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FISCAL IMPACT REPORT

ORIGINAL DATE 02/09/21

SPONSOR Tallman LAST UPDATED _____ HB _____

SHORT TITLE Continuing Care Aging Contracts SB 152

ANALYST Klundt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY21 | FY22 | FY23 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|------|------|----------------------|------------------------------|------------------|
| Total | NFI | NFI | NFI | | | |

(Parenthesis () Indicate Expenditure Decreases)

Related to SB189 and SM6

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)

Aging and Long-Term Services Department (ALTSD)

SUMMARY

Synopsis of Bill

Senate Bill 152 (SB152) amends the Continuing Care Act requiring actuarial analysis for type A and type B agreements be comprehensive. Section 2 is amended to require providers include in their community care contract a provision that describes the community's plan for resident relocation upon closure or circumstances that necessitate relocation. Section 3 is amended to require the provider shall submit a copy of the disclosure statement to the Aging and Long-Term Services Department (ALTSD) no later than July 1, 2022 and each year thereafter, within 180 days after the end of a community's fiscal year. Section 4 is amended to require ALTSD review disclosure statements filed pursuant to the Continuing Care Act for compliance with the act. Subsection D is amended to give ALTSD 30 days to schedule a conference after notice of a violation of the act. Sections 6 is amended to allow any person to report violations of the Act to the New Mexico Attorney General's office (NMAG) or ALTSD. Should a violation be reported to the NMAG, NMAG shall review the allegation and upon a credible allegation, file an appropriate action in a court of competent jurisdiction.

FISCAL IMPLICATIONS

There is no appropriation contained in this bill. While the bill requires additional case reviews by NMAG and the ALTSD, neither department indicated any additional operating budget impact. Therefore, it is assumed any additional workload will be covered by each of the department's current operating budget.

SIGNIFICANT ISSUES

ALTSD reported “Continuing Care Communities are those which residents normally pay large up-front costs that offer a myriad of services including independent living units, residential amenities, meals, activities, transportation, physicians, rehabilitative services, skilling nursing, memory care, and hospice care.”

Issues that have arisen involve the solvency of these organizations with little or no equity to cover unexpected short falls in cash flow resulting in bankruptcy and the need to relocate residents with very short notice.

Many facilities that issue Type A contracts are under-capitalized and actuarially under-reserved, with little or no equity available to cover unexpected shortages in cash flow. This in turn has created systemic risk that could leave a multitude of aging Americans financially and medically vulnerable. Many CCRC's offer a soft promise to continue to provide care until death, even after a given resident has exhausted his/her personal financial resources. The price of Type A contracts typically includes a six-figure initial entrance fee and ongoing monthly fees, which grow with inflation but not with the level of care required by any particular resident. The implicit assumption is that the facility operator will reserve a sufficient amount of cash from the entrance fee to fund its long-term actuarial obligations.”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 189 would create a new Act focusing on Financial Exploitation. The proposed Act includes definitions for caregiver, confidential relationship, eligible adult, fiduciary relationship, financial exploitation, financial institution, qualified individual, transaction, trusted person and undue influence.

Senate Memorial 6 requires the Secretary of Aging and Long-Term Services to convene a task force comprised of long-term care (LTC) healthcare professionals that regulate and support LTC facilities in order to prepare for future emergencies. A report must be submitted to the governor and appropriate legislative committees by November 1, 2021.

KK/al