From: Elizabeth Dwyer <othelloetd@gmail.com>
Sent: Saturday, May 7, 2022 7:56 AM
To: Comments, ALTSD-CCRC, ALTSD <ALTSD-CCRC.Comments@state.nm.us>
Cc: Dwyer Elizabeth <othelloetd@gmail.com>
Subject: [EXTERNAL] Comments re: 9.2.24 NMAC Proposed Repeal and Replacement - ALTSD's "The Administration of the Continuing Care Act"

Comments re: 9.2.24 NMAC Proposed Repeal and Replacement
ALTSD's "The Administration of the Continuing Care Act"

I am communicating the following comments in response to an email sent on Friday, April 1, 2022, titled: 9.2.24 NMAC Proposed Repeal and Replacement – ALTSD's "The Administration of the Continuing Care Act". I serve as Chair of the Legislative and NaCCRA (L&N) Committee of The Neighborhood in Rio Rancho (NIRR) Residents' Council and serve on the Board of the New Mexico Regional Chapter of the National Continuing Care Residents' Association (NaCCRA). The following comments are collected from NIRR residents and members of the NaCCRA Board.

Speaking on behalf of both the L&N Committee and the Regional Chapter of the NaCCRA Board, I want to thank Secretary Hotrum-Lopez and her staff for working with us to get SB 152 passed, and then listening to our concerns and comments during the initial process of beginning to draft new rules. We are encouraged to see many of our recommendations included in these final proposed rules.

Here are our specific comments:

1. 9.2.24.8 - Rate and Fee Increases

A. Monthly fees should be changed no more frequently than on an annual basis. Interim fee increases are disruptive to resident budgeting and can mislead prospective residents who would be assuming only an annual change to monthly fees.

If fee increases are to be assessed more often than annually, the administrative rule should require that such policy, or possibility, be clearly and specifically spelled out in residents' contracts.

C. (1) "economic necessity" as defined in Subsection G of 9.2.24.7 NMAC reads as follows:

"economic necessity" means insolvency or circumstances where funds are lacking to maintain a reasonable level of service and care for residents, including the inability to meet loan or bond requirements, or having insufficient funds to comply with master trust indenture or a future service obligation, where, under GAAP accounting, the expenses are greater than the future revenue.

Here is our question: What if funds are lacking because our sole member owner has invested in other properties and made La Vida Llena and NIRR part of the Obligated Group of non-profits that are responsible to cover any of the subsidiary losses? This situation currently exists in that one of the entities owned by our sole member continues to be downgraded by Fitch and may become insolvent. Please revisit your definition of "economic necessity" to protect our CCRC's if this should occur.

C. (4) Is a reasonable return on investment as referenced in 9.9.24.12 NMAC appropriate for a non-profit organization?
See comments in #2 in response to language at 9.2.24.12.

D. Fee increases at La Vida Llena and The Neighborhood in Rio Rancho have been assessed down to one-hundredth of a percent. Such an accurate calculation certainly involves mathematics.

Suggested Rule:
Please require that the mathematical computations that support rate increases accurate to one-hundredth of a percent be provided to residents. Vague explanations supporting rate increases are subjective and defy accurate evaluation, but mathematical calculations can be checked.

2. 9.2.24.12 – Reasonable Return on Investment as It Pertains to Rate and Fee Increases
Comments:
A. The 90-day US Treasury bill rate is a low (but positive) measurement.
B. The six-percentage point return on investment would be excessive for a non-profit.

Suggested Rule:
There should be a separate "reasonable" return standard for non-profit versus for-profit organizations.

3. 9.2.24.16 – Disclosure Statement and Provider Certification
A. Annual Disclosure Statement to ALTSD:

Suggested Rule:
Require a standard financial reporting form in the Annual Disclosure Statement for all CCRC's so that financial information is presented in a way that persons without degrees in accounting can understand. This will provide important information to current and prospective CCRC residents.

I am attaching a copy of the Florida Office of Insurance Regulation's Annual Financial Report as an example. This reporting form addresses some of our concerns regarding minimum liquid reserves, escrow statements, and both La Vida Llena and The Neighborhood in Rio Rancho's vulnerabilities that result from being part of the Obligated Group that could potentially be responsible for losses in a property in another state that is owned by our sole member.

https://www.floir.com/siteDocuments/OIR-A3-470.pdf

4. 9.2.24.17 – Actuarial Studies

Each of the three paragraphs in this section are extremely important to residents and potential residents of CCRC's, as well as the future of the CCRC industry, in general. The new requirement that the actuarial analysis and the annual future-service obligation calculation must be performed by an actuary who certifies that they are a member of the American academy of actuaries is critical to the substance of the results of those calculations.

Residents in Type-A Continuing Care Communities often invest their life savings to pay the buy-in fees to such Communities. Many, perhaps most, senior citizens who invest in these Communities do so on blind faith since they are not qualified to assess the long-term future viability of such Communities. Unfortunately, Type-A Communities do sometimes go bankrupt. This has happened in New Mexico. When a Community goes bankrupt, it can render residents destitute.

Suggested Rule:
Require that actuaries who do a Community's comprehensive actuarial analysis provide their best judgment of the Community's chances of remaining viable for the next 5 to 10 years. Require that actuaries' rate the probability of a Community's 5 year and 10 year future viability on a scale of poor, average, or good. For comparison, require that residents and prospective residents be provided the ratings that have been assigned to every Type A Community in the state.

Speaking personally, from experiences in my life, parts of which were working as a public sector professional and having parents who talked about planning for their later years, I believe CCRC's are good public policy. If, throughout our lives, we can keep a handle on what it would cost to live in a CCRC, those costs can be factored into our financial planning over our lifetimes. The saddest stories I have witnessed are watching some of my friends and colleagues work to convince their parents that they needed to rid themselves of their assets in time to have incomes low enough to qualify for Medicaid. Keeping a healthy CCRC industry is good for us and for our country's economy.

If you have questions regarding any of our comments, please contact me at othelloetd@gmail.com.

Again, thank you all for the excellent work you have done with us.

Respectfully submitted,
Elizabeth Dwyer