

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 245

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

AN ACT

RELATING TO HEALTH; ENACTING THE HEALTH CARE REGISTRY ACT;  
ESTABLISHING A REGISTRY OF EMPLOYEES DETERMINED TO HAVE  
COMMITTED ABUSE, NEGLIGENCE OR MISAPPROPRIATION OF PROPERTY;  
MAKING AN APPROPRIATION.

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

Section 1. SHORT TITLE.--This act may be cited as the  
"Health Care Registry Act".

Section 2. DEFINITIONS.--As used in the Health Care  
Registry Act:

A. "abuse" means the willful infliction of injury,  
unreasonable confinement, intimidation or punishment with  
resulting physical harm, pain or mental anguish;

B. "department" means the department of health;

C. "direct care" means face-to-face services

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underscored material = new  
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1 provided to a service recipient;

2 D. "employee" means a person employed or contracted  
3 to provide services to persons who are developmentally  
4 disabled, physically disabled or elderly, including a personal  
5 care attendant funded through the medicaid program;

6 E. "misappropriation of property" means the  
7 deliberate misplacement, exploitation or wrongful, temporary or  
8 permanent use of a resident's belongings or money without the  
9 resident's consent;

10 F. "neglect" means the failure to provide goods and  
11 services necessary to avoid physical harm, mental anguish or  
12 mental illness;

13 G. "provider" means an agency or organization that  
14 delivers home and community-based services to adults or  
15 children with developmental disabilities, including an  
16 intermediate care facility for the mentally retarded, an agency  
17 that delivers services to the elderly or an agency that  
18 delivers services to the physically disabled. "Provider" does  
19 not include managed care organizations, except for their  
20 employees who provide respite care to persons who are  
21 developmentally disabled, physically disabled or elderly;

22 H. "registry" means the health care registry; and

23 I. "secretary" means the secretary of health.

24 Section 3. REGISTRY OF EMPLOYEES DETERMINED TO HAVE  
25 COMMITTED ABUSE, NEGLECT OR MISAPPROPRIATION OF PROPERTY.--

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1           A. The department shall establish a "health care  
2 registry" of employees determined by the department to have  
3 committed abuse, neglect or misappropriation of property  
4 pursuant to the Health Care Registry Act.

5           B. Before a provider hires or contracts with an  
6 employee, the provider shall inquire of the department whether  
7 the employee is included in the registry.

8           C. When the department receives an inquiry  
9 regarding whether the employee is included in the registry, the  
10 department shall inform the provider whether the employee is  
11 included in the registry.

12           D. Providers that hire employees shall maintain  
13 documentation demonstrating that they have checked the registry  
14 for each applicant being considered for employment.

15           E. A provider shall not hire, retain or contract  
16 with an employee in a direct care setting or other setting that  
17 allows for routine and unsupervised physical or financial  
18 access to persons who are developmentally disabled, physically  
19 disabled or elderly if the employee is included in the  
20 registry.

21           F. A division of the department or other  
22 governmental agency funding services to the developmentally  
23 disabled, physically disabled or elderly or contracting for the  
24 personal care attendant option of the medicaid program may at  
25 its discretion not enter into or renew a contract with a

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1 provider that fails to comply with the provisions of Subsection  
2 E of this section.

3 G. A provider that reports allegations of abuse,  
4 neglect or misappropriation of property or that fails to hire  
5 or retain an employee because the employee is included in the  
6 registry is presumed to be acting in good faith and shall be  
7 immune from liability for both civil and criminal damages that  
8 might otherwise be incurred or imposed by law. If, however,  
9 the provider acted in bad faith or with malicious purpose, the  
10 provider is not immune from liability.

11 H. After a period of five years an employee placed  
12 on the registry may petition the department for removal of the  
13 employee's name from the registry. Petitions for removal shall  
14 be in writing and mailed or hand-delivered to the department.

15 I. The department shall promulgate rules necessary  
16 to carry out the provisions of the Health Care Registry Act,  
17 including an articulation of standards for determining neglect  
18 and a phase-in of the registry by July 1, 2006 for employees  
19 of:

20 (1) providers to adults and children with  
21 developmental disabilities;

22 (2) providers to adults and children with  
23 physical disabilities;

24 (3) providers to the elderly; and

25 (4) personal care attendants funded through

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1 the medicaid program.

2 Section 4. REVIEW OF REPORT OF ABUSE, NEGLECT OR  
3 MISAPPROPRIATION OF PROPERTY--HEARING.--

4 A. In addition to other actions required by law,  
5 the department shall review each report it receives of abuse,  
6 neglect or misappropriation of property of a person who is  
7 developmentally disabled, physically disabled or elderly being  
8 served by providers. The department shall also review the  
9 reports of abuse, neglect or misappropriation of property that  
10 involves employees of providers that it receives from the  
11 children, youth and families department or a protective  
12 services agency.

13 B. The department shall investigate all allegations  
14 to determine whether there is a reasonable basis for a  
15 complaint of abuse, neglect or misappropriation of property.

16 C. If the department determines that abuse, neglect  
17 or misappropriation of property has occurred, the department  
18 shall notify the employee by mail of the employee's right to a  
19 fair hearing pursuant to the provisions of the Administrative  
20 Procedures Act. The notice, which shall also be mailed to the  
21 provider, shall include:

22 (1) the nature of the determination of the  
23 abuse, neglect or misappropriation of property;

24 (2) the date and time of the occurrence;

25 (3) the employee's right to a fair hearing;

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1 (4) the department's intent to report the  
2 substantiated findings, once the employee has had the  
3 opportunity for a hearing, to the registry; and

4 (5) that the employee's failure to request a  
5 hearing in writing within thirty days from the date of the  
6 notice shall result in the department's reporting of the  
7 employee's placement on the registry to the provider that  
8 employs the implicated employee, to the employee and to the  
9 registry.

10 D. If an employee waives the right to a hearing or  
11 receives a hearing pursuant to Subsection C of this section and  
12 the decision of the hearing upholds the department's  
13 determination that abuse, neglect or misappropriation of  
14 property has occurred, the department shall report the  
15 employee's placement on the registry to the provider that  
16 employs the implicated employee, to the employee and to the  
17 registry.

18 E. If an employee receives a hearing pursuant to  
19 Subsection C of this section and the decision of the hearing  
20 does not uphold the department's determination that abuse,  
21 neglect or misappropriation of property has occurred, the  
22 department shall notify the employee and the provider by mail  
23 that the department's determination was unsubstantiated and  
24 that the department will not report its findings to the  
25 registry.

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