

1                                   **CONTINUING CARE RETIREMENT FACILITIES**

2   **AMENDMENTS**

3   2023 GENERAL SESSION

4   STATE OF UTAH

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6   **LONG TITLE**

7   **General Description:**

8           This bill modifies provisions related to the regulation of continuing care facilities.

9   **Highlighted Provisions:**

10          This bill:

- 11           ▶ defines terms;
- 12           ▶ modifies the processes through which the Department of Insurance regulates
- 13           continuing care facilities; and
- 14           ▶ makes technical and conforming changes.

15   **Money Appropriated in this Bill:**

16          None

17   **Other Special Clauses:**

18          None

19   **Utah Code Sections Affected:**

20   AMENDS:

21           **31A-44-102**, as last amended by Laws of Utah 2016, Third Special Session, Chapter 8

22           **31A-44-402**, as enacted by Laws of Utah 2016, Chapter 270

23           **31A-44-502**, as last amended by Laws of Utah 2016, Third Special Session, Chapter 8

24           **31A-44-504**, as enacted by Laws of Utah 2016, Chapter 270

25           **31A-44-505**, as enacted by Laws of Utah 2016, Chapter 270

26           **31A-44-506**, as enacted by Laws of Utah 2016, Chapter 270

27   ENACTS:

28           **31A-44-501.1**, Utah Code Annotated 1953

29           **31A-44-501.2**, Utah Code Annotated 1953

30   REPEALS:

31           **31A-44-101**, as enacted by Laws of Utah 2016, Chapter 270

32           **31A-44-501**, as enacted by Laws of Utah 2016, Chapter 270

33           **31A-44-503**, as last amended by Laws of Utah 2016, Third Special Session, Chapter 8

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

36           Section 1. Section **31A-44-102** is amended to read:

37           **31A-44-102. Definitions.**

38           As used in this chapter:

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

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

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

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

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

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

56           (4) "Facility" means a place in which a person provides continuing care pursuant to a  
57 continuing care contract.

58           (5) "Ground lease" means a lease to a provider of the land and infrastructure  
59 improvements to the land on which a facility is located.

60           (6) "Ground lessor" means, for a facility subject to a ground lease, the owner and lessor  
61 of the land and infrastructure improvements to the land on which the facility is located.

62           (7) "Insolvent" means:

63 (a) having generally ceased to pay debts in the ordinary course of business other than as  
 64 a result of a bona fide dispute;

65 (b) being unable to pay debts as they become due; or

66 (c) being insolvent within the meaning of federal bankruptcy law.

67 ~~[(7)]~~ (8) "Living unit" means a room, apartment, cottage, or other area within a facility  
 68 set aside for the exclusive use or control of one or more identified individuals.

69 ~~[(8)]~~ (9) (a) "Provider" means:

70 (i) the owner of a facility;

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

72 (iii) a person who enters into a continuing care contract with a resident or potential  
 73 resident.

74 (b) "Provider" does not include a person who is solely a ground lessor.

75 ~~[(9)]~~ (10) "Provider disclosure statement" means, for a given provider, the disclosure  
 76 statement described in Section 31A-44-301.

77 ~~[(10)]~~ (11) "Reservation agreement" means an agreement that requires the payment of a  
 78 deposit to reserve a living unit for a prospective resident.

79 ~~[(11)]~~ (12) "Resident" means an individual entitled to receive continuing care in a  
 80 facility pursuant to a continuing care contract.

81 Section 2. Section **31A-44-402** is amended to read:

82 **31A-44-402. Actuarial reserve -- Department may require -- Priority of refunds.**

83 (1) The department may require a provider that the department determines has actuarial  
 84 liability under Section 31A-44-204 to create an additional reserve fund to offset the actuarial  
 85 liability.

86 (2) The department may require the additional reserve fund described in Subsection (1)  
 87 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act[-]

88 (3) If a refund or remittance of funds is owed in relation to a living unit due to the  
 89 death or relocation of a resident, the provider shall prioritize the sale of the resident's living  
 90 unit over the sale of other units for which a refund or remittance of funds is not owed.

91 Section 3. Section **31A-44-501.1** is enacted to read:

92 **31A-44-501.1. Financial assessment.**

93 (1) The department shall assess the financial condition of a provider no less than once

94 per year.

95 (2) The department may consider any relevant documents and information in  
96 performing an assessment.

97 (3) A provider shall prepare and timely provide to the department documents and  
98 information requested by the department in connection with an assessment.

99 (4) Department work papers created or relied upon in connection with an assessment  
100 are protected under Title 63G, Chapter 2, Government Records Access and Management Act.

101 (5) The department may conduct any portion of an assessment at the provider's facility  
102 during regular business hours if the department notifies the provider of the anticipated visit and  
103 assessment at least seven calendar days in advance.

104 (6) The department shall prepare a written report of the assessment and provide a copy  
105 of the report to the provider within 28 days after the day on which the department completes  
106 gathering information necessary to complete the assessment.

107 Section 4. Section **31A-44-501.2** is enacted to read:

108 **31A-44-501.2. Receivership.**

109 (1) Upon motion or on the court's own initiative, the court may appoint the  
110 commissioner as receiver for a provider.

111 (2) The court shall appoint the commissioner as receiver if, as determined by the  
112 commissioner, the provider:

113 (a) is insolvent or at material risk of becoming insolvent within the next twelve  
114 months;

115 (b) is materially unable to meet the income or available cash projections described in  
116 the provider's disclosure statement; or

117 (c) is unable or at risk of being unable to perform a material obligation under a  
118 continuing care contract within the next twelve months.

119 (3) In evaluating whether a receiver is appropriate under this section, the court:

120 (a) shall evaluate and promote the best interests of the residents that have contracted  
121 with the provider; and

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

124 (4) The commissioner may not file an independent proceeding or action described in

125 this section if another judicial proceeding or action based on the provider's financial condition  
126 is pending, but may move to intervene in a pending judicial proceeding or action based on the  
127 provider's financial condition.

128 Section 5. Section **31A-44-502** is amended to read:

129 **31A-44-502. Relief available.**

130 (1) ~~[A court order to rehabilitate a facility under Section 31A-44-501 may direct a~~  
131 ~~trustee to]~~ In a proceeding under Section 31A-44-501.2, a court may:

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

135 (b) ~~[take action as directed by the court]~~ direct a receiver to eliminate the causes and  
136 conditions that made ~~[rehabilitation]~~ receivership necessary, which action may include:

137 (i) selling the facility ~~[through bankruptcy or receivership proceedings]; [and]~~

138 (ii) requiring a purchaser of the facility to honor any continuing care contract for the  
139 facility; or

140 (iii) collecting and liquidating all or a portion of the provider's assets within the court's  
141 jurisdiction.

142 (2) (a) For a facility subject to a ground lease, a court may, in addition to the actions  
143 described in Subsection (1), direct a ~~[trustee]~~ receiver to purchase from the ground lessor, or  
144 assign to another person that agrees to operate the facility, for market value, the ground lessor's  
145 interest in the land and the infrastructure improvements to the land on which the facility is  
146 located.

147 (b) A court may direct a ~~[trustee under Subsection (2)(a)]~~ receiver to purchase from a  
148 ground lessor the land and infrastructure improvements to the land on which a facility is  
149 located, regardless of the terms of the ground lease agreement.

150 (c) If a court directs a ~~[trustee]~~ receiver to purchase or assign the land and  
151 infrastructure improvements to the land under Subsection (2)(a), the ground lessor shall sell or  
152 assign the land and infrastructure improvements to the land in compliance with the court order.

153 ~~[(d) The commissioner shall determine market value in accordance with rules made by~~  
154 ~~the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking~~  
155 ~~Act.]~~

156 ~~[(c)]~~ (d) In determining market value under Subsection ~~[(2)(d)]~~ (2)(a), the  
157 commissioner shall:

158 (i) value the land and infrastructure improvements to the land on which the facility is  
159 located as though the land and infrastructure improvements to the land were not subject to the  
160 ground lease; and

161 (ii) disregard the monetized value of an existing ground lease.

162 (3) A provider that is subject to a liquidation order may not enter into a new continuing  
163 care contract.

164 ~~[(3)]~~ (4) Solely for the purpose of enforcing this section, a court has personal  
165 jurisdiction in a proceeding under this section over:

166 (a) the owner of a facility; and

167 (b) the owner of the land and infrastructure improvements to the land on which a  
168 facility is located.

169 (5) If the commissioner is appointed as receiver, the commissioner may hire a deputy  
170 receiver to perform the duties of receivership.

171 Section 6. Section **31A-44-504** is amended to read:

172 **31A-44-504. Bond.**

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

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

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

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

181 Section 7. Section **31A-44-505** is amended to read:

182 **31A-44-505. Termination of receivership.**

183 (1) A court may terminate a ~~[rehabilitation]~~ receivership of a provider's facility and  
184 order the return of the facility and the facility's assets to the provider if the court determines:

185 (a) the objectives of the ~~[order to rehabilitate the facility]~~ receivership orders have been  
186 accomplished; and

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

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

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

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

193 Section 8. Section **31A-44-506** is amended to read:

194 **31A-44-506. Payment of trustee.**

195 A [trustee's] receiver's reasonable costs, expenses, and fees are payable from a  
196 provider's or facility's assets.

197 Section 9. **Repealer.**

198 This bill repeals:

199 Section **31A-44-101, Title.**

200 Section **31A-44-501, Application for court order for rehabilitation or liquidation.**

201 Section **31A-44-503, Order to liquidate.**