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FISCAL IMPACT REPORT

SPONSOR: Gonzales DATE TYPED: 3/4/03 HB 871

SHORT TITLE: Continuing Care Reporting Requirements SB _____

ANALYST: Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From
State Agency on Aging (SAA)

SUMMARY

Synopsis of Bill

HB 871 amends the Continuing Care Act as follows:

- Changes the definition of continuing care community (CCC) to include the requirement of an entrance fee;
- Deletes the requirement that the CCC furnish prospective residents with a copy of the consumer's guide prepared by the state agency on aging and the AG's office;
- Deletes the implication that an agreement to provide or offer to provide continuing care has been made if the CCC advertises or otherwise represents that a nursing facility or hospital services the residents or is in close proximity to the residential units;
- Deletes requirements that the CCC's comply with generally accepted accounting principles in preparation of financial documents and disclose to prospective residents, and annually thereafter, an audit report and balance sheet of the last fiscal year; and, instead, requires disclosure of previous year's tax return;
- Deletes the requirement that periodic increases in fees shall be based upon economic necessity, reasonable cost of operating the community, cost of care and a reasonable return on investment; and
- Deletes the requirement that any deposits or entrance fees paid by or for a resident, plus

interest, are maintained in an escrow account until the resident has occupied the unit, allowing the escrow account to be closed once the contract is signed.

Significant Issues

Continuing Care Communities (CCCs) are retirement facilities that furnish, pursuant to a contract, independent living and health or health-related services. These services may be provided in the community, in the resident's independent living unit or in another setting, designated by the continuing care contract, and include, at a minimum, priority access to a nursing facility or hospital either on site or at a site designated by the contract. In other words, a CCC offers a resident the ability to "age in place" – from independent living through nursing home care. Generally, but not always, the prospective resident pays a large up-front entrance fee. There are also monthly fees for rent and a variety of other services. There are currently 9 CCCs in New Mexico.

Deletion of the requirement for disclosure of an annual audit or balance sheet, as proposed in HB 871, is of significant concern to the SAA. Of even greater concern to the SAA is the deletion of the requirement that financial documents are prepared in compliance with generally accepted accounting principles (GAAP). Without audits and without compliance with GAAP, financial statements are unreliable and essentially useless. While the Continuing Care Act falls far short of protecting residents against financially unstable providers or ones that make excessive profit, at least the Act requires full disclosure and reasonable fee increases. It is important to residents to know the financial status of the CCC since they have likely invested a large portion, if not all, their life savings in entrance and other fees and may not have the financial resources to move elsewhere. Also, their intent in entering such an arrangement is the security of knowing they will not have to move out of their "community" if and when they require assisted living or nursing home care.

SAA also opposes the deletion of criteria for allowable fee increases. *Skofield vs. The Evangelical Lutheran Good Samaritan Society dba Manzano del Sol Good Samaritan Village* was a class action case decided December 2002 in New Mexico District Court. The plaintiffs were awarded over \$360,000 in compensatory damages for excessive fees charged to residents, in violation of New Mexico's Continuing Care Act, when annual increases were found to be in excess of what could be justified under a reasonable return on investment – a provision that HB 871 proposes to delete. If the criteria for allowable fee increases were deleted from the Continuing Care Act, excessive increases could be imposed on residents without any protection or recourse.

OTHER SUBSTANTIVE ISSUES

Almost all other states with statutes governing CCCs require, at a minimum, full financial disclosure, consistent with New Mexico's current Continuing Care Act. Many other states impose far greater protections in their CCC statutes than does New Mexico, including such provisions as: required actuarial studies, required certification or accreditation, provisions that protect the resident in the event of bankruptcy and oversight by the department or superintendent of insurance. (A survey of state CCC statutes is available upon request from the State Agency on Aging.)

BD/yr