

Representative R. Curt Webb proposes the following substitute bill:

CONTINUING CARE RETIREMENT COMMUNITY AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Earl D. Tanner

Senate Sponsor: Deidre M. Henderson

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;
- ▶ authorizes the commissioner to create 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;
- ▶ imposes criminal and civil penalties; and
- ▶ creates a private right of action.

Money Appropriated in this Bill:

None

Other Special Clauses:



26 None

27 **Utah Code Sections Affected:**

28 ENACTS:

29 **31A-44-101**, Utah Code Annotated 1953

30 **31A-44-102**, Utah Code Annotated 1953

31 **31A-44-103**, Utah Code Annotated 1953

32 **31A-44-104**, Utah Code Annotated 1953

33 **31A-44-201**, Utah Code Annotated 1953

34 **31A-44-202**, Utah Code Annotated 1953

35 **31A-44-203**, Utah Code Annotated 1953

36 **31A-44-204**, Utah Code Annotated 1953

37 **31A-44-205**, Utah Code Annotated 1953

38 **31A-44-206**, Utah Code Annotated 1953

39 **31A-44-301**, Utah Code Annotated 1953

40 **31A-44-302**, Utah Code Annotated 1953

41 **31A-44-303**, Utah Code Annotated 1953

42 **31A-44-304**, Utah Code Annotated 1953

43 **31A-44-305**, Utah Code Annotated 1953

44 **31A-44-306**, Utah Code Annotated 1953

45 **31A-44-307**, Utah Code Annotated 1953

46 **31A-44-308**, Utah Code Annotated 1953

47 **31A-44-309**, Utah Code Annotated 1953

48 **31A-44-310**, Utah Code Annotated 1953

49 **31A-44-311**, Utah Code Annotated 1953

50 **31A-44-312**, Utah Code Annotated 1953

51 **31A-44-313**, Utah Code Annotated 1953

52 **31A-44-314**, Utah Code Annotated 1953

53 **31A-44-401**, Utah Code Annotated 1953

54 **31A-44-402**, Utah Code Annotated 1953

55 **31A-44-403**, Utah Code Annotated 1953

56 **31A-44-404**, Utah Code Annotated 1953

- 57 [31A-44-405](#), Utah Code Annotated 1953
- 58 [31A-44-501](#), Utah Code Annotated 1953
- 59 [31A-44-502](#), Utah Code Annotated 1953
- 60 [31A-44-503](#), Utah Code Annotated 1953
- 61 [31A-44-504](#), Utah Code Annotated 1953
- 62 [31A-44-505](#), Utah Code Annotated 1953
- 63 [31A-44-506](#), Utah Code Annotated 1953
- 64 [31A-44-601](#), Utah Code Annotated 1953
- 65 [31A-44-602](#), Utah Code Annotated 1953
- 66 [31A-44-603](#), Utah Code Annotated 1953
- 67 [31A-44-604](#), Utah Code Annotated 1953
- 68 [31A-44-605](#), Utah Code Annotated 1953

69

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

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

72 **CHAPTER 44. CONTINUING CARE PROVIDER ACT**

73 **31A-44-101. Title.**

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

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

76 **31A-44-102. Definitions.**

77 As used in this chapter:

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

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

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

87 (b) "Entrance fee" does not include an amount less than the sum of the regular period

88 charges for three months of residency in a facility.

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

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

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

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

98 (6) "Provider" means:

99 (a) the owner of a facility;

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

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

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

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

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

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

110 **31A-44-103. Advisory committee.**

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

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

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

117 (b) a representative of nursing homes;

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

- 119 (d) a representative from the insurance community; and
120 (e) a member of the general public who is a resident of a continuing care facility.
121 (3) (a) Except as required by Subsection (3)(b), the term of a member of the committee
122 shall be four years and expire on July 1.
123 (b) The commissioner shall, at the time of appointment or reappointment, adjust the
124 length of terms to ensure that the terms of members are staggered so that approximately half of
125 the committee is appointed every two years.
126 (4) A member of the committee shall serve until the member's successor is appointed
127 and qualified.
128 (5) When a vacancy occurs in the committee's membership, the department shall
129 appoint a replacement.
130 (6) The department may dismiss and replace members of the committee at the
131 department's discretion.
132 (7) The department may designate a chair of the committee.
133 (8) The committee shall meet when called by the department.
134 (9) A member may not receive compensation or benefits for the member's service, but
135 may receive per diem and travel expenses in accordance with:
136 (a) Section [63A-3-106](#);
137 (b) Section [63A-3-107](#); and
138 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
139 [63A-3-107](#).
140 (10) The department shall staff the committee.
141 Section 4. Section **31A-44-104** is enacted to read:
142 **31A-44-104. Scope of regulation.**
143 (1) The regulation of providers under this chapter does not limit or replace regulation
144 by any other governmental entity of continuing care facilities or providers.
145 (2) The department may not regulate, or in any manner inquire into, the quality of care
146 provided in a facility.
147 (3) A record that the department receives from a provider that is not required to be part
148 of a disclosure statement under this chapter is a protected record under Title 63G, Chapter 2,
149 Government Records Access and Management Act.

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

153 (5) A provider that begins a continuing care facility project on or before May 10, 2016,
154 is not required to comply with this chapter until May 10, 2017.

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

156 **Part 2. Registration**

157 **31A-44-201. Registration required.**

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

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

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

163 **31A-44-202. Registration.**

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

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

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

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

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

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

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

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

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

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

180 **31A-44-203. Renewal process.**

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

182 (1) pay an annual fee established by the department in accordance with Section

183 63J-1-504;

184 (2) submit an updated provider disclosure statement that complies with Section

185 31A-44-301;

186 (3) submit a copy of the most recent version of the continuing care contract the

187 provider will propose to a prospective facility resident; and

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

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

190 **31A-44-204. Actuarial review.**

191 (1) (a) This section applies only to a provider that directly or indirectly offers a future

192 guarantee of continuing care that the department determines develops current actuarial

193 liabilities.

194 (b) This section does not apply to a provider that offers continuing care under a

195 fee-for-service model with a required entrance fee.

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

197 review:

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

199 (b) on a day designated by the department in the year five years after the day on which

200 the department last received an actuarial review from the provider.

201 (3) The department may require an actuarial review in addition to the actuarial reviews

202 required by Subsection (2) if the department determines that the provider shows an indication

203 of financial instability.

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

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

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

207 intentionally violates this chapter.

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

209 **31A-44-206. Management by others.**

210 A provider may not contract for total management of a facility unless the provider

211 notifies the department.

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

213 **Part 3. Provider Disclosure**

214 **31A-44-301. Precontractual recording requirements.**

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

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

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

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

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

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

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

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

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

233 **31A-44-302. Delivery of disclosure statement.**

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

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

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

238 (2) The most recently filed disclosure statement:

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

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

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

243 **31A-44-303. Cover page of disclosure statement.**

244 The cover page of a disclosure statement shall state:

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

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

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

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

254 **31A-44-304. Disclosure statement -- Contents -- Provider characteristics.**

255 A provider disclosure statement shall contain:

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

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

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

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

264 (b) if the physical property is proposed:

265 (i) the property's estimated completion date;

266 (ii) whether construction has begun; and

267 (iii) conditions known to the provider under which the property's construction could be
268 deferred;

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

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

273 (b) a description of any entity that controls or is controlled by the person that proposes

274 to provide goods, leases, or services to residents of the facility, of an aggregate value of \$500
275 or greater in a year;

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

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

280 (i) has been convicted of a felony;

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

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

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

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

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

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

289 **31A-44-305. Disclosure statement -- Contents -- Contract.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

322 **31A-44-306. Disclosure statement -- Contents -- Health care information.**

323 The provider disclosure statement shall include:

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

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

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

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

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

333 **31A-44-307. Disclosure statement -- Contents -- Financial information.**

334 The provider disclosure statement shall:

335 (1) describe any provisions the provider made or will make to provide reserve funding

336 or security to enable the provider to fully perform the provider's obligations under a continuing
337 care contract, including:

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

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

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

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

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

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

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

349 **31A-44-308. Anticipated source and application of funds.**

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

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

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

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

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

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

364 **31A-44-309. Standard contract form.**

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

367 (2) The standard contract form shall specify the refund provisions of Sections
368 31A-44-312 and 31A-44-313.

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

370 **31A-44-310. Annual disclosure statement revision.**

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

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

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

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

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

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

385 (5) The department:

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

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

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

389 **31A-44-311. Advertisement in conflict with disclosures.**

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

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

394 **31A-44-312. Rescission of contract -- Required language.**

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

397 (a) midnight on the day seven days after the day on which the individual executes the

398 continuing care contract; or

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

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

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

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

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

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

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

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

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

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

428 **31A-44-313. Cancellation of contract -- Death or incapacity before occupancy.**

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

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

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

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

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

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

442 (i) \$1,000; or

443 (ii) 2% of the entrance fee.

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

445 **31A-44-314. Disclosure statement fees.**

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

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

449 **Part 4. Operations**

450 **31A-44-401. Continuing care contract requirements -- No waiver.**

451 (1) A continuing care contract shall:

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

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

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

460 (b) provide that the resident may terminate the continuing care contract upon giving
461 notice of termination:

462 (i) with or without cause; and

463 (ii) clearly stating what portion of the entrance fee the provider will refund and the date
464 by which the provider will make the refund; and

465 (c) provide that a continuing care contract is terminated by the resident's death and
466 clearly state:

467 (i) what portion of the entrance fee the provider will refund in the event of the
468 resident's death;

469 (ii) the date before which the provider will make the refund; and

470 (iii) to whom the provider will make the refund.

471 (2) A continuing care contract may permit involuntary dismissal of a resident from a
472 continuing care facility upon a reasonable determination by the provider that the resident's
473 health and well-being require termination of the continuing care contract.

474 (3) If a resident is dismissed under Subsection (2) and is in a condition of financial
475 hardship, as defined by the department by rule made in accordance with Title 63G, Chapter 3,
476 Utah Administrative Rulemaking Act, the provider shall refund the resident's entrance fee:

477 (a) in an amount provided in the continuing care contract; and

478 (b) before the earlier of:

479 (i) a time provided in the continuing care contract; and

480 (ii) 60 days after the day on which the provider dismisses the resident from the facility.

481 (4) A resident may not waive a provision of this chapter by agreement.

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

483 **31A-44-402. Actuarial reserve -- Department may require.**

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

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

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

490 **31A-44-403. Resident advisory committee.**

491 (1) A provider shall maintain, beginning no later than two years after the day on which
492 a facility is operational, a resident advisory committee for the facility that meets the
493 requirements of this section.

494 (2) A resident advisory committee shall:

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

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

497 (c) discuss resident concerns and communications relevant to the provider or the
498 facility.

499 (3) A provider shall:

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

501 (b) distribute a provider disclosure statement to the resident advisory committee each

502 time the provider is required to renew the provider disclosure statement under Section

503 [31A-44-301.](#)

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

505 **31A-44-404. Nondisturbance of residents.**

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

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

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

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

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

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

519 **31A-44-405. Continuing care facilities not exempt from property tax.**

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

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

523 **Part 5. Rehabilitation and Liquidation**

524 **31A-44-501. Application for court order for rehabilitation or liquidation.**

525 (1) The department may request that the attorney general petition a district court in the
526 state, or a federal bankruptcy court that has exercised jurisdiction over a provider's facility, for
527 an order that appoints a trustee to rehabilitate or liquidate the facility if:

528 (a) the department determines that:

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

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

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

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

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

537 and

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

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

541 **31A-44-502. Order to rehabilitate.**

542 A court order to rehabilitate a facility under Section 31A-44-501 may direct a trustee to:

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

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

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

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

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

551 **31A-44-503. Order to liquidate.**

552 (1) If the trustee determines that further efforts to rehabilitate a provider's facility are

553 impractical or useless, the trustee may petition a court for liquidation of the facility.

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

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

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

559 **31A-44-504. Bond.**

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

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

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

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

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

569 **31A-44-505. Termination of rehabilitation.**

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

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

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

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

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

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

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

580 **31A-44-506. Payment of trustee.**

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

583 Section 36. Section **31A-44-601** is enacted to read:

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Part 6. Enforcement

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

(1) To secure the obligations of the provider to a resident or a group of residents under a continuing care contract, the commissioner holds a lien in favor of the resident or group of residents that attaches on the day the notice described in Subsection (3) is recorded as provided in Subsection (4).

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

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

(6) 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;

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

(d) pay reasonable operating costs of the facility.

(7) If a lien on the property of the provider is superior to a lien described in Subsection (1), a provider may only use an entrance fee to:

- 615 (a) reduce a debt secured by a superior lien;
- 616 (b) construct, acquire, replace, or improve a facility;
- 617 (c) fund reserves for the provider's actuarial debt under continuing care contracts for a
- 618 facility;
- 619 (d) refund an entrance fee of a resident of a facility;
- 620 (e) pay a facility resident's debt to the provider for a recurring fee due under the
- 621 resident's continuing care contract; or
- 622 (f) pay an amount for a purpose approved by the commissioner.
- 623 (8) The commissioner may judicially foreclose a lien described in Subsection (1) if
- 624 property subject to the lien is liquidated or the provider is insolvent or bankrupt.
- 625 (9) The commissioner shall use the proceeds from a lien foreclosed under Subsection
- 626 (7) to satisfy the provider's obligations under any continuing care contract in effect on the day
- 627 the commissioner forecloses the lien.

628 Section 37. Section **31A-44-602** is enacted to read:

629 **31A-44-602. Enforcement by department -- Rulemaking.**

630 (1) Subject to the requirements of Title 63G, Chapter 4, Administrative Procedures

631 Act, the department may:

- 632 (a) receive and act on a complaint about a provider or a facility;
- 633 (b) take action designed to obtain voluntary compliance by the provider with this
- 634 chapter;
- 635 (c) commence administrative or judicial proceedings on the commission's own in order
- 636 to enforce compliance by a provider with this chapter; or
- 637 (d) take action against a provider who fails to:
- 638 (i) respond to the department, in writing, before 30 business days after the day on
- 639 which the provider receives notice from the department of a complaint filed with the
- 640 department; or
- 641 (ii) submit information requested by the department.

642 (2) The department may:

- 643 (a) counsel an individual on the individual's rights or duties under this chapter;
- 644 (b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
- 645 Rulemaking Act, to:

- 646 (i) restrict or prohibit practices by the provider that are misleading, unfair, or abusive;
- 647 (ii) promote or assure fair and full disclosure of the terms and conditions of continuing
- 648 care contracts, agreements, and communications between a resident and a provider;
- 649 (iii) promote or assure the ability of the public to compare continuing care contracts,
- 650 providers, and facilities; and
- 651 (iv) clearly disclose any financial risks related to a provider's facility to the facility's
- 652 residents;
- 653 (c) employ hearing examiners, clerks, and other employees and agents as necessary to
- 654 perform the department's duties under this chapter; and
- 655 (d) appoint a receiver for a provider.

656 Section 38. Section **31A-44-603** is enacted to read:

657 **31A-44-603. Examinations.**

- 658 (1) The department may conduct periodic on-site examinations of a provider.
- 659 (2) In conducting an examination, the department or the department's staff:
 - 660 (a) shall have full and free access to all the provider's records; and
 - 661 (b) may summon and qualify as a witness, under oath, and examine, any director,
 - 662 officer, member, agent, or employee of the provider, and any other person, concerning the
 - 663 condition and affairs of the provider or a facility.
- 664 (3) The provider shall pay the reasonable costs of an examination under this section.
- 665 (4) The department may conduct an on-site examination in conjunction with an
- 666 examination performed by a representative of an agency of another state.
- 667 (5) (a) The department, in lieu of an on-site examination, may accept the examination
- 668 report of an agency of another state that has regulatory oversight of the provider, or a report
- 669 prepared by an independent accounting firm.
- 670 (b) A report accepted under Subsection (5)(a) is considered for all purposes an official
- 671 report of the department.
- 672 (6) Upon reasonable cause, the department may conduct an on-site examination of an
- 673 unlicensed person to determine whether a violation of this chapter has occurred.

674 Section 39. Section **31A-44-604** is enacted to read:

675 **31A-44-604. Criminal and civil penalties.**

- 676 (1) A person who knowingly violates this chapter or files materially false information

677 with a registration application or renewal under this chapter is:

678 (a) guilty of a class B misdemeanor; and

679 (b) subject to revocation of the person's registration under this chapter.

680 (2) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if the department
681 determines that a person is engaging in the business of being a continuing care provider in
682 violation of this chapter, the department may:

683 (a) suspend, revoke, or refuse to renew the person's registration under this chapter;

684 (b) issue a cease and desist order from committing any further violation;

685 (c) prohibit the person from continuing to engage in the business of being a continuing
686 care provider;

687 (d) impose an administrative fine not greater than \$1,000 per violation, except that the
688 aggregate total of fines imposed under this chapter against a person in a calendar year may not
689 exceed \$30,000 for that calendar year; or

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

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

694 Section 40. Section **31A-44-605** is enacted to read:

695 **31A-44-605. Civil liability.**

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

700 (a) actual damages;

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

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

705 (d) court costs; and

706 (e) reasonable attorney fees.

707 (2) A provider is liable under this section regardless of whether the provider had actual

708 knowledge of the misstatement or omission.

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

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

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

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

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

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

720 (b) the individual discovers, or reasonably should have discovered, the provider's
721 violation, misstatement, or omission.

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

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

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