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FISCAL IMPACT REPORT

SPONSOR Cisneros **ORIGINAL DATE** 01/22/10
LAST UPDATED 02/04/10 **HB** _____
SHORT TITLE Continuing Care Community Consumer Protection **SB** 70/aSPAC/aSJC
ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$10.0 - \$50.0			Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Office of the State Auditor (OSA)
 Aging and Long-Term Services Department (ALTSD)
 Department of Health (DOH)
 Health Policy Commission (HPC)

SUMMARY

Synopsis of SJC Amendment:

The Senate Judiciary Committee (SJC) Amendment clarifies that the requirements to provide a summary of an actuarial analysis and to maintain long-term financial reserves apply only to continuing care communities with obligations to provide future health services.

Specifically:

- adds a definition of "Type A Agreements" to mean entrance fee contracts for housing and services, including an unlimited amount of specific health-related services with little or no substantial increase in monthly maintenance or service fees;
- adds a definition of "Type B Agreements" to mean entrance fee contracts for housing and services, including a limited amount of specific health-related services without a substantial increase in monthly fees, after which the resident pays at full or discounted per diem rates;
- specifies that only communities that offer Type A or Type B contracts are required to furnish residents with a summary of the community's actuarial analysis;
- specifies that only communities that offer Type A contracts are required to maintain long-term reserves equal to one year's debt service and three months' operating expenses;

- specifies that communities offering Type B contracts must maintain such reserves on a prorated basis for residents that fall under Type B agreements; and
- specifies that communities offering Type A or Type B contracts shall keep entrance fees in bank accounts separate from its operating accounts.

FISCAL IMPLICATIONS

The additional costs of complying with the actuarial and long-term reserves requirements will affect only those communities with future service obligations incurred through Type A and Type B contracts, the definitions of which are derived from accepted industry standards.

SIGNIFICANT ISSUES

The Amendment ensures that the requirements related to the provision of future health services apply only to those communities that have contractually incurred those obligations.

ADMINISTRATIVE IMPLICATIONS

The ALTSD is responsible for issuing the regulations regarding reserves, disclosures and for other administrative tasks.

Synopsis of SPAC Amendment

The Senate Public Affairs Committee Amendment further defines “liquid reserves” as cash or other assets available within sixty days, as opposed to thirty days; and “net operating expenses” as costs of operating a community that exclude amortization or depreciation, in addition to long-term debt.

The Amendment clarifies mandatory disclosure statements, as follows:

- requires financial disclosures and consumer guides be given to a prospective resident seven days before entering into a contract, or prior to their first payment, whichever comes first;
- provides that financial disclosure statements may refer to assets of the local community, or of its parent corporation;
- provides for a mandatory actuarial analysis every five years that may be in summary form with a “future-service obligation calculation” computed annually, as opposed to a full actuarial analysis every three years; and
- provides for a “statement of activities” as opposed to an “income statement” to accommodate communities that are non-profit/not-for-profit entities.

The Amendment clarifies mandatory components of continuing care contracts:

- eliminates the requirement that resident deposits/entrance fees shall be “interest-bearing”;
- clarifies that the funds be maintained in a federally insured bank account until the resident has “taken possession of”, as opposed to “occupied” the unit; and
- moves the contract’s disclosure statement counseling a prospective resident to consult with an attorney/financial advisor prior to signing from the front page to the signature page.

FISCAL IMPLICATIONS

Requiring an actuarial analysis to be completed every five years instead of every three years, and allowing a summary of the actuarial analysis be provided instead of the full report, will translate into cost savings for these communities than was provided for in the original bill.

The Amendment includes an annual future-service obligation calculation. The future-service obligation calculation is a calculation used by an accountant or actuary which would look at what a “community” (as defined in the bill) would have to pay, for all residents, to meet its obligation to provide lifetime care. Requiring this calculation every year may help demonstrate a community has enough cash and other assets to meet those obligations.

Synopsis of Original Bill

Senate Bill 70 amends the Continuing Care Act (CCA), Chapter 24 Article 17 NMSA 1978, to require greater disclosure and financial requirements on providers (facility owners) of continuing care communities.

Section 24-17-3 NMSA 1978, adds and defines the terms *liquid reserves* as cash or other assets that would become available within thirty days to satisfy the community’s expenses; and *net operating expenses* as the total costs of operating a community, including taxes and insurance but not long-term debt service.

Section 24-17-4 NMSA 1978, would require annual financial and reserve disclosure statements consistent with generally accepted accounting practices (GAAP) and an actuarial analysis every three years.

Section 24-17-6 NMSA 1978, would require providers to maintain a twelve-month reserve for long-term debts; and a three-month reserve of net operating expenses.

SB 70 also provides some general language clean-up.

FISCAL IMPLICATIONS

The AG note that the amendments in the bill may increase its investigative and enforcement efforts, but provides no additional appropriation.

NM has seven continuing care communities operating in the state. The amendments in the bill could pose a financial hardship for certain facility owners.

The bill would require that any deposits or entrance fees paid by a resident be held in an interest-bearing, federally insured bank account that is held separate from the owners’ operating accounts.

The bill would repeal existing language that allows providers the option of furnishing residents with an IRS return instead of an audited financial statement.

SIGNIFICANT ISSUES

The bill attempts to improve consumer protection of residents of continuing care communities.

Under the CCA, providers may charge incoming residents of a continuing care community entrance fees in exchange for continued care services that include independent-living and health-care services. SB 70 attempts to expand consumer protections for these residents.

The AG concludes that the bill provides reasonable disclosures so a consumer (resident) can make informed decisions before entering into an agreement for continuing care services.

The bill would require all providers, not just those that began operating after 1985, to conduct actuarial analyses.

PERFORMANCE IMPLICATIONS

Providers of continuing care communities currently file financial disclosure statements with the ALTSD. SB 70 would impose additional requirements on these providers of continuing care communities that do not exist under current law.

ALTSD is tasked with issuing notices of violations and referring violations to the AGO.

HPC reports that the federal government primarily only regulates health-facilities located within continuing care communities that rely on Medicaid and Medicare reimbursement.

ADMINISTRATIVE IMPLICATIONS

ALTSD states that the Department will be able to promulgate rules and regulations regarding financial reserves, disclosure and actuarial studies with existing staff.

OTHER SUBSTANTIVE ISSUES

Continuing care communities are an option for individuals needing long-term care. HSD notes that projections for 2015 indicate that 16.8%, or 343,000 New Mexicans, will be age 65 and older, increasing to 26% in 2030.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Facility owners would not be required to maintain minimum reserves, future residents' assets may be at risk.

AHO/mew:svb