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HOUSE BILL 229

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Roberto J. Gonzales

AN ACT

RELATING TO CONTINUING CARE; PERMITTING A GROSS RECEIPTS TAX
DEDUCTION FOR CONTINUING CARE RECEIPTS; REVISING REPORTING
REQUIREMENTS; AMENDING SECTIONS OF THE CONTINUING CARE ACT.

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

Section 1. A new section of the Gross Receipts and
Compensating Tax Act is enacted to read:

"[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS TAX--CONTINUING
CARE RECEIPTS.--Receipts of a retirement home, retirement
community, home for the aged or other place that provides
continuing care in accordance with the Continuing Care Act may
be deducted from gross receipts."

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

"24-17-3. DEFINITIONS.--As used in the Continuing Care

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1 Act:

2 A. "affiliate" means a person having a five percent
3 or greater interest in a provider;

4 B. "community" means a retirement home, retirement
5 community, home for the aged or other place that undertakes to
6 provide continuing care;

7 C. "continuing care" means furnishing, pursuant to
8 a contract that requires entrance fees and service or periodic
9 fees, independent living and health or health-related services.
10 Entrance fees do not include security or damage deposit fees
11 that amount to less than three months' service or periodic
12 fees. These services may be provided in the community, in the
13 resident's independent living unit or in another setting,
14 designated by the continuing care contract, to an individual
15 not related by consanguinity or affinity to the provider
16 furnishing the care. The services include, at a minimum,
17 priority access to a nursing facility or hospital either on
18 site or at a site designated by the contract;

19 D. "continuing care contract" means an agreement by
20 a provider to furnish continuing care to a resident;

21 E. "person" means an individual, corporation,
22 partnership, trust, association or other legal entity;

23 F. "priority access to a nursing facility or
24 hospital" means that a nursing facility or hospital services
25 the residents of independent living units or that there is a

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1 promise of such health care or health-related services being
2 available in the future;

3 G. "provider" means the owner or manager of a
4 community;

5 H. "resident" means, unless otherwise specified, an
6 actual or prospective purchaser of, nominee of or subscriber to
7 a continuing care contract; and

8 I. "unit" means the living quarters that a resident
9 buys, leases or has assigned as part of the continuing care
10 contract. "

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

13 "24-17-4. DISCLOSURE. --

14 A. Any person who provides or offers to provide
15 continuing care in this state shall furnish a current annual
16 disclosure statement and ~~[the]~~ a consumer's guide to continuing
17 care communities ~~[prepared]~~ as furnished by the state agency on
18 aging ~~[and]~~ or the attorney general's office to actual
19 residents and to a prospective resident at least seven days
20 prior to entering into a continuing care contract with the
21 prospective resident. ~~[Advertising, otherwise representing or~~
22 ~~contractual provisions indicating that a nursing facility or~~
23 ~~hospital services the residents of independent living units or~~
24 ~~advertising that there is a close structural proximity of~~
25 ~~residential units to nursing or acute care units shall imply an~~

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1 ~~agreement to provide or offer to provide continuing care.]~~ For
2 the purposes of this subsection, the obligation to furnish
3 information to actual residents shall be deemed satisfied if a
4 copy is given to the residents' association, if there is one,
5 and a written message has been delivered to all residents that
6 personal copies are available upon request.

7 B. The disclosure statement shall include:

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

10 (2) the name and business address of the
11 provider;

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

15 (4) the name and business address of any
16 affiliate;

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

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

23 (b) has been held liable or enjoined in
24 a civil action by final judgment, if the civil action involved
25 fraud, embezzlement, fraudulent conversion or misappropriation

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1 of property;

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

4 (d) had any state or federal licenses or
5 permits suspended or revoked or had any state, federal or
6 industry self-regulatory agency commence an action against him
7 and the result of such action;

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

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

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

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1 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 whether the community
6 maintains reserves to assure payment of debt obligations and
7 the ability to provide services to residents and a description
8 of such reserves;

9 (11) for those communities that charge an
10 entrance fee that were not in operation on [~~the effective date~~
11 ~~of the Continuing Care Act~~] June 14, 1985, an actuarial
12 analysis of the community performed by an actuary experienced
13 in analyzing continuing care communities;

14 (12) a financial statement and audit report
15 [~~as of the last fiscal year~~] prepared within the last two years
16 in accordance with generally accepted accounting principles
17 applied on a consistent basis and certified by a certified
18 public accountant, including a cash flow statement or sources
19 and application of funds statement [~~and a balance sheet~~] as of
20 the end of the provider's last fiscal year and a description of
21 long-term obligations and the holders of mortgages and notes;

22 (13) a copy of the previous year's tax filing
23 with the internal revenue service;

24 [~~(13)~~] (14) a sample copy of the contract used
25 by the provider; and

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1 [~~(14)~~] (15) a list of documents and other
2 information available upon request, including:
3 (a) a copy of the Continuing Care Act;
4 (b) if the provider is a corporation, a
5 copy of the articles of incorporation; if the provider is a
6 partnership or other unincorporated association, a copy of the
7 partnership agreement, articles of association or other
8 membership agreement; and if the provider is a trust, a copy of
9 the trust agreement or instruments;
10 (c) resumes of the provider and
11 officers, directors, trustees, partners or managers;
12 (d) a copy of lease agreements between
13 the community and any person owning land or property leased to
14 the community;
15 (e) information concerning the location
16 and description of other properties, both existing and
17 proposed, of the provider in which the provider owns any
18 interest and on which communities are or are intended to be
19 located and the identity of previously owned or operated
20 communities;
21 (f) a copy of the community's policies
22 and procedures; and
23 (g) such other data, financial
24 statements and pertinent information requested by the resident
25 with respect to the provider or community, or its directors,

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1 trustees, members, managers, branches, subsidiaries or
2 affiliates, which is reasonably necessary for the resident to
3 determine the financial status of the provider and community
4 and the management capabilities of the managers and owners,
5 including the most recent audited financial statements of
6 comparable communities owned, managed or developed by the
7 provider or its principal.

8 C. Each year, within one hundred eighty days after
9 the end of the community's fiscal year, the provider shall
10 furnish to actual residents a current financial statement and
11 audit report prepared within the last two years in accordance
12 with generally accepted accounting principles applied on a
13 consistent basis and certified by a certified public
14 accountant, including a cash flow statement or sources and
15 application of funds statement and a balance sheet as of the
16 end of the provider's last fiscal year, a description of long-
17 term obligations [~~and~~], any other changes in the disclosure
18 statement required to be furnished pursuant to Subsection A of
19 this section and a copy of the previous year's tax filing with
20 the internal revenue service or an annual report. For purposes
21 of this subsection, the obligation to furnish the required
22 information to residents shall be deemed satisfied if the
23 information is given to the residents' association, if there is
24 one, and a written message has been delivered to all residents
25 stating that personal copies of the information are available

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1 upon request. "

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

4 "24-17-5. CONTRACT INFORMATION. --

5 A. A continuing care contract shall be written in
6 clear and understandable language.

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

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

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

13 (3) describe the circumstances under which the
14 resident will be permitted to remain in the community in the
15 event of possible financial difficulties of the resident;

16 (4) list the total consideration paid,
17 including donations, entrance fees, subscription fees, periodic
18 fees and other fees paid or payable; provided, however, that a
19 provider cannot require a resident to transfer all his assets
20 to the provider or community as a condition for providing
21 continuing care and the provider shall reserve his rights to
22 charge periodic fees;

23 (5) describe in detail all items of service to
24 be received by the resident such as food, shelter, medical
25 care, nursing care and other health services and whether

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1 services will be provided for a designated time period or for
2 life;

3 (6) provide as an addendum to the contract a
4 description of items of service, if any, which are available to
5 the resident but are not covered in the entrance or monthly
6 fee;

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

9 (8) specify that deposits or entrance fees
10 paid by or for a resident shall be held in trust in a cash
11 escrow account in a New Mexico trust company or in the trust
12 department of a federally insured New Mexico bank until the
13 resident has occupied his unit, and that after the resident has
14 notified the trustee that he has occupied his unit, the money,
15 including interest unless otherwise specified, shall be
16 released to the provider;

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

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

25 (11) state when fees will be subject to

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1 periodic increases and what the policy for increases will be;
2 provided, however, that the provider shall give advance notice
3 of not less than thirty days to the residents before the change
4 becomes effective and increases shall be based upon economic
5 necessity, the reasonable cost of operating the community, the
6 cost of care and a reasonable return on investment as defined
7 by rules promulgated by the state agency on aging no later than
8 January 31, 2005;

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

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

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

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

24 (16) describe the rights of the residents to
25 form a residents' association and the participation, if any, of

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1 the association in the community's decision-making process;

2 (17) describe the living quarters purchased by
3 or assigned to the resident;

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

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

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

11 (21) state, in the event of voluntary absence
12 from the community for an extended period of time by the
13 resident, what fee adjustments, if any, will be made;

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

21 (23) if the community includes a nursing
22 facility, describe the admissions policies and what will occur
23 if a nursing facility bed is not available at the time it is
24 needed;

25 (24) describe, if the resident is offered a

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1 priority for nursing facility admission at a facility that is
2 not owned by the community, with which nursing facility the
3 formal arrangement is made and what will occur if a nursing
4 facility bed is not available at the time it is needed;

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

16 (26) specify the types of insurance, if any,
17 the resident must maintain, including medicare, other health
18 insurance and property insurance;

19 (27) specify the circumstances, if any, under
20 which the resident will be required to apply for medicaid,
21 public assistance or any other public benefit programs;

22 (28) state, in bold type of not less than
23 twelve-point type on the front of the contract, that a contract
24 for continuing care may present a significant financial risk
25 and that a person considering a continuing care contract should

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1 consult with an attorney and with a financial advisor
2 concerning the advisability of pursuing continuing care.
3 Provided, however, failure to consult with an attorney or
4 financial advisor shall not be raised as a defense to bar
5 recovery for a resident in any claims arising under the
6 provisions of the Continuing Care Act;

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

12 (30) state in immediate proximity to the space
13 reserved in the contract for the signature of the resident in
14 bold type of not less than twelve-point type the following:

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

19 (31) contain a completed form in duplicate,
20 captioned "Notice of Cancellation", which shall be attached to
21 the contract and easily detachable, and which shall contain in
22 twelve-point bold face type the following information and
23 statements in the same language as that used in the contract.

24 "NOTICE OF CANCELLATION

25 Date: _____

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(enter date of transaction)

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

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

(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 5. Section 24-17-6 NMSA 1978 (being Laws 1985, Chapter 102, Section 6) is amended to read:

"24-17-6. ESCROW REQUIREMENTS. -- Any deposits or entrance fees paid by or for a resident shall be held in trust in a cash

1 escrow account in a New Mexico trust company or in a trust
2 department of a federally insured New Mexico bank until the
3 resident has occupied his unit. After the resident has
4 notified the trustee that he has occupied his unit, or has
5 signed a continuing care contract, the money, including
6 interest unless otherwise specified, shall be released to the
7 provider. "

8 Section 6. Section 24-17-8 NMSA 1978 (being Laws 1985,
9 Chapter 102, Section 8) is amended to read:

10 "24-17-8. CONSUMER'S GUIDE TO CONTINUING CARE
11 COMMUNITIES. --The office of the attorney general and the state
12 agency on aging [~~shall~~] may publish and distribute a consumer's
13 guide to continuing care communities and [~~shall~~] may publish an
14 annual directory of communities in New Mexico. "

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