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FISCAL IMPACT REPORT

ORIGINAL DATE 02/15/13

SPONSOR Wirth LAST UPDATED _____ HB _____

SHORT TITLE Continuing Care Community Regulation SB 348

ANALYST Esquibel

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
	Indeterminate	Indeterminate	Recurring	Other State Funds

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate	Indeterminate	Indeterminate	Recurring	Other State Funds

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Aging and Long-Term Services Department (ALTSD)

Division of Insurance, Public Regulation Commission (PRC)

Administrative Office of the Courts (AOC)

Attorney General's Office (AG)

SUMMARY

Synopsis of Bill

SB 348 amends and enacts statutory sections within the Continuing Care Act ("CCA"), Section 24-17-1 NMSA 1978 et. seq. to grant and specify the jurisdiction, powers and duties to and of the Superintendent of Insurance ("superintendent") under the CCA.

Section 3 of the Act requires a provider to have a certificate of authority from the superintendent prior to entering into a continuing care contract with a resident and grants the superintendent the authority to issue, deny or revoke a certificate to enter into a continuing care contract and to

promulgate appropriate rules. SB 348 provides that, except as otherwise provided in the CCA, nothing in this section shall be construed to interfere with the jurisdiction of the Aging and Long-term Services Department (ALTSD) or any other regulatory body exercising authority over providers regulated pursuant to the CCA.

Section 4 requires a provider to file a copy of a disclosure statement and any amendments with the superintendent, in addition to the ALTSD.

Section 6 is amended to limit the ALTSD's promulgation of rules necessary or appropriate to administer the CCA to those regarding the "nonfinancial" provisions of the CCA.

Section 8 of the Act specifies the following circumstances under which the superintendent, upon determination, may send the AG a written report:

- when a provider has entered into a continuing care contract without a certificate of authority from the superintendent;
- when a provider has misrepresented any information required to be disclosed under Section 24-17-4 NMSA 1978, regarding the furnishing of a current annual disclosure statement;
- when a provider has violated Section 24-17-6 NMSA 1978, governing escrow requirements; or
- when a provider has violated any rule adopted by the superintendent pursuant to the Continuing Care Act (CCA).

SB 348 requires that the Attorney General, upon receipt of a report, promptly conduct an investigation to determine whether grounds exist to file an action against the provider for injunctive relief, including the requirement that the provider post security to guarantee performance of its obligations under a continuing care contract.

The bill provides for a grace period, for providers in operation as of July 1, 2013, to continue to operate without a certificate of authority until 30 days after the rules applicable to the certificate are promulgated by the superintendent.

The effective date of the Act is July 1, 2013.

FISCAL IMPLICATIONS

Senate Bill 348 (SB 348) contains no appropriation.

The AOC indicates Section 7 of SB 348 governs the sending of a written report from the Aging and Long-term Services Department (ALTSD) to the Attorney General, alleging a possible nonfinancial violation of the Continuing Care Act (CCA) or of any rule adopted by the ALTSD pursuant to the CCA. Upon receipt of the report, the AG is required to promptly conduct an investigation and, upon a finding that grounds exist for formally finding a violation, the AG is required to file an action against the alleged violator. If the court finds that there were violations of any provision of the CCA or any rule adopted by the ALTSD pursuant to the CCA, the court has the discretion to impose a civil penalty of \$5 per resident or up to \$500, for each day that the violation remains uncorrected after the compliance date stipulated in a notice of violation issued pursuant to the CCA. Thus, under SB 348, a report of a violation of the CCA sent to the AG by either the Aging and Long-Term Services Department (ALTSD) or the Superintendent of

Insurance may trigger a civil action leading to the imposition of penalties and/or injunctive relief.

The AOC indicates there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced civil actions for injunctive relief and/or imposing penalties, and appeals from the same. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

The Insurance Division of the Public Regulation Commission indicates it does not have the staff or expertise to oversee, regulate and enforce financial provisions and related provisions of the CCA as they would relate to the delivery of health care and obtaining such staff and expertise would require additional funding, as well as expanding the duties of the Division of Insurance under the Insurance Code.

SIGNIFICANT ISSUES

The Aging and Long-Term Services Department (ALTSD) indicates the purpose of SB 348 is to provide for disclosure and the inclusion of certain information in continuing care contracts in order that residents may make more informed decisions, residents may be better protected, and continuing care community may have their financial solvency further ensured. SB 348 would strengthen the enforcement of the CCRC by creating further oversight of continuing care retirement communities through the additional oversight of the Superintendent of Insurance given that the superintendent's office possesses more applicable expertise than does ALTSD in the financial oversight of a CCRC.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The Attorney General's Office writes "there may be an issue with the superintendent assuming jurisdiction over continuing care providers given the plain language contained in the New Mexico Constitution requiring the superintendent to regulate insurance companies and others engaged in risk assumption. Article XI, § 20 of the New Mexico Constitution, which creates the Office of the Superintendent, states:

"The superintendent of insurance shall regulate insurance companies and others engaged in risk assumption in such manner as provided by law."

The duties of the superintendent, as proposed in this amendment, appear to be more expansive than what is contemplated in the Constitution. Also, because the New Mexico Insurance Code ("Code") does not specifically address the superintendent's jurisdiction over continuing care providers, the Code may also need to be amended to reflect the superintendent's jurisdiction over this area."

TECHNICAL ISSUES

The ALTSD indicates in 2006 it promulgated administrative rules governing the rate and fee increases of CCRCs, 9.2.24 NMAC. Under SB 348, those rules would need to be amended so that the Superintendent holds the authority to regulate these increases.

The ALTSD suggests the bill include a definition of a “certificate of authority”. In addition, the bill does not address what the effect of revoking a certificate of authority would be on existing residents’ contracts. Would they still be valid? Further, if the superintendent revokes, denies or issues a certificate of authority, in order to fulfill its concurrent jurisdiction, the ALTSD would need to be so informed.

On page 10, paragraph D(2), lines 22 through 23, the bill states that the Superintendent shall require annual proof of financial responsibility from each provider. It is unclear if the required disclosure statement (24-17-4) would suffice or if this would entail CCRCs filing further information.

The ALTSD suggests that the amendment to 24-17-7 clarify whether CCRCs shall file disclosure statements with the Superintendent and ALTSD annually. The language of this section does not specify, however 24-17-4 states that, “A provider shall furnish a current *annual* disclosure statement that meets the requirements... to each actual resident and to a prospective resident...” Also, this leads one to believe that the public may only inspect disclosure statements that were filed with ALTSD, not those filed with the superintendent. Lines 4 through 5 on page 12 could be amended to clearly explain that public inspection of disclosure statements may occur through both the Superintendent and ALTSD.

The ALTSD also suggests changing “should” to “must” on page 12, line 25, so that a CCRC in violation of the parts of the Act would understand what action is required. Adding “or continue to occur;” on page 13, line 3, after the last word “occur,” would require assurance that current violations would no longer continue.

RAE/blm