

1 SENATE BILL 163

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Bill Tallman

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10 AN ACT

11 RELATING TO LONG-TERM CARE; AMENDING A SECTION OF THE
12 CONTINUING CARE ACT TO UPDATE THE DISCLOSURE REQUIREMENTS FOR
13 CONTINUING CARE PROVIDERS.

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

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

18 "24-17-4. DISCLOSURE.--

19 A. A provider shall furnish a current annual
20 disclosure statement that meets the requirements set forth in
21 Subsection B of this section and the aging and long-term
22 services department's and attorney general's consumer's guide
23 to continuing care communities to each actual resident and to a
24 prospective resident at least seven days before the provider
25 enters into a continuing care contract with the prospective

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (a) a summary of a comprehensive
19 actuarial analysis within the last five years; and

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

24 (12) an audited financial statement and an
25 audit report prepared in accordance with generally accepted

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1 accounting principles applied on a consistent basis and
2 certified by a certified public accountant, including an income
3 statement or statement of activities, a cash-flow statement or
4 sources and application of funds statement and a balance sheet
5 as of the end of the provider's last fiscal year. The balance
6 sheet should accurately reflect the deferred revenue balance,
7 including entrance fees and any other prepaid services, and
8 should include notes describing the community's long-term
9 obligations and identifying all the holders of mortgages and
10 notes;

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

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

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

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

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

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

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1 the community;

2 (e) information concerning the location
3 and description of other properties, both existing and
4 proposed, of the provider in which the provider owns any
5 interest and on which communities are or are intended to be
6 located and the identity of previously owned or operated
7 communities;

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

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

20 C. Each year, within one hundred eighty days after
21 the end of the community's fiscal year, the provider shall
22 furnish to actual residents the disclosure statement as
23 outlined in this section. For purposes of this subsection, the
24 obligation to furnish the required information to residents
25 shall be deemed satisfied if the information is given to the

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1 residents' association, if there is one, and a written message
2 has been delivered to each resident, stating that personal
3 copies of the information are available upon request."

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