

AN ACT

RELATING TO LONG-TERM CARE; CREATING THE LONG-TERM CARE ADMINISTRATORS ACT; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978; CREATING DEFINITIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-13-1 NMSA 1978 (being Laws 1970, Chapter 61, Section 1) is amended to read:

"61-13-1. SHORT TITLE. -- Chapter 61, Article 13 NMSA 1978 may be cited as the "Long-Term Care Administrators Act". "

Section 2. Section 61-13-2 NMSA 1978 (being Laws 1970, Chapter 61, Section 2, as amended) is amended to read:

"61-13-2. DEFINITIONS. -- As used in the Long-Term Care Administrators Act:

A. "adult residential care facility" means a health facility licensed by the department of health pursuant to Section 24-1-5 NMSA 1978 as a shelter care home or a boarding home not under the control of an institution of higher learning;

B. "adult residential care facility administrator" means a person who is responsible for planning, organizing, directing and controlling the operation of an adult residential care facility;

C. "board" means the long-term care administrators board;

D. "long-term care" means care required to be provided under state or federal law in licensed adult residential care facilities or nursing homes;

E. "long-term care administrator" means a person licensed by the state as an adult residential care facility administrator or a nursing home administrator;

F. "long-term care facility" means an adult residential care facility or a nursing home;

G. "nursing home administrator" means a person who is responsible for planning, organizing, directing and controlling the operation of a nursing home or who shares such functions with one or more persons in operating a nursing home;

H. "nursing home" means a nursing institution or facility required to be licensed pursuant to state law as a nursing facility by the public health division of the department of health, whether proprietary or nonprofit, including skilled nursing home facilities, and whether a separate entity or a part of a medical institutional facility; and

I. "practice of long-term care administration" means the planning, organizing, directing and control of the operation of a nursing home or an adult residential care facility."

Section 3. Section 61-13-3 NMSA 1978 (being Laws 1974, Chapter 78, Section 35) is amended to read:

"61-13-3. CRIMINAL OFFENDER'S CHARACTER EVALUATION. --

The provisions of the Criminal Offender Employment Act shall govern any consideration of criminal records required or permitted by the Long-Term Care Administrators Act."

Section 4. Section 61-13-4 NMSA 1978 (being Laws 1970, Chapter 61, Section 3, as amended) is amended to read:

"61-13-4. LONG-TERM CARE ADMINISTRATORS BOARD. --

A. There is created the "long-term care administrators board", consisting of eleven members appointed by the governor to three-year terms staggered so that no more than four terms expire in any one year. Three members of the board shall be nursing home administrators licensed and practicing under the Long-Term Care Administrators Act for a minimum of five years; three members shall be adult residential care facility administrators, including one who is administrator of an adult residential care facility with a capacity of more than thirty beds, one who is administrator of an adult residential care facility with a capacity of between ten and thirty beds and one who is an administrator of an adult residential care facility with a capacity of less than ten beds; one member shall be a practicing physician licensed in this state; and four members shall be from the public who have no significant financial interest, direct or indirect, in the long-term care industry. No person who has been disciplined by the board may serve as a board member.

B. Within ninety days of a vacancy, the governor shall appoint a person to fill the unexpired portion of the term. Board members shall be citizens of the United States and residents of the state, and not more than one member shall be an employee of any state or other public agency.

C. On the effective date of the Long-Term Care Administrators Act, members of the board of nursing home administrators are appointed to the long-term care administrators board for terms equal to the time remaining on their appointment under the Nursing Home Administrators Act. "

Section 5. Section 61-13-6 NMSA 1978 (being Laws 1970, Chapter 61, Section 5, as amended) is amended to read:

"61-13-6. DUTIES OF THE BOARD. --It is the duty of the board to:

A. formulate, adopt and regularly revise such rules not inconsistent with law as may be necessary to adopt and enforce standards for licensing long-term care administrators and to carry into effect the provisions of the Long-Term Care Administrators Act;

B. approve for licensure applicants for:

(1) initial licensure;

(2) annual renewal of current, active

licenses;

(3) reciprocity;

(4) reinstatement of revoked or suspended

licenses; and

(5) reactivation of inactive or expired licenses;

C. cause the prosecution or enjoinder of all persons violating the Long-Term Care Administrators Act and deny, suspend or revoke licenses in accordance with the provisions of the Uniform Licensing Act;

D. submit a written annual report to the governor and the legislature detailing the actions of the board and including an accounting of all money received and expended by the board;

E. employ such administrative personnel as may be necessary for the efficient operation of the Long-Term Care Administrators Act; and

F. maintain a register of licensees and a record of all applicants for licensure received by the board."

Section 6. A new Section 61-13-8.1 NMSA 1978 is enacted to read:

"61-13-8.1. LICENSURE OF ADULT RESIDENTIAL CARE FACILITY ADMINISTRATORS. --

A. After July 1, 2002, the board shall issue a license as an adult residential care facility administrator to an applicant who files an application in the form and manner prescribed by the board, accompanied by the required fee, and who furnishes evidence, including a criminal records check, satisfactory to the board that he

demonstrates professional competence in and knowledge of the operation of adult residential care facilities, including a thorough understanding of the department of health requirements for adult residential care facilities, as prescribed by rules of the board.

B. Until June 30, 2002 the board shall issue a license as an adult residential care facility administrator to an applicant who demonstrates that he is employed as an adult residential care facility administrator and who pays the required fee set by rule of the board.

C. The board may adopt and implement rules to permit issuance of a license as an adult residential care facility administrator to a licensed nursing home administrator who has not been disciplined by the board and who makes application and pays the required fee for such a license. "

Section 7. Section 61-13-10 NMSA 1978 (being Laws 1970, Chapter 61, Section 9, as amended) is amended to read:

"61-13-10. LICENSURE BY EXAMINATIONS BY BOARD. --

A. Upon investigation of the application and other evidence submitted, the board shall, not less than thirty days prior to any scheduled examination, notify each applicant that the application and evidence submitted is satisfactory or unsatisfactory and rejected. If rejected, the notice shall state the reasons for rejection.

B. Examinations shall be held at least twice each

year at such a time and place as the board may determine and at other times as in the opinion of the board the number of applicants for licensure warrants.

C. The board shall administer the national standards examination for nursing home administrators in a manner specified by the national examination service with which it contracts.

D. The board shall adopt and implement an examination for licensure as an adult residential care facility administrator. "

Section 8. Section 61-13-11 NMSA 1978 (being Laws 1970, Chapter 61, Section 10, as amended) is amended to read:

"61-13-11. LICENSURE WITHOUT EXAMINATION. --The board shall issue a nursing home administrator's license or adult residential care facility administrator's license, temporary or regular, without examination, to any person who holds a current nursing home administrator's license or an adult residential care facility administrator's license in good standing in another jurisdiction if the board finds that the standards of licensure in the other jurisdiction are at least the substantial equivalent of those prevailing in this state and that the applicant meets the qualifications of the Long-Term Care Administrators Act. "

Section 9. Section 61-13-12 NMSA 1978 (being Laws 1970, Chapter 61, Section 11, as amended) is amended to

read:

"61-13-12. LICENSE AND RENEWAL FEES-- BOARD
EXPENDITURES.--

A. The board shall require by rule that applicants for licensure as nursing home administrators pay a license fee in an amount set by the board not to exceed two hundred fifty dollars (\$250) and an annual renewal fee in an amount set by the board not to exceed two hundred dollars (\$200).

B. The board shall require by rule fees for licensure and license renewal as an adult residential care facility administrator as follows:

(1) licensure to administer an adult residential care facility with a capacity of up to nine persons, one hundred dollars (\$100);

(2) annual license renewal to administer an adult residential care facility with a capacity of up to nine persons, fifty dollars (\$50.00);

(3) licensure to administer an adult residential care facility with a capacity between ten and thirty persons, one hundred fifty dollars (\$150);

(4) annual license renewal to administer an adult residential care facility with a capacity between ten and thirty persons, one hundred dollars (\$100);

(5) licensure to administer an adult residential care facility with a capacity of more than

thirty-one persons, two hundred fifty dollars (\$250); and

(6) annual license renewal to administer an adult residential care facility with a capacity of more than thirty-one persons, two hundred dollars (\$200).

C. The board shall deposit all fees received by the board in the "long-term care administrators fund" maintained by the state treasurer for use in defraying the expenses of administration of the Long-Term Care Administrators Act. Any unexpended balance remaining in the fund at the end of each fiscal year shall remain to the credit of the board.

D. The board may obtain and administer programs of grants-in-aid or financial assistance from any governmental agency or private source in the furtherance of programs consistent with the Long-Term Care Administrators Act. "

Section 10. Section 61-13-13 NMSA 1978 (being Laws 1970, Chapter 61, Section 12, as amended) is amended to read:

"61-13-13. REFUSAL, SUSPENSION OR REVOCATION OF LICENSE.--The board may refuse to issue or renew or may suspend or revoke any license in accordance with the procedures contained in the Uniform Licensing Act on the grounds that the licensee or applicant:

A. is guilty of fraud or deceit in procuring or attempting to procure or renew a license to practice as a

long-term care administrator;

B. is convicted of a felony;

C. is guilty of gross incompetence;

D. is habitually intemperate or is addicted to the use of habit-forming drugs or is addicted to any vice to such a degree as to render him unfit to practice as a nursing home administrator;

E. is guilty of failing to comply with any of the provisions of the Long-Term Care Administrators Act or any rules of the board adopted and filed in accordance with the State Rules Act;

F. has been declared mentally incompetent by regularly constituted authorities; provided that the revocation shall only be in effect during the period of such incompetency; or

G. is guilty of conduct that substantially deviates from reasonable standards of acceptable practice of long-term care administration, including the following:

(1) he has been convicted of a misdemeanor substantially relating to the practice of long-term care administration;

(2) he has been found by a court of law, the board, an agency responsible for the certification and licensure of nursing homes or adult residential care facilities, a state medicaid fraud and abuse unit or any other duly recognized state agency to be responsible for the

neglect or abuse of long-term care facility residents or the misappropriation of their personal funds or property;

(3) he has been found by a state long-term care licensing board, an agency responsible for the certification and licensure of long-term care facilities or any other duly recognized state agency as responsible for substandard care in a long-term care facility;

(4) he has been found to have falsified records related to the residents or employees of a long-term care facility on the basis of race, religion, color, national origin, sex, age or handicap in violation of federal or state laws; or

(5) he has had a license revoked, suspended or denied by another state for any of the reasons contained in this section. "

Section 11. Section 61-13-14 NMSA 1978 (being Laws 1970, Chapter 61, Section 13) is amended to read:

"61-13-14. PENALTIES. -- It is a misdemeanor for any person to:

A. sell or fraudulently obtain or furnish any license or aid or abet in the obtaining or furnishing of any license under the Long-Term Care Administrators Act;

B. practice as a long-term care administrator, under cover of any license or registration illegally or fraudulently obtained or unlawfully issued;

C. practice as a long-term care administrator or

use in connection with his name any designation tending to imply that he is a long-term care administrator unless duly licensed and registered to practice under the provisions of the Long-Term Care Administrators Act; or

D. practice as a long-term care administrator without a valid license or during the time his license or registration issued under the provisions of the Long-Term Care Administrators Act is suspended or revoked. "

Section 12. Section 61-13-15 NMSA 1978 (being Laws 1970, Chapter 61, Section 14) is amended to read:

"61-13-15. INJUNCTIVE PROCEEDINGS. --

A. The board may, in the name of the state, through the attorney general, apply for an injunction in any court of competent jurisdiction to enjoin any person from committing any act declared to be a misdemeanor by the Long-Term Care Administrators Act.

B. If it is established that the defendant has been or is committing an act declared to be a misdemeanor by the Long-Term Care Administrators Act, the court shall enter a decree perpetually enjoining the defendant from further committing the act.

C. Injunctive proceedings shall be in addition to and not in lieu of all penalties and other remedies in the Long-Term Care Administrators Act. "

Section 13. Section 61-13-17 NMSA 1978 (being Laws 1978, Chapter 206, Section 1, as amended) is amended to

read:

"61-13-17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL. --The long-term care administrators board is terminated on July 1, 2005 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 13 NMSA 1978 until July 1, 2006. Effective July 1, 2006, Chapter 61, Article 13 NMSA 1978 is repealed. "

Section 14. TEMPORARY PROVISIONS. --On the effective date of the Long-Term Care Administrators Act, all money, appropriations, records, files, furniture, equipment and other property belonging to the board of nursing home administrators is transferred to the long-term care administrators board. All references in law to the Nursing Home Administrators Act are deemed to refer to the Long-Term Care Administrators Act.

Section 15. REPEAL. --Section 61-13-16 NMSA 1978 (being Laws 1970, Chapter 61, Section 15) is repealed.

Section 16. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 2001. _____