

R590. Insurance Administration.

R590-273. Continuing Care Provider Rule.

R590-273-1. Authority.

This rule is promulgated by the Insurance Commissioner pursuant to:

(1) Section 31A-2-201, which authorizes the commissioner to make rules to implement the provisions of Title 31A;

(2) Subsection 31A-44-202(2) for the registration process;

(3) Subsection 31A-44-203(4) for the annual renewal process;

(4) Section 31A-44-314 for the establishment of registration and renewal fees;

(5) Subsection 31A-44-401(3) to define financial hardship in the case of resident dismissal contract exceptions;

(6) Subsection 31A-44-402(2) to determine when actuarial reserves will be required;

(7) Subsection 31A-44-502(2)(d) to determine market value of land and infrastructure improvements in rehabilitation;

(8) Subsection 31A-44-503(4)(d) to determine market value of land and infrastructure improvements in liquidation;

(9) Subsection 31A-44-601(6)(f) to determine the conditions under which a lien will be superior to a property lease; and

(10) Subsection 31A-44-602(2)(b) to establish financial disclosure and market conduct rules including conditions for enforcement.

R590-273-2. Purpose and Scope.

(1) The purpose of this rule is to outline the responsibilities of a provider of continuing care where required by Title 31A, Chapter 44.

(2) Pursuant to Subsection 31A-44-104(5), a provider that begins marketing a continuing care facility project:

(a) on or before May 10, 2016, will not be subject to the provisions of this rule until May 10, 2017; or

(b) after May 10, 2016 will be subject to this rule 45 days after the effective date of the rule.

R590-273-3. Definitions.

(1) The definitions in Sections 31A-1-301 and 31A-44-102 apply to this rule.

(2) "Qualified actuary" means a member of the American Academy of Actuaries or the Society of Actuaries or a person recognized by the commissioner as having comparable training or experience.

R590-273-4. Registration.

Thirty days prior to entering into a continuing care contract or reservation agreement, a provider must complete and submit to the commissioner:

(1) the initial registration form, supporting documentation, and attachments, which shall be filed electronically with the commissioner; and

(2) payment of the initial registration fee in accordance with Rule R590-102 through the online payment portal at <https://secure.utah.gov/ips/uidrenewal>.

R590-273-5. Registration Renewal.

(1) A registered provider must complete and submit to the commissioner:

(a) the renewal registration form and attachments, which shall be filed electronically with the commissioner by September 30 of each year; and

(b) payment of the renewal registration fee in accordance with Rule R590-102 through the online payment portal at <https://secure.utah.gov/ips/uidrenewal>.

(2) Registration forms are posted at the department's webpage at <https://insurance.utah.gov/agent/agent-other/CCRC.php>.

R590-273-6. Financial Hardship Refund.

A continuing care facility resident is in a condition of financial hardship for purposes of Subsection 31A-44-401(3) if:

(1) the resident's regular monthly expenses exceed his or her regular monthly income; and

(2) the resident has net assets, over and above his or her entrance fee at the continuing care facility, of less than \$25,000.

R590-273-7. Additional Actuarial Reserve.

(1) Pursuant to Subsection 31A-44-402(2) the commissioner may require the additional reserve fund described in Subsection 31A-44-402(1) if the department determines it is necessary pursuant to Subsection 31A-44-204(1)(a).

(2) The additional reserve fund shall be determined by:

(a) a qualified actuary; or

(b) a person recognized by the commissioner as having comparable training or experience.

(3) The commissioner may require an independent actuarial review to determine the adequacy of the additional actuarial reserve.

(4) The provider will pay the reasonable costs of the actuarial review described in Sub-section (3) pursuant to Subsection 31A-44-603(3).

R590-273-8. Market Value of Land and Infrastructure Improvements in Rehabilitation.

In determining the market value of land and infrastructure improvements under an order of rehabilitation pursuant to Section 31A-44-502(2)(d), the commissioner shall:

(1) Consider the most probable price as of a specified date, for which the land and infrastructure improvements owned in fee by the ground lessor should sell:

(a) after reasonable exposure in a competitive market;

(b) under all conditions requisite to a fair sale;

(c) with the buyer and seller each acting prudently, knowledgeably and for self-interest; and

(d) assuming neither buyer or seller is acting under duress.

(2) Disregard the existence or terms of the ground lease.

(3) Determine if a commercial appraisal is required to assign the market value.

R590-273-9. Market Value of Land and Infrastructure Improvements in Liquidation.

In determining the market value of land and infrastructure improvements under an order of liquidation pursuant to Subsection 31A-44-502(2)(d), the commissioner shall:

(1) Consider the most probable price as of a specified date, for which the land and infrastructure improvements owned in fee by the ground lessor should sell:

(a) after reasonable exposure in a competitive market;

(b) under all conditions requisite to a fair sale;

(c) with the buyer and seller each acting prudently, knowledgeably and for self-interest; and

(d) assuming neither buyer or seller is acting under duress.

(2) Disregard the existence or terms of the ground lease.

(3) Determine if a commercial appraisal is required to assign the market value.

R590-273-10. Lien Held by the Commissioner in Favor of a Resident or a Group of Residents.

Pursuant to Subsection 31A-44-601(6)(f), the amount of a lien on a provider's property that is superior to the lien created by Subsection 31A-44-601(1) includes:

(1) all amounts used to pay fees and costs for architectural and engineering for the design of the Facility;

(2) all amounts paid for engineering, environmental and similar studies, reports and surveys with respect to the facility;

(3) all amounts paid for appraisals, marketing and other reports and surveys in connection with the 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 provider;

(5) all fees, charges, assessments, taxes charged or imposed by any governmental unit, district or similar body having jurisdiction over the facility; and

(6) reimbursements to a provider or other owner of the facility for expenditures that would otherwise qualify under Subsection 31A-44-601(1) or this rule if paid directly from loan proceeds.

R590-273-11. Enforcement.

(1) Pursuant to Subsection 31A-44-602(2)(b) the commissioner may conduct an examination or investigation of a provider to determine compliance with Title 31A, Chapter 44, Part 6:

(a) to determine the financial solvency of a facility;

(b) to determine the adequacy of the additional actuarial reserve under R590-273-7;

(c) to verify a statement contained in a disclosure or actuarial statement;

(d) to act on a complaint against a provider or a facility;

(e) to obtain all documents requested by the commissioner; or

(f) to take any corrective action to enforce compliance.

(2) The commissioner may request corrective actions, including but not limited to:

(a) counsel to suggest correct behavior;

(b) restrict or prohibit behavior by the provider that is misleading, unfair or abusive;

(c) issue a cease and desist from committing any further violation;

(d) suspend, revoke, or refuse issuance or renewal of the person's registration;

(e) provide transparent information to compare continuing care contracts, providers, or facilities;

(f) disclosure of all terms and conditions of continuing care contracts and agreements;

(g) disclosure of any financial risks;

(h) promote certain communications between the residents and the provider;

(i) employ or hire examiners, hearing officers, clerks, and others to perform the department's duties in this chapter;

(j) judicially, foreclose a lien as described in Section 31A-44-601; or

(k) appoint a receiver.

(3)(a) The commissioner shall have free access to all 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 the inspection by the commissioner during normal business hours from the date of the transaction for no less than three years, plus the current calendar year.

(4) Nothing in this section prohibits the commissioner from billing to the provider, the reasonable costs of any examination or investigation, including the cost of the review by an actuary.

(5) Nothing in this section prohibits the issuance of administrative forfeitures calculated under R590-273-12.

(6) Nothing in this section prohibits the destruction of books and records past the required records and books retention in R590-273-11(3).

R590-273-12. Penalties.

(1) A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

(2) The issuance of administrative forfeitures shall be calculated at an amount not greater than \$1,000 per violation, and with an aggregate maximum of \$30,000 per calendar year.

R590-273-13. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-273-14. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and

to this end the provisions of this rule are declared to be severable.