

NEW MEXICO CONTINUING CARE ACT

24-17-1. Short title.

Sections 1 through 13 of this act may be cited as the "Continuing Care Act".

24-17-2. Findings and purpose.

A. The legislature finds that continuing care communities are an important and growing alternative for the provision of long-term residential, social and health maintenance needs for the elderly; however, the legislature also finds that severe consequences to residents may result when a provider becomes insolvent or unable to provide responsible care.

B. The purpose of the Continuing Care Act [24-17-1 NMSA 1978] is to provide for disclosure and the inclusion of certain information in continuing care contracts in order that residents may make informed decisions concerning continuing care and to provide protection for residents and communities.

24-17-3. Definitions.

As used in the Continuing Care Act [24-17-1 NMSA 1978]:

- 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 or advance fees and service or periodic fees, independent living and health or health-related services. Entrance or advanced fees do not include security or damage deposit fees that amount to less than three months' service or periodic fees. These services may be provided in the community, in the resident's independent living unit or in another setting, designated by the continuing care contract, to an individual not related by consanguinity or affinity to the provider furnishing the care. The services include, at a minimum, priority access to a nursing facility or hospital either on site or at a site designated by the continuing care contract;
- D. "continuing care contract" means an agreement by a provider to furnish continuing care to a resident;
- E. "person" means an individual, corporation, partnership, trust, association or other legal entity;
- F. "priority access to a nursing facility or hospital" means that a nursing facility or hospital services the residents of independent living units or that there is a promise of such health care or health-related services being available in the future;
- G. "provider" means the owner or manager of a community;
- H. "resident" means, unless otherwise specified, an actual or prospective purchaser of, nominee of or subscriber to a continuing care contract; and
- I. "unit" means the living quarters that a resident buys, leases or has assigned as part of the continuing care contract.

24-17-4. Disclosure.

A. A person who provides or offers to provide continuing care in this state shall furnish a current annual disclosure statement and a consumer's guide to continuing care communities as furnished by the aging and

long-term services department or the attorney general's office to actual residents and to a prospective resident at least seven days prior to entering into a continuing care contract with the prospective resident. For the purposes of this subsection, the obligation to furnish information to actual residents shall be deemed satisfied if a copy is given to the residents' association, if there is one, and a written message has been delivered to all residents that personal copies are available upon request.

B. The disclosure statement shall include:

- (1) a brief narrative summary of the contents of the disclosure statement written in plain language;
- (2) the name and business address of the provider;
- (3) if the provider is a partnership, corporation or association, the names, addresses and duties of its officers, directors, trustees, partners or managers;
- (4) the name and business address of any affiliate;
- (5) a statement as to whether the provider or any of its officers, directors, trustees, partners, managers or affiliates, within ten years prior to the date of application:
 - (a) was convicted of a felony, a crime that if committed in New Mexico would be a felony or any crime having to do with the provision of continuing care;
 - (b) has been held liable or enjoined in a civil action by final judgment, if the civil action involved fraud, embezzlement, fraudulent conversion or misappropriation of property;
 - (c) had a prior discharge in bankruptcy or was found insolvent in any court action; or
 - (d) had any state or federal licenses or permits suspended or revoked or had any state, federal or industry self-regulatory agency commence an action against him and the result of such action;
- (6) the name and address of any person whose name is required to be provided in the disclosure statement who owns any interest in or receives any remuneration from, either directly or indirectly, any other person providing or expected to provide to the community goods, leases or services with a real or anticipated value of five hundred dollars (\$500) or more and the name and address of the person in which such interest is held. The disclosure shall describe such goods, leases or services and the actual or probable cost to the community or provider and shall describe why such goods, leases or services should not be purchased from an independent entity;
- (7) the name and address of any person owning land or property leased to the community and a statement of what land or property is leased;
- (8) a statement as to whether the provider is, or is associated with, a religious, charitable or other organization and the extent to which the associate organization is responsible for the financial and contractual obligations of the provider or community;
- (9) the location and description of real property being used or proposed to be used in connection with the community's contracts to furnish care;
- (10) a statement as to whether the community maintains reserves to assure payment of debt obligations and the ability to provide services to residents and a description of such reserves;
- (11) for those communities that charge an entrance fee that were not in operation on June 14, 1985, an actuarial analysis of the community performed by an actuary experienced in analyzing continuing care communities;
- (12) an audited financial statement as of the end of the provider's last fiscal year or a copy of the previous year's tax filings with the internal revenue service;
- (13) a sample copy of the contract used by the provider; and

- (14) a list of documents and other information available upon request, including:
- (a) a copy of the Continuing Care Act [24-17-1 NMSA 1978];
 - (b) if the provider is a corporation, a copy of the articles of incorporation; if the provider is a partnership or other unincorporated association, a copy of the partnership agreement, articles of association or other membership agreement; and if the provider is a trust, a copy of the trust agreement or instruments;
 - (c) resumes of the provider and officers, directors, trustees, partners or managers;
 - (d) a copy of lease agreements between the community and any person owning land or property leased to the community;
 - (e) information concerning the location and description of other properties, both existing and proposed, of the provider in which the provider owns any interest and on which communities are or are intended to be located and the identity of previously owned or operated communities;
 - (f) a copy of the community's policies and procedures; and
 - (g) such other data, financial statements and pertinent information requested by the resident with respect to the provider or community, or its directors, trustees, members, managers, branches, subsidiaries or affiliates, that is reasonably necessary for the resident to determine the financial status of the provider and community and the management capabilities of the managers and owners, including the most recent audited financial statements of comparable communities owned, managed or developed by the provider or its principal.

C. Each year, within one hundred eighty days after the end of the community's fiscal year, the provider shall furnish to actual residents the disclosure statement as outlined in this section. For purposes of this subsection, the obligation to furnish the required information to residents shall be deemed satisfied if the information is given to the residents' association, if there is one, and a written message has been delivered to all residents stating that personal copies of the information are available upon request.

24-17-5. Contract information.

- A. A continuing care contract shall be written in clear and understandable language.
- B. A continuing care contract shall, at a minimum:
 - (1) describe the community's admission policies, including age, health status and minimum financial requirements, if any;
 - (2) describe the health and financial conditions required for a person to continue to be a resident;
 - (3) describe the circumstances under which the resident will be permitted to remain in the community in the event of possible financial difficulties of the resident;
 - (4) list the total consideration paid, including donations, entrance fees, subscription fees, periodic fees and other fees paid or payable; provided, however, that a provider cannot require a resident to transfer all the resident's assets to the provider or community as a condition for providing continuing care and the provider shall reserve the right to charge periodic fees;
 - (5) describe in detail all items of service to be received by the resident such as food, shelter, medical care, nursing care and other health services and whether services will be provided for a designated time period or for life;
 - (6) provide as an addendum to the contract a description of items of service, if any, that are available to the resident but are not covered in the entrance or monthly fee;

- (7) specify taxes and utilities, if any, that the resident must pay;
- (8) specify that deposits or entrance fees paid by or for a resident shall be held in trust for the benefit of the resident in a federally insured New Mexico bank until the resident has occupied his unit or the resident's contract cancellation period has ended;
- (9) state the terms under which a continuing care contract may be canceled by the resident or the community and the basis for establishing the amount of refund of the entrance fee;
- (10) state the terms under which a continuing care contract is canceled by the death of the resident and the basis for establishing the amount of refund, if any, of the entrance fee;
- (11) state when fees will be subject to periodic increases and what the policy for increases will be; provided, however, that the provider shall give advance notice of not less than thirty days to the residents before the change becomes effective and increases shall be based upon economic necessity, the reasonable cost of operating the community, the cost of care and a reasonable return on investment as defined by rules promulgated by the aging and long-term services department no later than January 31, 2006;
- (12) state the entrance fee and periodic fees that will be charged if the resident marries while living in the community, the terms concerning the entry of a spouse to the community and the consequences if the spouse does not meet the requirements for entry;
- (13) indicate funeral and burial services that are not furnished by the provider;
- (14) state the rules and regulations of the provider then in effect and state the circumstances under which the provider claims to be entitled to have access to the resident's unit;
- (15) list the resident's and provider's respective rights and obligations as to any real or personal property of the resident transferred to or placed in the custody of the provider;
- (16) describe the rights of the residents to form a residents' association and the participation, if any, of the association in the community's decision-making process;
- (17) describe the living quarters purchased by or assigned to the resident;
- (18) provide under what conditions, if any, the resident may assign the use of a unit to another;
- (19) include the policy and procedure with regard to changes in accommodations due to an increase or decrease in the number of persons occupying an individual unit;
- (20) state the conditions upon which the community may sublet or relet a resident's unit;
- (21) state, in the event of voluntary absence from the community for an extended period of time by the resident, what fee adjustments, if any, will be made;
- (22) include the procedures to be followed when the provider temporarily or permanently changes the resident's accommodations, either within the community or by transfer to a health facility; provided that the contract shall state that such changes in accommodations shall only be made to protect the health or safety of the resident or the general and economic welfare of all other residents of the community;
- (23) if the community includes a nursing facility, describe the admissions policies and what will occur if a nursing facility bed is not available at the time it is needed;
- (24) describe, if the resident is offered a priority for nursing facility admission at a facility that is not owned by the community, with which nursing facility the formal arrangement is made and what will occur if a nursing facility bed is not available at the time it is needed;
- (25) include the policy and procedures for determining under what circumstances a resident will be considered incapable of independent living and will require a permanent move to a nursing facility. The contract shall also state who will participate in the decision for permanent residency in the nursing facility

and shall provide that the resident shall have an advocate involved in that decision; provided that if the resident has no family member, attorney, guardian or other responsible person to act as the resident's advocate, the provider shall request the local office of the human services department to serve as advocate;

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

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

(28) state, in bold type of not less than twelve-point type on the front of the contract, that a contract for continuing care may present a significant financial risk and that a person considering a continuing care contract should consult with an attorney and with a financial advisor concerning the advisability of pursuing continuing care. Provided, however, failure to consult with an attorney or financial advisor shall not be raised as a defense to bar recovery for a resident in any claims arising under the provisions of the Continuing Care Act [24-17-1 NMSA 1978];

(29) state, in bold type of not less than twelve-point type on the front of the contract, that nothing in the contract or the Continuing Care Act should be construed to constitute approval, recommendation or endorsement of any continuing care community by the state of New Mexico;

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

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

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

"NOTICE OF CANCELLATION

Date: _____

(enter date of transaction)

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

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

_____ (Name of Provider)

at

(Address of Provider's Place of Business)

not later than midnight of _____

(Date)

I hereby cancel this transaction.

(Buyer's Signature)

(Date)".

24-17-6. Escrow requirements.

Any deposits or entrance fees paid by or for a resident shall be held in trust for the benefit of the resident in a federally insured New Mexico bank until the resident has occupied his unit or the resident's contract cancellation period has ended.

24-17-7. Disclosure statements filed with the state agency on aging for public inspection.

A provider shall file a copy of the disclosure statement and any amendments to that statement with the state agency on aging for public inspection during regular working hours.

24-17-8. Consumer's guide to continuing care communities.

The office of the attorney general and the aging and long-term services department may publish and distribute a consumer's guide to continuing care communities and may publish an annual directory of communities in New Mexico.

24-17-9. Repealed.

24-17-10. Restraint of prohibited acts; remedies.

A. Whenever the attorney general has reasonable belief that any person is violating or is about to violate any provision of the Continuing Care Act [24-17-1 NMSA 1978] and that proceedings would be in the public interest, he may bring an action in the name of the state to restrain or prevent violations of that act. The action may be brought in the district court of the county in which the person resides or has his principal place of business or in the district court for Santa Fe county. The attorney general acting on behalf of the state shall not be required to post bond when seeking a temporary or permanent injunction in such action.

B. In any action filed pursuant to this section of the Continuing Care Act, including an action with respect to unimproved real property, the attorney general may petition the district court for temporary or permanent injunctive relief and restitution.

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

24-17-11. Applicability.

A. The provisions of the Continuing Care Act [24-17-1 NMSA 1978] apply equally to for-profit and nonprofit provider organizations and shall be construed as the minimum requirements to be imposed upon any person offering or providing continuing care.

B. The provisions of the Continuing Care Act do not apply to closed-membership organizations that operate communities solely for the benefit of their members.

24-17-12. Right to a written transfer policy.

A provider shall adopt and follow a written policy establishing the procedure and criteria applicable when deciding to transfer residents from one level of care to another.

24-17-13. Right to organize and participate.

A. Residents have the right to organize a resident association and to engage in concerted activities for the purpose of keeping themselves informed of the operation of the facility or for the purpose of other mutual aid or protection. A provider shall take appropriate steps to encourage and facilitate the establishment of a resident association in each facility. At a minimum, these steps shall include the posting in conspicuous places of written notices of the right of residents to organize into a resident association and to use the facility for association meetings.

B. The administration of an operating facility shall meet at least quarterly with the resident association, if one exists, or with interested residents if there is no resident association. The following procedures shall apply:

- (1) the provider shall notify all residents at least seven days in advance of each meeting;
- (2) the provider shall post the meeting agenda in a conspicuous place and make copies of it available; and
- (3) if the resident association requests, the provider shall ensure that a member or an authorized representative of the board of directors, a general partner or a principal owner attends the meeting.

24-17-14. Right to protection against retaliatory conduct.

Retaliatory conduct by a provider or any person acting on the provider's behalf against a resident for lawful efforts to secure or enforce his legal rights as a resident is a violation of the Continuing Care Act [24-17-1 NMSA 1978].

24-17-15. Right to civil action for damages.

A. Residents, as a class or otherwise, may bring an action in a court of competent jurisdiction to recover actual and punitive damages for injury resulting from a violation of the Continuing Care Act [24-17-1 NMSA 1978].

B. The court may award reasonable attorneys' fees and costs to the prevailing party in an action brought under this section.

C. The right of a resident to bring an action pursuant to this section is in addition to any other rights or remedies the resident may have by statute or common law.

24-17-16. Identification and procedures for correction of violations.

A. If the state agency on aging determines that a person or an organization has engaged in or is about to engage in an act or practice constituting a violation of the Continuing Care Act [24-17-1 NMSA 1978] or any rule adopted pursuant to that act, the state agency on aging shall issue a notice of violation in writing to that person or organization and send copies to the resident association of any facility affected by the

notice.

B. The notice of violation shall state the following:

- (1) a description of a violation at issue;
- (2) the action that, in the judgment of the state agency on aging, the provider should take to conform to the law or the assurances that the state agency on aging requires to establish that no violation is about to occur;
- (3) the compliance date by which the provider shall correct any violation or submit assurances;
- (4) the requirements for filing a report of compliance; and
- (5) the applicable sanctions for failure to correct the violation or failure to file the report of compliance according to the terms of the notice of violation.

C. At any time after receipt of a notice of violation, the person or organization to which the notice is addressed or the state agency on aging may request a conference. The state agency on aging shall schedule a conference within seven days of a request.

D. The purpose of the conference is to discuss the contents of the notice of violation and to assist the addressee to comply with the requirements of the Continuing Care Act. Subject to rules that the state agency on aging may promulgate, a representative of the resident association at any facility affected by the notice shall have a right to attend the conference.

E. A person receiving a notice of violation shall submit a signed report of compliance as provided by the notice. The state agency on aging shall send a copy to the resident association of any facility affected by the notice.

F. Upon receipt of the report of compliance the state agency on aging shall take steps to determine that compliance has been achieved.

24-17-17. Rules and regulations authorized.

The state agency on aging shall promulgate all rules and regulations necessary or appropriate to administer the provisions of the Continuing Care Act [24-17-1 NMSA 1978].

24-17-18. Report to attorney general; civil action; civil penalties.

Any time after the state agency on aging issues a notice of violation, the state agency on aging may send the attorney general a written report alleging a possible violation of the Continuing Care Act [24-17-1 NMSA 1978] or any rule adopted pursuant to that act. Upon receipt of that report, the attorney general shall promptly conduct an investigation to determine whether grounds exist for formally finding a violation. If the attorney general makes that finding, he shall file an appropriate action against the alleged violator in a court of competent jurisdiction. Upon finding violations of any provisions of the Continuing Care Act or any rule adopted pursuant to that act, the court may impose a civil penalty in the amount of five dollars (\$5.00) per resident or up to five hundred dollars (\$500), in the discretion of the court, for each day that the violation remains uncorrected after the compliance date stipulated in a notice of violation issued pursuant to the Continuing Care Act.

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