

State of Utah
Administrative Rule Analysis
Revised May 2024

NOTICE OF SUBSTANTIVE CHANGE

TYPE OF FILING: Amendment

Rule or Section Number:

R590-273

Filing ID: Office Use Only

Date of Previous Publication (Only for CPRs):

Click or tap to enter a date.

Agency Information

1. Title catchline:	Insurance, Administration	
Building:	Taylorsville State Office Building	
Street address:	4315 S. 2700 W.	
City, state	Taylorsville, UT	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact persons:		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R590-273. Continuing Care Provider Rule
3. Purpose of the new rule or reason for the change:
This rule contains references to Rule R590-102, which was recently repealed. The changes are necessary to notify continuing care providers about how the Department sets its fees.
4. Summary of the new rule or change:
The rule filing updates two references to the former Rule R590-102 to now point to the fee setting process contained in Section 63J-1-504.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to state budget. The Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule.
B) Local governments:
There is no anticipated cost or savings to local governments. This rule governs the relationship between the Department and its licensees and does not apply to local governments in any way.
C) Small businesses ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses. The Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There is no anticipated cost or savings to non-small businesses. The Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):

There is no anticipated cost or savings to any other persons. The Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There is no compliance cost for any affected persons. The Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2025	FY2026	FY2027
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2025	FY2026	FY2027
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Commissioner of the Insurance Department, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 31A-2-201	Section 31A-44-202	Section 31A-44-203
Section 31A-44-401	Section 31A-44-402	Section 31A-44-502
Section 31A-44-503	Section 31A-44-601	Section 31A-44-602

Incorporations by Reference Information

7. Incorporations by Reference (if this rule incorporates more than two items by reference, please include additional tables):

A) This rule adds or updates the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

Official Title of Materials Incorporated (from title page)	
Publisher	
Issue Date	
Issue or Version	

B) This rule adds or updates the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

Official Title of Materials Incorporated (from title page)	
Publisher	
Issue Date	

Issue or Version

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)		
A) Comments will be accepted until:		09/03/2024
B) A public hearing (optional) will be held:		
Date (mm/dd/yyyy):	Time (hh:mm AM/PM):	Place (physical address or URL):
To the agency: If more space is needed for a physical address or URL, refer readers to Box 4 in General Information. If more than two hearings will take place, continue to add rows.		

9. This rule change MAY become effective on:	09/10/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 63G-3-302, 63G-3-303, and 63G-3-402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> and delaying the first possible effective date.			
Agency head or designee and title:	Steve Gooch, Public Information Officer	Date:	07/15/2024

R590. Insurance, Administration.

R590-273. Continuing Care Provider Rule.

R590-273-1. Authority.

This rule is promulgated by the commissioner pursuant to Sections 31A-2-201, 31A-44-202, 31A-44-203, 31A-44-401, 31A-44-402, 31A-44-502, 31A-44-503, 31A-44-601, and 31A-44-602.

R590-273-2. Purpose and Scope.

- (1) The purpose of this rule is to:
 - (a) define financial hardship;
 - (b) establish procedures to register or renew as a provider;
 - (c) determine when an additional reserve fund is necessary;
 - (d) determine market value of land and infrastructure improvements of a facility in liquidation;
 - (e) set forth conditions when a lien is superior to a property lease; and
 - (f) establish enforcement procedures.
- (2) This rule applies to a provider that markets a continuing care facility project.

R590-273-3. Definitions.

Terms used in this rule are defined in Sections 31A-1-301 and 31A-44-102. Additional terms are defined as follows:

- (1) "Financial hardship," under Subsection 31A-44-401(3), means a resident of a continuing care facility:
 - (a) with regular monthly expenses exceeding the resident's regular monthly income; and
 - (b) with net assets of less than \$25,000, over and above the resident's entrance fee at the continuing care facility.
- (2) "Qualified actuary" means:
 - (a) a member of the American Academy of Actuaries;
 - (b) a member of the Society of Actuaries; or
 - (c) a person recognized by the commissioner as having comparable training or experience.

R590-273-4. Registration.

- (1) Thirty days before entering into a continuing care contract or reservation agreement, a provider shall complete and submit electronically to the commissioner:
 - (a) an initial registration form, supporting documentation, and all attachments; and
 - (b) payment of the initial registration fee [~~under Rule R590-102~~], in an amount annually established by the Utah Legislature under Section 63J-1-504, using the department's secure payment portal.
- (2) Registration forms are available on the department's website, <https://insurance.utah.gov>.

R590-273-5. Registration Renewal.

- (1) By September 30 of each year, a provider shall complete and submit electronically to the commissioner:
 - (a) a registration renewal form; and
 - (b) payment of the registration renewal fee [~~under Rule R590-102~~], in an amount annually established by the Utah Legislature under Section 63J-1-504, using the department's secure payment portal.
- (2) Registration renewal forms are available on the department's website, <https://insurance.utah.gov>.

R590-273-6. Additional Reserve Fund.

- (1) A provider shall create an additional reserve fund if directed to do so by the commissioner.
- (2) The additional reserve fund amount shall be determined by a qualified actuary.
- (3) An independent actuarial review shall determine the adequacy of an additional reserve fund.
- (4) A provider shall pay the reasonable costs of the actuarial review under Subsection 31A-44-603(4).

R590-273-7. Market Value of Land and Infrastructure Improvements in Rehabilitation or Liquidation.

To determine the market value of land and infrastructure improvements under an order of rehabilitation or liquidation pursuant to Subsection 31A-44-502(2)(d) or 31A-44-503(4)(e), the commissioner shall:

- (1) consider the most probable price, as of a specified date, that the land and infrastructure improvements owned in fee by the ground lesser should sell for:
 - (a) after reasonable exposure in a competitive market;
 - (b) under all conditions of a fair sale;
 - (c) with the buyer and seller each acting prudently, knowledgeably, and in their self-interest; and
 - (d) assuming neither buyer nor seller acts under duress;
- (2) disregard the existence or terms of the ground lease; and
- (3) determine if a commercial appraisal is required to assign the market value.

R590-273-8. Lien Held by the Commissioner in Favor of a Resident or a Group of Residents.

The lien amount on a provider's property that is superior to the lien described in Subsection 31A-44-601(1) is limited to the portion of the funds secured by the lien used by the provider, including:

- (1) an amount used to pay fees and costs for the design of the facility, including architectural and engineering fees and costs;
- (2) an amount paid for engineering, environmental, and similar studies, reports, and surveys for the facility;
- (3) an amount paid for appraisals, marketing, and other reports and surveys for construction, acquisition, or improvement of the facility;
- (4) fees and costs paid to contractors, developers, brokers, salespersons, and other employees and agents, including affiliates of the provider;
- (5) a fee, charge, assessment, or tax charged or imposed by a governmental unit, district, or similar body having jurisdiction over the facility; and
- (6) reimbursement to a provider for expenditures that qualify under Subsection 31A-44-601(1) or this rule, if paid directly from loan proceeds.

R590-273-9. Enforcement.

- (1) The commissioner may conduct an examination or investigation of a provider to:
 - (a) determine the financial solvency of a facility;
 - (b) determine the adequacy of the additional reserve fund under Section R590-273-6;
 - (c) verify a statement contained in a disclosure or actuarial statement;
 - (d) act on a complaint against a provider or a facility;
 - (e) obtain documents requested by the commissioner; or
 - (f) take corrective action to enforce compliance.
- (2) The commissioner may take corrective action, including:
 - (a) suggesting corrective business practices;
 - (b) restricting or prohibiting behavior by a provider that is misleading, unfair, or abusive;
 - (c) ordering a provider to cease and desist from committing further violations;
 - (d) suspending, revoking, or non-renewing a provider's registration;
 - (e) requiring information to compare continuing care contracts, providers, or facilities;
 - (f) requiring disclosure of all terms and conditions of continuing care contracts and agreements;
 - (g) requiring disclosure of any financial risks; and
 - (h) promoting certain communications between the residents and the provider.
- (3)(a) The provider shall give the commissioner access to the books and papers relating to the business and affairs of the provider.
- (b) The books and records required under Subsection 31A-44-603(2)(a) shall be available for inspection by the commissioner during normal business hours from the date of the transaction and for no less than three years, plus the current calendar year.
- (4) The commissioner may bill the provider for the reasonable costs of an examination or investigation, including the cost of the review by an actuary.

R590-273-10. Severability.

If any provision of this rule, Rule R590-273, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: insurance, continuing care facility

Date of Last Change: February 8, 2023

Notice of Continuation: April 7, 2022

Authorizing, and Implemented or Interpreted Law: 31A-44-202(2); 31A-2-201; 31A-44-314; 31A-44-401(3); 31A-44-402(2); 31A-44-502(2)(d); 31A-44-503(4)(d); 31A-44-601(6)(f); 31A-44-602(2)(b); 31A-44-203(4)