

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 51

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

AN ACT

RELATING TO AGING; REQUIRING A CLOSURE CLAUSE IN A CONTRACT
PURSUANT TO 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
to continuing care communities to each actual resident and to a
prospective resident at least seven days before the provider

.217196.1

underscored material = new
[bracketed material] = delete

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

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

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

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

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

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

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

24 (a) was convicted of a felony, a crime
25 that if committed in New Mexico would be a felony or any crime

1 having to do with the provision of continuing care;

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

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

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

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

24 (7) the name and address of any person owning
25 land or property leased to the community and a statement of

.217196.1

underscoring material = new
~~[bracketed material] = delete~~

1 what land or property is leased;

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

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

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

17 (11) for communities that provide type A and
18 type B agreements:

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

21 (b) an annual future-service obligation
22 calculation by an actuary who is a member of the American
23 academy of actuaries and who is experienced in analyzing
24 continuing care communities; and

25 (c) a certification by an actuary who is

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

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

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

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

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

.217196.1

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

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

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

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

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

20 (g) other data, financial statements and
21 pertinent information with respect to the provider or
22 community, or its directors, trustees, members, managers,
23 branches, subsidiaries or affiliates, that a resident requests
24 and that is reasonably necessary in order for the resident to
25 determine the financial status of the provider, its sole member

.217196.1

1 and the community and the management capabilities of the
 2 managers and owners, including the most recent audited
 3 financial statements of comparable communities owned, managed
 4 or developed by the provider, its sole member or its principal.

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

14 SECTION 2. Section 24-17-5 NMSA 1978 (being Laws 1985,
 15 Chapter 102, Section 5, as amended) is amended to read:

16 "24-17-5. CONTRACT INFORMATION.--

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

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

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

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

.217196.1

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

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

12 (5) describe in detail all items of service to
13 be received by the resident, such as food, shelter, medical
14 care, nursing care and other health services, and whether
15 services will be provided for a designated time period or for
16 the resident's lifetime;

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

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

23 (8) specify that deposits or entrance fees
24 paid by or for a resident shall be held in trust for the
25 benefit of the resident in a federally insured New Mexico bank

.217196.1

1 until the resident has taken possession of the resident's unit
2 or the resident's contract cancellation period has ended,
3 whichever occurs later;

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

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

12 (11) state when fees will be subject to
13 periodic increases and what the policy for increases will be;
14 provided, however, that the provider shall give advance notice
15 of not less than thirty days to the residents before the change
16 becomes effective and increases shall be based upon economic
17 necessity, the reasonable cost of operating the community, the
18 cost of care and a reasonable return on investment as defined
19 by rules promulgated by the aging and long-term services
20 department;

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

.217196.1

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

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

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

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

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

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

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

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

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

.217196.1

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

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

12 (24) in the event the resident is offered a
13 priority for nursing facility admission at a facility that is
14 not owned by the community, describe with which nursing
15 facility the formal arrangement is made and what will occur if
16 a nursing facility bed is not available at the time it is
17 needed;

18 (25) include the policy and procedures for
19 determining under what circumstances a resident will be
20 considered incapable of independent living and will require a
21 permanent move to a nursing facility. The contract shall also
22 state who will participate in the decision for permanent
23 residency in the nursing facility and shall provide that the
24 resident shall have an advocate involved in that decision;
25 provided that if the resident has no family member, attorney,

.217196.1

1 guardian or other responsible person to act as the resident's
2 advocate, the provider shall request the local office of the
3 human services department to serve as advocate;

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

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

11 (28) in bold type of not less than twelve-
12 point type on the signature page, state that a contract for
13 continuing care may present a significant financial risk and
14 that a person considering a continuing care contract should
15 consult with an attorney and with a financial advisor
16 concerning the advisability of pursuing continuing care;
17 provided, however, that failure to consult with an attorney or
18 financial advisor shall not be raised as a defense to bar
19 recovery for a resident in any claims arising under the
20 provisions of the Continuing Care Act;

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

.217196.1

1 within ten business days following receipt by the provider of
2 your cancellation notice, and any security interest or lien
3 arising out of the transaction will be canceled.

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

7 (Name of Provider)

8 at _____

9 (Address of Provider's Place of Business)

10 not later than midnight of _____

11 (Date)

12 I hereby cancel this transaction.

13 _____

14 (Buyer's Signature)

15 _____

16 (Date)"."

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

19 "24-17-7. DISCLOSURE STATEMENTS FILED WITH THE [STATE
20 AGENCY-ON] AGING AND LONG-TERM SERVICES DEPARTMENT FOR PUBLIC
21 INSPECTION.--No later than July 1, 2020 and annually
22 thereafter, a provider shall [file] provide a copy of the
23 disclosure statement and any amendments to that statement
24 [with] to the [~~state agency on~~] aging and long-term services
25 department for public inspection during regular working hours."

underscored material = new
[bracketed material] = delete

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

3 "24-17-16. IDENTIFICATION AND PROCEDURES FOR CORRECTION
4 OF VIOLATIONS.--

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

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

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

19 (1) a description of a violation at issue;
20 (2) the action that, in the judgment of the
21 ~~[state agency on]~~ aging and long-term services department, the
22 provider should take to conform to the law or the assurances
23 that the ~~[state agency on]~~ aging and long-term services
24 department requires to establish that no violation is about to
25 occur;

.217196.1

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

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

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

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

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

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

1 facility affected by the notice.

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

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

8 "24-17-17. RULES AND REGULATIONS AUTHORIZED.--The aging
9 and long-term services department ~~[shall]~~ may promulgate all
10 rules and regulations necessary or appropriate to administer
11 the provisions of the Continuing Care Act, including ~~[but not~~
12 ~~limited to]~~ requirements regarding financial reserves,
13 disclosure and actuarial studies."

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

16 "24-17-18. REPORT TO ATTORNEY GENERAL--CIVIL ACTION--
17 CIVIL PENALTIES.--

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

22 B. Any time after the ~~[state agency on]~~ aging and
23 long-term services department issues a notice of violation, the
24 ~~[state agency on aging]~~ department may send the attorney
25 general a written report alleging a possible violation of the

.217196.1

1 Continuing Care Act or any rule adopted pursuant to that act.

2 C. Upon receipt of [that] a report from any source
3 alleging a violation of the Continuing Care Act or rules
4 promulgated pursuant to that act, the attorney general shall
5 promptly [conduct an investigation to determine whether grounds
6 exist for formally finding a violation. If the attorney
7 general makes that finding, he] review the allegation. Upon
8 finding that an allegation received pursuant to this subsection
9 is credible, the attorney general shall file an appropriate
10 action against the alleged violator in a court of competent
11 jurisdiction.

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