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AN ACT

RELATING TO AGING; REQUIRING PROVIDERS TO INCLUDE CLOSURE
PLAN DESCRIPTIONS IN CONTINUING CARE CONTRACTS; 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 enters into a continuing care contract with the
prospective resident, or prior to the prospective resident's
first payment, whichever occurs first. For the purposes of
this subsection, the obligation to furnish information to
each actual resident shall be deemed satisfied if a copy of
the disclosure statement and the consumer's guide is given to
the residents' association, if there is one, and a written
message has been delivered to each actual resident, stating
that personal copies are available upon request.

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

3 (1) a brief narrative summary of the
4 contents of the disclosure statement written in plain
5 language;

6 (2) the name and business address of the
7 provider;

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

11 (4) the name and business address of each of
12 the provider's affiliates;

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

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

20 (b) has been held liable or enjoined
21 in a civil action by final judgment, if the civil action
22 involved fraud, embezzlement, fraudulent conversion or
23 misappropriation of property;

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

1 (d) had a state or federal license or
2 permit suspended or revoked or had any state, federal or
3 industry self-regulatory agency commence an action against
4 the provider or any of its officers, directors, trustees,
5 partners, managers or affiliates and the result of such
6 action;

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

19 (7) the name and address of any person
20 owning land or property leased to the community and a
21 statement of what land or property is leased;

22 (8) a statement as to whether the provider
23 is, or is associated with, a religious, charitable or other
24 organization and the extent to which the associate
25 organization is responsible for the financial and contractual

1 obligations of the provider or community;

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

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

13 (11) for communities that provide type A and
14 type B agreements:

15 (a) a summary of a comprehensive
16 actuarial analysis within the last five years; and

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

21 (12) an audited financial statement and an
22 audit report prepared in accordance with generally accepted
23 accounting principles applied on a consistent basis and
24 certified by a certified public accountant, including an
25 income statement or statement of activities, a cash-flow

1 statement or sources and application of funds statement and a
2 balance sheet as of the end of the provider's last fiscal
3 year. The balance sheet should accurately reflect the
4 deferred revenue balance, including entrance fees and any
5 other prepaid services, and should include notes describing
6 the community's long-term obligations and identifying all the
7 holders of mortgages and notes;

8 (13) a sample copy of the contract used by
9 the provider; and

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

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

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

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

21 (d) a copy of lease agreements between
22 the community and any person owning land or property leased
23 to the community;

24 (e) information concerning the location
25 and description of other properties, both existing and

1 proposed, of the provider in which the provider owns any
2 interest and on which communities are or are intended to be
3 located and the identity of previously owned or operated
4 communities;

5 (f) a copy of the community's policies
6 and procedures; and

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

18 C. Each year, within one hundred eighty days after
19 the end of the community's fiscal year, the provider shall
20 furnish to actual residents the disclosure statement as
21 outlined in this section. For purposes of this subsection,
22 the obligation to furnish the required information to
23 residents shall be deemed satisfied if the information is
24 given to the residents' association, if there is one, and a
25 written message has been delivered to each resident, stating

1 that personal copies of the information are available upon
2 request."

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

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

6 A. A provider is responsible for ensuring that a
7 continuing care contract is written in clear and
8 understandable language.

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

10 (1) describe the community's admission
11 policies, including age, health status and minimum financial
12 requirements, if any;

13 (2) describe the health and financial
14 conditions required for a person to continue to be a
15 resident;

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

19 (4) list the total consideration paid,
20 including donations, entrance fees, subscription fees,
21 periodic fees and other fees paid or payable; provided,
22 however, that a provider cannot require a resident to
23 transfer all the resident's assets or the resident's real
24 property to the provider or community as a condition for
25 providing continuing care and the provider shall reserve the

1 right to charge periodic fees;

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

7 (6) as an addendum to the contract, provide
8 a description of items of service, if any, that are available
9 to the resident but that are not covered in the entrance or
10 monthly fee;

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

13 (8) specify that deposits or entrance fees
14 paid by or for a resident shall be held in trust for the
15 benefit of the resident in a federally insured New Mexico
16 bank until the resident has taken possession of the
17 resident's unit or the resident's contract cancellation
18 period has ended, whichever occurs later;

19 (9) state the terms under which a continuing
20 care contract may be canceled by the resident or the
21 community and the basis for establishing the amount of refund
22 of the entrance fee;

23 (10) state the terms under which a
24 continuing care contract is canceled by the death of the
25 resident and the basis for establishing the amount of refund,

1 if any, of the entrance fee;

2 (11) state when fees will be subject to
3 periodic increases and what the policy for increases will be;
4 provided, however, that the provider shall give advance
5 notice of not less than thirty days to the residents before
6 the change becomes effective and increases shall be based
7 upon economic necessity, the reasonable cost of operating the
8 community, the cost of care and a reasonable return on
9 investment as defined by rules promulgated by the aging and
10 long-term services department;

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

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

18 (14) state the rules and regulations of the
19 provider then in effect and state the circumstances under
20 which the provider claims to be entitled to have access to
21 the resident's unit;

22 (15) list the resident's and provider's
23 respective rights and obligations as to any real or personal
24 property of the resident transferred to or placed in the
25 custody of the provider;

1 (16) describe the rights of the residents to
2 form a residents' association and the participation, if any,
3 of the association in the community's decision-making
4 process;

5 (17) describe the living quarters purchased
6 by or assigned to the resident;

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

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

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

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

18 (22) include the procedures to be followed
19 when the provider temporarily or permanently changes the
20 resident's accommodations, either within the community or by
21 transfer to a health facility; provided that the contract
22 shall state that such changes in accommodations shall only be
23 made to protect the health or safety of the resident or the
24 general and economic welfare of all other residents of the
25 community;

1 (23) if the community includes a nursing
2 facility, describe the admissions policies and what will
3 occur if a nursing facility bed is not available at the time
4 it is needed;

5 (24) in the event the resident is offered a
6 priority for nursing facility admission at a facility that is
7 not owned by the community, describe with which nursing
8 facility the formal arrangement is made and what will occur
9 if a nursing facility bed is not available at the time it is
10 needed;

11 (25) include the policy and procedures for
12 determining under what circumstances a resident will be
13 considered incapable of independent living and will require a
14 permanent move to a nursing facility. The contract shall
15 also state who will participate in the decision for permanent
16 residency in the nursing facility and shall provide that the
17 resident shall have an advocate involved in that decision;
18 provided that if the resident has no family member, attorney,
19 guardian or other responsible person to act as the resident's
20 advocate, the provider shall request the local office of the
21 human services department to serve as advocate;

22 (26) specify the types of insurance, if any,
23 the resident is required to maintain, including medicare,
24 other health insurance and property insurance;

25 (27) specify the circumstances, if any,

1 under which the resident will be required to apply for any
2 public assistance, including medical assistance, or any other
3 public benefit programs;

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

14 (29) in bold type of not less than
15 twelve-point type on the front of the contract, state that
16 nothing in the contract or the Continuing Care Act should be
17 construed to constitute approval, recommendation or
18 endorsement of any continuing care community by the state of
19 New Mexico;

20 (30) contain a provision describing the
21 community's plan for resident relocation upon closure or
22 circumstances that necessitate relocation;

23 (31) in immediate proximity to the space
24 reserved in the contract for the signature of the resident,
25 in bold type of not less than twelve-point type, state the

1 following:

2 "You, the buyer, may cancel this transaction at any time
3 prior to midnight of the seventh day after the date of this
4 transaction. See the attached notice of cancellation form
5 for an explanation of this right."; and

6 (32) contain a completed form, in duplicate,
7 captioned "Notice of Cancellation", which shall be attached
8 to the contract and easily detachable, and which shall
9 contain in twelve-point boldface type the following
10 information and statements in the same language as that used
11 in the contract.

12 "NOTICE OF CANCELLATION

13 Date: _____

14 (enter date of transaction)

15 You may cancel this transaction without any penalty or
16 obligation within seven days from the above date. If you
17 cancel, any payments made by you under the contract or sale
18 and any negotiable instrument executed by you will be
19 returned within ten business days following receipt by the
20 provider of your cancellation notice, and any security
21 interest or lien arising out of the transaction will be
22 canceled.

23 To cancel this transaction, deliver a signed and dated
24 copy of this cancellation notice or any other written notice,
25 or send a telegram, to: _____

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(Name of Provider)

at _____

(Address of Provider's Place of Business)

not later than midnight of _____

(Date)

I hereby cancel this transaction.

(Buyer's Signature)

(Date)"."

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

"24-17-7. DISCLOSURE STATEMENTS FILED WITH THE AGING AND LONG-TERM SERVICES DEPARTMENT FOR PUBLIC INSPECTION.--No later than July 1, 2022 and each year thereafter, within one hundred eighty days after the end of a community's fiscal year, a provider shall provide a copy of the disclosure statement and any amendments to that statement to the aging and long-term services department for public inspection during regular working hours."

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

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

A. The aging and long-term services department

1 shall review disclosure statements filed pursuant to the
2 Continuing Care Act for compliance with that act.

3 B. If the aging and long-term services department
4 determines that a person or an organization has engaged in or
5 is about to engage in an act or practice constituting a
6 violation of the Continuing Care Act or any rule adopted
7 pursuant to that act, the aging and long-term services
8 department shall issue a notice of violation in writing to
9 that person or organization and send copies to the resident
10 association of any facility affected by the notice.

11 C. The notice of violation shall state the
12 following:

- 13 (1) a description of a violation at issue;
- 14 (2) the action that, in the judgment of the
15 aging and long-term services department, the provider should
16 take to conform to the law or the assurances that the aging
17 and long-term services department requires to establish that
18 no violation is about to occur;
- 19 (3) the compliance date by which the
20 provider shall correct any violation or submit assurances;
- 21 (4) the requirements for filing a report of
22 compliance; and
- 23 (5) the applicable sanctions for failure to
24 correct the violation or failure to file the report of
25 compliance according to the terms of the notice of violation.

1 D. At any time after receipt of a notice of
2 violation, the person or organization to which the notice is
3 addressed or the aging and long-term services department may
4 request a conference. The aging and long-term services
5 department shall schedule a conference within thirty days of
6 a request.

7 E. The purpose of the conference is to discuss
8 the contents of the notice of violation and to assist the
9 addressee to comply with the requirements of the Continuing
10 Care Act. Subject to rules that the aging and long-term
11 services department may promulgate, a representative of the
12 resident association at any facility affected by the notice
13 shall have a right to attend the conference.

14 F. A person receiving a notice of violation shall
15 submit a signed report of compliance as provided by the
16 notice. The aging and long-term services department shall
17 send a copy to the resident association of any facility
18 affected by the notice.

19 G. Upon receipt of the report of compliance, the
20 aging and long-term services department shall take steps to
21 determine that compliance has been achieved."

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

24 "24-17-17. RULES AND REGULATIONS AUTHORIZED.--The aging
25 and long-term services department shall promulgate all rules

1 and regulations necessary or appropriate to administer the
2 provisions of the Continuing Care Act."

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

5 "24-17-18. REPORT TO ATTORNEY GENERAL--CIVIL ACTION--
6 CIVIL PENALTIES.--

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

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

16 C. Upon receipt of a report from any source
17 alleging a violation of the Continuing Care Act or rules
18 promulgated pursuant to that act, the attorney general shall
19 promptly review the allegation. Upon finding that an
20 allegation received pursuant to this subsection is credible,
21 the attorney general shall file an appropriate action against
22 the alleged violator in a court of competent jurisdiction.

23 D. Upon finding violations of any provisions of
24 the Continuing Care Act or any rule adopted pursuant to that
25 act, the court may impose a civil penalty in the amount of

1 five dollars (\$5.00) per resident or up to five hundred
2 dollars (\$500), in the discretion of the court, for each day
3 that the violation remains uncorrected after the compliance
4 date stipulated in a notice of violation issued pursuant to
5 the Continuing Care Act." _____

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