

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 316

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO AGING; REQUIRING THE OFFICE OF SUPERINTENDENT OF
INSURANCE TO REVIEW FINANCIAL AND ACTUARIAL DISCLOSURES TO THE
AGING AND LONG-TERM SERVICES DEPARTMENT AND REPORT VIOLATIONS
OF THE CONTINUING CARE ACT; 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

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underscored material = new
[bracketed material] = delete

1 to continuing care communities to each actual resident and to a
2 prospective resident at least seven days before the provider
3 enters into a continuing care contract with the prospective
4 resident, or prior to the prospective resident's first payment,
5 whichever occurs first. For the purposes of this subsection,
6 the obligation to furnish information to each actual resident
7 shall be deemed satisfied if a copy of the disclosure statement
8 and the consumer's guide is given to the residents'
9 association, if there is one, and a written message has been
10 delivered to each actual resident, stating that personal copies
11 are available upon request.

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

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

16 (2) the name and business address of the
17 provider;

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

21 (4) the name and business address of each of
22 the provider's affiliates;

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

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

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

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

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

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

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1 (7) the name and address of any person owning
2 land or property leased to the community and a statement of
3 what land or property is leased;

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

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

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

19 (11) for communities that provide type A and
20 type B agreements:

21 (a) a summary of an actuarial analysis
22 within the last five years; ~~and~~

23 (b) an annual future-service obligation
24 calculation by an actuary who is a member of the American
25 academy of actuaries and who is experienced in analyzing

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1 continuing care communities; and

2 (c) a certification by the actuary who
3 performs the future-service obligation calculation affirming
4 that the community is solvent;

5 (12) an audited financial statement and an
6 audit report prepared in accordance with generally accepted
7 accounting principles applied on a consistent basis and
8 certified by a certified public accountant, including an income
9 statement or statement of activities, a cash-flow statement or
10 sources and application of funds statement and a balance sheet
11 as of the end of the provider's last fiscal year. The balance
12 sheet should accurately reflect the deferred revenue balance,
13 including entrance fees and any other prepaid services, and
14 should include notes describing the community's long-term
15 obligations and identifying all the holders of mortgages and
16 notes;

17 (13) a sample copy of the contract used by the
18 provider; and

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

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

22 (b) if the provider is a corporation, a
23 copy of the articles of incorporation; if the provider is a
24 partnership or other unincorporated association, a copy of the
25 partnership agreement, articles of association or other

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1 membership agreement; and if the provider is a trust, a copy of
2 the trust agreement or instruments;

3 (c) resumes of the provider and
4 officers, directors, trustees, partners or managers;

5 (d) a copy of lease agreements between
6 the community and any person owning land or property leased to
7 the community;

8 (e) information concerning the location
9 and description of other properties, both existing and
10 proposed, of the provider in which the provider owns any
11 interest and on which communities are or are intended to be
12 located and the identity of previously owned or operated
13 communities;

14 (f) a copy of the community's policies
15 and procedures; and

16 (g) other data, financial statements and
17 pertinent information with respect to the provider or
18 community, or its directors, trustees, members, managers,
19 branches, subsidiaries or affiliates, that a resident requests
20 and that is reasonably necessary in order for the resident to
21 determine the financial status of the provider and community
22 and the management capabilities of the managers and owners,
23 including the most recent audited financial statements of
24 comparable communities owned, managed or developed by the
25 provider or its principal.

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1 C. Each year, within one hundred eighty days after
 2 the end of the community's fiscal year, the provider shall
 3 furnish to actual residents the disclosure statement as
 4 outlined in this section. For purposes of this subsection, the
 5 obligation to furnish the required information to residents
 6 shall be deemed satisfied if the information is given to the
 7 residents' association, if there is one, and a written message
 8 has been delivered to each resident, stating that personal
 9 copies of the information are available upon request."

10 SECTION 2. Section 24-17-7 NMSA 1978 (being Laws 1985,
 11 Chapter 102, Section 7) is amended to read:

12 "24-17-7. DISCLOSURE STATEMENTS FILED WITH THE [~~STATE~~
 13 ~~AGENCY-ON~~] AGING AND LONG-TERM SERVICES DEPARTMENT FOR PUBLIC
 14 INSPECTION.--No later than July 1, 2020 and annually
 15 thereafter, a provider shall [~~file~~] provide a copy of the
 16 disclosure statement and any amendments to that statement
 17 [~~with~~] to the [~~state agency on~~] aging and long-term services
 18 department for public inspection during regular working hours.
 19 The aging and long-term services department shall provide a
 20 copy of the disclosure statement to the office of
 21 superintendent of insurance."

22 SECTION 3. Section 24-17-16 NMSA 1978 (being Laws 1991,
 23 Chapter 263, Section 5) is amended to read:

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

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1 A. The aging and long-term services department
2 shall review all disclosure statements received to ensure that
3 providers operate in accordance with the Continuing Care Act.

4 B. The office of superintendent of insurance shall:

5 (1) review the financial documents, actuarial
6 projections and audits received pursuant to Paragraphs (10)
7 through (12) of Subsection B of Section 24-17-4 NMSA 1978; and

8 (2) after the review pursuant to this
9 subsection or an examination pursuant to Subsection C of this
10 section, report financial violations of the Continuing Care
11 Act, if any, to the aging and long-term services department.

12 C. Upon finding an irregularity in the financial
13 reports, audit or actuarial reports provided by a community,
14 the office of superintendent of insurance may contract for an
15 independent audit or actuarial examination that shall be
16 conducted at the expense of the community.

17 ~~[A.]~~ D. If the ~~[state agency on]~~ aging and long-
18 term services department determines that a person or an
19 organization has engaged in or is about to engage in an act or
20 practice constituting a violation of the Continuing Care Act or
21 any rule adopted pursuant to that act, the ~~[state agency on]~~
22 aging and long-term services department shall issue a notice of
23 violation in writing to that person or organization and send
24 copies to the resident association of any facility affected by
25 the notice.

1 ~~[B.]~~ E. The notice of violation shall state the
2 following:

3 (1) a description of a violation at issue;
4 (2) the action that, in the judgment of the
5 ~~[state agency on]~~ aging and long-term services department, the
6 provider should take to conform to the law or the assurances
7 that the ~~[state agency on]~~ aging and long-term services
8 department requires to establish that no violation is about to
9 occur;

10 (3) the compliance date by which the provider
11 shall correct any violation or submit assurances;

12 (4) the requirements for filing a report of
13 compliance; and

14 (5) the applicable sanctions for failure to
15 correct the violation or failure to file the report of
16 compliance according to the terms of the notice of violation.

17 ~~[G.]~~ F. At any time after receipt of a notice of
18 violation, the person or organization to which the notice is
19 addressed or the ~~[state agency on]~~ aging and long-term services
20 department may request a conference. The ~~[state agency on]~~
21 aging and long-term services department shall schedule a
22 conference within ~~[seven]~~ thirty days of a request.

23 ~~[D.]~~ G. The purpose of the conference is to discuss
24 the contents of the notice of violation and to assist the
25 addressee to comply with the requirements of the Continuing

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1 Care Act. Subject to rules that the [~~state agency on~~] aging
2 and long-term services department may promulgate, a
3 representative of the resident association at any facility
4 affected by the notice shall have a right to attend the
5 conference.

6 [~~E.~~] H. A person receiving a notice of violation
7 shall submit a signed report of compliance as provided by the
8 notice. The [~~state agency on~~] aging and long-term services
9 department shall send a copy to the resident association of any
10 facility affected by the notice.

11 [~~F.~~] I. Upon receipt of the report of compliance,
12 the [~~state agency on~~] aging and long-term services department
13 shall take steps to determine that compliance has been
14 achieved."

15 **SECTION 4.** Section 24-17-17 NMSA 1978 (being Laws 1991,
16 Chapter 263, Section 6, as amended) is amended to read:

17 "24-17-17. RULES AND REGULATIONS AUTHORIZED.--The aging
18 and long-term services department [~~shall~~] may promulgate all
19 rules and regulations necessary or appropriate to administer
20 the provisions of the Continuing Care Act, including [~~but not~~
21 ~~limited to~~] requirements regarding financial reserves,
22 disclosure and actuarial studies."

23 **SECTION 5.** Section 24-17-18 NMSA 1978 (being Laws 1991,
24 Chapter 263, Section 7) is amended to read:

25 "24-17-18. REPORT TO ATTORNEY GENERAL--CIVIL ACTION--

1 CIVIL PENALTIES.--

2 A. A person may report an alleged violation of the
3 Continuing Care Act or rules promulgated pursuant to that act
4 to the attorney general or to the aging and long-term services
5 department.

6 B. Any time after the [state agency on] aging and
7 long-term services department issues a notice of violation, the
8 [state agency on aging] department may send the attorney
9 general a written report alleging a possible violation of the
10 Continuing Care Act or any rule adopted pursuant to that act.

11 C. Upon receipt of [that] a report from any source
12 alleging a violation of the Continuing Care Act or rules
13 promulgated pursuant to that act, the attorney general shall
14 promptly [conduct an investigation to determine whether grounds
15 exist for formally finding a violation. If the attorney
16 general makes that finding, he] review the allegation. Upon
17 finding that an allegation received pursuant to this subsection
18 is credible, the attorney general shall file an appropriate
19 action against the alleged violator in a court of competent
20 jurisdiction.

21 D. Upon finding violations of any provisions of the
22 Continuing Care Act or any rule adopted pursuant to that act,
23 the court may impose a civil penalty in the amount of five
24 dollars (\$5.00) per resident or up to five hundred dollars
25 (\$500), in the discretion of the court, for each day that the

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1 violation remains uncorrected after the compliance date
2 stipulated in a notice of violation issued pursuant to the
3 Continuing Care Act."

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