

1                   **CONTINUING CARE RETIREMENT COMMUNITY**  
2                                   **AMENDMENTS**

3                                   2016 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: Earl D. Tanner**

6                                   Senate Sponsor: \_\_\_\_\_

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7  
8                   **LONG TITLE**

9                   **General Description:**

10                   This bill enacts provisions related to continuing care providers.

11                   **Highlighted Provisions:**

12                   This bill:

- 13                   ▶ includes a continuing care provider within the jurisdiction of the Insurance  
14 Department;
- 15                   ▶ creates a continuing care advisory committee;
- 16                   ▶ provides operating requirements for a continuing care provider;
- 17                   ▶ requires a continuing care provider to register with the Insurance Department;
- 18                   ▶ provides form and content requirements for a continuing care contract;
- 19                   ▶ requires a continuing care provider to maintain an escrow account for certain  
20 resident fees;
- 21                   ▶ requires a continuing care provider to maintain reserve escrow accounts for certain  
22 financing and operations expenses;
- 23                   ▶ requires a continuing care provider to make certain disclosures;
- 24                   ▶ provides requirements for a successor to a continuing care provider's assets;
- 25                   ▶ grants rulemaking and enforcement authority to the Insurance Department;
- 26                   ▶ provides that the Insurance Department may place a continuing care facility under  
27 supervision, rehabilitation, or liquidation under certain circumstances;



- 28           ▶ imposes criminal and civil penalties; and
- 29           ▶ creates a private right of action.

**30 Money Appropriated in this Bill:**

31           None

**32 Other Special Clauses:**

33           None

**34 Utah Code Sections Affected:**

35 ENACTS:

- 36           **31A-44-101**, Utah Code Annotated 1953
- 37           **31A-44-102**, Utah Code Annotated 1953
- 38           **31A-44-103**, Utah Code Annotated 1953
- 39           **31A-44-104**, Utah Code Annotated 1953
- 40           **31A-44-201**, Utah Code Annotated 1953
- 41           **31A-44-202**, Utah Code Annotated 1953
- 42           **31A-44-203**, Utah Code Annotated 1953
- 43           **31A-44-204**, Utah Code Annotated 1953
- 44           **31A-44-205**, Utah Code Annotated 1953
- 45           **31A-44-206**, Utah Code Annotated 1953
- 46           **31A-44-301**, Utah Code Annotated 1953
- 47           **31A-44-302**, Utah Code Annotated 1953
- 48           **31A-44-303**, Utah Code Annotated 1953
- 49           **31A-44-304**, Utah Code Annotated 1953
- 50           **31A-44-305**, Utah Code Annotated 1953
- 51           **31A-44-306**, Utah Code Annotated 1953
- 52           **31A-44-307**, Utah Code Annotated 1953
- 53           **31A-44-308**, Utah Code Annotated 1953
- 54           **31A-44-309**, Utah Code Annotated 1953
- 55           **31A-44-310**, Utah Code Annotated 1953
- 56           **31A-44-311**, Utah Code Annotated 1953
- 57           **31A-44-312**, Utah Code Annotated 1953
- 58           **31A-44-313**, Utah Code Annotated 1953



90 individual related to the individual by blood, marriage, or adoption, of lodging together with  
91 nursing services, medical services, or other related services pursuant to a contract requiring an  
92 entrance fee.

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

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

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

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

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

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

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

109 (6) "Provider" means:

110 (a) the owner of a facility;

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

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

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

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

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

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

121 31A-44-103. Advisory committee.

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

125 (2) The committee described in Subsection (1) shall consist of five members appointed  
126 by the department as follows:

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

128 (b) a representative of nursing homes;

129 (c) a representative from the continuing care industry;

130 (d) a representative from the insurance community; and

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

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

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

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

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

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

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

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

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

147 (a) Section [63A-3-106](#);

148 (b) Section [63A-3-107](#); and

149 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and  
150 [63A-3-107](#).

151 (10) The department shall staff the committee.

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

153 **31A-44-104. Scope of regulation.**

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

156 (2) The department may not regulate, or in any manner inquire into, the quality of care  
157 provided in a facility.

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

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

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

165 **Part 2. Registration**

166 **31A-44-201. Registration required.**

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

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

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

172 **31A-44-202. Registration.**

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

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

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

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

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

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

182 (c) evidence that the provider's facility is located or will be located in a zone that a

183 municipality or county has zoned exclusively for continuing care facilities; and

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

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

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

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

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

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

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

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

198 **31A-44-203. Renewal process.**

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

200 (1) pay an annual fee established by the department in accordance with Section  
201 [63J-1-504](#);

202 (2) submit an updated provider disclosure statement that complies with Section  
203 [31A-44-301](#);

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

206 (4) comply with rules made by the department under Subsection [31A-44-202\(3\)](#).

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

208 **31A-44-204. Actuarial review.**

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

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

214 (a) upon being notified of the department's determination; and  
 215 (b) on a day designated by the department in the year five years after the day on which  
 216 the department last received an actuarial review from the provider.

217 (3) The department may require an actuarial review in addition to the actuarial reviews  
 218 required by Subsection (2) if the department determines that the provider shows an indication  
 219 of financial instability.

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

221 **31A-44-205. Suspension or revocation of registration.**

222 The department may suspend or revoke a provider's registration if the provider:

223 (1) draws on an escrow account required by this chapter in an amount greater than  
 224 allowed by this chapter; or

225 (2) intentionally violates this chapter.

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

227 **31A-44-206. Management by others.**

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

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

231 **Part 3. Provider Disclosure**

232 **31A-44-301. Precontractual recording requirements.**

233 (1) A provider shall file with the department:

234 (a) a current disclosure statement that meets the requirements of this part; and

235 (b) a copy of an agreement that establishes an escrow account required under Part 4,  
 236 Operations, or a verified statement explaining that an escrow account is not required.

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

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

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

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

244 (3) A provider solicits or offers a contract under Subsection (2)(c), if, after 12 months



245 before the day on which a party to a continuing care contract signs or accepts a continuing care  
246 contract, the provider or a person acting on behalf of the provider gives information concerning  
247 the facility or the availability of a continuing care contract for the facility:

- 248 (a) in a direct communication to an individual in the state; or
- 249 (b) in a paid advertisement published in or broadcast from the state, except for a paid
- 250 advertisement in a publication with more than two-thirds of the publication's circulation
- 251 outside of the state.

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

253 **31A-44-302. Delivery of disclosure statement.**

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

- 256 (a) the provider executes a continuing care contract with the individual; or
- 257 (b) the individual transfers an entrance fee or a nonrefundable deposit to the provider.

258 (2) The most recently filed disclosure statement:

- 259 (a) is current for the purpose of this chapter; and
- 260 (b) is the only disclosure statement that satisfies the requirements described in

261 Subsection (1).

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

263 **31A-44-303. Cover page of disclosure statement.**

264 The cover page of a disclosure statement shall state:

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

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

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

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

274 **31A-44-304. Disclosure statement -- Contents -- Provider characteristics.**

275 A provider disclosure statement shall contain:

- 276 (1) the name and business address of each provider officer, director, trustee, and  
277 managing or general partner of the provider;
- 278 (2) the name and business address of each person who has at least a 10% interest in the  
279 provider and a description of the person's interest in or occupation with the provider;
- 280 (3) a statement of whether the continuing care provider is a for-profit or not-for-profit  
281 entity, and a statement of the provider's tax-exempt status, if any;
- 282 (4) (a) the location and a description of the proposed or existing physical property of  
283 the facility; and
- 284 (b) if the physical property is proposed:
- 285 (i) the property's estimated completion date;
- 286 (ii) whether construction has begun; and
- 287 (iii) conditions under which the property's construction could be deferred;
- 288 (5) if the provider intends to contract with a person other than an employee of the  
289 provider to manage the operations of the facility:
- 290 (a) a description of the person's experience in the operation or management of a  
291 continuing care or similar facility;
- 292 (b) a description of any entity that controls or is controlled by the person that proposes  
293 to provide goods, leases, or services to residents of the facility, of an aggregate value of \$500  
294 or greater in a year;
- 295 (c) a description of any goods, leases, or services described in Subsection (5)(b), and a  
296 statement of the probable or anticipated cost to the facility, provider, or residents for the goods,  
297 leases, or services, or a statement that the provider is unable to estimate the cost; and
- 298 (d) a description of any matter in which the person:
- 299 (i) has been convicted of a felony;
- 300 (ii) is subject to a restrictive court order; or
- 301 (iii) has had a state or federal license revoked as a result of a matter related to a  
302 continuing care facility or a related health care field; and
- 303 (6) (a) any religious, charitable, or nonprofit organization affiliated with the provider;  
304 (b) the extent of the affiliation and the extent to which the organization is responsible  
305 for contractual or financial obligations of the provider; and
- 306 (c) the organization's tax-exempt status, if any.

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

308 **31A-44-305. Disclosure statement -- Contents -- Contract.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

337 and

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

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

341 **31A-44-306. Disclosure statement -- Contents -- Health care information.**

342 The provider disclosure statement shall include:

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

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

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

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

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

352 **31A-44-307. Disclosure statement -- Contents -- Financial information.**

353 The provider disclosure statement shall:

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

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

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

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

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

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

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

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

- 369           (a) anticipated earnings on any cash reserves;  
 370           (b) estimate of net receipts from entrance fees, other than entrance fees included in the  
 371 statement of the anticipated source and application of funds required under Section  
 372 31A-44-305, minus estimated entrance fee refunds, including a description of the actuarial  
 373 basis and method of computation for the projection of entrance fee receipts;  
 374           (c) estimate of gifts or bequests to be relied on to meet operating expenses;  
 375           (d) projection of estimated income from fees and charges, excluding entrance fees,  
 376 that:  
 377           (i) states the individual rates the provider anticipates that the provider will charge; and  
 378           (ii) includes a description of the assumptions used for computing the estimated  
 379 occupancy rate of the facility and the effect on the income of the facility on a government  
 380 subsidy for health care services, if any, that is provided under the continuing care contract;  
 381           (e) projection of the facility's operating expenses, including:  
 382           (i) a description of the assumptions used in computing the facility's operating expenses;  
 383 and  
 384           (ii) a separate allowance for the replacement of equipment and furnishings and  
 385 anticipated major structural repairs or additions; and  
 386           (f) estimate of annual payments of principal and interest required by a mortgage loan or  
 387 other long-term financing arrangement relating to the facility.  
 388           Section 18. Section **31A-44-308** is enacted to read:  
 389           **31A-44-308. Anticipated source and application of funds.**  
 390           If a provider's facility is not in operation, the provider disclosure statement shall include  
 391 a statement of the provider's anticipated source and application of funds to be used in the  
 392 purchase or construction of the facility, including:  
 393           (1) an estimate of the cost of purchasing or constructing and of equipping the facility,  
 394 including financing expenses, legal expenses, land costs, occupancy development costs, and  
 395 any other costs that the provider expects to incur or to become obligated to pay before the  
 396 facility begins operating;  
 397           (2) a description of any mortgage loan or other long-term financing arrangement for the  
 398 facility, including the anticipated terms and costs of the financing;  
 399           (3) an estimate of the total entrance fees to be received from, or on behalf of, residents

400 before the facility begins operation; and

401 (4) an estimate of any funds the provider anticipates are necessary to cover the facility's  
402 initial losses and to provide the reserve funds required by this chapter.

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

404 **31A-44-309. Standard contract form.**

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

407 (2) The standard contract form shall specify the refund provisions of Sections  
408 31A-44-312 and 31A-44-313.

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

410 **31A-44-310. Annual disclosure statement revision.**

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

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

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

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

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

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

425 (5) The department:

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

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

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

429 **31A-44-311. Advertisement in conflict with disclosures.**

430 A provider may not engage in any type of advertisement for a continuing care contract

431 or facility if the advertisement contains a statement or representation in conflict with the  
432 disclosures required under this part.

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

434 **31A-44-312. Rescission of contract -- Required language.**

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

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

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

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

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

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

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

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

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

460 (5) In addition to Subsection (4), a continuing care contract shall include the following  
461 statement in type that is boldfaced, capitalized, underlined, or otherwise set out from the

462 surrounding written material so as to be conspicuous:

463 "This document, if executed, constitutes a legal and binding contract between you and  
464 . You may wish to consult a legal or financial advisor before signing, although it  
465 is not required that you do so to make this contract binding."

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

467 **31A-44-313. Cancellation of contract -- Death or incapacity before occupancy.**

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

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

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

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

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

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

481 (i) \$1,000; or

482 (ii) 2% of the entrance fee.

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

484 **31A-44-314. Disclosure statement fees.**

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

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

488 **Part 4. Operations**

489 **31A-44-401. Continuing care contract requirements -- No waiver.**

490 (1) A continuing care contract shall:

491 (a) provide that the provider shall refund the portion of a resident's entrance fee that the  
492 provider has agreed to refund, if any, no later than the earlier of:



- 493 (i) 30 days after the day on which the resident's living unit is occupied by a new  
494 resident; or
- 495 (ii) one year after the day on which the resident ceases to occupy the resident's living  
496 unit, unless the provider proves that the provider has made and is making a good faith effort to  
497 find another resident for the living unit at the lowest entrance fee that is acceptable to the  
498 resident;
- 499 (b) provide that the resident may terminate the continuing care contract upon giving  
500 notice of termination:
- 501 (i) with or without cause; and
- 502 (ii) clearly stating what portion of the entrance fee the provider will refund and the date  
503 by which the provider will make the refund; and
- 504 (c) provide that a continuing care contract is terminated by the resident's death and  
505 clearly state:
- 506 (i) what portion of the entrance fee the provider will refund in the event of the  
507 resident's death;
- 508 (ii) the date before which the provider will make the refund; and
- 509 (iii) to whom the provider will make the refund.
- 510 (2) A continuing care contract may permit involuntary dismissal of a resident from a  
511 continuing care facility upon a reasonable determination by the provider that the resident's  
512 health and well-being require termination of the continuing care contract.
- 513 (3) If a resident is dismissed under Subsection (2) and is in a condition of financial  
514 hardship, as defined by the department by rule made in accordance with Title 63G, Chapter 3,  
515 Utah Administrative Rulemaking Act, the provider shall refund the resident's entrance fee:
- 516 (a) in an amount provided in the continuing care contract; and
- 517 (b) before the earlier of:
- 518 (i) a time provided in the continuing care contract; and
- 519 (ii) 60 days after the day on which the provider dismisses the resident from the facility.
- 520 (4) A resident may not waive a provision of this chapter by agreement.
- 521 Section 26. Section **31A-44-402** is enacted to read:
- 522 **31A-44-402. Escrow account -- Entrance fees.**
- 523 (1) (a) A provider may not accept payment, from an individual, of a deposit made

524 under a reservation agreement, or of an entrance fee or a portion of an entrance fee, before the  
525 provider establishes an entrance fee escrow account with a federally insured depository  
526 institution, as escrow agent, that is located in the state.

527 (b) No later than 72 hours after the provider receives a deposit, an entrance fee, or a  
528 portion of an entrance fee, the provider shall deposit the deposit, entrance fee, or portion of an  
529 entrance fee with the escrow agent described in Subsection (1)(a).

530 (c) If the provider or a prospective resident of the provider's facility submits a written  
531 request to the escrow agent, the escrow agent may:

532 (i) return the prospective resident's deposit; or

533 (ii) deposit the entrance fee into the entrance fee escrow account.

534 (d) Unless the escrow agent receives a written request from a provider or a resident to  
535 return an entrance fee, the escrow agent shall release the entrance fee to the provider or place  
536 the entrance fee in a loan reserve fund escrow account under Section [31A-44-403](#) or an  
537 operations reserve fund escrow under Section [31A-44-404](#).

538 (2) Except as provided in Subsection (3), an escrow agent shall release an entrance fee  
539 that applies to a living unit to the provider if:

540 (a) a minimum of 50% of the number of living units in the facility have been reserved  
541 for residents, as evidenced by:

542 (i) executed continuing care contracts with the residents that the residents have not  
543 cancelled; and

544 (ii) the receipt by the escrow agent, from each resident with a living unit reserved, of at  
545 least 10% of the entrance fee deposit required by the resident's continuing care contract;

546 (b) the sum of the aggregate entrance fees received or receivable by the provider under  
547 binding continuing care contracts, the anticipated proceeds of any first mortgage loan or other  
548 long-term financing commitment, and funds from other sources in the actual possession of the  
549 provider are greater than or equal to the sum of:

550 (i) 90% of the aggregate cost of constructing, or purchasing, equipping, and furnishing,  
551 the facility;

552 (ii) 90% of the funds that the provider estimates, in the statement of the anticipated  
553 source and application of funds included in the disclosure statement, are necessary to cover the  
554 initial losses of the facility;

555           (iii) 90% of the amount of any loan reserve fund escrow account the provider is  
556 required to maintain under Section 31A-44-403; and

557           (iv) 90% of the amount of any operations reserve fund escrow account the provider is  
558 required to maintain under Section 31A-44-404; and

559           (c) a commitment has been received by the provider for any permanent mortgage loan  
560 or other long-term financing described in the statement of the anticipated source and  
561 application of funds included in the current disclosure statement and the provider has satisfied  
562 any conditions of the commitment except completion of the construction or closing on the  
563 purchase of the facility, and:

564           (i) if the provider has not substantially completed construction of the facility:

565           (A) the provider has obtained any necessary government permit or approval;

566           (B) the provider and the general contractor responsible for construction of the facility  
567 have entered into a maximum price contract;

568           (C) a recognized surety authorized to do business in the state has executed a bond in  
569 favor of the provider that covers the performance of the construction contract by the general  
570 contractor and the payment of all obligations under the contract;

571           (D) the provider has entered into a loan agreement for an interim construction loan in  
572 an amount that, when combined with the amount of entrance fees in escrow plus the amount of  
573 funds from other sources in the actual possession of the provider, equals or exceeds the  
574 estimated cost of constructing, equipping, and furnishing the facility;

575           (E) the lender has disbursed at least 10% of the amount of the construction loan for  
576 physical construction of the facility or completed site preparation work; and

577           (F) the provider has placed orders at firm prices for at least 50% of the value of items  
578 necessary for equipping and furnishing the facility in accordance with the description in the  
579 disclosure statement, including any installation charges; or

580           (ii) if construction or purchase of the facility has been substantially completed:

581           (A) a local government entity that has the authority to issue an occupancy permit has  
582 issued an occupancy permit covering the living unit; and

583           (B) if the entrance fee applies to a living unit that has been previously occupied, the  
584 living unit is available for occupancy by the new resident.

585           (3) The escrow agent may not release, before the date on which the loan reserve fund

586 escrow account required under Section 34A-44-403 and the operations reserve fund escrow  
587 account required under Section 31A-44-404 are first established, an aggregate amount of  
588 entrance fees to the provider that is greater than the aggregate amount of entrance fees received  
589 or receivable by the provider under binding continuing care contracts minus the amount of  
590 entrance fees received or receivable by the provider that the provider is required to maintain  
591 initially in the loan reserve fund escrow and operations reserve fund escrow accounts.

592 (4) (a) The department may create, by rule made in accordance with Title 63G, Chapter  
593 3, Utah Administrative Rulemaking Act, standards for when an escrow agent may release an  
594 entrance fee to a provider for a facility that is built in phases.

595 (b) A provider that intends to build a facility in phases shall, before the provider begins  
596 construction of the provider's facility, request that the department adapt the requirements  
597 described in this section to a facility built in phases.

598 (5) (a) After an escrow agent releases an entrance fee to a provider for a specific  
599 facility, the department shall authorize the escrow agent to continue to release entrance fees to  
600 the provider for the facility, without requiring the provider to submit additional proof that the  
601 provider complies with this section, if:

602 (i) the provider provides the department a monthly report on marketing activities for  
603 the facility's living units; and

604 (ii) the provider immediately informs the department of a problem, issue, or  
605 irregularity that the provider encounters while marketing the facility.

606 (b) If the provider fails to meet the requirements of Subsection (5)(a), the department  
607 may require the provider to provide ongoing proof that the provider satisfies the requirements  
608 of this section.

609 (6) A provider may not pledge an entrance fee held in escrow, or a portion of an  
610 entrance fee held in escrow, as collateral to secure a loan.

611 (7) (a) Except as provided in Subsection (7)(b), if an entrance fee is neither released to  
612 the provider nor returned to the resident two years after the day on which an escrow agent  
613 receives an entrance fee related to a resident, the escrow agent shall return the entrance fee to  
614 the resident.

615 (b) The provider may provide for a release date that is different than required by  
616 Subsection (7)(a) if the provider clearly states the release date in the disclosure statement.

617 (8) This chapter does not require the escrow of any nonrefundable portion of a deposit  
618 or entrance fee that:

619 (a) does not exceed an amount equal to 2% of the entrance fee; and

620 (b) is clearly designated as nonrefundable in the continuing care contract or reservation  
621 agreement.

622 (9) Unless otherwise provided in a continuing care contract, interest that accrues on  
623 funds held in an entrance fee escrow account is the property of the provider.

624 (10) The department shall adopt rules, made in accordance with Title 63G, Chapter 3,  
625 Utah Administrative Rulemaking Act, to implement this section.

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

627 **31A-44-403. Loan reserve fund escrow account.**

628 (1) Beginning the day on which the first resident occupies a continuing care facility, a  
629 provider shall establish and maintain a loan reserve fund escrow account in an account with a  
630 federally insured depository institution in Utah.

631 (2) (a) A provider shall maintain, on any given day, in the account described in  
632 Subsection (1), an account balance in an amount equal to, for each mortgage or other long-term  
633 financing arrangement for the facility, the sum of the principal and interest payments due in 12  
634 months after the given day.

635 (b) A provider may comply with the requirement described in Subsection (2)(a) if the  
636 provider has other reserve funds for the purpose of meeting a loan obligation that total an  
637 amount that is greater than or equal to the amount required by Subsection (2)(a).

638 (3) The provider may invest the funds contained in the loan reserve fund escrow  
639 account described in Subsection (1), and other reserve funds the provider holds for the purpose  
640 of meeting a loan obligation, with interest payable to the provider, in accordance with  
641 requirements established by the department by rule made in accordance with Title 63G,  
642 Chapter 3, Utah Administrative Rulemaking Act.

643 (4) The escrow agent may, for the account described in Subsection (1), upon a  
644 provider's written request, release an amount less than or equal to one-twelfth of the amount  
645 described in Subsection (2).

646 (5) The escrow agent shall give written notice to the department 11 days before the day  
647 on which the escrow agent releases an amount under Subsection (4).

648 (6) The escrow agent may not release funds from the loan reserve fund escrow account  
649 under this section more than once during a calendar year.

650 (7) (a) A provider may apply to the department for the withdrawal of all or part of the  
651 loan reserve fund escrow account funds.

652 (b) The department may release the loan reserve fund escrow account funds in  
653 accordance with requirements established by the department by rule made in accordance with  
654 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

655 (8) A provider shall repay to the loan reserve fund escrow account described in  
656 Subsection (1) any amount released to the provider under this section no later than 18 months  
657 after the day on which the amount is released to the provider.

658 (9) The department may place the provider or facility under supervision under Part 5,  
659 Supervision, Rehabilitation, and Liquidation, or take any other appropriate action as provided  
660 by law if the provider does not repay the loan reserve fund escrow account within the required  
661 period.

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

663 **31A-44-404. Operations reserve fund escrow account.**

664 (1) Beginning the day on which the first resident occupies a continuing care facility, a  
665 provider shall establish and maintain an operations reserve fund escrow account with a  
666 federally insured depository institution in Utah.

667 (2) A provider shall maintain, on any given day, in the operations reserve fund escrow  
668 account described in Subsection (1), an account balance in an amount equal to 20% of the  
669 provider's projected operating expenses the provider will incur for a facility during the 12  
670 months after the given day. The requirements of this section may be met in whole or in part by  
671 other reserve funds held for the purpose of meeting operating expenses if the total amount  
672 equals or exceeds the amount required by this Subsection (2).

673 (3) The funds in the operations reserve fund escrow account and other reserve funds  
674 held for the purpose of meeting loan obligations under this section may be invested in  
675 accordance with rules promulgated by the department, with earnings payable to the provider.

676 (4) The escrow agent may, for the operations reserve fund escrow account described in  
677 Subsection (1), upon written request of the provider, release an amount less than or equal to  
678 20% of the amount described in Subsection (2).

679 (5) The escrow agent must give written notice to the department no later than 11 days  
680 before the day on which the escrow agent releases the funds as described in Subsection (4).

681 (6) The escrow agent may not release funds from the operations reserve fund escrow  
682 account under this section more than once during a calendar year.

683 (7) A provider shall repay the operations reserve fund escrow account described in  
684 Subsection (1) any amount released to the provider under Subsection (4) no later than 18  
685 months after the day on which the amount is released to the provider.

686 (8) The department may place the provider or facility under supervision under Part 5,  
687 Supervision, Rehabilitation, and Liquidation, or take other legal action if the provider does not  
688 repay the operations reserve fund escrow account within the required period.

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

690 **31A-44-405. Actuarial reserve -- Department may require.**

691 (1) The department may require a provider that the department determines has actuarial  
692 liability under Section [31A-44-204](#) to create an additional reserve fund to offset the actuarial  
693 liability.

694 (2) The department may require the additional reserve fund described in Subsection (1)  
695 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

696 Section 30. Section **31A-44-406** is enacted to read:

697 **31A-44-406. Resident advisory committee.**

698 (1) A provider shall maintain, for a facility, a resident advisory committee that meets  
699 the requirements of this section.

700 (2) A resident advisory committee shall:

701 (a) consist of no fewer than the lesser of five residents or all residents;

702 (b) meet no less than once per month; and

703 (c) discuss resident concerns and communications relevant to the provider or the  
704 facility.

705 (3) A provider shall:

706 (a) meet with the resident advisory committee no fewer than three times per year; and

707 (b) distribute a provider disclosure statement to the resident advisory committee each  
708 time the provider is required to renew the provider disclosure statement under Section

709 [31A-44-301](#).

710 Section 31. Section **31A-44-407** is enacted to read:

711 **31A-44-407. Nondisturbance of residents.**

712 (1) A person may not directly or indirectly disturb the rights of a resident or third party  
713 beneficiary under a continuing care contract and this chapter if the resident has substantially  
714 performed the resident's obligations under the continuing care contract.

715 (2) If which person a resident owes performance to under the continuing care contract  
716 is contested, and a court has not issued a temporary or permanent order resolving the contest:

717 (a) the department may appoint a temporary receiver to receive the performance of the  
718 resident; and

719 (b) a court may appoint a receiver upon petition by the department.

720 Section 32. Section **31A-44-408** is enacted to read:

721 **31A-44-408. Continuing care facilities not exempt from property tax.**

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

724 Section 33. Section **31A-44-501** is enacted to read:

725 **Part 5. Supervision, Rehabilitation, and Liquidation**

726 **31A-44-501. Supervision.**

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

728 (a) the provider draws on the provider's entrance fee escrow account in an amount  
729 greater than permitted by Section [31A-44-402](#);

730 (b) the provider draws on the provider's loan reserve fund escrow account or operations  
731 reserve fund escrow account in an amount greater than permitted or more frequently than  
732 permitted by Sections [31A-44-403](#) and [31A-44-404](#);

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

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

739 (2) The department shall appoint a supervisor.

740 (3) The department may provide that a provider may not, during the supervision period



741 and without the prior approval of the department or the supervisor:

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

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

744 (c) lend the provider's funds;

745 (d) invest the provider's funds;

746 (e) transfer the provider's property;

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

748 (g) merge or consolidate with another facility.

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

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

753 Section 34. Section **31A-44-502** is enacted to read:

754 **31A-44-502. Application for court order for rehabilitation or liquidation.**

755 (1) For a provider that the department does not place under supervision under Section  
 756 31A-44-501, the department shall request that the attorney general petition a district court in  
 757 the state, or a federal bankruptcy court that has exercised jurisdiction over a provider's facility,  
 758 for an order that appoints a trustee to rehabilitate or liquidate the facility if:

759 (a) the provider draws from the provider's loan reserve fund escrow account or the  
 760 operations reserve fund escrow account in an amount greater than permitted by Sections  
 761 31A-44-403 and 31A-44-404;

762 (b) the provider does not repay the loan reserve fund escrow account or the operations  
 763 reserve fund escrow account as required by Sections 31A-44-403 and 31A-44-404;

764 (c) the department determines that:

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

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

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

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

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

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

776 Section 35. Section 31A-44-503 is enacted to read:

777 **31A-44-503. Order to rehabilitate.**

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

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

782 (2) take action as directed by the court to eliminate the causes and conditions that made  
783 rehabilitation necessary, including:

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

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

787 Section 36. Section 31A-44-504 is enacted to read:

788 **31A-44-504. Order to liquidate.**

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

791 (2) A court that issues an order to liquidate a facility under Subsection (1) shall appoint  
792 a trustee to collect and liquidate all of the provider's assets located in this state.

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

795 Section 37. Section 31A-44-505 is enacted to read:

796 **31A-44-505. Bond.**

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

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

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

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

805 Section 38. Section **31A-44-506** is enacted to read:

806 **31A-44-506. Termination of rehabilitation.**

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

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

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

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

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

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

816 Section 39. Section **31A-44-507** is enacted to read:

817 **31A-44-507. Payment of trustee.**

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

820 Section 40. Section **31A-44-601** is enacted to read:

821 **Part 6. Enforcement**

822 **31A-44-601. Lien.**

823 (1) To secure the obligations of the provider under any continuing care contract, a lien  
824 attaches on the date a resident first occupies a facility or receives services under a continuing  
825 care contract.

826 (2) The lien described in Subsection (1) covers the real and personal property of the  
827 provider located at the facility.

828 (3) The provider shall prepare, for each county where the provider has a facility, a  
829 written notice, sworn to by an officer of the provider, that contains:

830 (a) the name of the provider;

831 (b) a legal description of the provider's facility; and

832 (c) a statement that the facility is subject to this chapter and the lien imposed by this  
833 section.

834 (4) The provider shall record the notice described in Subsection (3) in the real property  
835 records of each county where the provider has a facility on or before the date the provider first  
836 executes a continuing care contract for the facility.

837 (5) The department may subordinate a lien under this section if a provider requests that  
838 the department subordinate the lien in order to obtain secondary financing or refinancing of a  
839 facility if:

840 (a) the provider is financially sound; and

841 (b) subordination of the lien does not adversely affect the facility's residents.

842 (6) (a) A lien under this section is subordinate to a lien on the property of the facility.

843 (b) The amount of the lien on the property of the facility described in Subsection (6)(a)  
844 is limited to the portion of the funds secured by the lien that the provider uses to:

845 (i) construct, acquire, replace, or improve the facility;

846 (ii) refinance the portion of a loan used to construct, acquire, replace, or improve the  
847 facility; or

848 (iii) pay a reasonable loan fee or loan expense.

849 (7) If there is a lien on the property of the facility described in Subsection (6)(a) that is  
850 superior to a lien under this section, a provider may only use an entrance fee to:

851 (a) reduce a debt secured by a superior lien;

852 (b) construct, acquire, replace, or improve the facility;

853 (c) establish the escrow funds required by this chapter;

854 (d) fund reserves for the provider's actuarial debt under continuing care contracts for  
855 the facility;

856 (e) refund an entrance fee of a resident of the facility;

857 (f) pay a facility resident's debt to the provider for a recurring fee due under the  
858 resident's continuing care contract; and

859 (g) pay an amount for a purpose approved by the department.

860 (8) The department may foreclose a lien against a provider and a provider's facility  
861 under this section if the facility is liquidated or the provider is insolvent or bankrupt.

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

865 Section 41. Section **31A-44-602** is enacted to read:

866 **31A-44-602. Enforcement by department -- Rulemaking.**

867 (1) Subject to the requirements of Title 63G, Chapter 4, Administrative Procedures  
868 Act, the department may:

869 (a) receive and act on a complaint about a provider or a facility;

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

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

874 (d) take action against a provider who fails to:

875 (i) respond to the department, in writing, before 30 business days after the day on  
876 which the provider receives notice from the department of a complaint filed with the  
877 department; or

878 (ii) submit information requested by the department.

879 (2) The department may:

880 (a) counsel an individual on the individual's rights or duties under this chapter;

881 (b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative  
882 Rulemaking Act, to:

883 (i) restrict or prohibit practices by the provider that are misleading, unfair, or abusive;

884 (ii) promote or assure fair and full disclosure of the terms and conditions of continuing  
885 care contracts, agreements, and communications between a resident and a provider;

886 (iii) promote or assure the ability of the public to compare continuing care contracts,  
887 providers, and facilities; and

888 (iv) clearly disclose any financial risks related to a provider's facility to the facility's  
889 residents;

890 (c) employ hearing examiners, clerks, and other employees and agents as necessary to  
891 perform the department's duties under this chapter; and

892 (d) appoint a receiver for a provider.

893 Section 42. Section **31A-44-603** is enacted to read:

894 **31A-44-603. Examinations.**

895 (1) The department may conduct periodic on-site examinations of a provider.

- 896 (2) In conducting an examination, the department or the department's staff:  
897 (a) shall have full and free access to all the provider's records; and  
898 (b) may summon and qualify as a witness, under oath, and examine, any director,  
899 officer, member, agent, or employee of the provider, and any other person, concerning the  
900 condition and affairs of the provider or a facility.
- 901 (3) The provider shall pay the reasonable costs of an examination under this section.  
902 (4) The department may conduct an on-site examination in conjunction with an  
903 examination performed by a representative of an agency of another state.
- 904 (5) (a) The department, in lieu of an on-site examination, may accept the examination  
905 report of an agency of another state that has regulatory oversight of the provider, or a report  
906 prepared by an independent accounting firm.
- 907 (b) A report accepted under Subsection (5)(a) is considered for all purposes an official  
908 report of the department.
- 909 (6) Upon reasonable cause, the department may conduct an on-site examination of an  
910 unlicensed person to determine whether a violation of this chapter has occurred.
- 911 Section 43. Section **31A-44-604** is enacted to read:  
912 **31A-44-604. Criminal and civil penalties.**
- 913 (1) A person who knowingly violates this chapter or files materially false information  
914 with a registration application or renewal under this chapter is:
- 915 (a) guilty of a class B misdemeanor; and  
916 (b) subject to revocation of the person's registration under this chapter.
- 917 (2) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if the department  
918 determines that a person is engaging in the business of being a continuing care provider in  
919 violation of this chapter, the department may:
- 920 (a) suspend, revoke, or refuse to renew the person's registration under this chapter;  
921 (b) issue a cease and desist order from committing any further violation;  
922 (c) prohibit the person from continuing to engage in the business of being a continuing  
923 care provider;
- 924 (d) impose an administrative fine not greater than \$1,000 per violation, except that the  
925 aggregate total of fines imposed under this chapter against a person in a calendar year may not  
926 exceed \$30,000 for that calendar year; or

927 (e) take any combination of actions listed under this Subsection (2).

928 (3) If the department revokes a registration, the department is not required to refund  
929 any portion of the provider's filing or renewal fee for the remainder of the period for which the  
930 fee is paid.

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

932 **31A-44-605. Civil liability.**

933 (1) A provider who enters into a continuing care contract with an individual without  
934 complying with the disclosure statement requirement described in this chapter, or who makes a  
935 continuing care contract with an individual who relies on a disclosure statement that omits a  
936 material fact, is liable to the individual for:

937 (a) actual damages;

938 (b) repayment of all fees the individual paid to the provider, minus the reasonable  
939 value of care and lodging provided to the individual before the violation, misstatement, or  
940 omission was discovered or reasonably should have been discovered;

941 (c) interest at the legal rate for judgments;

942 (d) court costs; and

943 (e) reasonable attorney fees.

944 (2) A provider is liable under this section regardless of whether the provider had actual  
945 knowledge of the misstatement or omission.

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

947 (a) the individual, before filing the action, receives a written offer from the provider for  
948 refund of all amounts paid to the provider or the provider's facility plus reasonable interest  
949 from the date of payment, minus the reasonable value of care and lodging provided before the  
950 receipt of the offer;

951 (b) the offer includes a description of the provisions of this section; and

952 (c) the recipient of the offer fails to accept the offer within 30 days after the date the  
953 offer is received.

954 (4) An individual shall bring an action under this section before the day three years  
955 after:

956 (a) the day on which the individual enters into the continuing care contract; or

957 (b) the individual discovers, or reasonably should have discovered, the provider's

958 violation, misstatement, or omission.

959 (5) A person does not have a cause of action under this chapter except as expressly  
960 provided by this chapter.

961 (6) This chapter does not limit the liability that exists under any other statute or  
962 common law.

963 (7) The provisions of this chapter are not exclusive and the remedies provided by this  
964 chapter are in addition to any other remedies provided by any other law.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**