

## NOTICE OF RULEMAKING AND PUBLIC HEARING

The Aging & Long-Term Services Department (Department) is proposing to repeal and replace New Mexico Administrative Code (NMAC) Rule 9.2.24 NMAC - *Rate and Fee Increases by Continuing Care Communities*.

Authority for the proposed rule's repeal and replacement is provided by Subsection E of Section 9-23-6 NMSA 1978, which states the following: "The secretary may make and adopt such reasonable procedural rules as may be necessary to carry out the duties of the department and its divisions."

The Department will hold a public hearing via Zoom link on Thursday May 19, 2022, from 9:00 a.m. to 12:00 p.m. to take comments regarding the proposed amendments to 9.2.24 NMAC.

Notice Date: April 5, 2022

Hearing Date and Time: May 19, 2022, from 9:00 a.m. to 12:00 p.m.

Adoption Date: Proposed as July 1, 2022

Statutory Authority: The Continuing Care Act, sections 24-17-1 through 24-17-18 NMSA 1978.

The Zoom link for the public hearing:

<https://altsd.zoom.us/j/85026024411>

Passcode: 287846

To attend the hearing by telephone please dial: (877) 853-5257 (Toll Free)

Meeting ID: 850 2602 4411

Passcode: 287846

Copies of the notice of rulemaking and proposed rule are available on the New Mexico Sunshine Portal at <https://ssp.nm.gov/> and on the ALTSD website at <https://nmaging.state.nm.us/news-events/ccrc-rule-making>.

### Background

The purpose of the proposed repeal and replacement of the rule is to comply with amendments made to the Continuing Care Act, Sections 24-17-1 through 24-17-18 NMSA 1978. The proposed rule will provide guidance on the administration of the Continuing Care Act in accordance with New Mexico law. The rule will no longer only address rate and fee increases by Continuing Care Communities. The rule will now be entitled "*The Administration of the Continuing Care Act*."

The Department is proposing to repeal and replace the rule, and is proposing the following substantive changes:

### 9.2.24.7 NMAC

Some definitions from the repealed rule are being maintained, including "expenses," "GAAP," "gift income," "income," "net income," "resident," and "return on investment." Some definitions are being maintained but amended, including "cost of care," "cost of operating the continuing care community," "economic necessity," and "investment income." New definitions include "affiliate," "ALTSD," "community," "continuing care," "fees," "liquid reserves," "net operating expenses," "person," "policy," "provider," "reserves," "type A agreement," and "type B agreement."

### 9.2.24.8 NMAC

This section clarifies that the continuing care contract shall clearly indicate which of the four factors referenced in this rule it will utilize for rate and fee increases.

### 9.2.24.9 NMAC

This section from the repealed rule is being maintained, except that Subsection B now refers to "assets less liabilities" instead of "owners' investment."

### 9.2.24.10 NMAC

This section from the repealed rule is being maintained, except that Subsection A now clarifies that rate and fee increases based on cost of care increases for providing medical care or health-related supportive services are governed by the continuing care contract.

#### **9.2.24.11 NMAC**

This section on historical and current data from the repealed rule is being maintained and renumbered, except that Subsection A now allows for a deviation from historical data when exigent circumstances exist, and Subsection C now differentiates between publicly available data and non-public data.

#### **9.2.24.12 NMAC**

This section from the repealed rule is being maintained and renumbered, except that it now clarifies that reasonable return on investment pertains to rate and fee increases.

#### **9.2.24.13 NMAC**

This section from the repealed rule is being maintained and renumbered.

#### **9.2.24.14 NMAC**

This section from the repealed rule is being maintained and renumbered.

#### **9.2.24.15 NMAC**

This section discusses liquid reserves and other reserves and delineates the requirements for a certificate of compliance and a corrective action plan. The prior section on reserves in the repealed rule is not being maintained in the new rule.

#### **9.2.24.16 NMAC**

This section outlines the requirements for a Continuing Care Community's annual disclosure statement.

#### **9.2.24.17 NMAC**

This section outlines the requirements for actuarial studies.

#### **9.2.24.18 NMAC**

This section outlines the process for the issuance of a notice of violation to a Continuing Care Community.

Throughout the proposed rule, changes have been made to address formatting requirements.

The register for the proposed repeal and replacement of this rule will be available April 5, 2022, on the ALTSD web site at <https://nmaging.state.nm.us/news-events/ccrc-rule-making>. If you do not have internet access, a copy of the proposed rule may be requested by contacting ALTSD in Santa Fe at (505) 670-5141.

Interested parties may submit written comments directly to: Aging & Long-Term Services Department, Office of the Secretary, ATT: Continuing Care Act Rules Public Comments, 2550 Cerrillos Rd., Santa Fe, New Mexico 87505.

Interested persons may also send comments via e-mail to: [ALTSD-CCRC.Comments@state.nm.us](mailto:ALTSD-CCRC.Comments@state.nm.us). Written mail and electronic mail must be received no later than 5:00 p.m. MT on May 19, 2022. Written comments will be given the same consideration as oral comments made at the public hearing. All written comments received will be posted as they are received on the ALTSD website at <https://nmaging.state.nm.us/news-events/ccrc-rule-making> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact ALTSD in Santa Fe at (505) 670-5141. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by ALTSD upon request by providing copies directly to a requestor or by making them available on the ALTSD website or at an ALTSD location nearest to the county of the requestor.