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HOUSE BILL 538

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Raymond M. Ruiz

AN ACT

RELATING TO PROFESSIONAL LICENSURE; BROADENING THE SCOPE OF THE BOARD OF NURSING HOME ADMINISTRATORS TO LONG-TERM CARE; CHANGING THE NAME OF THE BOARD; TRANSFERRING PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES.

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. -- ~~[This act]~~ Chapter 61, Article 13 NMSA 1978 may be cited as the "~~[Nursing Home]~~ 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 ~~[Nursing Home]~~ Long-Term Care Administrators Act:

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

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

10           ~~[A.]~~ C. "board" means the ~~[board of nursing home]~~  
11 long-term care administrators board;

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

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

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

20           ~~[B.]~~ G. "nursing home administrator" means ~~[any~~  
21 individual] a person who is responsible for planning,  
22 organizing, directing and controlling the operation of a  
23 nursing home or who shares such functions with one or more  
24 persons in operating a nursing home;

25           ~~[C.]~~ H. "nursing home" means ~~[any]~~ a nursing

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1 institution or facility required to be licensed under state law  
2 as a nursing facility by the public health division of the  
3 department of health [~~whether proprietary or nonprofit,~~  
4 ~~including skilled nursing home facilities, and whether a~~  
5 ~~separate entity or a part of a medical institutional facility~~];  
6 and

7 ~~[D.]~~ I. "practice of [~~nursing home~~] long-term care  
8 administration" means the planning, organizing, directing and  
9 control of the operation of a [~~nursing home~~] long-term care  
10 facility. "

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

13 "61-13-3. CRIMINAL OFFENDER'S CHARACTER EVALUATION. -- The  
14 provisions of the Criminal Offender Employment Act shall govern  
15 any consideration of criminal records required or permitted by  
16 the [~~Nursing Home Administration~~] Long-Term Care Administrators  
17 Act. "

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

20 "61-13-4. [~~BOARD OF NURSING HOME~~] LONG-TERM CARE  
21 ADMINISTRATORS BOARD. --

22 A. [~~There is created the "board of nursing home~~]  
23 The "long-term care administrators board" is created,  
24 consisting of [~~seven~~] eleven members appointed by the governor  
25 to three-year terms staggered so that no more than three terms

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1 expire in any one year. Three members of the board shall be  
2 nursing home administrators licensed and practicing under the  
3 [~~Nursing Home~~] Long-Term Care Administrators Act for a minimum  
4 of five years and who have never been disciplined by the board;  
5 one member shall be an adult residential care facility  
6 administrator of an adult residential care facility with a  
7 capacity of more than fifteen beds and one member shall be an  
8 adult residential care facility administrator of an adult  
9 residential care facility with a capacity of fifteen or fewer  
10 beds, neither of whom have ever been disciplined by the board;  
11 one member shall be a practicing physician licensed in this  
12 state and [~~three~~] five members shall be from the public who  
13 have no significant financial interest, direct or indirect, in  
14 the nursing home industry.

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

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

25 Section 5. Section 61-13-6 NMSA 1978 (being Laws 1970,

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1 Chapter 61, Section 5, as amended) is amended to read:

2 "61-13-6. DUTIES OF THE BOARD. -- [~~It is the duty of~~] The  
3 board [~~to~~] shall:

4 A. formulate, adopt and regularly revise such rules  
5 [~~and regulations~~] not inconsistent with law as may be necessary  
6 to adopt and enforce standards for licensing [~~nursing home~~]  
7 long-term care administrators and to carry into effect the  
8 provisions of the [~~Nursing Home~~] Long-Term Care Administrators  
9 Act;

10 B. approve for licensure applicants for:

11 (1) initial licensure;

12 (2) annual renewal of current, active  
13 licenses;

14 (3) reciprocity;

15 (4) reinstatement of revoked or suspended  
16 licenses; and

17 (5) reactivation of inactive or expired  
18 licenses;

19 C. cause the prosecution or enjoinder of all  
20 persons violating the [~~Nursing Home~~] Long-Term Care  
21 Administrators Act and deny, suspend or revoke licenses in  
22 accordance with the provisions of the Uniform Licensing Act;

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

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1 the board;

2 E. employ such administrative personnel as may be  
3 necessary for the efficient operation of the [~~Nursing Home~~]  
4 Long-Term Care Administrators Act; and

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

7 Section 6. Section 61-13-8 NMSA 1978 (being Laws 1970,  
8 Chapter 61, Section 7, as amended) is amended to read:

9 "61-13-8. LICENSURE OF [~~NURSING HOME~~] LONG-TERM CARE  
10 ADMINISTRATORS. --

11 A. The board shall issue a license as a nursing  
12 home administrator to [~~each~~] an applicant who files an  
13 application in the form and manner prescribed by the board,  
14 accompanied by the required fee, and who furnishes evidence,  
15 including a criminal records check, satisfactory to the board  
16 that he:

17 [~~A.~~] (1) is of good moral character;

18 [~~B.~~] (2) has successfully completed a course  
19 of study for a baccalaureate degree and has been awarded [~~such~~]  
20 that degree from an accredited institution in a course of study  
21 approved by the board as being adequate preparation for nursing  
22 home administrators;

23 [~~C.~~] (3) demonstrates professional competence  
24 by passing an examination in nursing home administration as  
25 prepared and published by the professional examination service

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1 or such other nationally recognized examination as the board  
2 [~~shall prescribe~~] prescribes in its rules [~~and regulations~~];

3 [~~D.~~] (4) demonstrates knowledge of state  
4 [~~regulations~~] rules governing the operation of nursing homes in  
5 a manner [~~as~~] prescribed by the board [~~shall prescribe~~] in its  
6 rules [~~and regulations~~]; and

7 [~~E.~~] (5) has successfully completed an  
8 internship or administrator-in-training program as prescribed  
9 by the board in its rules [~~and regulations~~].

10 B. After July 1, 2003, the board shall issue a  
11 license as an adult residential care facility administrator to  
12 an applicant who files an application in the form and manner  
13 prescribed by the board, accompanied by the required fee, and  
14 who furnishes evidence, including a criminal records check,  
15 satisfactory to the board that he demonstrates professional  
16 competence in and knowledge of the operation of adult  
17 residential care facilities, including a thorough understanding  
18 of the department of health requirements for adult residential  
19 care facilities, as prescribed by rules of the board.

20 C. Until June 30, 2003 the board shall issue a  
21 temporary license as an adult residential care facility  
22 administrator to an applicant who demonstrates that he is  
23 employed as an adult residential care facility administrator  
24 and who pays the required fee set by rule of the board.

25 D. The board may adopt and implement rules to

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1 permit issuance of a license as an adult residential care  
2 facility administrator to a licensed nursing home administrator  
3 who has not been disciplined by the board and who makes  
4 application and pays the required fee for such a license."

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

7 "61-13-10. LICENSURE BY EXAMINATIONS BY BOARD. --

8 A. Upon investigation of the application and other  
9 evidence submitted, the board shall, not less than thirty days  
10 prior to any scheduled examination, notify ~~[each]~~ an applicant  
11 that the application and evidence submitted is satisfactory or  
12 unsatisfactory and rejected. If rejected, the notice shall  
13 state the reasons for rejection.

14 B. Examinations shall be held at least twice each  
15 year at such a time and place as the board may determine and at  
16 other times as, in the opinion of the board, the number of  
17 applicants for licensure warrants.

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

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

25 Section 8. Section 61-13-11 NMSA 1978 (being Laws 1970,

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1 Chapter 61, Section 10, as amended) is amended to read:

2 "61-13-11. LICENSURE WITHOUT EXAMINATION. -- The board  
3 shall issue a nursing home administrator's or adult residential  
4 care facility administrator's license, temporary or regular,  
5 without examination, to any person who holds a nursing home  
6 administrator's or an adult residential care facility  
7 administrator's license current and in good standing in another  
8 jurisdiction [~~provided that~~] if the board finds that the  
9 standards of licensure in the other jurisdiction are at least  
10 the substantial equivalent of those prevailing in this state  
11 and that the applicant meets the qualifications of the [~~Nursing~~  
12 ~~Home~~] Long-Term Care Administrators Act. "

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

15 "61-13-12. LICENSE AND RENEWAL FEES-- BOARD  
16 EXPENDITURES. --

17 A. The board shall require by [~~appropriate~~] rule  
18 [~~or regulation~~] that applicants for licensure [~~as nursing home~~  
19 ~~administrators~~] pay a license fee in an amount set by the board  
20 not to exceed two hundred fifty dollars (\$250) and an annual  
21 renewal fee in an amount set by the board not to exceed two  
22 hundred dollars (\$200).

23 B. The board shall deposit all fees received by the  
24 board in a special fund maintained by the state treasurer for  
25 use in defraying the expenses of administration of the [~~Nursing~~

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1 ~~Home]~~ Long-Term Care Administrators Act. All unexpended  
2 [~~balance]~~ balances remaining in the fund at the end of each  
3 fiscal year shall remain to the credit of the [~~board]~~ fund.

4 C. The board may obtain and administer programs of  
5 grants-in-aid or financial assistance from any governmental  
6 agency or private source in the furtherance of programs  
7 consistent with the [~~Nursing Home]~~ Long-Term Care  
8 Administrators Act. "

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

11 "61-13-13. REFUSAL, SUSPENSION OR REVOCATION OF  
12 LICENSE. --The board may refuse to issue or renew or may suspend  
13 or revoke any license in accordance with the procedures  
14 contained in the Uniform Licensing Act on the grounds that the  
15 licensee or applicant:

16 A. is guilty of fraud or deceit in procuring or  
17 attempting to procure or renew a license to practice as a  
18 [~~nursing home]~~ long-term care administrator;

19 B. is convicted of a felony;

20 C. is guilty of gross incompetence;

21 D. is habitually intemperate or is addicted to the  
22 use of habit-forming drugs or is addicted to any vice to such a  
23 degree as to render him unfit to practice as a [~~nursing home]~~  
24 long-term care administrator;

25 E. is guilty of failing to comply with any of the

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1 provisions of the [~~Nursing Home~~] Long-Term Care Administrators  
2 Act or any rules or regulations of the board adopted and filed  
3 in accordance with the State Rules Act;

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

8 G. is guilty of conduct that substantially deviates  
9 from reasonable standards of acceptable practice of [~~nursing~~  
10 ~~home~~] long-term care administration, including [~~but not limited~~  
11 ~~to~~] the following:

12 (1) he has been convicted of a misdemeanor  
13 substantially relating to the practice of [~~nursing-home~~] long-  
14 term care administration;

15 (2) he has been found by a court of law, the  
16 board, an agency responsible for the certification and  
17 licensure of [~~nursing-homes~~] long-term care facilities, a state  
18 medicaid fraud and abuse unit or any other duly recognized  
19 state agency to be responsible for the neglect or abuse of  
20 [~~nursing-home~~] long-term care facility residents or the  
21 misappropriation of their personal funds or property;

22 (3) he has been found by a state [~~nursing~~  
23 ~~home~~] long-term care licensing board, an agency responsible for  
24 the certification and licensure of [~~nursing-homes~~] long-term  
25 care facilities or any other duly recognized state agency [as]

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1 to be responsible for substandard care in a [~~nursing home~~]  
2 long-term care facility;

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

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

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

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

15 A. sell or fraudulently obtain or furnish any  
16 license or aid or abet in the obtaining or furnishing of any  
17 license under the [~~Nursing Home~~] Long-Term Care Administrators  
18 Act;

19 B. practice as a [~~nursing home~~] long-term care  
20 administrator, under cover of any license or registration  
21 illegally or fraudulently obtained or unlawfully issued;

22 C. practice as a [~~nursing home~~] long-term care  
23 administrator or use in connection with his name any  
24 designation tending to imply that he is a [~~nursing home~~]  
25 long-term care administrator unless duly licensed and

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1 registered to [~~so~~] practice under the provisions of the  
2 [~~Nursing Home~~] Long-Term Care Administrators Act; or

3 D. practice as a [~~nursing-home~~] long-term care  
4 administrator without a valid license or during the time his  
5 license or registration issued under the provisions of the  
6 [~~Nursing Home~~] Long-Term Care Administrators Act is suspended  
7 or revoked. "

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

10 "61-13-15. INJUNCTIVE PROCEEDINGS. --

11 A. The board may, in the name of the state [~~of New~~  
12 ~~Mexico~~] and through the attorney general, apply for an  
13 injunction in any court of competent jurisdiction to enjoin any  
14 person from committing any act declared to be a misdemeanor by  
15 the [~~Nursing Home~~] Long-Term Care Administrators Act.

16 B. If it [~~be~~] is established that the defendant has  
17 been or is committing an act declared to be a misdemeanor by  
18 the [~~Nursing Home~~] Long-Term Care Administrators Act, the court  
19 shall enter a decree perpetually enjoining [~~said~~] the defendant  
20 from further committing [~~such~~] the act.

21 C. [~~Such~~] Injunctive proceedings shall be in  
22 addition to and not in lieu of all penalties and other remedies  
23 in the [~~Nursing Home~~] Long-Term Care Administrators Act. "

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

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1 "61-13-17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL. --

2 The [~~board of nursing home~~] long-term care administrators  
3 board is terminated on July 1, 2005 pursuant to the Sunset Act.  
4 The board shall continue to operate according to the provisions  
5 of Chapter 61, Article 13 NMSA 1978 until July 1, 2006.  
6 Effective July 1, 2006, Chapter 61, Article 13 NMSA 1978 is  
7 repealed. "

8 Section 14. TEMPORARY PROVISION--TRANSFER. -- On the  
9 effective date of this act:

10 A. all functions, personnel, appropriations, money,  
11 files, records, furniture, equipment, supplies and other  
12 property of the board of nursing home administrators shall be  
13 transferred to the long-term care administrators board;

14 B. contractual obligations of the board of nursing  
15 home administrators shall be obligations of the long-term care  
16 administrators board; and

17 C. statutory references to the board of nursing  
18 home administrators shall be deemed to be references to the  
19 long-term care administrators board.

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

22 Section 16. EFFECTIVE DATE. -- The effective date of the  
23 provisions of this act is July 1, 2003.