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FISCAL IMPACT REPORT

SPONSOR Tallman LAST UPDATED _____
ORIGINAL DATE 2/3/23
BILL
SHORT TITLE Continuing Care Provider Disclosure NUMBER Senate Bill 163
ANALYST Klundt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			
Total						

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From

Aging and Long-Term Services Department (ALTSD)
New Mexico Attorney General Office (NMAG)

SUMMARY

Synopsis of Senate Bill

Senate Bill 163 (SB 163) amends the information that a provider must make available on the request of residents and prospective residents. Providers would be required to disclose financial statements with respect to the provider or community, or its branches, subsidiaries or affiliates. SB163 would remove the requirement the request must be reasonably necessary for the resident to determine the financial status of the provider.

FISCAL IMPLICATIONS

No fiscal impact is reported or identified at this time.

SIGNIFICANT ISSUES

The New Mexico Attorney General's Office stated the changes proposed in SB163 may affect the information made available to a requesting resident.

ALTSD reports:

The proposed amendments to the Continuing Care Act limit the information residents may request in order to make informed decisions regarding their own personal interest and financial investments in a Continuing Care Retirement Community (CCRC). CCRCs are an option for adults who are planning for where they wish to reside, often for the remainder of their lives. CCRCs, through financial contracts with residents, provide a continuum of housing and care – from independent living to nursing facilities—that would allow for individuals to remain in the same community regardless of their medical needs or the level of care required. The chief benefit of CCRCs, as described by AARP, is that they provide a sense of stability when preparing for often unpredictable changes in health conditions.

This level of stability requires a substantial investment from individuals wishing to reside in a CCRC; often including entry fees, monthly maintenance, and service fees. These fees may constitute the totality of an individual’s financial assets, making it imperative that individuals have access to financial information. Further, residents need information related to the CCRC, by which they can make an informed decision regarding their investment and the likelihood that the CCRC will remain solvent and able to uphold agreements to provide a home, amenities, personal services, healthcare services, and long-term care, etc. through the course of the resident’s lifetime.

The proposed legislation would negatively impact the protections for residents established by the Continuing Care Act. The amendments imply that a resident – whose investment is made to mitigate future risks to their health, life and personal financial stability – has equivalent needs for information of investors who are not and do not plan to be residents. However, residents and investors have fundamentally different stakes and therefore have fundamentally different needs associated with making an informed decision.

The proposed amendments unnecessarily narrow the information residents may request CCRCs to disclose, thereby limiting the resident’s access to information. Although there are non-substantive edits, such as deletion of the term “other data” and reference to “officers, directors, trustees, partners, or managers,” the remainder of the edits have a detrimental impact on the rights of CCRC residents.

Removing “pertinent information” and “reasonably necessary” language consequently limits access to the type of information that is pertinent and critical to people investing in the quality of their daily lives now and into later stages of life. Depending on the circumstances, additional information not found within a financial statement may be necessary to an individual making an informed decision. This language provides guidance for individuals and providers as to the type of information that must be disclosed and is not overly broad or ambiguous. The type of information requested may vary by individual, but the current language dictates that the information must be pertinent and reasonably necessary for that individual to determine the financial status of the provider as well as the management capabilities of the managers and owners.”

TECHNICAL ISSUES

ALTSD also states:

The existing language of Section 24-17-4, Disclosure, aligns with the findings and purpose of the Continuing Care Act as set forth in Section 24-17-2: “to provide for disclosure and the inclusion of certain information in continuing care contracts in order that residents may make informed decisions concerning continuing care; to provide protection for residents; and to ensure the solvency of communities.” Additionally, the Act recognizes “that severe consequences to residents may result when a provider becomes insolvent or unable to provide responsible care.”

Individuals contracting with a CCRC are in essence investing in a stable community, an investment that involves personal analysis of a variety of contributing factors in addition to financial solvency – including quality of service, health and safety, staff credentials, etc. Removing “pertinent information” suggests that there are distinct and predictable criteria for information/data that individuals may need in order to make informed decisions about their investment in their current and future lives, services, and care. When in fact, there is no specific set of criteria for making an informed decision. For example, it is pertinent that an individual would want information related to health and safety code violations, ratings, etc. in order to assess current quality of service and predict future quality.

Removing “reasonably necessary” unduly limits access and the ability to request pertinent information by which individuals may make informed decisions about life planning and financial investment in a stable community. Additionally, this language also protects providers from “unreasonable” requests.”

KK/al/hg