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₵ 03-01-16 10:08 PM ₵

H.B. 323
2nd Sub. (Gray)

Representative Earl D. Tanner proposes the following substitute bill:

CONTINUING CARE RETIREMENT COMMUNITY AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Earl D. Tanner

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts provisions related to continuing care providers.

Highlighted Provisions:

This bill:

- includes a continuing care provider within the jurisdiction of the Insurance Department;
- creates a continuing care advisory committee;
- provides operating requirements for a continuing care provider;
- requires a continuing care provider to register with the Insurance Department;
- provides form and content requirements for a continuing care contract;
- requires a continuing care provider to make certain disclosures;
- provides requirements for a successor to a continuing care provider's assets;
- grants rulemaking and enforcement authority to the Insurance Department;
- provides that the Insurance Department may place a continuing care facility under supervision, rehabilitation, or liquidation under certain circumstances;
- imposes criminal and civil penalties; and
- creates a private right of action.

2nd Sub. H.B. 323

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

31A-44-101, Utah Code Annotated 1953
31A-44-102, Utah Code Annotated 1953
31A-44-103, Utah Code Annotated 1953
31A-44-104, Utah Code Annotated 1953
31A-44-201, Utah Code Annotated 1953
31A-44-202, Utah Code Annotated 1953
31A-44-203, Utah Code Annotated 1953
31A-44-204, Utah Code Annotated 1953
31A-44-205, Utah Code Annotated 1953
31A-44-206, Utah Code Annotated 1953
31A-44-301, Utah Code Annotated 1953
31A-44-302, Utah Code Annotated 1953
31A-44-303, Utah Code Annotated 1953
31A-44-304, Utah Code Annotated 1953
31A-44-305, Utah Code Annotated 1953
31A-44-306, Utah Code Annotated 1953
31A-44-307, Utah Code Annotated 1953
31A-44-308, Utah Code Annotated 1953
31A-44-309, Utah Code Annotated 1953
31A-44-310, Utah Code Annotated 1953
31A-44-311, Utah Code Annotated 1953
31A-44-312, Utah Code Annotated 1953
31A-44-313, Utah Code Annotated 1953
31A-44-314, Utah Code Annotated 1953
31A-44-401, Utah Code Annotated 1953

31A-44-402, Utah Code Annotated 1953
31A-44-403, Utah Code Annotated 1953
31A-44-404, Utah Code Annotated 1953
31A-44-405, Utah Code Annotated 1953
31A-44-501, Utah Code Annotated 1953
31A-44-502, Utah Code Annotated 1953
31A-44-503, Utah Code Annotated 1953
31A-44-504, Utah Code Annotated 1953
31A-44-505, Utah Code Annotated 1953
31A-44-506, Utah Code Annotated 1953
31A-44-507, Utah Code Annotated 1953
31A-44-601, Utah Code Annotated 1953
31A-44-602, Utah Code Annotated 1953
31A-44-603, Utah Code Annotated 1953
31A-44-604, Utah Code Annotated 1953
31A-44-605, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **31A-44-101** is enacted to read:

CHAPTER 44. CONTINUING CARE PROVIDER ACT

31A-44-101. Title.

This chapter is known as the "Continuing Care Provider Act."

Section 2. Section **31A-44-102** is enacted to read:

31A-44-102. Definitions.

As used in this chapter:

(1) "Continuing care" means the furnishing to an individual, other than by an individual related to the individual by blood, marriage, or adoption, of lodging together with nursing services, medical services, or other related services pursuant to a contract requiring an entrance fee.

(2) "Continuing care contract" means a contract under which a provider provides continuing care to a resident.

(3) (a) "Entrance fee" means an initial or deferred transfer to a provider of a sum of money or property made or promised to be made as full or partial consideration for acceptance of a specified individual as a resident in a facility.

(b) "Entrance fee" does not include an amount less than the sum of the regular period charges for three months of residency in a facility.

(c) "Entrance fee" includes a monthly fee, assessed at a rate that is greater than the value of the provider's monthly services, that a resident agrees to pay in exchange for acceptance into a facility or a promise of future monthly fees assessed at a rate that is less than the value of the services rendered.

(d) "Entrance fee" does not include a deposit of less than $1,000 made under a reservation agreement.

(4) "Facility" means a place in which a person provides continuing care.

(5) "Living unit" means a room, apartment, cottage, or other area within a facility set aside for the exclusive use or control of one or more identified individuals.

(6) "Provider" means:

(a) the owner of a facility;

(b) a person, other than a resident, that claims a possessory interest in a facility; or

(c) a person who enters into a continuing care contract with a resident or potential resident.

(7) "Provider disclosure statement" means, for a given provider, the disclosure statement described in Section 31A-44-301.

(8) "Reservation agreement" means an agreement that requires the payment of a deposit to reserve a living unit for a prospective resident.

(9) "Resident" means an individual entitled to receive continuing care in a facility pursuant to a continuing care contract.

Section 3. Section **31A-44-103** is enacted to read:

31A-44-103. Advisory committee.

(1) The commissioner may convene a continuing care advisory committee to advise the department on issues related to the continuing care industry, continuing care facility residents, and the department's duties under this chapter.

(2) The committee described in Subsection (1) shall consist of five members appointed

by the department as follows:

(a) a representative from an organization that advocates for the elderly;

(b) a representative of nursing homes;

(c) a representative from the continuing care industry;

(d) a representative from the insurance community; and

(e) a member of the general public who is a resident of a continuing care facility.

(3) (a) Except as required by Subsection (3)(b), the term of a member of the committee shall be four years and expire on July 1.

(b) The commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of members are staggered so that approximately half of the committee is appointed every two years.

(4) A member of the committee shall serve until the member's successor is appointed and qualified.

(5) When a vacancy occurs in the committee's membership, the department shall appoint a replacement.

(6) The department may dismiss and replace members of the committee at the department's discretion.

(7) The department may designate a chair of the committee.

(8) The committee shall meet when called by the department.

(9) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(10) The department shall staff the committee.

Section 4. Section **31A-44-104** is enacted to read:

31A-44-104. Scope of regulation.

(1) The regulation of providers under this chapter does not limit or replace regulation by any other governmental entity of continuing care facilities or providers.

(2) The department may not regulate, or in any manner inquire into, the quality of care

provided in a facility.

(3) A record that the department receives from a provider that is not required to be part of a disclosure statement under this chapter is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(4) The department shall determine the amount of any fee required under this chapter, in accordance with Section 63J-1-504, and in an amount that covers the department's cost to administer this chapter.

Section 5. Section **31A-44-201** is enacted to read:

Part 2. Registration

31A-44-201. Registration required.

(1) A person may not provide or offer to provide continuing care unless the person is registered with the department.

(2) A registration expires on December 31 of a given year, unless a provider renews the provider's registration under Section 31A-44-203.

Section 6. Section **31A-44-202** is enacted to read:

31A-44-202. Registration.

(1) To register under this part, a person shall:

(a) pay an original registration fee established by the department in accordance with Section 63J-1-504; and

(b) submit a registration statement, in a form approved by the department, that contains the information described in Subsection (2).

(2) A provider's registration statement shall include:

(a) the provider disclosure described in Section 31A-44-301;

(b) a copy of the continuing care contract that the provider will propose to a prospective facility resident;

(c) evidence that the provider's facility is located or will be located in a zone that a municipality or county has zoned exclusively for continuing care facilities; and

(d) information required by the department by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) The department may deny, suspend, or revoke the registration or renewal of a provider if the department determines:

(a) the provider's application or registration statement is insufficient;

(b) the provider has not demonstrated that the provider is financially sound;

(c) the provider has not demonstrated that the competence, experience, and integrity of the provider and the provider's board of directors, officers, and management make it in the public interest to approve the registration; or

(d) the provider has not demonstrated that the provider is capable of complying with this chapter.

(4) The department shall accept or deny a registration no later than 180 days after the day on which the provider applies for registration.

Section 7. Section **31A-44-203** is enacted to read:

31A-44-203. Renewal process.

In order to renew a registration under this section, a provider shall:

(1) pay an annual fee established by the department in accordance with Section 63J-1-504;

(2) submit an updated provider disclosure statement that complies with Section 31A-44-301;

(3) submit a copy of the most recent version of the continuing care contract the provider will propose to a prospective facility resident; and

(4) comply with rules made by the department under Subsection 31A-44-202(3).

Section 8. Section **31A-44-204** is enacted to read:

31A-44-204. Actuarial review.

(1) This section applies only to a provider that directly or indirectly offers a future guarantee of continuing care that the department determines develops current actuarial liabilities.

(2) A provider subject to this section shall file, with the department, an actuarial review:

(a) upon being notified of the department's determination; and

(b) on a day designated by the department in the year five years after the day on which the department last received an actuarial review from the provider.

(3) The department may require an actuarial review in addition to the actuarial reviews required by Subsection (2) if the department determines that the provider shows an indication

of financial instability.

Section 9. Section **31A-44-205** is enacted to read:

31A-44-205. Suspension or revocation of registration.

The department may suspend or revoke a provider's registration if the provider intentionally violates this chapter.

Section 10. Section **31A-44-206** is enacted to read:

31A-44-206. Management by others.

A provider may not contract for management of a facility unless the provider notifies the department.

Section 11. Section **31A-44-301** is enacted to read:

Part 3. Provider Disclosure

31A-44-301. Precontractual recording requirements.

(1) A provider shall file with the department a current disclosure statement that meets the requirements of this part.

(2) A provider shall comply with Subsection (1) before the provider:

(a) contracts to provide continuing care to a resident in this state;

(b) extends the term of an existing continuing care contract with a resident in this state that requires a person to pay an entrance fee, regardless of whether the extended continuing care contract requires an entrance fee; or

(c) solicits or offers, or directs another person to solicit or offer, a continuing care contract to a resident of the state.

(3) A provider solicits or offers a contract under Subsection (2)(c), if, after 12 months before the day on which a party to a continuing care contract signs or accepts a continuing care contract, the provider or a person acting on behalf of the provider gives information concerning the facility or the availability of a continuing care contract for the facility:

(a) in a direct communication to an individual in the state; or

(b) in a paid advertisement published in or broadcast from the state, except for a paid advertisement in a publication with more than two-thirds of the publication's circulation outside of the state.

Section 12. Section **31A-44-302** is enacted to read:

31A-44-302. Delivery of disclosure statement.

(1) A provider shall deliver a disclosure statement to an individual before the earlier of the date:

(a) the provider executes a continuing care contract with the individual; or

(b) the individual transfers an entrance fee or a nonrefundable deposit to the provider.

(2) The most recently filed disclosure statement:

(a) is current for the purpose of this chapter; and

(b) is the only disclosure statement that satisfies the requirements described in Subsection (1).

Section 13. Section **31A-44-303** is enacted to read:

31A-44-303. Cover page of disclosure statement.

The cover page of a disclosure statement shall state:

(1) the disclosure statement's date in a prominent location and in type that is boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material so as to be conspicuous;

(2) that the provider is required to deliver a disclosure statement to an individual before the provider executes a continuing care contract with the individual or accepts payment of an entrance fee or a nonrefundable deposit from the individual; and

(3) that the disclosure statement has not been approved by a government agency to ensure the disclosure statement's accuracy.

Section 14. Section **31A-44-304** is enacted to read:

31A-44-304. Disclosure statement -- Contents -- Provider characteristics.

A provider disclosure statement shall contain:

(1) the name and business address of each provider officer, director, trustee, and managing or general partner of the provider;

(2) the name and business address of each person who has at least a 10% interest in the provider and a description of the person's interest in or occupation with the provider;

(3) a statement of whether the continuing care provider is a for-profit or not-for-profit entity, and a statement of the provider's tax-exempt status, if any;

(4) (a) the location and a description of the proposed or existing physical property of the facility; and

(b) if the physical property is proposed:

(i) the property's estimated completion date;

(ii) whether construction has begun; and

(iii) conditions under which the property's construction could be deferred;

(5) if the provider intends to contract with a person other than an employee of the provider to manage the operations of the facility:

(a) a description of the person's experience in the operation or management of a continuing care or similar facility;

(b) a description of any entity that controls or is controlled by the person that proposes to provide goods, leases, or services to residents of the facility, of an aggregate value of $500 or greater in a year;

(c) a description of any goods, leases, or services described in Subsection (5)(b), and a statement of the probable or anticipated cost to the facility, provider, or residents for the goods, leases, or services, or a statement that the provider is unable to estimate the cost; and

(d) a description of any matter in which the person:

(i) has been convicted of a felony;

(ii) is subject to a restrictive court order; or

(iii) has had a state or federal license revoked as a result of a matter related to a continuing care facility or a related health care field; and

(6) (a) any religious, charitable, or nonprofit organization affiliated with the provider;

(b) the extent of the affiliation and the extent to which the organization is responsible for contractual or financial obligations of the provider; and

(c) the organization's tax-exempt status, if any.

Section 15. Section **31A-44-305** is enacted to read:

31A-44-305. Disclosure statement -- Contents -- Contract.

A provider disclosure statement shall include a description of the following provisions contained in the provider's continuing care contract:

(1) a description of the services provided under the provider's proposed continuing care contract, including a description of:

(a) the extent to which the provider will offer or provide medical care to a resident; and

(b) the services the provider includes under the contract, and the services the provider offers at an extra charge;

(2) the fees the provider requires a resident to pay, including any entrance fees or periodic charges;

(3) a description of the conditions, in the provider's continuing care contract, under which:

(a) a provider or a resident may cancel the continuing care contract;

(b) a provider will refund all or part of an entrance fee; or

(c) a provider may adjust a fee the provider charges a resident and any limitations on those adjustments;

(4) any health or financial criteria that a resident is required to meet under the continuing care contract for acceptance to the facility or for the resident to continue living in the facility, including the effect of any change in the health or financial condition of an individual between the date of the continuing care contract and the date on which the individual initially occupies a living unit;

(5) the provider's policy for the spouse of a resident, regarding:

(a) the conditions under which the spouse is allowed to live in the resident's unit; and

(b) the financial or other consequences to the resident if the spouse does not meet the requirements for admission;

(6) the provider's policy regarding changes in the number of people residing in a living unit because of marriage or other relationships;

(7) the conditions under which a living unit occupied by a resident may be made available by the provider to a different resident other than on the death of the previous resident; and

(8) the number of continuing care contracts terminated, other than by the resident's death, at the provider's facility in the state during the three most recent calendar years.

Section 16. Section **31A-44-306** is enacted to read:

31A-44-306. Disclosure statement -- Contents -- Health care information.

The provider disclosure statement shall include:

(1) a description of the facility as an independent living, assisted living, or nursing care facility, or a combination of facility types;

(2) a general description of medical services provided at the facility in addition to assisted living services and nursing care services;

(3) a statement as to whether the facility accepts Medicare and Medicaid reimbursements; and

(4) notice of the online federal nursing care facility database and the online federal nursing care facility database's Internet address.

Section 17. Section **31A-44-307** is enacted to read:

31A-44-307. Disclosure statement -- Contents -- Financial information.

The provider disclosure statement shall:

(1) describe any provisions the provider made or will make to provide reserve funding or security to enable the provider to fully perform the provider's obligations under a continuing care contract, including:

(a) the establishment of an escrow account, trust, or reserve fund, and the manner in which the provider will invest the account, trust, or reserve funds; and

(b) the name and experience of an individual in the provider's direct employment who will make the investment decisions;

(2) contain a provider financial statement, prepared in accordance with generally accepted accounting principles, and audited by an independent certified public account, that includes:

(a) a balance sheet as of the end of the most recent fiscal year;

(b) an income statement for each of the three most recent fiscal years; and

(c) a cash flow statement for each of the three most recent fiscal years;

(3) include a provider financial statement that contains estimated annual income statements for the provider for at least the next five fiscal years, including the provider's:

(a) anticipated earnings on any cash reserves;

(b) estimate of net receipts from entrance fees, other than entrance fees included in the statement of the anticipated source and application of funds required under Section 31A-44-305, minus estimated entrance fee refunds, including a description of the actuarial basis and method of computation for the projection of entrance fee receipts;

(c) estimate of gifts or bequests to be relied on to meet operating expenses;

(d) projection of estimated income from fees and charges, excluding entrance fees, that:

(i) states the individual rates the provider anticipates that the provider will charge; and

(ii) includes a description of the assumptions used for computing the estimated occupancy rate of the facility and the effect on the income of the facility on a government subsidy for health care services, if any, that is provided under the continuing care contract;

(e) projection of the facility's operating expenses, including:

(i) a description of the assumptions used in computing the facility's operating expenses; and

(ii) a separate allowance for the replacement of equipment and furnishings and anticipated major structural repairs or additions; and

(f) estimate of annual payments of principal and interest required by a mortgage loan or other long-term financing arrangement relating to the facility.

Section 18. Section **31A-44-308** is enacted to read:

31A-44-308. Anticipated source and application of funds.

If a provider's facility is not in operation, the provider disclosure statement shall include a statement of the provider's anticipated source and application of funds to be used in the purchase or construction of the facility, including:

(1) an estimate of the cost of purchasing or constructing and of equipping the facility, including financing expenses, legal expenses, land costs, occupancy development costs, and any other costs that the provider expects to incur or to become obligated to pay before the facility begins operating;

(2) a description of any mortgage loan or other long-term financing arrangement for the facility, including the anticipated terms and costs of the financing;

(3) an estimate of the total entrance fees to be received from, or on behalf of, residents before the facility begins operation; and

(4) an estimate of any funds the provider anticipates are necessary to cover the facility's initial losses.

Section 19. Section **31A-44-309** is enacted to read:

31A-44-309. Standard contract form.

(1) A provider shall attach a copy of the provider's standard contract form to a disclosure statement.

(2) The standard contract form shall specify the refund provisions of Sections 31A-44-312 and 31A-44-313.

Section 20. Section **31A-44-310** is enacted to read:

31A-44-310. Annual disclosure statement revision.

(1) A provider shall file a revised disclosure statement with the department before 120 days after the day on which the provider's fiscal year ends.

(2) The revised disclosure statement shall revise, as of the end of the provider's fiscal year, the information required by this part.

(3) The revised disclosure statement shall describe any material differences between:

(a) the estimated income statements filed under Section 31A-44-307 as a part of the disclosure statement the provider filed after the start of the provider's most recently completed fiscal year; and

(b) the actual result of operations during that fiscal year with the revised estimated income statements filed as a part of the revised disclosure statement.

(4) A provider may revise the provider's disclosure statement and may file a revised disclosure statement at any time if, in the provider's opinion, a revision is necessary to prevent a disclosure statement from containing a material misstatement of fact or omitting a material fact required by this part.

(5) The department:

(a) shall review the disclosure statement for completeness; and

(b) is not required to review the disclosure statement for accuracy.

Section 21. Section **31A-44-311** is enacted to read:

31A-44-311. Advertisement in conflict with disclosures.

A provider may not engage in any type of advertisement for a continuing care contract or facility if the advertisement contains a statement or representation in conflict with the disclosures required under this part.

Section 22. Section **31A-44-312** is enacted to read:

31A-44-312. Rescission of contract -- Required language.

(1) An individual who executes a continuing care contract with a provider may rescind the contract at any time before the later of:

(a) midnight on the day seven days after the day on which the individual executes the continuing care contract; or

(b) a time specified in the continuing care contract that is:

(i) after the day on which the continuing care contract is executed; or

(ii) after the day on which the individual receives a disclosure statement that meets the requirements of this part.

(2) A provider may not require an individual who executes a continuing care contract with the provider to move into a facility before the end of the rescission period described in Subsection (1).

(3) If an individual rescinds a continuing care contract under this section, the provider shall refund any money or property that the individual transferred to the provider, other than periodic charges specified in the contract and applicable only to the period the individual occupied a living unit, before 30 days after the day on which the individual rescinds the contract.

(4) A continuing care contract shall include the following statement, or a substantially equivalent statement, in type that is boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material so as to be conspicuous:

"You may cancel this contract at any time before midnight on the day seven days after the day on which you sign the contract, or before a later day if specified in the contract that is after the later of the day on which you sign the contract or you receive the facility's disclosure statement. If you elect to cancel the contract, you are required to cancel the contract in writing, and you are entitled to receive a refund of all assets transferred other than periodic charges applicable to the time you occupied your living unit."

(5) In addition to Subsection (4), a continuing care contract shall include the following statement in type that is boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material so as to be conspicuous:

"This document, if executed, constitutes a legal and binding contract between you and _____ (Legal name of the continuing care provider). You may wish to consult a legal or financial advisor before signing, although it is not required that you do so to make this contract binding."

Section 23. Section **31A-44-313** is enacted to read:

31A-44-313. Cancellation of contract -- Death or incapacity before occupancy.

(1) A continuing care contract to provide continuing care in a living unit in a facility is cancelled if the resident:

(a) dies before occupying a living unit in the facility; or

(b) is precluded under the terms of the contract from occupying a living unit in the facility because of illness, injury, or incapacity.

(2) If a continuing care contract is cancelled under this section, the resident or the resident's legal representative is entitled to a refund of all money or property transferred to the provider, minus:

(a) any nonstandard costs specifically incurred by the provider or facility at the request of the resident that are described in the contract or in an addendum to the contract signed by the resident; and

(b) a reasonable service charge, if set out in the contract, that may not exceed the greater of:

(i) $1,000; or

(ii) 2% of the entrance fee.

Section 24. Section **31A-44-314** is enacted to read:

31A-44-314. Disclosure statement fees.

A provider that files a disclosure statement under this chapter shall pay to the department a fee established by the department in accordance with Section 63J-1-504.

Section 25. Section **31A-44-401** is enacted to read:

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 resident's entrance fee that the provider has agreed to refund, if any, no later than the earlier of:

(i) 30 days after the day on which the resident's living unit is occupied by a new resident; or

(ii) one year after the day on which the resident ceases to occupy the resident's living unit, unless the provider proves that the provider has made and is making a good faith effort to find another resident for the living unit at the lowest entrance fee that is acceptable to the 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.

Section 26. Section **31A-44-402** is enacted to read:

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.

Section 27. Section **31A-44-403** is enacted to read:

31A-44-403. Resident advisory committee.

(1) A provider shall maintain, for a facility, a resident advisory committee 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.

Section 28. Section **31A-44-404** is enacted to read:

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 person that succeeds a provider in the provider's interest in a facility is bound by every continuing care contract concerning the facility, including a continuing care contract that provides for the return of entrance fees.

Section 29. Section **31A-44-405** is enacted to read:

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.

Section 30. Section **31A-44-501** is enacted to read:

Part 5. Supervision, Rehabilitation, and Liquidation

31A-44-501. Supervision.

(1) The department may place a provider or facility under supervision if:

(a) the department determines that the provider is financially unsound or is unable to meet the income or available cash projections included in the provider's disclosure statement, and that the ability of the provider to fully perform the provider's obligations under continuing care contracts is endangered; or

(b) the provider is bankrupt, insolvent, or has filed for protection from creditors under a federal or state reorganization, bankruptcy, or insolvency law.

(2) For a provider or facility that the department places under supervision, the department:

(a) shall appoint a supervisor; and

(b) may order the facility, other than an order described in Section 31A-44-503 or 31A-44-504, to correct any condition described in Subsection 1(a) through (d) that is the basis for placing the provider or facility under supervision.

(3) The department may provide that a provider may not, during the supervision period and without the prior approval of the department or the supervisor:

(a) dispose of, convey, or encumber the provider's assets;

(b) withdraw from the provider's bank account;

(c) lend the provider's funds;

(d) invest the provider's funds;

(e) transfer the provider's property;

(f) incur a debt, obligation, or liability;

(g) merge or consolidate with another facility; or

(h) enter into a new continuing care contract.

(4) The department shall terminate the supervision and restore to a provider the authority to manage a facility's affairs if the department determines that the facility is capable of meeting its financial obligations.

(5) The facility or provider shall pay the costs of a supervisor.

Section 31. Section **31A-44-502** is enacted to read:

31A-44-502. Application for court order for rehabilitation or liquidation.

(1) Regardless of whether the department places a facility or provider under supervision under Section 31A-44-501, the department may request that the attorney general

petition a district court in the state, or a federal bankruptcy court that has exercised jurisdiction over a provider's facility, for an order that appoints a trustee to rehabilitate or liquidate the facility if:

(a) the department determines that:

(i) the provider is financially unsound or is unable to meet the income or available cash projections described in the provider's disclosure statement; and

(ii) the provider's ability to fully perform the provider's obligations under a continuing care contract is endangered; or

(b) the provider is bankrupt, insolvent, or has filed for protection from creditors under a federal or state reorganization, bankruptcy, or insolvency law.

(2) A court that evaluates a petition filed under Subsection (1) regarding a provider:

(a) shall evaluate the best interests of a person that has contracted with the provider; and

(b) may require the proceeds of a lien imposed under Section 31A-44-601 to be used to pay an entrance fee to another facility on behalf of a resident of the provider's facility.

Section 32. Section **31A-44-503** is enacted to read:

31A-44-503. Order to rehabilitate.

A court order to rehabilitate a facility under Section 31A-44-502 shall direct a trustee to:

(1) take possession of the provider's property in order to conduct the provider's business, including employing any manager or agent that the trustee considers necessary; and

(2) take action as directed by the court to eliminate the causes and conditions that made rehabilitation necessary, which action may include:

(a) selling the facility through bankruptcy or receivership proceedings; and

(b) requiring a purchaser of the facility to honor any continuing care contract for the facility.

Section 33. Section **31A-44-504** is enacted to read:

31A-44-504. Order to liquidate.

(1) If the trustee determines that further efforts to rehabilitate a provider's facility are impractical or useless, the trustee may petition a court for liquidation of the facility.

(2) A court that issues an order to liquidate a facility under Subsection (1) shall appoint

a trustee to collect and liquidate all of the provider's assets located in this state.

(3) An individual may not enter into a continuing care contract at a facility after a court enters an order to liquidate the facility.

Section 34. Section **31A-44-505** is enacted to read:

31A-44-505. Bond.

A court may refuse to make or vacate an order to rehabilitate a provider's facility under this part if the provider posts a bond that is:

(1) in an amount that the court determines is equal to the reserve funding the provider needs to fulfill the provider's obligations under all of the continuing care contracts for the facility;

(2) issued by a recognized surety authorized to do business in the state; and

(3) executed in favor of the state on behalf of any individual entitled to an entrance fee refund or other damages from the provider.

Section 35. Section **31A-44-506** is enacted to read:

31A-44-506. Termination of rehabilitation.

(1) A court may terminate a rehabilitation of a provider's facility and order the return of the facility and the facility's assets to the provider if the court determines:

(a) the objectives of the order to rehabilitate the facility have been accomplished; and

(b) the facility may be returned to the provider without further jeopardy to the facility's residents, creditors, or owners, or the public.

(2) A court may enter an order under this section after the court enters:

(a) a full report and accounting of the conduct of the facility's affairs during the rehabilitation; and

(b) a report on the facility's financial condition.

Section 36. Section **31A-44-507** is enacted to read:

31A-44-507. Payment of trustee.

A trustee's reasonable costs, expenses, and fees are payable from a provider's or facility's assets.

Section 37. Section **31A-44-601** is enacted to read:

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 a resident first occupies a facility or receives services under a continuing care contract.

(2) A lien described in Subsection (1) covers the real and personal property of the provider.

(3) The provider shall prepare, for each county where the provider has an interest in real or personal property, a written notice, sworn to by an officer of the provider, that contains:

(a) the name of the provider;

(b) a legal description of the provider's real or personal property; and

(c) a statement that the real or personal property is subject to this chapter and 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) The commissioner may, after providing notice to any resident of a facility subject to a lien described in Subsection (1), and after providing an opportunity for a hearing, subordinate the lien if the provider establishes, by a preponderance of the evidence, that:

(a) subordinating the lien is necessary to obtain secondary financing or refinancing of real or personal property subject to the lien;

(b) the provider is financially sound; and

(c) subordinating the lien does not adversely affect the residents of a facility subject to the lien.

(6) Except as provided in Subsection (7), the lien described in Subsection (1) is subordinate to a lien on the property of the provider.

(7) The amount of a 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; or

(c) pay, for a loan related to the facility, a reasonable loan fee or loan expense.

(8) 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.

(9) The commissioner may foreclose a lien described in Subsection (1) if property subject to the lien is liquidated or the provider is insolvent or bankrupt.

(10) 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.

Section 38. Section **31A-44-602** is enacted to read:

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 about a provider or a facility;

(b) take action designed to obtain voluntary compliance by the provider with this chapter;

(c) commence administrative or judicial proceedings on the commission's own in order to enforce compliance by a provider with this chapter; or

(d) 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; and

(d) appoint a receiver for a provider.

Section 39. Section **31A-44-603** is enacted to read:

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.

Section 40. Section **31A-44-604** is enacted to read:

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.

Section 41. Section **31A-44-605** is enacted to read:

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 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 regardless of whether the provider had actual knowledge of the misstatement or omission.

(3) An individual may not file or maintain an action under this section if:

(a) the individual, before filing the action, 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 offer includes a description of the provisions of this section; and

(c) 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.