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HOUSE BILL 871

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Roberto J. Gonzales

AN ACT

RELATING TO CONTINUING CARE; REVISING REPORTING REQUIREMENTS;
AMENDING AND REPEALING SECTIONS OF THE CONTINUING CARE ACT.

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

Section 1. 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
Act:

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

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

C. "continuing care" means furnishing, pursuant to
a contract that requires entrance fees and service or periodic

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1 fees, independent living and health or health-related services.
2 Entrance fees do not include security or damage deposit fees
3 that amount to less than three months' service or periodic
4 fees. These services may be provided in the community, in the
5 resident's independent living unit or in another setting,
6 designated by the continuing care contract, to an individual
7 not related by consanguinity or affinity to the provider
8 furnishing the care. The services include, at a minimum,
9 priority access to a nursing facility or hospital either on
10 site or at a site designated by the contract;

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

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

15 F. "priority access to a nursing facility or
16 hospital" means that a nursing facility or hospital services
17 the residents of independent living units or that there is a
18 promise of such health care or health-related services being
19 available in the future;

20 G. "provider" means the owner or manager of a
21 community;

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

25 I. "unit" means the living quarters that a resident

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1 buys, leases or has assigned as part of the continuing care
2 contract. "

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

5 "24-17-4. DISCLOSURE. - -

6 A. ~~[Any]~~ A person who provides or offers to provide
7 continuing care in this state shall furnish a current annual
8 disclosure statement ~~[and the consumer's guide to continuing~~
9 ~~care communities prepared by the state agency on aging and the~~
10 ~~attorney general's office]~~ to actual residents and to a
11 prospective resident at least seven days prior to entering into
12 a continuing care contract with the prospective resident.

13 ~~[Advertising, otherwise representing or contractual provisions~~
14 ~~indicating that a nursing facility or hospital services the~~
15 ~~residents of independent living units or advertising that there~~
16 ~~is a close structural proximity of residential units to nursing~~
17 ~~or acute care units shall imply an agreement to provide or~~
18 ~~offer to provide continuing care.]~~ For the purposes of this
19 subsection, the obligation to furnish information to actual
20 residents shall be deemed satisfied if a copy is given to the
21 residents' association, if there is one, and a written message
22 has been delivered to all residents that personal copies are
23 available upon request.

24 B. The disclosure statement shall include:

25 (1) a brief narrative summary of the contents

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1 of the disclosure statement written in plain language;

2 (2) the name and business address of the
3 provider;

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

7 (4) the name and business address of any
8 affiliate;

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

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

15 (b) has been held liable or enjoined in
16 a civil action by final judgment, if the civil action involved
17 fraud, embezzlement, fraudulent conversion or misappropriation
18 of property;

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

21 (d) had any state or federal licenses or
22 permits suspended or revoked or had any state, federal or
23 industry self-regulatory agency commence an action against him
24 and the result of such action;

25 (6) the name and address of any person whose

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

11 (7) the name and address of any person owning
12 land or property leased to the community and a statement of
13 what land or property is leased;

14 (8) a statement as to whether the provider is,
15 or is associated with, a religious, charitable or other
16 organization and the extent to which the associate organization
17 is responsible for the financial and contractual obligations of
18 the provider or community;

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

22 (10) a statement as to whether the community
23 maintains reserves to assure payment of debt obligations and
24 the ability to provide services to residents and a description
25 of such reserves;

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

6 (12) a financial statement and [~~audit report~~
7 ~~as of the last fiscal year prepared in accordance with~~
8 ~~generally accepted accounting principles applied on a~~
9 ~~consistent basis and certified by a certified public~~
10 ~~accountant, including~~] a cash flow statement or sources and
11 application of funds statement [~~and a balance sheet~~] as of the
12 end of the provider's last fiscal year and a description of
13 long-term obligations and the holders of mortgages and notes;

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

16 [~~(13)~~] (14) a sample copy of the contract used
17 by the provider; and

18 [~~(14)~~] (15) a list of documents and other
19 information available upon request, including:

- 20 (a) a copy of the Continuing Care Act;
21 (b) if the provider is a corporation, a
22 copy of the articles of incorporation; if the provider is a
23 partnership or other unincorporated association, a copy of the
24 partnership agreement, articles of association or other
25 membership agreement; and if the provider is a trust, a copy of

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1 the trust agreement or instruments;

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

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

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

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

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

25 C. Each year, within one hundred eighty days after

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

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

23 "24-17-5. CONTRACT INFORMATION. --

24 A. A continuing care contract shall be written in
25 clear and understandable language.

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

2 (1) describe the community's admission
3 policies, including age, health status and minimum financial
4 requirements, if any;

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

7 (3) describe the circumstances under which the
8 resident will be permitted to remain in the community in the
9 event of possible financial difficulties of the resident;

10 (4) list the total consideration paid,
11 including donations, entrance fees, subscription fees, periodic
12 fees and other fees paid or payable; provided, however, that a
13 provider cannot require a resident to transfer all his assets
14 to the provider or community as a condition for providing
15 continuing care and the provider shall reserve his rights to
16 charge periodic fees;

17 (5) describe in detail all items of service to
18 be received by the resident, such as food, shelter, medical
19 care, nursing care and other health services, and whether
20 services will be provided for a designated time period or for
21 life;

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

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

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

11 (9) state the terms under which a continuing
12 care contract may be canceled by the resident or the community
13 and the basis for establishing the amount of refund of the
14 entrance fee;

15 (10) state the terms under which a continuing
16 care contract is canceled by the death of the resident and the
17 basis for establishing the amount of refund, if any, of the
18 entrance fee;

19 (11) state when fees will be subject to
20 periodic increases and what the policy for increases will be;
21 provided, however, that the provider shall give advance notice
22 of not less than thirty days to the residents before the change
23 becomes effective [~~and increases shall be based upon economic~~
24 ~~necessity, the reasonable cost of operating the community, the~~
25 ~~cost of care and a reasonable return on investment~~];

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

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

8 (14) state the rules and regulations of the
9 provider then in effect and state the circumstances under which
10 the provider claims to be entitled to have access to the
11 resident's unit;

12 (15) list the resident's and provider's
13 respective rights and obligations as to any real or personal
14 property of the resident transferred to or placed in the
15 custody of the provider;

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

19 (17) describe the living quarters purchased by
20 or assigned to the resident;

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

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

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

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

6 (22) include the procedures to be followed
7 when the provider temporarily or permanently changes the
8 resident's accommodations, either within the community or by
9 transfer to a health facility; provided that the contract shall
10 state that such changes in accommodations shall only be made to
11 protect the health or safety of the resident or the general and
12 economic welfare of all other residents of the community;

13 (23) if the community includes a nursing
14 facility, describe the admissions policies and what will occur
15 if a nursing facility bed is not available at the time it is
16 needed;

17 (24) describe, if the resident is offered a
18 priority for nursing facility admission at a facility that is
19 not owned by the community, with which nursing facility the
20 formal arrangement is made and what will occur if a nursing
21 facility bed is not available at the time it is needed;

22 (25) include the policy and procedures for
23 determining under what circumstances a resident will be
24 considered incapable of independent living and will require a
25 permanent move to a nursing facility. The contract shall also

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1 state who will participate in the decision for permanent
2 residency in the nursing facility and shall provide that the
3 resident shall have an advocate involved in that decision;
4 provided that if the resident has no family member, attorney,
5 guardian or other responsible person to act as his advocate,
6 the provider shall request the local office of the human
7 services department to serve as advocate;

8 (26) specify the types of insurance, if any,
9 the resident must maintain, including medicare, other health
10 insurance and property insurance;

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

14 (28) state, in bold type of not less than
15 twelve-point type on the front of the contract, that a contract
16 for continuing care may present a significant financial risk
17 and that a person considering a continuing care contract should
18 consult with an attorney and with a financial advisor
19 concerning the advisability of pursuing continuing care.
20 Provided, however, failure to consult with an attorney or
21 financial advisor shall not be raised as a defense to bar
22 recovery for a resident in any claims arising under the
23 provisions of the Continuing Care Act;

24 (29) state, in bold type of not less than
25 twelve-point type on the front of the contract, that nothing in

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1 the contract or the Continuing Care Act should be construed to
2 constitute approval, recommendation or endorsement of any
3 continuing care community by the state of New Mexico;

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

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

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

16 "NOTICE OF CANCELLATION

17 Date: _____
18 (enter date of transaction)

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

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

4 (Name of Provider)

5 at _____

6 (Address of Provider's Place of Business)

7 not later than midnight of _____

8 (Date)

9 I hereby cancel this transaction.

10 _____
11 (Buyer's Signature)

12 _____
13 (Date) ". "

14 Section 4. Section 24-17-6 NMSA 1978 (being Laws 1985,
15 Chapter 102, Section 6) is amended to read:

16 "24-17-6. ESCROW REQUIREMENTS. -- Any deposits or entrance
17 fees paid by or for a resident shall be held in trust in a cash
18 escrow account in a New Mexico trust company or in a trust
19 department of a federally insured New Mexico bank until the
20 resident has occupied his unit [~~After the resident has notified~~
21 ~~the trustee that he has occupied his unit, the money, including~~
22 ~~interest unless otherwise specified, shall be released to the~~
23 ~~provider] or has signed a continuing care contract."~~

24 Section 5. REPEAL. -- Section 24-17-8 NMSA 1978 (being Laws
25 1985, Chapter 102, Section 8) is repealed.

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