

Effective 5/10/2016

**Part 4
Operations**

31A-44-401 Continuing care contract requirements -- No waiver.

- (1) A continuing care contract shall:
 - (a) provide that the provider shall refund the portion of a departing resident's entrance fee that the provider has agreed to refund, if any, no later than the earlier of:
 - (i) if the departing resident ceased occupancy of the departing resident's unit before any other departing resident who has not received an entrance fee refund, 30 days after the day on which the provider accumulates an amount of money, from sales of living units previously occupied by departing residents, that is equal to the departing resident's entrance fee refund; or
 - (ii) one year after the day on which the departing resident ceases to occupy the departing resident's living unit, unless the provider proves that the provider has made and is making a good faith effort to find an occupant for a living unit that was previously occupied by a departing resident;
 - (b) provide that the resident may terminate the continuing care contract upon giving notice of termination:
 - (i) with or without cause; and
 - (ii) clearly stating what portion of the entrance fee the provider will refund and the date by which the provider will make the refund; and
 - (c) provide that a continuing care contract is terminated by the resident's death and clearly state:
 - (i) what portion of the entrance fee the provider will refund in the event of the resident's death;
 - (ii) the date before which the provider will make the refund; and
 - (iii) to whom the provider will make the refund.
- (2) A continuing care contract may permit involuntary dismissal of a resident from a continuing care facility upon a reasonable determination by the provider that the resident's health and well-being require termination of the continuing care contract.
- (3) If a resident is dismissed under Subsection (2) and is in a condition of financial hardship, as defined by the department by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the provider shall refund the resident's entrance fee:
 - (a) in an amount provided in the continuing care contract; and
 - (b) before the earlier of:
 - (i) a time provided in the continuing care contract; and
 - (ii) 60 days after the day on which the provider dismisses the resident from the facility.
- (4) A resident may not waive a provision of this chapter by agreement.

Amended by Chapter 8, 2016 Special Session 3

31A-44-402 Actuarial reserve -- Department may require.

- (1) The department may require a provider that the department determines has actuarial liability under Section 31A-44-204 to create an additional reserve fund to offset the actuarial liability.
- (2) The department may require the additional reserve fund described in Subsection (1) by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Enacted by Chapter 270, 2016 General Session

31A-44-403 Resident advisory committee.

- (1) A provider shall maintain, beginning no later than two years after the day on which a facility is operational, a resident advisory committee for the facility that meets the requirements of this section.
- (2) A resident advisory committee shall:
 - (a) consist of no fewer than the lesser of five residents or all residents;
 - (b) meet no less than once per month; and
 - (c) discuss resident concerns and communications relevant to the provider or the facility.
- (3) A provider shall:
 - (a) meet with the resident advisory committee no fewer than three times per year; and
 - (b) distribute a provider disclosure statement to the resident advisory committee each time the provider is required to renew the provider disclosure statement under Section 31A-44-301.

Enacted by Chapter 270, 2016 General Session

31A-44-404 Nondisturbance of residents .

- (1) A person may not directly or indirectly disturb the rights of a resident or third party beneficiary under a continuing care contract and this chapter if the resident has substantially performed the resident's obligations under the continuing care contract.
- (2) If the person to whom a resident owes performance under the continuing care contract is contested, and a court has not issued a temporary or permanent order resolving the contest:
 - (a) the department may appoint a temporary receiver to receive the performance of the resident; and
 - (b) a court may appoint a receiver upon petition by the department.
- (3)
 - (a) Except as provided in Subsection (3)(b), a person other than a resident that holds a present right to possess a facility, including a ground lessor but only after the ground lessor acquires a provider's possessory interest by termination of a ground lease or otherwise, is bound by every continuing care contract related to the facility, including a continuing care contract that provides for the return of part or all of a resident's entrance fee.
 - (b) If a ground lessor acquires a provider's possessory interest by termination of a ground lease or otherwise, the ground lessor's obligation under the continuing care contracts is limited to the monetary obligations of the provider to which the ground lessor succeeds.
- (4)
 - (a) The commissioner holds a covenant that:
 - (i) runs with the land on which a facility is located; and
 - (ii) except as provided in Subsection (4)(b), binds a person with a present right to possess the land on which the facility is located, including a ground lessor but only after the ground lessor acquires a provider's possessory interest by termination of a ground lease or otherwise, to every continuing care contract related to the facility, including a continuing care contract that provides for the return of all or part of a resident's entrance fee.
 - (b) If a ground lessor acquires a provider's possessory interest by termination of a ground lease or otherwise, the ground lessor's obligation under the continuing care contracts under the covenant described in Subsection (4)(a) is limited to the monetary obligations of the provider to which the ground lessor succeeds.
 - (c) A person may not sell the land on which the facility is located free and clear of the interest described in Subsection (4)(a).

(5) A person may not sell or transfer the land on which a facility subject to a ground lease is located free and clear of the provider's possessory interest in the ground lease.

Amended by Chapter 8, 2016 Special Session 3

31A-44-405 Continuing care facilities not exempt from property tax.

Notwithstanding any tax-exempt status of a provider or facility, a provider or facility is liable for property tax due under Title 59, Chapter 2, Property Tax Act.

Enacted by Chapter 270, 2016 General Session