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FISCAL IMPACT REPORT

SPONSOR	<u>SJC</u>	ORIGINAL DATE	<u>2/8/19</u>	
		LAST UPDATED	<u>3/12/19</u>	HB
SHORT TITLE	<u>Investigation of Continuing Care Violations</u>			SB
				<u>CS/CS/316/SPACS/ SJCS</u>
				<u>Chenier/Chilton/ Martinez</u>
		ANALYST		

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

NMAG said the bill conflicts with SB91, which seeks to amend 24-17-18 NMSA 1978, to require reporting violations to Superintendent of Insurance and charge the superintendent with investigating and prosecuting alleged violations of the Act.

SOURCES OF INFORMATION

LFC Files

Responses Received From the Following Regarding Original Bill:

New Mexico Attorney General (NMAG)

Aging and Long-Term Services Department (ALTSD)

SUMMARY

Synopsis of Bill

The Senate Judiciary Committee Substitute for Senate Public Affairs Committee Substitute for Senate Bill 316 would amend a section of the Continuing Care Act (Section 24-17 NMSA 1978) to require the Superintendent of Insurance to evaluate the compliance of continuing care institutions with the Continuing Care Act and to report violations of the Continuing Care Act to the Attorney General.

A disclosure statement is required by the act to be made available to each continuing care resident annually and to prospective residents seven days or more before the new resident signs a contract or before the resident's first payment is made. Among other required contents of the disclosure statement that are already included in the act, the following are listed:

- 1) A narrative summary in readable language
- 2) Statement regarding any bankruptcies, felonies, convictions of fraud or embezzlement, or license suspensions or revocations on the part of the provider, its officers or directors, or its affiliates within the previous 10 years.
- 3) Possible conflicts of interest regarding supplies, services, or leases to be provided by persons or businesses to the continuing care facility
- 4) A statement of affiliation with any organization, including religious and charitable organizations, which is responsible financially for the facility
- 5) A statement of financial condition and ability to continue to provide care to residents of

- the facility, including financial reserves
- 6) An audited financial statement and actuarial statement of ability to continue providing care to residents no more than five years old.
 - 7) An actuary must certify that the continuing care community is solvent and able to meet future-service obligations.

Section 2 of the bill revises Section 24-17-7 NMSA 1978 to require the provision of the already-required annual disclosure statement to ALTSD no later than July 1, 2020 and annually thereafter, and ALTSD must provide a copy of this statement to the Office of Superintendent of Insurance (OSI).

Section 3 of the bill amends Section 24-17-16 NMSA 1978 to require ALTSD review all disclosure statements to assure compliance with the Continuing Care Act. OSI would review the financial documents, actuarial projections and audits aspects, and report any perceived violations to ALTSD. Upon finding an irregularity in the reports, audit or actuarial reports provided by a community, OSI may contract for an independent audit or actuarial examination that shall be conducted at the expense of the community. Actions that ALTSD might take are already encoded in Section 24-17-16.

Section 4 of the bill amends Section 24-17-17 NMSA 1978 to allow but not require ALTSD to make regulations to administer the Continuing Care Act.

Section 5 of the bill amends Section 24-17-18 of the act to allow any person to report possible violations of the Continuing Care Act either to ALTSD or to the Attorney General, which would be investigating by one or both agencies. According to current statute, only ALTSD is empowered to report alleged violations to the Attorney General.

FISCAL IMPLICATIONS

Neither ALTSD nor NMAG indicated any additional cost to those agencies of making the regulations or investigating, reporting or prosecuting violations of the Continuing Care Act, although the additional requirements of the committee substitute would be greater than the requirements in the original bill analyzed by these agencies.

SIGNIFICANT ISSUES

Elder abuse is a well-recognized entity, with its own agency, the National Center on Elder Abuse offering resources, some on a state-by-state basis, to avoid or deal with abuse of this vulnerable population (at <https://ncea.acl.gov/resources/>). One such resource, on financial abuse of elders, is attached. The bill would make it possible for any person viewing what appear to be violations of a senior citizen's rights to make a report either to NMAG or to ALTSD.

RELATIONSHIP

SB 316 relates to SB91, which would change oversight of continuing care providers. In 2017, two bills relating to possible abuses against elderly residents of continuing care facilities, SB187, which did not pass, and SB171, Long-term Care Ombudsman Act Changes, which became law and required the state ombudsman or other ombudsmen to consult with the resident or a surrogate decision-maker about any perceived violations.

EC/LAC/JM/sb/al