

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/06/12  
**LAST UPDATED** 02/13/12    **HB** \_\_\_\_\_

**SPONSOR**    Senate Floor

**SHORT TITLE**    Nursing Home Contract Refunds    **SB** 275/SFLS/aSFL

**ANALYST** Esquibel

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY12	FY13		
N/A	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Aging and Long-Term Services Department (ALTSD)  
 Human Services Department (HSD)  
 Department of Health (DOH)  
 Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of Senate Floor Amendment

The Senate Floor amendment to the Senate Floor substitute for Senate Bill 275 (SB275/SFLS/aSFL) strike the provision in SB275/SFLS that would have made the bill applicable to adult assisted living facility contracts entered into or renewed after July 1, 2012. The amendments instead add an emergency clause to make the provisions of the substitute applicable upon enactment.

#### Synopsis of Senate Floor Substitute

The Senate Floor substitute for Senate Bill 275 (SB275/SFLS) would require DOH-licensed adult assisted living facilities to modify the contracts they make with their residents to allow for a prorated refund to the resident's estate or responsible party after a resident dies. The prorated refund would be based on the calculated daily rate for any unused portion of payment beyond the termination date after all charges have been paid. The substitute specifies the termination date shall be the date the unit is vacated by the resident due to the resident's death and cleared of all personal belongings.

SB275/SFLS indicates that if a resident's belongings are not removed within one week of the resident's death and the amount of the belongings does not preclude renting the unit, the facility may clear the unit and charge the resident's estate for moving and storing the items at a rate equal to the actual cost to the facility, not to exceed 10 percent of the regular rate for the unit. This provision is provided that the responsible party for the resident is given notice at least one week before the resident's belongings are removed. If the resident's belongings are not claimed within 45 days after notification, the facility may dispose of them.

### **FISCAL IMPLICATIONS**

Senate Bill 275 contains no appropriation.

The Human Services Department indicates that Medicaid recipients, according to HSD Medicaid policy, would have no patient liability through the Medicaid Medical Care Credit (MCC) for the month of entry into a long-term care facility or the month a client leaves the facility; therefore, there would be nothing to refund to the resident's estate or responsible party. The Medicaid program would not be responsible for "rent" for storing the deceased individual's belongings for the 45 days as outlined by the bill as the client's Medicaid coverage will have ended as of the date of death.

### **SIGNIFICANT ISSUES**

The Department of Health indicates its Division of Health Improvement (DHI) has promulgated regulations for nursing homes and intermediate care facilities specifying that nursing homes must fully inform residents in writing of the terms for refunding advance payments in case of transfer, death or voluntary or involuntary discharge. The regulations do not, however, specify that the prorated unused portion of an advance payment must be refunded to a deceased resident's estate.

The DHI requires assisted living facilities to complete an admission agreement for each resident that must include the refund provision in case of death, transfer, voluntary or involuntary discharge. As with nursing home regulations, assisted living facilities regulations do not specify that a refund must be given at the death of a resident.

### **ADMINISTRATIVE IMPLICATIONS**

The Department of Health's Division of Health Improvement (DHI) would be required to revise its regulations to reflect the changes included in SB275/SFLS/aSFL. The DHI would also have to revise the survey tools used to monitor assisted living facilities and train staff to utilize the new tools.

### **OTHER SUBSTANTIVE ISSUES**

The Aging and Long-Term Services Department (ALTSD) indicates its Ombudsman Program is unaware of any situation where a licensed nursing home in New Mexico did not refund per-paid rent upon the death or discharge of a resident. The ALTSD indicates this circumstance may be a concern for residents/families in assisted living facilities and could be handled through the Department of Health's regulatory authority.

RAE/lj