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HOUSE BILL 260

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

INTRODUCED BY

Irvin Harrison

AN ACT

RELATING TO EXECUTIVE ORGANIZATION; CREATING THE AGING AND  
LONG-TERM SERVICES DEPARTMENT; PROVIDING POWERS AND DUTIES;  
PROVIDING FOR A PHASED TRANSITION TO THE NEW DEPARTMENT;  
APPROVING TRANSFERS OF FUNCTIONS, PERSONNEL, MONEY,  
APPROPRIATIONS AND PROPERTY.

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

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1  
through 11 of this act may be cited as the "Aging and Long-Term  
Services Department Act".

Section 2. [NEW MATERIAL] PURPOSE. -- The purpose of the  
Aging and Long-Term Services Department Act is to create a  
single, unified department to administer all laws and exercise  
all functions formerly administered by the state agency on  
aging and to administer laws and exercise functions of the

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1 human services department, the department of health and the  
2 children, youth and families department that relate to aging,  
3 adults with disabilities or long-term care services.

4 Section 3. [NEW MATERIAL] DEFINITIONS. -- As used in the  
5 Aging and Long-Term Services Department Act:

6 A. "department" means the aging and long-term  
7 services department; and

8 B. "secretary" means the secretary of aging and  
9 long-term services.

10 Section 4. [NEW MATERIAL] DEPARTMENT CREATED--  
11 DIVISIONS. --

12 A. The "aging and long-term services department" is  
13 created. The department is a cabinet department and includes  
14 the following divisions:

15 (1) administrative services division;

16 (2) consumer and elder rights division;

17 (3) aging network services division;

18 (4) long-term care division; and

19 (5) adult protective services division.

20 B. The secretary may organize the department and  
21 the divisions specified in Subsection A of this section and may  
22 transfer or merge functions between divisions in the interest  
23 of efficiency and economy.

24 Section 5. [NEW MATERIAL] SECRETARY OF AGING AND  
25 LONG-TERM SERVICES-- APPOINTMENT. --

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1           A. The chief executive and administrative officer  
2 of the department is the "secretary of aging and long-term  
3 services". The secretary shall be appointed by the governor  
4 with the consent of the senate. The secretary shall hold that  
5 office at the pleasure of the governor and shall serve in the  
6 executive cabinet.

7           B. An appointed secretary shall serve and have all  
8 of the duties, responsibilities and authority of that office  
9 during the period of time prior to final action by the senate  
10 confirming or rejecting his appointment.

11           Section 6. [NEW MATERIAL] SECRETARY--DUTIES AND GENERAL  
12 POWERS. --

13           A. The secretary is responsible to the governor for  
14 the operation of the department. It is his duty to manage all  
15 operations of the department and to administer and enforce the  
16 laws with which he or the department is charged.

17           B. To perform his duties, the secretary has every  
18 power expressly enumerated in the laws, whether granted to the  
19 secretary or the department or any division of the department,  
20 except where authority conferred upon any division is  
21 explicitly exempted from the secretary's authority by statute.  
22 In accordance with these provisions, the secretary shall:

23                   (1) except as otherwise provided in the Aging  
24 and Long-Term Services Department Act, exercise general  
25 supervisory and appointing authority over all department

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1 employees, subject to any applicable personnel laws and  
2 regulations;

3 (2) delegate authority to subordinates as he  
4 deems necessary and appropriate, clearly delineating such  
5 delegated authority and the limitations thereto;

6 (3) organize the department into those  
7 organizational units he deems will enable it to function most  
8 efficiently, subject to provisions of law requiring or  
9 establishing specific organizational units;

10 (4) within the limitations of available  
11 appropriations and applicable laws, employ and fix the  
12 compensation of those persons necessary to discharge his  
13 duties;

14 (5) take administrative action by issuing  
15 orders and instructions, not inconsistent with the law, to  
16 ensure implementation of and compliance with the provisions of  
17 law for whose administration or execution he is responsible and  
18 to enforce those orders and instructions by appropriate  
19 administrative action in the courts;

20 (6) conduct research and studies that will  
21 improve the operations of the department and the provision of  
22 services to the citizens of the state;

23 (7) provide courses of instruction and  
24 practical training for employees of the department and other  
25 persons involved in the administration of programs with the

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1 objective of improving the operations and efficiency of  
2 administration;

3 (8) prepare an annual budget of the  
4 department;

5 (9) provide cooperation, at the request of  
6 heads of administratively attached agencies, in order to:

7 (a) minimize or eliminate duplication of  
8 services and jurisdictional conflicts;

9 (b) coordinate activities and resolve  
10 problems of mutual concern; and

11 (c) resolve by agreement the manner and  
12 extent to which the department shall provide budgeting,  
13 record-keeping and related clerical assistance to  
14 administratively attached agencies; and

15 (10) appoint, with the governor's consent, for  
16 each division, a "director". These appointed positions are  
17 exempt from the provisions of the Personnel Act. Persons  
18 appointed to these positions shall serve at the pleasure of the  
19 secretary.

20 C. The secretary may apply for and receive, with  
21 the governor's approval, in the name of the department, any  
22 public or private funds, including United States government  
23 funds, available to the department to carry out its programs,  
24 duties or services.

25 D. Where functions of departments overlap or a

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1 function assigned to one department could better be performed  
2 by another department, the secretary may recommend appropriate  
3 legislation to the next session of the legislature for its  
4 approval.

5 E. The secretary may make and adopt such reasonable  
6 procedural rules as may be necessary to carry out the duties of  
7 the department and its divisions. No rule promulgated by the  
8 director of any division in carrying out the functions and  
9 duties of the division shall be effective until approved by the  
10 secretary unless otherwise provided by statute. Unless  
11 otherwise provided by statute, no rule affecting any person or  
12 agency outside the department shall be adopted, amended or  
13 repealed without a public hearing on the proposed action before  
14 the secretary or a hearing officer designated by him. The  
15 public hearing shall be held in Santa Fe unless otherwise  
16 permitted by statute. Notice of the subject matter of the  
17 rule, the action proposed to be taken, the time and place of  
18 the hearing, the manner in which interested persons may present  
19 their views and the method by which copies of the proposed  
20 rule, proposed amendment or repeal of an existing rule may be  
21 obtained shall be published once at least thirty days prior to  
22 the hearing date in a newspaper of general circulation and  
23 mailed at least thirty days prior to the hearing date to all  
24 persons who have made a written request for advance notice of  
25 hearing. Rules shall be filed in accordance with the State

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1 Rules Act.

2 Section 7. [NEW MATERIAL] DIVISION DIRECTORS. -- The  
3 secretary shall appoint, with the approval of the governor,  
4 "directors" of divisions established in the department. The  
5 directors so appointed are exempt from the Personnel Act.

6 Section 8. [NEW MATERIAL] BUREAUS--CHIEFS. -- The secretary  
7 may establish in the divisions such bureaus as he deems  
8 necessary to carry out the provisions of the Aging and  
9 Long-Term Services Department Act. He shall employ a "chief"  
10 to be the administrative head of a bureau.

11 Section 9. [NEW MATERIAL] DIVISIONS--GENERAL DUTIES. -- In  
12 addition to the duties assigned to each division of the  
13 department by the secretary:

14 A. the administrative services division shall  
15 provide clerical, recordkeeping and administrative support to  
16 the department in the areas of personnel, budget, procurement  
17 and contracting;

18 B. the consumer and elder rights division shall  
19 administer the long-term care ombudsman program and provide  
20 health insurance and benefits counseling and legal services;

21 C. the aging network services division shall  
22 administer the federal Older Americans' Act programs;

23 D. the long-term care division shall administer  
24 home- and community-based long-term care programs; and

25 E. the adult protective services division shall

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1 provide adult protective services.

2 Section 10. [NEW MATERIAL] OFFICE OF INDIAN ELDER AFFAIRS  
3 CREATED. --The "office of Indian elder affairs" is created  
4 within the office of the secretary. The office of Indian elder  
5 affairs shall assume the responsibilities of the Indian area  
6 agency on aging, including contract management, program  
7 compliance monitoring, technical assistance, advocacy and  
8 training to pueblo and Apache tribe Older Americans Act of 1965  
9 programs, and to establish relationships that support the  
10 efforts of the Navajo area agency on aging, and shall  
11 participate with the other divisions of the department to  
12 review and make recommendations regarding other health and  
13 social programs of the department that serve Indian elders.  
14 The office of Indian elder affairs shall defer to and comply  
15 with the standards and policies of an Indian nation, tribe or  
16 pueblo when providing services to Indian elders within the  
17 boundaries of that Indian nation, tribe or pueblo. Abolishment  
18 or transfer of the office of Indian elder affairs out of the  
19 department shall require approval of the legislature.

20 Section 11. [NEW MATERIAL] ORGANIZATIONAL UNITS OF THE  
21 DEPARTMENT-- POWERS AND DUTIES SPECIFIED BY LAW - ACCESS TO  
22 INFORMATION. --Those organizational units of the department and  
23 the officers of those units specified by law shall have all of  
24 the powers and duties enumerated in the specific laws involved.  
25 However, the carrying out of those powers and duties shall be

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1 subject to the direction and supervision of the secretary, who  
2 shall retain the final decision-making authority and  
3 responsibility for the administration of any such laws as  
4 provided in Subsection B of Section 6 of the Aging and  
5 Long-Term Services Department Act. The department shall have  
6 access to all records, data and information of other state  
7 departments, agencies and institutions, including its own  
8 organizational units, not specifically held confidential by  
9 law.

10 Section 12. Section 9-8-8 NMSA 1978 (being Laws 1977,  
11 Chapter 252, Section 9, as amended) is amended to read:

12 "9-8-8. ADMINISTRATIVELY ATTACHED AGENCIES. -- The [~~office~~  
13 ~~of Indian affairs, the~~] commission on the status of women [~~and~~  
14 ~~the state agency on aging are~~] is administratively attached to  
15 the human services department in accordance with the Executive  
16 Reorganization Act. "

17 Section 13. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,  
18 PERSONNEL, PROPERTY, CONTRACTS AND REFERENCES IN LAW. --

19 A. The transfer of functions, personnel,  
20 appropriations, money, records, equipment, supplies, other  
21 property and contractual obligations of the state agency on  
22 aging to the aging and long-term care department pursuant to  
23 executive order issued in accordance with Laws 2003, Chapter  
24 403 is approved and transferred to the aging and long-term  
25 services department. All references in law to the state agency

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1 on aging shall be deemed to be references to the aging and  
2 long-term services department.

3 B. It is the intent of the legislature that  
4 consolidation of state services and programs into the aging and  
5 long-term services department be accomplished as quickly as  
6 practicable, without disruption in services, as follows:

7 (1) the functions of the traumatic brain  
8 injury program that was administered by the department of  
9 health shall be transferred to the aging and long-term services  
10 department by July 1, 2004;

11 (2) the functions of the home- and  
12 community-based medicaid waiver program for the disabled and  
13 elderly, the medicaid centralized screening and intake services  
14 program, the medicaid personal care option program, the program  
15 of all-inclusive care for the elderly and other home- and  
16 community-based long-term care programs that serve seniors or  
17 adults with disabilities that were administered by the human  
18 services department shall be transferred to the aging and  
19 long-term services department by no later than January 1, 2005;  
20 and

21 (3) the functions of the adult protective  
22 services, adult day care, attendant care and other home- and  
23 community-based long-term care programs that serve seniors or  
24 adults with disabilities that were administered by the  
25 children, youth and families department shall be transferred to

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1 the aging and long-term services department by no later than  
2 January 1, 2006.

3 C. At the time of transfer of an agency or program,  
4 all personnel, money, appropriations, records, files,  
5 furniture, equipment and other property related to that agency  
6 or program shall be transferred to the aging and long-term  
7 services department. The governor's office and the state  
8 budget division of the department of finance and administration  
9 shall assist in the identification of personnel, money,  
10 appropriations and property to be transferred. The state board  
11 of finance shall certify to the legislature that resources  
12 transferred from other agencies to the aging and long-term  
13 services department are sufficient to continue the same level  
14 of services.

15 D. The transition of the home-based care programs  
16 shall be conducted so that the delivery of services to Native  
17 American communities is not interrupted or discontinued. The  
18 aging and long-term services department shall conduct a  
19 transition of services to the Native American elderly that  
20 maintains continuation of programs employing personnel who are  
21 sensitive to the cultural and unique needs of the Native  
22 American population.

23 E. The aging and long-term services department  
24 shall:

- 25 (1) develop criteria that differentiate

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1 between urban and rural settings to be used in determining  
2 funding allocations for home-based care programs; and

3 (2) provide no less than the rate paid on July  
4 1, 2003 to home-based care providers.

5 F. Contractual and other obligations of an agency  
6 or program shall be obligations of the aging and long-term  
7 services department.

8 G. After the effective date of the transfers  
9 provided in Subsection B of this section, references in law to  
10 the programs being transferred shall be deemed to be references  
11 to the aging and long-term services department.

12 H. The secretary of aging and long-term services  
13 shall provide periodic updates to the legislative finance  
14 committee and the legislative health and human services  
15 committee on the progress of the transition and integration  
16 plan and the establishment of the aging and long-term services  
17 department. By November 1, 2005, the secretary shall provide  
18 the legislative health and human services committee with a  
19 comprehensive plan to provide long-term care and related  
20 services for all populations, including recommendations, if  
21 any, for the transfer of additional long-term services programs  
22 from other departments to the aging and long-term services  
23 department. Such plan shall be developed with public input and  
24 the assistance of an advisory committee representing consumers,  
25 advocacy organizations, providers, other departments and

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