

Representative James A. Dunnigan proposes the following substitute bill:

CONTINUING CARE RETIREMENT FACILITIES

AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

31A-44-404, as last amended by Laws of Utah 2016, Third Special Session, Chapter 8



26 **31A-44-502**, as last amended by Laws of Utah 2016, Third Special Session, Chapter 8

27 **31A-44-505**, as enacted by Laws of Utah 2016, Chapter 270

28 **31A-44-506**, as enacted by Laws of Utah 2016, Chapter 270

29 ENACTS:

30 **31A-44-315**, Utah Code Annotated 1953

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

32 REPEALS:

33 **31A-44-101**, as enacted by Laws of Utah 2016, Chapter 270

34 **31A-44-501**, as enacted by Laws of Utah 2016, Chapter 270

35 **31A-44-503**, as last amended by Laws of Utah 2016, Third Special Session, Chapter 8

36

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

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

39 **31A-44-102. Definitions.**

40 As used in this chapter:

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

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

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

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

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

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

57 reservation agreement.

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

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

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

64 (7) "Insolvent" means:

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

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

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

69 [(7)] (8) "Living unit" means a room, apartment, cottage, or other area within a facility
70 set aside for the exclusive use or control of one or more identified individuals.

71 [(8)] (9) (a) "Provider" means:

72 (i) the owner of a facility;

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

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

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

77 [(9)] (10) "Provider disclosure statement" means, for a given provider, the disclosure
78 statement described in Section 31A-44-301.

79 [(10)] (11) "Reservation agreement" means an agreement that requires the payment of a
80 deposit to reserve a living unit for a prospective resident.

81 [(11)] (12) "Resident" means an individual entitled to receive continuing care in a
82 facility pursuant to a continuing care contract.

83 Section 2. Section 31A-44-315 is enacted to read:

84 **31A-44-315. Financial assessment.**

85 (1) The department shall assess the financial condition of a provider no less than once
86 per year.

87 (2) The department may consider any relevant documents and information in

88 performing an assessment.

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

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

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

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

99 Section 3. Section **31A-44-402** is amended to read:

100 **31A-44-402. Actuarial reserve -- Priority of entrance fee refunds.**

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

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

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

109 Section 4. Section **31A-44-404** is amended to read:

110 **31A-44-404. Nondisturbance of residents.**

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

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

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

119 (b) a court may appoint a receiver upon the department's petition [~~by the department~~],
120 or the department's motion under an existing action.

121 (3) (a) Except as provided in Subsection (3)(b), a person other than a resident that
122 holds a present right to possess a facility, including a ground lessor but only after the ground
123 lessor acquires a provider's possessory interest by termination of a ground lease or otherwise, is
124 bound by every continuing care contract related to the facility, including a continuing care
125 contract that provides for the return of part or all of a resident's entrance fee.

126 (b) If a ground lessor acquires a provider's possessory interest by termination of a
127 ground lease or otherwise, the ground lessor's obligation under the continuing care contracts is
128 limited to the monetary obligations of the provider to which the ground lessor succeeds.

129 (4) (a) The commissioner holds a covenant that:

130 (i) runs with the land on which a facility is located; and

131 (ii) except as provided in Subsection (4)(b), binds a person with a present right to
132 possess the land on which the facility is located, including a ground lessor but only after the
133 ground lessor acquires a provider's possessory interest by termination of a ground lease or
134 otherwise, to every continuing care contract related to the facility, including a continuing care
135 contract that provides for the return of all or part of a resident's entrance fee.

136 (b) If a ground lessor acquires a provider's possessory interest by termination of a
137 ground lease or otherwise, the ground lessor's obligation under the continuing care contracts
138 under the covenant described in Subsection (4)(a) is limited to the monetary obligations of the
139 provider to which the ground lessor succeeds.

140 (c) A person may not sell the land on which the facility is located free and clear of the
141 interest described in Subsection (4)(a).

142 (5) A person may not sell or transfer the land on which a facility subject to a ground
143 lease is located free and clear of the provider's possessory interest in the ground lease.

144 Section 5. Section **31A-44-501.1** is enacted to read:

145 **31A-44-501.1. Receivership.**

146 (1) The department may, by petition or motion, request that a court appoint the
147 commissioner as receiver for a provider.

148 (2) The court may appoint the commissioner as receiver if, as determined by the
149 commissioner, the provider:

150 (a) is insolvent or at material risk of becoming insolvent within the next 12 months;

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

153 (c) is unable or at risk of being unable to perform a material obligation under a
154 continuing care contract within the next 12 months.

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

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

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

160 (4) The commissioner may not file an independent proceeding or action described in
161 this section if another judicial proceeding or action based on the provider's financial condition
162 is pending, but may move to intervene in a pending proceeding or action that is based on the
163 provider's financial condition.

164 Section 6. Section 31A-44-502 is amended to read:

165 **31A-44-502. Relief available.**

166 (1) ~~[A court order to rehabilitate a facility under Section 31A-44-501 may direct a~~
167 ~~trustee to]~~ In a judicial proceeding, including under Sections 31A-44-501 and 31A-44-501.1, a
168 court may:

169 (a) direct a receiver to take possession of the provider's property in order to conduct the
170 provider's business, including employing any manager or agent that the [trustee] receiver
171 considers necessary; and

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

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

175 (ii) requiring a purchaser of the facility to honor any continuing care contract for the
176 facility; and

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

179 (2) (a) For a facility subject to a ground lease, a court may, in addition to the actions
180 described in Subsection (1), direct a [trustee] receiver to purchase from the ground lessor, or

181 assign to another person that agrees to operate the facility, for market value, the ground lessor's
 182 interest in the land and the infrastructure improvements to the land on which the facility is
 183 located.

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

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

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

193 [~~(e)~~] (d) In determining market value under Subsection [~~(2)(d)~~] (2)(a), the
 194 commissioner shall:

195 (i) value the land and infrastructure improvements to the land on which the facility is
 196 located as though the land and infrastructure improvements to the land were not subject to the
 197 ground lease; and

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

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

201 [~~(3)~~] (4) Solely for the purpose of enforcing this section, a court has personal
 202 jurisdiction in a proceeding under this section over:

203 (a) the owner of a facility; and

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

206 (5) If the commissioner is appointed as receiver, the commissioner may hire or retain a
 207 deputy receiver to perform any duties of receivership.

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

209 **31A-44-505. Termination of receivership.**

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

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

214 (b) [~~the facility may be returned to the provider without further jeopardy to the facility's~~
215 ~~residents, creditors, or owners, or the public~~] termination of the receivership will not jeopardize
216 the interests of the facility's residents, creditors, owners, or the public.

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

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

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

221 Section 8. Section ~~31A-44-506~~ is amended to read:

222 **31A-44-506. Payment of receiver.**

223 A [~~trustee's~~] receiver's and any deputy receiver's reasonable costs, expenses, and fees
224 are payable from a provider's or facility's assets.

225 Section 9. **Repealer.**

226 This bill repeals:

227 Section ~~31A-44-101~~, **Title.**

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

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