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## FISCAL IMPACT REPORT

**SPONSOR** Gonzales      **DATE TYPED** 3/17/05      **HB** 392/aHBIC

**SHORT TITLE** Amend Continuing Care Act Disclosures      **SB** \_\_\_\_\_

**ANALYST** Hanika-Ortiz

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Aging and Long Term Services Department (ALTSD)  
Office of the Attorney General (AGO)  
Department of Health (DOH)

### SUMMARY

#### Synopsis of HBIC Amendment

The House Business and Industry Committee amendment addresses ALTSD's concerns by clarifying that a trust is to be held for the benefit of a resident until the resident has occupied the unit or the resident's contract cancellation period has ended.

#### Synopsis of Original Bill

House Bill 392 amends sections of the Continuing Care Act. The bill adds language that defines the continuing care contract as one that requires entrance, advance fees or periodic fees. These fees do not include security or damage deposit fees that amount to three months service or periodic fees.

The AGO reports on the amended language of the required disclosure statement:

- (A) Language mandating any advertising stating that the continuing care community (CCC) is serviced by or in close physical proximity to a hospital implied an agreement to furnish nursing or acute care has been removed.

- (B) Language that required a financial statement and audited report of the last fiscal year prepared according to GAAP, prepared by a CPA including a cash flow statement and a balance sheet, has been amended to require an audited financial statement or a copy of previous year's tax filings with the IRS.
- (C) The requirement to produce a financial statement to residents on an annual basis is amended to mirror the language required in subsection (B).
- (D) 24-17-5 (8) Contract information is amended to require that all deposits or entrance fees be held in trust in a federally insured NM bank until the resident occupies his unit or the contract cancellation period has ended.
- (E) 24-17-5 (11) ALTSD must define reasonable return on investment and cost of care.
- (F) 24-17-16 Escrow requirements are amended to mirror the language of 24-17-5.
- (G) 24-17-8 Consumer's Guide to Continuing Care is amended to remove mandatory language that the AGO and ALTSD will publish and distribute a consumer's guide to continuing care, and now is permissive language that AGO and ALTSD may publish such a guide.

This bill also makes non-substantive grammatical changes.

### Significant Issues

ALTSD has the following comment:

- 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.
- 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.

### **FISCAL IMPLICATIONS**

No Fiscal Impact

### **ADMINISTRATIVE IMPLICATIONS**

The ALTSD reports HB392 represents a compromise that has been reached between ALTSD and CCC representatives over amendments to the Continuing Care Act that had been proposed by

CCC representatives.

**TECHNICAL ISSUES**

The AGO has the following comment:

- The proposed amendments are generally not substantive and most simplify the language of the act without removing any consumer protections. However, the removal of the language contained in 24-17-4 will apparently permit advertising that CCCs are located near nursing facilities without implying that the agency actually provides the care. This appears to be a reduction in consumer protection.

AMENDMENT is proposed by the ALTSD on page 10, line 3, and on page 15, line 19, to add the words “for the benefit of the resident” between the words “in trust...” and “...in a”. ALTSD believes the additional language should help clarify the meaning of the two provisions.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

The Continuing Care Act will remain unchanged.

AHO/yr:lg