

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 ACTUARIAL DISCLOSURES TO THE AGING AND
LONG-TERM SERVICES DEPARTMENT AND REPORT VIOLATIONS OF THE
CONTINUING CARE ACT; ALLOWING THE ATTORNEY GENERAL TO
INVESTIGATE 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.--Within one hundred eighty days after the end of
 15 the community's fiscal year and annually thereafter, a provider
 16 shall [~~file~~] provide a copy of the disclosure statement and any
 17 amendments to that statement [~~with~~] to the [~~state agency on~~]
 18 aging and long-term services department for public inspection
 19 during regular working hours. The aging and long-term services
 20 department shall provide a copy of the disclosure statement to
 21 the office of 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 The office of superintendent of insurance shall review all
5 financial documents received pursuant to Paragraphs (10)
6 through (12) of Subsection B of Section 24-17-4 NMSA 1978 to
7 assess the financial solvency of the providers. The office of
8 superintendent of insurance shall report any violations to the
9 aging and long-term services department.

10 ~~[A.]~~ B. If the ~~[state agency on]~~ aging and long-
11 term services department determines that a person or an
12 organization has engaged in or is about to engage in an act or
13 practice constituting a violation of the Continuing Care Act or
14 any rule adopted pursuant to that act, the ~~[state agency on]~~
15 aging and long-term services department shall issue a notice of
16 violation in writing to that person or organization and send
17 copies to the resident association of any facility affected by
18 the notice.

19 ~~[B.]~~ C. The notice of violation shall state the
20 following:
21 (1) a description of a violation at issue;
22 (2) the action that, in the judgment of the
23 ~~[state agency on]~~ aging and long-term services department, the
24 provider should take to conform to the law or the assurances
25 that the ~~[state agency on]~~ aging and long-term services

1 department requires to establish that no violation is about to
2 occur;

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

5 (4) the requirements for filing a report of
6 compliance; and

7 (5) the applicable sanctions for failure to
8 correct the violation or failure to file the report of
9 compliance according to the terms of the notice of violation.

10 [~~G.~~] D. At any time after receipt of a notice of
11 violation, the person or organization to which the notice is
12 addressed or the [~~state agency on~~] aging and long-term services
13 department may request a conference. The [~~state agency on~~]
14 aging and long-term services department shall schedule a
15 conference within [~~seven~~] thirty days of a request.

16 [~~D.~~] E. The purpose of the conference is to discuss
17 the contents of the notice of violation and to assist the
18 addressee to comply with the requirements of the Continuing
19 Care Act. Subject to rules that the [~~state agency on~~] aging
20 and long-term services department may promulgate, a
21 representative of the resident association at any facility
22 affected by the notice shall have a right to attend the
23 conference.

24 [~~E.~~] F. A person receiving a notice of violation
25 shall submit a signed report of compliance as provided by the

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1 notice. The ~~[state agency on]~~ aging and long-term services
2 department shall send a copy to the resident association of any
3 facility affected by the notice.

4 ~~[F.]~~ G. Upon receipt of the report of compliance,
5 the ~~[state agency on]~~ aging and long-term services department
6 shall take steps to determine that compliance has been
7 achieved."

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

10 "24-17-17. RULES AND REGULATIONS AUTHORIZED.--The aging
11 and long-term services department ~~[shall]~~ may promulgate all
12 rules and regulations necessary or appropriate to administer
13 the provisions of the Continuing Care Act, including ~~[but not~~
14 ~~limited to]~~ requirements regarding financial reserves,
15 disclosure and actuarial studies."

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

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

20 A. A person may report an alleged violation of the
21 Continuing Care Act or rules promulgated pursuant to that act
22 to the attorney general or to the aging and long-term services
23 department.

24 B. Any time after the ~~[state agency on]~~ aging and
25 long-term services department issues a notice of violation, the

1 ~~[state agency on aging]~~ department may send the attorney
2 general a written report alleging a possible violation of the
3 Continuing Care Act or any rule adopted pursuant to that act.

4 C. Upon receipt of ~~[that]~~ a report from any source
5 alleging a violation of the Continuing Care Act or rules
6 promulgated pursuant to that act, the attorney general shall
7 promptly conduct an investigation to determine whether grounds
8 exist for formally finding a violation. If the attorney
9 general makes that finding, ~~[he]~~ the attorney general shall
10 file an appropriate action against the alleged violator in a
11 court of competent jurisdiction.

12 D. Upon finding violations of any provisions of the
13 Continuing Care Act or any rule adopted pursuant to that act,
14 the court may impose a civil penalty in the amount of five
15 dollars (\$5.00) per resident or up to five hundred dollars
16 (\$500), in the discretion of the court, for each day that the
17 violation remains uncorrected after the compliance date
18 stipulated in a notice of violation issued pursuant to the
19 Continuing Care Act."

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