

HB0070S01 compared with HB0070

~~{deleted text}~~ shows text that was in HB0070 but was deleted in HB0070S01.

inserted text shows text that was not in HB0070 but was inserted into HB0070S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: _____

LONG TITLE

~~{Committee Note:~~

~~_____ The Political Subdivisions Interim Committee recommended this bill.~~

~~_____ Legislative Vote: 10 voting for 0 voting against _____ 6 absent~~

~~{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

HB0070S01 compared with HB0070

- ▶ 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

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

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

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

ENACTS:

31A-44-315, Utah Code Annotated 1953

31A-44-501.1, Utah Code Annotated 1953

~~{ **31A-44-501.2**, Utah Code Annotated 1953~~

~~‡~~REPEALS:

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

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

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

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

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

31A-44-102. Definitions.

As used in this chapter:

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

(2) "Continuing care contract" means a contract under which a provider provides

HB0070S01 compared with HB0070

continuing care to a resident.

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

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

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

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

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

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

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

(7) "Insolvent" means:

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

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

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

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

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

(i) the owner of a facility;

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

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

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

HB0070S01 compared with HB0070

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

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

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

Section 2. Section ~~{31A-44-402}~~ 31A-44-315 is ~~{amended to read:~~
~~}enacted to read:~~

31A-44-315. Financial assessment.

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

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

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

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

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

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

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

31A-44-402. Actuarial reserve -- ~~{}~~Priority of entrance fee refunds.

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

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

(3) If a refund or remittance of funds is owed in relation to a living unit due to the

HB0070S01 compared with HB0070

death or relocation of a resident, the provider shall prioritize the sale of the resident's living unit over the sale of other units for which a refund or remittance of funds is not owed.

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

31A-44-404. Nondisturbance of residents.

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

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

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

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

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

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

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

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

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

(b) If a ground lessor acquires a provider's possessory interest by termination of a ground lease or otherwise, the ground lessor's obligation under the continuing care contracts

HB0070S01 compared with HB0070

under the covenant described in Subsection (4)(a) is limited to the monetary obligations of the provider to which the ground lessor succeeds.

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

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

Section ~~{3}~~5. Section 31A-44-501.1 is enacted to read:

31A-44-501.1. Financial assessment.

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

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

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

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

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

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

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

~~31A-44-501.2~~1. Receivership.

(1) ~~{Upon motion}~~The department may, by petition or ~~{on the court's own initiative, the court may}~~motion, request that a court appoint the commissioner as receiver for a provider.

(2) The court ~~{shall}~~may appoint the commissioner as receiver if, as determined by the commissioner, the provider:

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

(b) is materially unable to meet the income or available cash projections described in

HB0070S01 compared with HB0070

the provider's disclosure statement; or

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

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

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

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

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

Section ~~5~~6. Section **31A-44-502** is amended to read:

31A-44-502. Relief available.

(1) ~~[A court order to rehabilitate a facility under Section 31A-44-501 may direct a trustee to]~~ In a ~~judicial~~ proceeding, including under ~~Section~~ Sections 31A-44-501 and 31A-44-501. ~~2~~1, a court may:

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

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

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

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

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

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

HB0070S01 compared with HB0070

located.

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

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

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

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

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

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

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

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

(a) the owner of a facility; and

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

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

Section ~~{6}~~ 7. Section **31A-44-505** is amended to read:

31A-44-505. Termination of receivership.

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

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

HB0070S01 compared with HB0070

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

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

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

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

Section ~~{7}~~8. Section **31A-44-506** is amended to read:

31A-44-506. Payment of ~~{trustee}~~receiver.

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

Section ~~{8}~~9. **Repealer.**

This bill repeals:

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

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

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