

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 and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

Herrera/ Armstrong, D/  
 Romero/Chandler/ **ORIGINAL DATE** 2/14/19  
**SPONSOR** Sanchez **LAST UPDATED** 3/04/19 **HB** 414/aHJC  
**SHORT TITLE** Notice of Nursing Home Closure **SB** \_\_\_\_\_  
**ANALYST** Chenier

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$5.0-\$10.0		\$5.0-\$10.0	Nonrecurring	Department of Health

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Health (DOH)

Aging and Long-Term Services Department (ALTSD)

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee Amendment to House Bill 414 adds two new subsections to the bill to define Medicaid and Medicare and to exclude nursing homes from the provisions of the bill when they have been involuntarily closed due to termination of the nursing facility's participation in Medicare or Medicaid by state or federal authorities.

#### Synopsis of Original Bill

House Bill 414 adds a new section to the Nursing Home Administrators Act and requires nursing home administrators to provide notice of nursing home closures. The bill would make it a misdemeanor to fail to provide the notice. Notices of closure shall be submitted to DOH, the office of the state Long-Term Care Ombudsman, and residents of the nursing home ninety days before the closure. Notices shall include a plan approved by DOH that includes adequate relocation of residents, assurances residents will be transferred to the most appropriate facilities, and ensure no new residents are admitted after the date of notification. Nursing homes are also required to have appropriate policies and procedures in place in case of a closure.

## **FISCAL IMPLICATIONS**

DOH said that revisions would be needed to current nursing home regulations, 7.9.2 NMAC, to include the provisions of the bill. If revisions are required, the estimated one-time cost to promulgate rules is between \$5 thousand and \$10 thousand.

ALTSD said the Long-Term Care Ombudsman (LTCO) does not provide oversight of Nursing Home Administrators and federal law requires that the LTCO receive a copy of any certified nursing home facility-initiated discharge. Therefore, this bill has no fiscal or operational impact for the LTCO program or the Aging & Long-Term Services Department.

## **SIGNIFICANT ISSUES**

DOH provided the following:

Currently, federal regulations for Nursing Homes require that the facility Administrator provide a notice to the state survey agency (DOH Division of Health Improvement), state long term care ombudsman, residents and their representatives of the facility closure with an approved plan assuring resident transfer to appropriate facilities, with additional requirements about not admitting new residents and the implementation of policy and procedures.

## **ADMINISTRATIVE IMPLICATIONS**

DOH provided the following:

The bill requires “at least 90 days before the date of closure” for a written notification to be given. However, federal law, which nursing homes must comply with, requires only 60 days notice prior to the date of closure. Under Section 1128I(h) and 1819(h)(4) of the Social Security Act and regulations at 42 CFR 483.70 (l) and (m), administrators of a nursing home must provide written notification of an impending closure of a facility which also includes the plan for relocation of residents at least 60 days prior to the impending closure. Amendments made in 2013 to Sections 483.12(a)(8) and 489.52(a)(2) reflect this requirement.

Federal regulations cited above already require specific notification of closure be given to the state survey agency, the State LTC Ombudsman, residents, legal representatives of such residents and other responsible parties; that the home administrator ensure the facility does not admit any new residents on or after the date on which such written notification is submitted; and, include in the plan to be approved by the State the transfer and adequate relocation of the residents by a date that would be specified by the State prior to closure, including assurances that the residents be transferred to the most appropriate facility. Under 42 CFR 483.70 (l) and (m), federal law requires the facility have in place policies and procedures to ensure that the administrator duties and responsibilities involve providing the appropriate notices in the event of a facility closure, as required by paragraph (l).

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

ALTSD said by not enacting this bill, it gives residents and/or their legal representatives less time to find adequate relocation. Federal law requires certified nursing homes to provide a 60 day notice. Since state regulations do not specifically address a nursing home closure, the regular discharge requirements would be followed by licensed only nursing homes, which only requires a 30 day notice.

EC/al/sb