SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 51

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

This document incorporates amendments that have been adopted during the current legislative session. The document is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO AGING; REQUIRING SJC→~~A~~←SJC SJC→PROVIDERS TO INCLUDE←SJC CLOSURE SJC→~~CLAUSE~~←SJC SJC→PLAN DESCRIPTIONS←SJC IN SJC→~~A CONTRACT~~←SJC SJC→~~PURSUANT TO THE~~←SJC CONTINUING CARE SJC→~~ACT~~←SJC SJC→CONTRACTS←SJC; REQUIRING THE ATTORNEY GENERAL TO ACCEPT AND REVIEW ALLEGED VIOLATIONS OF THE CONTINUING CARE ACT REPORTED FROM ANY SOURCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 24-17-4 NMSA 1978 (being Laws 1985, Chapter 102, Section 4, as amended) is amended to read:

underscored material = new
[~~bracketed material~~] = delete
Amendments: new = →bold, blue, highlight←
delete = →~~bold, red, highlight, strikethrough~~←

"24-17-4. DISCLOSURE.--

A. A provider shall furnish a current annual disclosure statement that meets the requirements set forth in Subsection B of this section and the aging and long-term services department's and attorney general's consumer's guide to continuing care communities to each actual resident and to a prospective resident at least seven days before the provider enters into a continuing care contract with the prospective resident, or prior to the prospective resident's first payment, whichever occurs first. For the purposes of this subsection, the obligation to furnish information to each actual resident shall be deemed satisfied if a copy of the disclosure statement and the consumer's guide is given to the residents' association, if there is one, and a written message has been delivered to each actual resident, stating that personal copies are available upon request.

B. The disclosure statement provided pursuant to Subsection A of this section shall include:

(1) a brief narrative summary of the contents of the disclosure statement written in plain language;

(2) the name and business address of the provider;

(3) if the provider is a partnership, corporation or association, the names, addresses and duties of its officers, directors, trustees, partners or managers;

(4) the name and business address of each of the provider's affiliates;

(5) a statement as to whether the provider or any of its officers, directors, trustees, partners, managers or affiliates, within ten years prior to the date of application:

(a) was convicted of a felony, a crime that if committed in New Mexico would be a felony or any crime having to do with the provision of continuing care;

(b) has been held liable or enjoined in a civil action by final judgment, if the civil action involved fraud, embezzlement, fraudulent conversion or misappropriation of property;

(c) had a prior discharge in bankruptcy or was found insolvent in any court action; or

(d) had a state or federal license or permit suspended or revoked or had any state, federal or industry self-regulatory agency commence an action against the provider or any of its officers, directors, trustees, partners, managers or affiliates and the result of such action;

(6) the name and address of any person whose name is required to be provided in the disclosure statement who owns any interest in or receives any remuneration from, either directly or indirectly, any other person providing or expected to provide to the community goods, leases or services with a

real or anticipated value of five hundred dollars ($500) or more and the name and address of the person in which such interest is held. The disclosure shall describe such goods, leases or services and the actual or probable cost to the community or provider and shall describe why such goods, leases or services should not be purchased from an independent entity;

(7) the name and address of any person owning land or property leased to the community and a statement of what land or property is leased;

(8) a statement as to whether the provider is, or is associated with, a religious, charitable or other organization and the extent to which the associate organization is responsible for the financial and contractual obligations of the provider or community;

(9) the location and description of real property being used or proposed to be used in connection with the community's contracts to furnish care;

(10) a statement as to the community's or corporation's liquid reserves to assure payment of debt obligations and an ongoing ability to provide services to residents. The statement shall also include a description of the community's or corporation's reserves, including a specific explanation as to how the community or corporation intends to comply with the requirements of Section 24-17-6 NMSA 1978;

(11) for communities that provide type A and

type B agreements:

(a) a summary of [~~an~~] a comprehensive actuarial analysis within the last five years; SJC→[~~and~~]←SJC SJC→and←SJC

(b) an annual future-service obligation calculation by an actuary who is a member of the American academy of actuaries and who is experienced in analyzing continuing care communities; SJC→~~and~~←SJC

SJC→~~(c) a certification by an actuary who is~~←SJC SJC→~~a member of the American academy of actuaries and who is experienced in analyzing continuing care communities as to whether the community is in satisfactory actuarial balance, as defined by the actuarial standards board's *Continuing Care Retirement Communities*, and that is based upon a comprehensive actuarial study, using the national association of insurance commissioners' statutory accounting principles, performed within the last five years;~~←SJC

(12) an audited financial statement and an audit report prepared in accordance with generally accepted accounting principles applied on a consistent basis and certified by a certified public accountant, including an income statement or statement of activities, a cash-flow statement or sources and application of funds statement and a balance sheet as of the end of the provider's last fiscal year. The balance

sheet should accurately reflect the deferred revenue balance, including entrance fees and any other prepaid services, and should include notes describing the community's long-term obligations and identifying all the holders of mortgages and notes;

(13) a sample copy of the contract used by the provider; and

(14) a list of documents and other information available upon request, including:

(a) a copy of the Continuing Care Act;

(b) if the provider is a corporation, a copy of the articles of incorporation; if the provider is a partnership or other unincorporated association, a copy of the partnership agreement, articles of association or other membership agreement; and if the provider is a trust, a copy of the trust agreement or instruments;

(c) resumes of the provider and its officers, directors, trustees, partners or managers;

(d) a copy of lease agreements between the community and any person owning land or property leased to the community;

(e) information concerning the location and description of other properties, both existing and proposed, of the provider in which the provider owns any interest and on which communities are or are intended to be

located and the identity of previously owned or operated communities;

(f) a copy of the community's policies and procedures; and

(g) other data, financial statements and pertinent information with respect to the provider or community, or its directors, trustees, members, managers, branches, subsidiaries or affiliates, that a resident requests and that is reasonably necessary in order for the resident to determine the financial status of the provider, its sole member and the community and the management capabilities of the managers and owners, including the most recent audited financial statements of comparable communities owned, managed or developed by the provider, its sole member or its principal.

C. Each year, within one hundred eighty days after the end of the community's fiscal year, the provider shall furnish to actual residents the disclosure statement as outlined in this section. For purposes of this subsection, the obligation to furnish the required information to residents shall be deemed satisfied if the information is given to the residents' association, if there is one, and a written message has been delivered to each resident, stating that personal copies of the information are available upon request."

SECTION 2. Section 24-17-5 NMSA 1978 (being Laws 1985,

Chapter 102, Section 5, as amended) is amended to read:

"24-17-5. CONTRACT INFORMATION.--

A. A provider is responsible for ensuring that a continuing care contract is written in clear and understandable language.

B. A continuing care contract shall, at a minimum:

(1) describe the community's admission policies, including age, health status and minimum financial requirements, if any;

(2) describe the health and financial conditions required for a person to continue to be a resident;

(3) describe the circumstances under which the resident will be permitted to remain in the community in the event of financial difficulties of the resident;

(4) list the total consideration paid, including donations, entrance fees, subscription fees, periodic fees and other fees paid or payable; provided, however, that a provider cannot require a resident to transfer all the resident's assets or the resident's real property to the provider or community as a condition for providing continuing care and the provider shall reserve the right to charge periodic fees;

(5) describe in detail all items of service to be received by the resident, such as food, shelter, medical care, nursing care and other health services, and whether

services will be provided for a designated time period or for the resident's lifetime;

(6) as an addendum to the contract, provide a description of items of service, if any, that are available to the resident but that are not covered in the entrance or monthly fee;

(7) specify taxes and utilities, if any, that the resident must pay;

(8) specify that deposits or entrance fees paid by or for a resident shall be held in trust for the benefit of the resident in a federally insured New Mexico bank until the resident has taken possession of the resident's unit or the resident's contract cancellation period has ended, whichever occurs later;

(9) state the terms under which a continuing care contract may be canceled by the resident or the community and the basis for establishing the amount of refund of the entrance fee;

(10) state the terms under which a continuing care contract is canceled by the death of the resident and the basis for establishing the amount of refund, if any, of the entrance fee;

(11) state when fees will be subject to periodic increases and what the policy for increases will be;

provided, however, that the provider shall give advance notice of not less than thirty days to the residents before the change becomes effective and increases shall be based upon economic necessity, the reasonable cost of operating the community, the cost of care and a reasonable return on investment as defined by rules promulgated by the aging and long-term services department;

(12) state the entrance fee and periodic fees that will be charged if the resident marries while living in the community, the terms concerning the entry of a spouse to the community and the consequences if the spouse does not meet the requirements for entry;

(13) indicate funeral and burial services that are not furnished by the provider;

(14) state the rules and regulations of the provider then in effect and state the circumstances under which the provider claims to be entitled to have access to the resident's unit;

(15) list the resident's and provider's respective rights and obligations as to any real or personal property of the resident transferred to or placed in the custody of the provider;

(16) describe the rights of the residents to form a residents' association and the participation, if any, of the association in the community's decision-making process;

(17) describe the living quarters purchased by or assigned to the resident;

(18) provide under what conditions, if any, the resident may assign the use of a unit to another;

(19) include the policy and procedure with regard to changes in accommodations due to an increase or decrease in the number of persons occupying an individual unit;

(20) state the conditions upon which the community may sublet or relet a resident's unit;

(21) state the fee adjustments that will be made in the event of a resident's voluntary absence from the community for an extended period of time;

(22) include the procedures to be followed when the provider temporarily or permanently changes the resident's accommodations, either within the community or by transfer to a health facility; provided that the contract shall state that such changes in accommodations shall only be made to protect the health or safety of the resident or the general and economic welfare of all other residents of the community;

(23) if the community includes a nursing facility, describe the admissions policies and what will occur if a nursing facility bed is not available at the time it is needed;

(24) in the event the resident is offered a

priority for nursing facility admission at a facility that is not owned by the community, describe with which nursing facility the formal arrangement is made and what will occur if a nursing facility bed is not available at the time it is needed;

(25) include the policy and procedures for determining under what circumstances a resident will be considered incapable of independent living and will require a permanent move to a nursing facility. The contract shall also state who will participate in the decision for permanent residency in the nursing facility and shall provide that the resident shall have an advocate involved in that decision; provided that if the resident has no family member, attorney, guardian or other responsible person to act as the resident's advocate, the provider shall request the local office of the human services department to serve as advocate;

(26) specify the types of insurance, if any, the resident is required to maintain, including medicare, other health insurance and property insurance;

(27) specify the circumstances, if any, under which the resident will be required to apply for any public assistance, including medical assistance, or any other public benefit programs;

(28) in bold type of not less than twelve-point type on the signature page, state that a contract for

continuing care may present a significant financial risk and that a person considering a continuing care contract should consult with an attorney and with a financial advisor concerning the advisability of pursuing continuing care; provided, however, that failure to consult with an attorney or financial advisor shall not be raised as a defense to bar recovery for a resident in any claims arising under the provisions of the Continuing Care Act;

(29) in bold type of not less than twelve-point type on the front of the contract, state that nothing in the contract or the Continuing Care Act should be construed to constitute approval, recommendation or endorsement of any continuing care community by the state of New Mexico;

(30) contain a provision describing the community's plan for resident relocation upon closure SJC→,←SJC SJC→~~liquidation, insolvency~~←SJC or SJC→~~other~~←SJC circumstances that necessitate relocation;

[~~(30)~~] (31) in immediate proximity to the space reserved in the contract for the signature of the resident, in bold type of not less than twelve-point type, state the following:

"You, the buyer, may cancel this transaction at any time prior to midnight of the seventh day after the date of this transaction. See the attached notice of cancellation form for

an explanation of this right."; and

[~~(31)~~] (32) contain a completed form, in duplicate, captioned "Notice of Cancellation", which shall be attached to the contract and easily detachable, and which shall contain in twelve-point boldface type the following information and statements in the same language as that used in the contract.

"NOTICE OF CANCELLATION

Date: _____

(enter date of transaction)

You may cancel this transaction without any penalty or obligation within seven days from the above date. If you cancel, any payments made by you under the contract or sale and any negotiable instrument executed by you will be returned within ten business days following receipt by the provider of your cancellation notice, and any security interest or lien arising out of the transaction will be canceled.

To cancel this transaction, deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to: _____

(Name of Provider)

at _____

(Address of Provider's Place of Business)

not later than midnight of _____

(Date)

I hereby cancel this transaction.

_____

(Buyer's Signature)

_____

(Date)"."

SECTION 3. Section 24-17-7 NMSA 1978 (being Laws 1985, Chapter 102, Section 7) is amended to read:

"24-17-7. DISCLOSURE STATEMENTS FILED WITH THE [~~STATE AGENCY ON~~] AGING AND LONG-TERM SERVICES DEPARTMENT FOR PUBLIC INSPECTION.--No later than July 1, SJC→~~2020~~←SJC SJC→2021←SJC and SJC→~~annually~~←SJC SJC→~~thereafter~~←SJC SJC→each year thereafter, within one hundred eighty days after the end of a community's fiscal year←SJC, a provider shall [~~file~~] provide a copy of the disclosure statement and any amendments to that statement [~~with~~] to the [~~state agency on~~] aging and long-term services department for public inspection during regular working hours."

SECTION 4. Section 24-17-16 NMSA 1978 (being Laws 1991, Chapter 263, Section 5) is amended to read:

"24-17-16. IDENTIFICATION AND PROCEDURES FOR CORRECTION OF VIOLATIONS.--

A. The aging and long-term services department shall review SJC→all←SJC disclosure statements SJC→~~received to ensure that~~←SJC SJC→~~providers operate in accordance with~~←SJC

underscored material = new
[~~bracketed material~~] = delete
Amendments: new = →bold, blue, highlight←
delete = →~~bold, red, highlight, strikethrough~~←

SJC→filed pursuant to←SJC the Continuing Care Act SJC→for compliance with that act←SJC.

[~~A.~~] B. If the [~~state agency on~~] aging and long-term services department determines that a person or an organization has engaged in or is about to engage in an act or practice constituting a violation of the Continuing Care Act or any rule adopted pursuant to that act, the [~~state agency on~~] aging and long-term services department shall issue a notice of violation in writing to that person or organization and send copies to the resident association of any facility affected by the notice.

[~~B.~~] C. The notice of violation shall state the following:

(1) a description of a violation at issue;

(2) the action that, in the judgment of the [~~state agency on~~] aging and long-term services department, the provider should take to conform to the law or the assurances that the [~~state agency on~~] aging and long-term services department requires to establish that no violation is about to occur;

(3) the compliance date by which the provider shall correct any violation or submit assurances;

(4) the requirements for filing a report of compliance; and

(5) the applicable sanctions for failure to

correct the violation or failure to file the report of compliance according to the terms of the notice of violation.

[~~C.~~] D. At any time after receipt of a notice of violation, the person or organization to which the notice is addressed or the [~~state agency on~~] aging and long-term services department may request a conference. The [~~state agency on~~] aging and long-term services department shall schedule a conference within [~~seven~~] thirty days of a request.

[~~D.~~] E. The purpose of the conference is to discuss the contents of the notice of violation and to assist the addressee to comply with the requirements of the Continuing Care Act. Subject to rules that the [~~state agency on~~] aging and long-term services department may promulgate, a representative of the resident association at any facility affected by the notice shall have a right to attend the conference.

[~~E.~~] F. A person receiving a notice of violation shall submit a signed report of compliance as provided by the notice. The [~~state agency on~~] aging and long-term services department shall send a copy to the resident association of any facility affected by the notice.

[~~F.~~] G. Upon receipt of the report of compliance, the [~~state agency on~~] aging and long-term services department shall take steps to determine that compliance has been

achieved."

SECTION 5. Section 24-17-17 NMSA 1978 (being Laws 1991, Chapter 263, Section 6, as amended) is amended to read:

"24-17-17. RULES AND REGULATIONS AUTHORIZED.--The aging and long-term services department SJC→~~[shall]~~←SJC SJC→shall←SJC SJC→~~may~~←SJC promulgate all rules and regulations necessary or appropriate to administer the provisions of the Continuing Care Act SJC→~~, including [but not limited to] requirements regarding financial reserves, disclosure and actuarial studies."~~←SJC SJC→.←SJC

SECTION 6. Section 24-17-18 NMSA 1978 (being Laws 1991, Chapter 263, Section 7) is amended to read:

"24-17-18. REPORT TO ATTORNEY GENERAL--CIVIL ACTION--CIVIL PENALTIES.--

A. A person may report an alleged violation of the Continuing Care Act or rules promulgated pursuant to that act to the attorney general or to the aging and long-term services department.

B. Any time after the [~~state agency on~~] aging and long-term services department issues a notice of violation, the [~~state agency on aging~~] department may send the attorney general a written report alleging a possible violation of the Continuing Care Act or any rule adopted pursuant to that act.

C. Upon receipt of [~~that~~] a report from any source alleging a violation of the Continuing Care Act or rules

promulgated pursuant to that act, the attorney general shall promptly [~~conduct an investigation to determine whether grounds exist for formally finding a violation. If the attorney general makes that finding, he~~] review the allegation. Upon finding that an allegation received pursuant to this subsection is credible, the attorney general shall file an appropriate action against the alleged violator in a court of competent jurisdiction.

D. Upon finding violations of any provisions of the Continuing Care Act or any rule adopted pursuant to that act, the court may impose a civil penalty in the amount of five dollars ($5.00) per resident or up to five hundred dollars ($500), in the discretion of the court, for each day that the violation remains uncorrected after the compliance date stipulated in a notice of violation issued pursuant to the Continuing Care Act."