

NEW MEXICO RESOURCES

Attorney General's Office

505-827-6000

Consumer Protection Division

505-222-9100

Aging and Long-Term Services Department

1-505-476-4799

Aging and Disability Resource Center

1-800-432-2080

Long-Term Care Ombudsman Program

1-866-451-2901

Adult Protective Services

1-866-654-3219

New Mexico Consumer's Guide to Continuing Care Communities



Bill Richardson, Governor

Michael Spanier, Secretary



Gary K. King, Attorney General



TABLE OF CONTENTS

IMPORTANT POINTS TO REMEMBER	4
WHAT IS CONTINUING CARE	6
COMMUNITY OWNERSHIP, FINANCIAL CONDITION AND ADMINISTRATION	8
POLICIES AND PROCEDURES	11
TYPES OF CONTINUING CARE COMMUNITIES	13
PAYING FOR CONTINUING CARE	14
HOUSING AND SERVICES	17
THE CONTINUING CARE ACT	21
REMEDIES IN THE CASE OF PROBLEMS	22

Acknowledgements

The Attorney General's Office and the Aging and Long-Term Services Department would like to extend special thanks to:

Jonelle Maison and Shannon Cupka.

Jonelle is the one person most responsible for the original consumer's guide, and Shannon is responsible for updating and reformatting the current version.

REMEDIES IN THE CASE OF PROBLEMS

Other Remedies:

Depending on the facts of your situation, there are also other bases of action including:

- Breach of Contract
- Fraud/Misrepresentation
- Unfair Trade Practices Act
- Negligence
- Unjust Enrichment

Before pursuing any possible course of action, you should always contact an attorney. If a resident feels he or she has been the victim of an unfair or deceptive trade practice, he or she may contact that Consumer Protection Division at the Attorney General's Office at 1-800-678-1508.

REMEDIES IN THE CASE OF PROBLEMS

Continuing Care Act:

Under NMSA 1978, Section 24-17-15, residents as a class or otherwise may file a civil suit for actual damages, punitive damages and attorneys' fees for a violation of the Continuing Care Act.

In addition, under NMSA 1978, Section 24-17-16, the Aging and Long-Term Services Department (ALTSD) can issue notices of violation to persons or organizations it determines have violated or are about to violate the Act. ALTSD will require a signed report of compliance from the violator. Under NMSA 1978, Section 24-17-18 ALTSD may also send the Attorney General a written report alleging a possible violation of the Act. Upon receipt of the report, the Attorney General will conduct an investigation to determine whether grounds exist for formally finding a violation. If a violation is found, then the Attorney General will file an appropriate action against the alleged violator in court.

INTRODUCTION

New Mexico, with its sunbelt climate, natural beauty and cultural diversity, can provide a wonderful environment for retired persons. In fact, seniors make up the fastest growing segment of our population. In response to this growth, we expect to see an increase in the number of services designed to meet the needs of senior citizens, including continuing care communities.

The New Mexico Consumer's Guide to Continuing Care Communities has been prepared by the New Mexico Aging and Long-Term Services Department and the Office of the Attorney General to provide you with information about continuing care and to help you assess the communities in which you are interested. After all, this may be the most important financial and lifestyle decision you will make as a senior citizen.

We want to protect our senior citizens and prevent any problems before they arise. In that spirit, please read this brochure carefully. We believe informed residents of continuing care communities will ultimately be satisfied residents.

January 2010

Michael Spanier
Secretary
Aging and Long-Term Services
Department

Gary K. King
Attorney General

IMPORTANT POINTS TO REMEMBER AS YOU ASSESS CONTINUING CARE COMMUNITIES

1. **This may be the most significant decision you will make** as a senior citizen. Do not be rushed into signing a contract. Make an informed choice.
2. **Do a thorough investigation of each community in which you are interested** to see which will best meet your needs now and in the future. Determine whether a continuing care community will fit with your personal lifestyle. Talk to residents, staff and volunteers. Spend time in the town in which the community is located to see that it can also meet your needs.
3. **Read the New Mexico Continuing Care Act** in order to know what your rights are concerning disclosure and protection. (Refer to page 21.)
4. **You are not buying real estate.** You are investing in a contract. The continued solvency of the facility is important to the viability of your investment.
5. **Examine all financial data** (as described on pages 8-10). If the community is a new project, ask for a copy of its prospectus and actuarial analysis.

THE CONTINUING CARE ACT

The Continuing Care Act, NMSA 1978, Sections 24-17-1 to -18, requires that continuing care communities in New Mexico provide to actual and potential residents information concerning ownership, operation and finances. In addition, the Act specifies certain information that must be included in the contract you sign.

There is no state agency responsible for overseeing the operations of communities to assure that finances remain adequate to provide care and services promised. Therefore it is important that you do a thorough investigation of any community in which you are interested, including talking to your lawyer or financial advisor, before signing a contract.

Copies of the Act and the Consumer's Guide are available from continuing care communities, the Aging and Long-Term Services Department or the Office of the New Mexico Attorney General. (See telephone numbers, page 24.) You can read the Continuing Care Act or get additional copies of this Consumer's Guide on the Aging and Long-Term Services Department website, <http://www.nmaging.state.nm.us> by going to the A-Z index and choosing the link to the Continuing Care Act or the link to the Consumer's Guide to Continuing Care Communities.

You can also find information about the state licensing of long-term care facilities at the New Mexico Department of Health website, <http://dhi.health.state.nm.us>.

Recreational and Educational Activities

This is probably the most subjective component of a community in that your interest in what is provided depends on your personal lifestyle. It is definitely worth your careful consideration. If you are not a swimmer, you may not care if the community has a pool; if you like to play tennis, it may be very important that tennis courts are available. In this category, it is also important where the community is located. If you like the symphony or museums, you may want to live in or near a city that offers these amenities.

Transportation

Most communities provide transportation, though it may be limited to certain uses such as transportation to the doctor's office. Ask about the community's policies on and fees, if any, for transportation.

IN SUMMARY

A continuing care community exists to serve the needs of its residents. Its purpose is to provide security and protection to further your goal of living as independently as possible, including maintaining your autonomy as an individual, the right to make decisions affecting your life and balancing the desire to live in a community with the desire for privacy. Only you can decide if a community offers what you need and want. We hope that you will give this important decision the thought and care it deserves. That way, whatever you decide should be a good decision for you.

6. You are entitled to a copy of the community's rules, regulations and procedures and a sample contract. Make sure you get one.
7. Never consider investing in a community unless you have personally visited the facility.
8. Medical facilities in the state must be licensed. Ask to see the latest inspection report of the community's health care facility.
9. Except for their health care facilities, continuing care communities in New Mexico are not licensed by the state; therefore it is important that you "do your homework" before you decide to invest in a community.
10. Be quite clear about who, if anyone, assumes legal responsibility for financial and contractual obligations of the community.
11. Understand fully the respective rights of the resident and the provider concerning fees, accommodations, changes in resident status, services, discharges and transfers, termination of contract and refunds.
12. **Do not sign a contract before consulting with an attorney and financial advisor.**

WHAT IS CONTINUING CARE?

Continuing care, or life care, retirement communities offer an attractive lifestyle option for seniors who want to live independently in a community while having the security of knowing that long-term care and other services are available when needed.

Typically, a continuing care community offers a variety of housing choices, from studios to one- and two-bedroom apartments or cottages, and special services such as meals, housekeeping, transportation, recreation and health care.

The distinction between continuing care communities and other retirement homes is the guarantee of, at a minimum, priority access to a nursing facility, usually at a cost less than that paid by the general public. However, as with other services provided, communities differ in what level of long-term care is offered, and what the cost will be.

Read the contract for the exact services offered.

Continuing care communities represent an important and growing alternative to traditional choices for the retired person. Keep in mind that many continuing care communities have minimum age and health standards that apply to their care continuum. These requirements should be clearly identified in the contract.

HOUSING and OTHER SERVICES (continued)

Meals and Special Diets

Most communities provide centralized dining facilities and may require that you eat at least one meal a day there. In addition, many communities will provide special diets ordered by your physician, either as part of the overall service or for an additional fee.

Personal Assistance

Personal assistance is the term used to describe those services that are needed so that you can continue to live independently in your residence. Depending on your physical condition, you may need short or long-term assistance with bathing and eating. You may need housekeeping services more often than usual, or need to have a nurse check on you and give you your medication. You should know what services are part of your contract or available for a fee in the community and what services you must purchase on your own from outside the community.

Social Services

Social services are specific types of support services. Examples of social services include counseling and rehabilitative therapies. Like personal assistance, you should know what services are part of your contract or available for a fee in the community and what services you must purchase on your own from outside the community.

HOUSING and OTHER SERVICES (continued)

SERVICES

While services vary, and it would be impossible to give an exhaustive list of what may be available, some services tend to be standard in almost all communities and will often include:

Medical Care

The medical care component of continuing care is a significant aspect of any contract you may sign; therefore, it is important to know what services are covered and what services you must pay for. Generally, an insurance model community offers an ***Extensive Health Care Guarantee***, that is, monthly fees are not increased as a result of a resident's move to the nursing facility. This does not mean that all medical care is included. In most communities, the extensive health care guarantee covers the per diem rate of the facility; the resident must pay his/her physician and the cost of medicines and special procedures ordered by the physician. In addition, if a resident needs care that cannot be provided by the nursing facility, e.g., specialized hospitalization and certain rehabilitation services, the resident may be financially responsible for the cost of such care.

Most fee-for-service communities offer their residents a ***Limited Health Care Guarantee***, such as a discount on the cost of nursing care. This often is provided as a certain number of free days before the resident must pay the per diem rate charged by the facility. Typically, the number of free days is granted annually and is noncumulative.

You should look carefully at your personal lifestyle as well as your financial situation before you decide to investigate a particular community.

This brochure can only give you general information. Therefore, you should consult with your lawyer or financial advisor about the specifics of a particular community. As with any contract, it is important to have your own legal counsel review it before you sign.

Remember:

**You are not buying Real Estate.*
You are investing in a contract
for housing and services.**

Most continuing care contracts are for life, so it is important to determine if the agreement, and the community, will financially and otherwise be able to meet your individual needs in the years to come.

**There may be communities in which you do buy real estate, but they are the exceptions, and still, the contract is the most important part of the community's offering. If you do buy real estate in a community, you need to be aware of restrictions. It is likely that you or your heirs will be limited to selling your residence to someone who meets the entrance requirements.*

COMMUNITY OWNERSHIP, FINANCIAL CONDITION, AND ADMINISTRATION

One of the most important aspects of your investigation concerns ownership, financial condition and administration of the community. The community's **Disclosure Statement** will provide you with information on ownership and financial condition of the community and is essential to review prior to signing any contract.

Ownership

You should know not only who owns the community, but who, if anyone, has a legal obligation in the case of failure in the community. You should be wary of a community that tells you that you are protected by a resident's lien if the community goes bankrupt. A lien is a legal right or interest that a creditor has in another's property until a debt or duty that it secures is satisfied. Almost any lien against the property or other assets of the community (such as a lien by a financial institution) will be superior to a resident's lien. Therefore, there may be nothing left for residents after the primary liens are settled.

Financial Condition

In investigating the community's ability to meet its financial and contractual obligations, you should look carefully at the **Reserves**, in other words, the funds set aside for future use. Reserves are important in the case of an emergency or economic hardship, as well as when a community has incurred long-term liabilities, for example, through bonds, bank loans or pre-paid

HOUSING AND OTHER SERVICES

Continuing care communities vary in the types of housing and the range of services provided. Although the contract will specify in detail what is provided, the following will give you some ideas of what to look for:

HOUSING

Your personal taste will govern what kind of housing you choose, but these are examples of the kind of information you will want:

- Who is responsible for maintenance and repairs, and what does that cover?
- Are appliances and other furnishings, such as carpets and drapes provided? If so, what is included?
- Are there options for furnished or unfurnished units?
- Are housekeeping services available, and must you pay extra for such services?
- What safety features, such as grab bars and emergency call buttons, are included in the design of the unit?
- What security measures are taken for your safety in your unit and in the community?
- Is the unit, and the community as a whole, accessible to the handicapped?
- Are utilities covered in the monthly fees?
- Are gardening and lawn services included in the fees?
- Does the provider have the right to enter your unit without prior notice to you?

Under New Mexico law, the provider must reserve the right to charge monthly fees. That means that a community cannot promise to take care of you upon payment of a ***Total Fee in Advance*** or a ***Lump Sum Only Payment***. Continuing care communities are expensive to operate, and it is reasonable to assume that fees will fluctuate with the general economy. You should **BEWARE** of a community that promises monthly fees will not be increased or will be increased only a certain percentage over your lifetime.

In addition, the law prohibits a ***Total Transfer of Your Assets*** to pay entrance and monthly fees. This means that a provider cannot ask that you turn over all your assets to the community in return for taking care of you. In the early days of the continuing care industry, total transfer of assets was a common practice, but it was found to place residents in the untenable position of extreme dependency on the provider, and if the community failed financially, the resident had no resources with which to start over.

Increases in fees and rates must be based upon economic necessity, the reasonable cost of operating the community, the cost of care and a reasonable return on investment. Communities must abide by Aging and Long-Term Services regulations whenever increasing fees and rates.

**NMSA 1978, Section 24-17-5(B)(11)
9.2.24 NMAC**

services in the form of the residents' entrance fees. In order to better assure payment when due, a bank may require the community to maintain reserves as part of a loan agreement.

Other reserves for such things as equipment replacement, the future health care promised to its residents, financial aid and contingencies, if held at all, are maintained through management or board policy. If the disclosure statement does not give you enough information concerning this important indicator of financial condition be sure to ask for additional information.

If you are considering a community that is a new project, ask for a copy of the ***Prospectus*** and the ***Actuarial Analysis***. An actuarial analysis is a statistical computation of risks and costs based on a set of assumptions, in this case, the ability to provide care as stated in the community's contract. You may need assistance in interpreting this material. Talk to your lawyer, financial advisor, or other people knowledgeable in this area.

Although the law does not require communities which were in operation prior to June 14, 1985 to perform actuarial analyses, some may have done so and you will want a copy of the actuary's report. Only an actuarial analysis can tell you if a community is likely to have enough cash to cover future health care costs. It is important that a community make sound actuarial assumptions, including mortality and morbidity rates of residents, new entrants into the community and economic forecasts, in order to evaluate its long-term financial status and its ability to provide care as promised.

Administration

The *Disclosure Statement* can only hint at the adequacy of the administration of the community.

How well a community is managed is indicative of both its quality of care and its financial stability. Some owners manage their communities directly, others contract for management; in either case, it is important to know how well they perform.

If the owner or manager provides continuing care at other communities, you will have a ready source of information to aid your investigation. Do not assume, however, that the fact of experience is sufficient evidence; you must assess that experience and make your own judgment. If the provider does not have experience at other communities, look at the history of the community you are investigating. If the community is new, ask about the provider's general business experience.

The best source of information concerning management is residents. When you visit the community, after you have talked to the admissions staff, talk to the residents. Members of the *Resident Association* should be able to answer most of your questions concerning the effectiveness of community management. A telling point may be the degree to which management solicits and listens to the opinions of the residents in the formulation and carrying out of policies.

Entrance fees are used to pay long-term debt obligations, capital expenditures and, in communities that offer extensive health care guarantees, to defray the cost of operating the nursing facilities. You should look carefully at the financial information provided by the community to determine if entrance fees are adequate to meet these obligations.

Most communities require that a potential resident make a *Reservation Deposit*. Some communities require *Payment Prior to Occupancy*, which is substantially more than a deposit. The Continuing Care Act requires that all money paid in advance of occupancy be held in trust for the benefit of the resident until the resident has moved in or the contract cancellation period has expired. Depending on the contract, the interest from monies held in trust on your behalf may go to the provider, not you. Therefore, if you are on a waiting list or wish to delay occupancy, you may want to negotiate the amount of the advance payment in order not to lose the income from a substantial payment before you have moved into the community.

Paying for continuing care includes the payment of a *Monthly Fee*. The monthly fees cover the operational expenses of providing services and maintaining the facilities. Fees are based in part on the type of residence you have as well as services provided by the community. Again, look carefully at the community's financial information to assess the adequacy of fees to cover offered services.

An insurance model may offer services that are paid for as they are used. And some communities may provide contracts for both true life care and fee-for-service.

Again, the major difference between the insurance model and the fee-for-service model is the degree to which nursing care is provided without an increase in fees.

PAYING FOR CONTINUING CARE

As a rule, true life care is more expensive at the beginning, because of the higher entrance fee; fee-for-service communities become more expensive if you get sick or need extensive services. After deciding that you are interested in continuing care and that it fits your lifestyle, you need to consider what type of community is best for you. Will you be able to comfortably afford the monthly fees after paying the entrance fee required by an insurance model community? Do you have enough savings to pay for nursing care or other services when you need them at a fee-for-service community? Your lawyer or financial advisor should be able to help you make that determination.

Whether it is called an entrance fee, accommodation fee, endowment fee or some other term, the **Entrance Fee** is a one-time fee which you pay to become a resident of a continuing care community. The amount you pay is usually determined, at least in part, by the type of housing you have selected and the kinds of services the community provides.

POLICIES AND PROCEDURES

As you begin investigating a community in which you are interested, be sure to ask for a copy of its policies and procedures. The community's handbook should give you information concerning a number of important issues.

Contract Cancellation

- Under what circumstances may a continuing care contract be canceled by the resident or the community and what is the basis for establishing the amount of refund, if any, of the entrance fees?
- Are any refunds due your estate in the event of your death?

Transfers

- How are decisions made for an involuntary transfer to the nursing facility? Must you formally specify a family member, attorney or some other responsible person to serve as your advocate?
- What are your rights in the event the community wishes to temporarily or permanently transfer you to an outside facility? For example, if you need psychiatric services that cannot be provided by the community, what rights do you have and what obligations does the community have? What happens in the event a nursing facility bed is not available when you need it?

Fees

- How are entrance and monthly fees set and what is the policy covering periodic increases of fees?
- How are fees adjusted if you marry, your spouse dies or you wish to change your accommodations?

Use of the Community

- What are your and the community's rights and obligations concerning the use and maintenance of the common areas and your private residence?
- What are your rights concerning the formation of a resident association? Is resident participation invited in the community's decision-making process?
- What is the policy concerning visitors and overnight guests?
- If you take an extended vacation, can you sublet your residence or will fee adjustments be made?
- If you marry someone who is not a resident of the community, what is the basis for establishing that person's entrance fee?
- What happens if you marry someone who does not meet the community's entrance requirements?

TYPES OF CONTINUING CARE

There are two basic approaches to the delivery of continuing care: the INSURANCE MODEL and the FEE-FOR-SERVICE MODEL. The insurance model, also referred to as "true life care," is characterized by the payment of a substantial entrance fee and monthly fees based on the type of housing unit the resident occupies and the type of services that are offered. The insurance model guarantees nursing care when needed. Although monthly fees may increase periodically for all residents of a true life care community, a resident's fees will not be increased due to his or her transfer to the nursing facility.

A fee-for-service community does not always charge an entrance fee, but if it does, the fee is usually less than that charged by an insurance model community. Fees are assessed for each service used and nursing home care is charged on a per diem basis as other, non-community nursing homes. Many fee-for-service communities offer a discount for residents who are transferred to the nursing facility; for example, the charges may be less than if the person were in a non-community nursing home or the contract may specify a number of days of free care before the resident will be charged the normal rate.

Some communities use a combination of the insurance model and the fee-for-service model in designing their services and contracts. A fee-for-service model may offer a package of basic services for a monthly fee.