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SENATE BILL 91

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Bill Tallman

AN ACT

RELATING TO AGING; AMENDING SECTIONS OF THE CONTINUING CARE ACT
TO TRANSFER OVERSIGHT OF CONTINUING CARE FROM THE ATTORNEY
GENERAL TO THE SUPERINTENDENT OF INSURANCE.

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

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

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

15 E. "liquid reserves" means cash or other assets
16 that are available within sixty days to satisfy a community's
17 expenses and that do not include real property or interests in
18 real property;

19 F. "net operating expenses" means the total costs
20 of operating a community, including taxes and insurance but not
21 including amortization, depreciation or long-term debt service;

22 G. "person" means an individual, corporation,
23 partnership, trust, association or other legal entity;

24 H. "priority access to a nursing facility or
25 hospital" means that a nursing facility or hospital services

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1 the residents of independent living units or that there is a
2 promise of such health care or health-related services being
3 available in the future;

4 I. "provider" means the owner or manager of a
5 community that provides, or offers to provide, continuing care;

6 J. "resident" means, unless otherwise specified, an
7 actual or prospective purchaser of, nominee of or subscriber to
8 a continuing care contract;

9 K. "superintendent" means the superintendent of
10 insurance;

11 [~~K-~~] L. "type A" agreement means an extensive
12 entrance-fee contract that includes housing, residential
13 services, amenities and unlimited specific health-related
14 services with little or no substantial increase in monthly
15 payments, except to cover normal operating costs and inflation
16 adjustments;

17 [~~L-~~] M. "type B" agreement means a modified
18 entrance-fee contract that includes housing, residential
19 services, amenities and a specific amount of health care with
20 no substantial increase in monthly payments, except to cover
21 normal operating costs and inflation adjustments. After the
22 specified amount of health care is used, persons served pay
23 either a discounted rate or the full per diem rates for
24 required health care services; and

25 [~~M-~~] N. "unit" means the living quarters that a

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

3 SECTION 2. Section 24-17-8 NMSA 1978 (being Laws 1985,
4 Chapter 102, Section 8, as amended) is amended to read:

5 "24-17-8. CONSUMER'S GUIDE TO CONTINUING CARE
6 COMMUNITIES.--The office of [~~the attorney general~~]
7 superintendent of insurance and the aging and long-term
8 services department may publish and distribute a consumer's
9 guide to continuing care communities and may publish an annual
10 directory of communities in New Mexico."

11 SECTION 3. Section 24-17-10 NMSA 1978 (being Laws 1985,
12 Chapter 102, Section 10, as amended) is amended to read:

13 "24-17-10. RESTRAINT OF PROHIBITED ACTS--REMEDIES.--

14 A. Whenever the [~~attorney general~~] superintendent
15 has reasonable belief that any person is violating or is about
16 to violate any provision of the Continuing Care Act, or any
17 regulation promulgated pursuant to that act, and that
18 proceedings would be in the public interest, the [~~attorney~~
19 ~~general~~] superintendent may bring an action [~~in the name of the~~
20 ~~state~~] to restrain or prevent violations of that act or
21 regulations promulgated pursuant to that act. The action may
22 be brought in the district court of the county in which the
23 person resides or has the person's principal place of business
24 or in the district court for Santa Fe county. The [~~attorney~~
25 ~~general acting on behalf of the state~~] superintendent shall not

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1 be required to post bond when seeking a temporary or permanent
2 injunction in such action.

3 B. In any action filed pursuant to this section of
4 the Continuing Care Act, including an action with respect to
5 unimproved real property, the ~~[attorney general]~~ superintendent
6 may petition the district court for temporary or permanent
7 injunctive relief and restitution or remedies available
8 pursuant to Section 24-17-15 NMSA 1978.

9 C. Any person who is the subject of an action
10 brought under this section shall have the right to demand a
11 jury trial."

12 SECTION 4. Section 24-17-18 NMSA 1978 (being Laws 1991,
13 Chapter 263, Section 7) is amended to read:

14 "24-17-18. REPORT TO ~~[ATTORNEY GENERAL]~~ SUPERINTENDENT--
15 CIVIL ACTION--CIVIL PENALTIES.--Any time after the ~~[state~~
16 ~~agency on]~~ aging and long-term services department issues a
17 notice of violation, the ~~[state agency on aging]~~ department may
18 send the ~~[attorney general]~~ superintendent a written report
19 alleging a possible violation of the Continuing Care Act or any
20 rule adopted pursuant to that act. Upon receipt of that
21 report, the ~~[attorney general]~~ superintendent shall promptly
22 conduct an investigation to determine whether grounds exist for
23 formally finding a violation. If the ~~[attorney general]~~
24 superintendent makes that finding, ~~[he]~~ the superintendent
25 shall file an appropriate action against the alleged violator

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1 in a court of competent jurisdiction. Upon finding violations
2 of any provisions of the Continuing Care Act or any rule
3 adopted pursuant to that act, the court may impose a civil
4 penalty in the amount of five dollars (\$5.00) per resident or
5 up to five hundred dollars (\$500), in the discretion of the
6 court, for each day that the violation remains uncorrected
7 after the compliance date stipulated in a notice of violation
8 issued pursuant to the Continuing Care Act."