

Effective 5/10/2016

**Part 6
Enforcement**

31A-44-601 Lien held by the commissioner in favor of a resident or a group of residents.

- (1) To secure the obligations of the provider to a resident or a group of residents under a continuing care contract, the commissioner holds a lien in favor of the resident or group of residents that attaches on the day the notice described in Subsection (3) is recorded as provided in Subsection (4).
- (2) A lien described in Subsection (1) covers the real and personal property of the provider that is used in connection with the facility.
- (3) The provider shall prepare, for the county where the facility is located, a written notice, sworn to by each person with an interest in the facility, that contains:
 - (a) the name of any provider and ground lessor;
 - (b) a legal description of the provider's real or personal property that is used in connection with the facility; and
 - (c) a statement that the real or personal property used in connection with the facility is subject to this chapter and to the lien imposed by this section, except that the interest of a ground lessor in the land and infrastructure improvements to the land on which the facility is located is not subject to the lien imposed by this section.
- (4) The provider shall record the notice described in Subsection (3) in the real property records of each county where the provider has real property on or before the date the provider first executes a continuing care contract for the facility.
- (5) Except as provided in Subsection (6), the lien described in Subsection (1) is subordinate to any lien on the property of the provider.
- (6) The amount of any lien on the provider's property that is superior to a lien described in Subsection (1) is limited to the portion of the funds secured by the lien that the provider uses to:
 - (a) construct, acquire, replace, or improve a facility;
 - (b) refinance the portion of a loan used to construct, acquire, replace, or improve a facility;
 - (c) pay, for a loan related to the facility, a reasonable loan fee, a loan expense, or loan interest;
 - (d) refund an entrance fee to a facility resident;
 - (e) pay reasonable operating costs of the facility; or
 - (f) pay an amount for a purpose determined by the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (7) If a lien on the property of the provider is superior to a lien described in Subsection (1), a provider may only use an entrance fee to:
 - (a) reduce a debt secured by a superior lien;
 - (b) construct, acquire, replace, or improve a facility;
 - (c) fund reserves for the provider's actuarial debt under continuing care contracts for a facility;
 - (d) refund an entrance fee of a resident of a facility;
 - (e) pay a facility resident's debt to the provider for a recurring fee due under the resident's continuing care contract; or
 - (f) pay an amount for a purpose approved by the commissioner.
- (8) The commissioner may judicially foreclose a lien described in Subsection (1) if property subject to the lien is liquidated or the provider is insolvent or bankrupt.

- (9) The commissioner shall use the proceeds from a lien foreclosed under Subsection (8) to satisfy the provider's obligations under any continuing care contract in effect on the day the commissioner forecloses the lien.

Amended by Chapter 8, 2016 Special Session 3

31A-44-602 Enforcement by department -- Rulemaking.

- (1) Subject to the requirements of Title 63G, Chapter 4, Administrative Procedures Act, the department may:
 - (a) receive and act on a complaint from a resident about a provider or a facility;
 - (b) take action designed to obtain voluntary compliance by the provider with this chapter for the benefit of a resident;
 - (c) commence administrative or judicial proceedings on the commission's own in order to enforce compliance by a provider with this chapter for the benefit of a resident;
 - (d) after a complaint by a resident about a provider for a facility subject to a ground lease, require the provider to pay rent in accordance with the ground lease; or
 - (e) take action against a provider who fails to:
 - (i) respond to the department, in writing, before 30 business days after the day on which the provider receives notice from the department of a complaint filed with the department; or
 - (ii) submit information requested by the department.
- (2) The department may:
 - (a) counsel an individual on the individual's rights or duties under this chapter;
 - (b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
 - (i) restrict or prohibit practices by the provider that are misleading, unfair, or abusive;
 - (ii) promote or assure fair and full disclosure of the terms and conditions of continuing care contracts, agreements, and communications between a resident and a provider;
 - (iii) promote or assure the ability of the public to compare continuing care contracts, providers, and facilities; and
 - (iv) clearly disclose any financial risks related to a provider's facility to the facility's residents;
 - (c) employ hearing examiners, clerks, and other employees and agents as necessary to perform the department's duties under this chapter;
 - (d) appoint a receiver for a provider; and
 - (e) upon request by a provider, subordinate a lien imposed under Section 31A-44-601 for the purpose of the provider obtaining secondary financing or refinancing of a facility if:
 - (i) the facility is financially sound; and
 - (ii) subordinating the lien does not adversely affect the residents of the facility.

Amended by Chapter 8, 2016 Special Session 3

31A-44-603 Examinations.

- (1) The department may conduct periodic on-site examinations of a provider.
- (2) In conducting an examination, the department or the department's staff:
 - (a) shall have full and free access to all the provider's records; and
 - (b) may summon and qualify as a witness, under oath, and examine, any director, officer, member, agent, or employee of the provider, and any other person, concerning the condition and affairs of the provider or a facility.
- (3) The provider shall pay the reasonable costs of an examination under this section.

- (4) The department may conduct an on-site examination in conjunction with an examination performed by a representative of an agency of another state.
- (5)
 - (a) The department, in lieu of an on-site examination, may accept the examination report of an agency of another state that has regulatory oversight of the provider, or a report prepared by an independent accounting firm.
 - (b) A report accepted under Subsection (5)(a) is considered for all purposes an official report of the department.
- (6) Upon reasonable cause, the department may conduct an on-site examination of an unlicensed person to determine whether a violation of this chapter has occurred.

Enacted by Chapter 270, 2016 General Session

31A-44-604 Criminal and civil penalties.

- (1) A person who knowingly violates this chapter or files materially false information with a registration application or renewal under this chapter is:
 - (a) guilty of a class B misdemeanor; and
 - (b) subject to revocation of the person's registration under this chapter.
- (2) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if the department determines that a person is engaging in the business of being a continuing care provider in violation of this chapter, the department may:
 - (a) suspend, revoke, or refuse to renew the person's registration under this chapter;
 - (b) issue a cease and desist order from committing any further violation;
 - (c) prohibit the person from continuing to engage in the business of being a continuing care provider;
 - (d) impose an administrative fine not greater than \$1,000 per violation, except that the aggregate total of fines imposed under this chapter against a person in a calendar year may not exceed \$30,000 for that calendar year; or
 - (e) take any combination of actions listed under this Subsection (2).
- (3) If the department revokes a registration, the department is not required to refund any portion of the provider's filing or renewal fee for the remainder of the period for which the fee is paid.

Enacted by Chapter 270, 2016 General Session

31A-44-605 Civil liability.

- (1) A provider who enters into a continuing care contract with an individual without complying with the disclosure statement requirement described in this chapter, or who makes a continuing care contract with an individual who relies on a disclosure statement that misstates or omits a material fact, is liable to the individual for:
 - (a) actual damages;
 - (b) repayment of all fees the individual paid to the provider, minus the reasonable value of care and lodging provided to the individual before the violation, misstatement, or omission was discovered or reasonably should have been discovered;
 - (c) interest at the legal rate for judgments;
 - (d) court costs; and
 - (e) reasonable attorney fees.

- (2) A provider is liable under this section unless the provider proves by a preponderance of evidence that the provider and the provider's agents and employees did not know and should not have known of the misstatement or omission.
- (3) An individual may not maintain an action under this section if:
 - (a) the individual receives a written offer from the provider for refund of all amounts paid to the provider or the provider's facility plus reasonable interest from the date of payment, minus the reasonable value of care and lodging provided before the receipt of the offer;
 - (b) the individual receives the offer described in Subsection (3)(a) before a day that is 30 days after the earlier of:
 - (i) the day on which the individual submits a written request to the provider for repayment under this section; or
 - (ii) the day on which the individual files an action under this section;
 - (c) the offer includes a description of the provisions of this section; and
 - (d) the recipient of the offer fails to accept the offer within 30 days after the date the offer is received.
- (4) An individual shall bring an action under this section before the day three years after:
 - (a) the day on which the individual enters into the continuing care contract; or
 - (b) the individual discovers, or reasonably should have discovered, the provider's violation, misstatement, or omission.
- (5) A person does not have a cause of action under this chapter except as expressly provided by this chapter.
- (6) This chapter does not limit the liability that exists under any other statute or common law.
- (7) The provisions of this chapter are not exclusive and the remedies provided by this chapter are in addition to any other remedies provided by any other law.

Amended by Chapter 8, 2016 Special Session 3