

State of Utah
Administrative Rule Analysis
Revised June 2022

NOTICE OF PROPOSED RULE

TYPE OF RULE: New ___; Amendment ___; Repeal ___; Repeal and Reenact x

Title No. - Rule No. - Section No.

Rule or Section Number:

R590-273

Filing ID: Office Use Only

Agency Information

| | | |
|-----------------------------|------------------------------------|-----------------|
| 1. Department: | Insurance | |
| Agency: | Administration | |
| Room number: | Suite 2300 | |
| Building: | Taylorsville State Office Building | |
| Street address: | 4315 S. 2700 W. | |
| City, state and zip: | Taylorsville, UT 84129 | |
| 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 agency.

General Information

2. Rule or section catchline:

R590-273. Continuing Care Provider Rule

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The rule is being changed in compliance with Executive Order 2021-12. During the review of this rule, the department discovered a number of minor issues that needed to be amended.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The majority of the changes are being done to fix style issues to bring the rule text more in line with current rulewriting standards. Other changes make the language of the rule more clear, remove the Penalties and Enforcement Date sections, and update the Severability section to use the department's current language. The changes do not add, remove, or change any regulations or requirements.

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 the state budget. The changes are largely clerical in nature, and will not change how the department functions.

B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

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 changes are largely clerical in nature, and will not affect non-small businesses.

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 changes are largely clerical in nature.

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

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

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 | FY2023 | FY2024 | FY2025 |
|------------------------------|---------------|---------------|---------------|
| 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 | FY2023 | FY2024 | FY2025 |
| 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 Insurance, 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, updates, or removes 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, updates, or removes 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: **01/31/2023**

B) A public hearing (optional) will be held:

| On (mm/dd/yyyy): | At (hh:mm AM/PM): | At (place): |
|------------------|-------------------|-------------|
| | | |
| | | |
| | | |
| | | |

9. This rule change MAY become effective on: **02/07/2023**

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, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.

| | | | |
|---|---|--------------|-------------------|
| Agency head or designee and title: | Steve Gooch, Public Information Officer | Date: | 12/15/2022 |
|---|---|--------------|-------------------|

R590. Insurance, Administration.

R590-273. Continuing Care Provider Rule.

~~R590-273-1. Authority.~~

~~This rule is promulgated 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(1) for the establishment of registration fee;~~
- ~~(3) Subsection 31A-44-202(2) for the registration process;~~
- ~~(4) Subsection 31A-44-203(1) for the establishment of a renewal fee;~~
- ~~(5) Subsection 31A-44-203(4) for the annual renewal process;~~
- ~~(6) Section 31A-44-314 for the establishment of a disclosure fee;~~
- ~~(7) Subsection 31A-44-401(3) to define financial hardship in the case of resident dismissal contract exceptions;~~
- ~~(8) Subsection 31A-44-402(2) to determine when actuarial reserves will be required;~~
- ~~(9) Subsection 31A-44-502(2)(d) to determine market value of land and infrastructure improvements in rehabilitation;~~
- ~~(10) Subsection 31A-44-503(4)(d) to determine market value of land and infrastructure improvements in liquidation;~~
- ~~(11) Subsection 31A-44-601(6)(f) to determine the conditions under which a lien will be superior to a property lease; and~~
- ~~(12) 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 operating requirements 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>.

_____ (3) Registration forms are posted at the department's webpage <https://insurance.utah.gov/agent/agent-other/CCRC.php>.

R590-273-5. Registration Renewal.

_____ (1) A registered provider registration must be completed and submitted 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 commissioner 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 Subsection (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-44-503(4)(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:~~

~~_____ (a) suggest corrective business practices;~~

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

~~_____ (c) order that the provider cease and desist from committing any further violation;~~

~~_____ (d) suspend, revoke, or non renew a provider'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 commissioner's duties in Title 31A, Chapter 44; or~~

~~_____ (j) 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 Section 31A-44-604.~~

~~R590-273-12. Penalties.~~

~~_____ A person found to be in violation of this rule shall be subject to penalties as provided under Sections 31A-2-308, 31A-44-604 and 31A-44-605.~~

~~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.]~~

~~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 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, 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: April 7, 2017

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)