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SENATE BILL 51

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

INTRODUCED BY

Bill Tallman and Elizabeth "Liz" Thomson

AN ACT

RELATING TO AGING; REQUIRING THE OFFICE OF SUPERINTENDENT OF INSURANCE TO REVIEW FINANCIAL AND ACTUARIAL DISCLOSURES TO THE AGING AND LONG-TERM SERVICES DEPARTMENT AND REPORT VIOLATIONS OF THE CONTINUING CARE ACT; 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:

"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

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1 to continuing care communities to each actual resident and to a
2 prospective resident at least seven days before the provider
3 enters into a continuing care contract with the prospective
4 resident, or prior to the prospective resident's first payment,
5 whichever occurs first. For the purposes of this subsection,
6 the obligation to furnish information to each actual resident
7 shall be deemed satisfied if a copy of the disclosure statement
8 and the consumer's guide is given to the residents'
9 association, if there is one, and a written message has been
10 delivered to each actual resident, stating that personal copies
11 are available upon request.

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

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

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

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

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

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

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

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

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

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

15 (6) the name and address of any person whose
16 name is required to be provided in the disclosure statement who
17 owns any interest in or receives any remuneration from, either
18 directly or indirectly, any other person providing or expected
19 to provide to the community goods, leases or services with a
20 real or anticipated value of five hundred dollars (\$500) or
21 more and the name and address of the person in which such
22 interest is held. The disclosure shall describe such goods,
23 leases or services and the actual or probable cost to the
24 community or provider and shall describe why such goods, leases
25 or services should not be purchased from an independent entity;

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

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

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

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

19 (11) for communities that provide type A and
20 type B agreements:

21 (a) a summary of [~~an~~] a comprehensive
22 actuarial analysis within the last five years; [~~and~~]

23 (b) an annual future-service obligation
24 calculation by an actuary who is a member of the American
25 academy of actuaries and who is experienced in analyzing

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1 continuing care communities; and

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

11 (12) an audited financial statement and an
12 audit report prepared in accordance with generally accepted
13 accounting principles applied on a consistent basis and
14 certified by a certified public accountant, including an income
15 statement or statement of activities, a cash-flow statement or
16 sources and application of funds statement and a balance sheet
17 as of the end of the provider's last fiscal year. The balance
18 sheet should accurately reflect the deferred revenue balance,
19 including entrance fees and any other prepaid services, and
20 should include notes describing the community's long-term
21 obligations and identifying all the holders of mortgages and
22 notes;

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

25 (14) a list of documents and other information

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1 available upon request, including:

2 (a) a copy of the Continuing Care Act;

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

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

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

14 (e) information concerning the location
15 and description of other properties, both existing and
16 proposed, of the provider in which the provider owns any
17 interest and on which communities are or are intended to be
18 located and the identity of previously owned or operated
19 communities;

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

22 (g) other data, financial statements and
23 pertinent information with respect to the provider or
24 community, or its directors, trustees, members, managers,
25 branches, subsidiaries or affiliates, that a resident requests

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1 and that is reasonably necessary in order for the resident to
2 determine the financial status of the provider, its sole member
3 and the community and the management capabilities of the
4 managers and owners, including the most recent audited
5 financial statements of comparable communities owned, managed
6 or developed by the provider, its sole member or its principal.

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

16 SECTION 2. Section 24-17-7 NMSA 1978 (being Laws 1985,
17 Chapter 102, Section 7) is amended to read:

18 "24-17-7. DISCLOSURE STATEMENTS FILED WITH THE [STATE
19 ~~AGENCY ON~~] AGING AND LONG-TERM SERVICES DEPARTMENT FOR PUBLIC
20 INSPECTION.--No later than July 1, 2021 and annually
21 thereafter, a provider shall [~~file~~] provide a copy of the
22 disclosure statement and any amendments to that statement
23 [~~with~~] to the [~~state agency on~~] aging and long-term services
24 department for public inspection during regular working hours.
25 The aging and long-term services department shall provide a

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1 copy of the disclosure statement to the office of
2 superintendent of insurance."

3 SECTION 3. Section 24-17-16 NMSA 1978 (being Laws 1991,
4 Chapter 263, Section 5) is amended to read:

5 "24-17-16. IDENTIFICATION AND PROCEDURES FOR CORRECTION
6 OF VIOLATIONS.--

7 A. The aging and long-term services department
8 shall review all disclosure statements received to ensure that
9 providers operate in accordance with the Continuing Care Act.

10 B. The office of superintendent of insurance shall:

11 (1) review the financial documents, actuarial
12 projections and audits received pursuant to Paragraphs (10)
13 through (12) of Subsection B of Section 24-17-4 NMSA 1978; and

14 (2) after the review pursuant to this
15 subsection or an examination pursuant to Subsection C of this
16 section, report financial violations of the Continuing Care
17 Act, if any, to the aging and long-term services department.

18 C. Upon finding an irregularity in the financial
19 reports, audit or actuarial reports provided by a community,
20 the office of superintendent of insurance may contract for an
21 independent audit or actuarial examination that shall be
22 conducted at the expense of the community.

23 ~~[A.]~~ D. If the [state agency on] aging and long-
24 term services department determines that a person or an
25 organization has engaged in or is about to engage in an act or

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1 practice constituting a violation of the Continuing Care Act or
2 any rule adopted pursuant to that act, the [~~state agency on~~
3 aging and long-term services department] shall issue a notice of
4 violation in writing to that person or organization and send
5 copies to the resident association of any facility affected by
6 the notice.

7 [~~B.~~] E. The notice of violation shall state the
8 following:

9 (1) a description of a violation at issue;
10 (2) the action that, in the judgment of the
11 [~~state agency on~~] aging and long-term services department, the
12 provider should take to conform to the law or the assurances
13 that the [~~state agency on~~] aging and long-term services
14 department requires to establish that no violation is about to
15 occur;

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

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

20 (5) the applicable sanctions for failure to
21 correct the violation or failure to file the report of
22 compliance according to the terms of the notice of violation.

23 [~~G.~~] F. At any time after receipt of a notice of
24 violation, the person or organization to which the notice is
25 addressed or the [~~state agency on~~] aging and long-term services

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1 department may request a conference. The [~~state agency on~~
2 aging and long-term services department shall schedule a
3 conference within [~~seven~~] thirty days of a request.

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

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

17 [~~F.~~] I. Upon receipt of the report of compliance,
18 the [~~state agency on~~] aging and long-term services department
19 shall take steps to determine that compliance has been
20 achieved."

21 **SECTION 4.** Section 24-17-17 NMSA 1978 (being Laws 1991,
22 Chapter 263, Section 6, as amended) is amended to read:

23 "24-17-17. RULES AND REGULATIONS AUTHORIZED.--The aging
24 and long-term services department [~~shall~~] may promulgate all
25 rules and regulations necessary or appropriate to administer

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1 the provisions of the Continuing Care Act, including [~~but not~~
2 ~~limited to~~] requirements regarding financial reserves,
3 disclosure and actuarial studies."

4 SECTION 5. Section 24-17-18 NMSA 1978 (being Laws 1991,
5 Chapter 263, Section 7) is amended to read:

6 "24-17-18. REPORT TO ATTORNEY GENERAL--CIVIL ACTION--
7 CIVIL PENALTIES.--

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

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

17 C. Upon receipt of [~~that~~] a report from any source
18 alleging a violation of the Continuing Care Act or rules
19 promulgated pursuant to that act, the attorney general shall
20 promptly [~~conduct an investigation to determine whether grounds~~
21 ~~exist for formally finding a violation. If the attorney~~
22 ~~general makes that finding, he] review the allegation. Upon~~
23 finding that an allegation received pursuant to this subsection
24 is credible, the attorney general shall file an appropriate
25 action against the alleged violator in a court of competent

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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."