

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 445

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Shannon Robinson

AN ACT

RELATING TO PUBLIC HEALTH; IMPOSING LICENSURE FEES AND
INTERMEDIATE SANCTIONS ON HEALTH FACILITIES; AMENDING SECTIONS
OF THE PUBLIC HEALTH ACT.

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

Section 1. Section 24-1-5 NMSA 1978 (being Laws 1973,
Chapter 359, Section 5, as amended) is amended to read:

"24-1-5. LICENSURE OF HEALTH FACILITIES--HEARINGS--
APPEALS.--

A. A health facility shall not be operated without
a license issued by the department. If a health facility is
found to be operating without a license, in order to protect
human health or safety, the secretary may issue a cease-and-
desist order. The health facility may request a hearing that
shall be held in the manner provided in this section. The

underscored material = new
[bracketed material] = delete

1 department may also proceed pursuant to the Health Facility
2 Receivership Act.

3 B. The department is authorized to make inspections
4 and investigations and to prescribe rules it deems necessary or
5 desirable to promote the health, safety and welfare of persons
6 using health facilities.

7 C. Except as provided in Subsection F of this
8 section, upon receipt of an application for a license to
9 operate a health facility, the department shall promptly
10 inspect the health facility to determine if it is in compliance
11 with all rules of the department. Applications for hospital
12 licenses shall include evidence that the bylaws or rules of the
13 hospital apply equally to osteopathic and medical physicians.
14 The department shall consolidate the applications and
15 inspections for a hospital that also operates as a hospital-
16 based primary care clinic.

17 D. Upon inspection of a health facility, if the
18 department finds a violation of its rules, the department may
19 deny the application for a license, whether initial or renewal,
20 or it may issue a temporary license. A temporary license shall
21 not be issued for a period exceeding one hundred twenty days,
22 nor shall more than two consecutive temporary licenses be
23 issued.

24 E. A one-year nontransferable license shall be
25 issued to any health facility complying with all rules of the

. 153337. 1

underscored material = new
[bracketed material] = delete

1 department. The license shall be renewable for successive one-
2 year periods, upon filing of a renewal application, if the
3 department is satisfied that the health facility is in
4 compliance with all rules of the department or, if not in
5 compliance with a rule, has been granted a waiver or variance
6 of that rule by the department pursuant to procedures,
7 conditions and guidelines adopted by rule of the department.

8 Licenses shall be posted in a conspicuous place on the licensed
9 premises, except that child care centers that receive no state
10 or federal funds may apply for and receive from the department
11 a waiver from the requirement that a license be posted or kept
12 on the licensed premises.

13 F. A health facility that has been inspected and
14 licensed by the department and that has received certification
15 for participation in federal reimbursement programs and that
16 has been fully accredited by the joint commission on
17 accreditation of health care organizations or the American
18 osteopathic association shall be granted a license renewal
19 based on that accreditation. Health facilities receiving less
20 than full accreditation by the joint commission on the
21 accreditation of health care organizations or by the American
22 osteopathic association may be granted a license renewal based
23 on that accreditation. License renewals shall be issued upon
24 application submitted by the health facility upon forms
25 prescribed by the department. This subsection does not limit

. 153337. 1

underscored material = new
[bracketed material] = delete

1 in any way the department's various duties and responsibilities
2 under other provisions of the Public Health Act or under any
3 other subsection of this section, including any of the
4 department's responsibilities for the health and safety of the
5 public.

6 G. The department may charge a reasonable fee not
7 to exceed [~~three dollars (\$3.00)~~] twelve dollars (\$12.00) per
8 bed for an inpatient health facility or [~~one hundred dollars~~
9 ~~(\$100)~~] three hundred dollars (\$300) for any other health
10 facility for each license application, whether initial or
11 renewal, of an annual license or the second consecutive
12 issuance of a temporary license. Fees collected shall not be
13 refundable. All fees collected pursuant to licensure
14 applications shall be deposited with the state treasurer for
15 credit [~~to the general fund~~] in a designated department
16 recurring account for use in health facility licensure and
17 certification operations.

18 H. The department may revoke or suspend the license
19 of a health facility or may impose on a health facility an
20 intermediate sanction and a civil monetary penalty provided in
21 Section 24-1-5.2 NMSA 1978 after notice and an opportunity for
22 a hearing before a hearing officer designated by the department
23 to hear the matter and, except for child care centers and
24 facilities, may proceed pursuant to the Health Facility
25 Receivership Act upon a determination that the health facility

underscored material = new
[bracketed material] = delete

1 is not in compliance with any rule of the department. If
2 immediate action is required to protect human health and
3 safety, the secretary may suspend a license or impose an
4 intermediate sanction pending a hearing, provided the hearing
5 is held within five working days of the suspension or
6 imposition of the sanction, unless waived by the licensee, and,
7 except for child care centers and facilities, may proceed ex
8 parte pursuant to the Health Facility Receivership Act.

9 I. The department shall schedule a hearing pursuant
10 to Subsection H of this section if the department receives a
11 request for a hearing from a licensee:

12 (1) within ten working days after receipt by
13 the licensee of notice of suspension, revocation, imposition of
14 an intermediate sanction or civil monetary penalty or denial of
15 an initial or renewal application;

16 (2) within four working days after receipt by
17 the licensee of an emergency suspension order or emergency
18 intermediate sanction imposition and notice of hearing if the
19 licensee wishes to waive the early hearing scheduled and
20 request a hearing at a later date; or

21 (3) within five working days after receipt of
22 a cease-and-desist order.

23 The department shall also provide timely notice to the
24 licensee of the date, time and place of the hearing, identity
25 of the hearing officer, subject matter of the hearing and

underscored material = new
[bracketed material] = delete

1 alleged violations.

2 J. A hearing held pursuant to provisions of this
3 section shall be conducted in accordance with adjudicatory
4 hearing rules and procedures adopted by rule of the department.
5 The licensee has the right to be represented by counsel, to
6 present all relevant evidence by means of witnesses and books,
7 papers, documents, records, files and other evidence and to
8 examine all opposing witnesses who appear on any matter
9 relevant to the issues. The hearing officer has the power to
10 administer oaths on request of any party and issue subpoenas
11 and subpoenas duces tecum prior to or after the commencement of
12 the hearing to compel discovery and the attendance of witnesses
13 and the production of relevant books, papers, documents,
14 records, files and other evidence. Documents or records
15 pertaining to abuse, neglect or exploitation of a resident,
16 client or patient of a health facility or other documents,
17 records or files in the custody of the human services
18 department or the office of the state long-term care ombudsman
19 at the ~~[state agency on]~~ aging and long-term services
20 department that are relevant to the alleged violations are
21 discoverable and admissible as evidence in any hearing.

22 K. Any party may appeal the final decision of the
23 department pursuant to the provisions of Section 39-3-1.1 NMSA
24 1978.

25 L. A complaint about a health facility received by
. 153337. 1

underscored material = new
[bracketed material] = del etc

1 the department pursuant to this section shall be promptly
2 investigated and appropriate action shall be taken if
3 substantiated. The department shall develop a health
4 facilities protocol in conjunction with the human services
5 department, the protective services division of the children,
6 youth and families department, the office of the state long-
7 term care ombudsman and other appropriate agencies to ensure
8 the health, safety and rights of individuals in health
9 facilities. The health facilities protocol shall require:

10 (1) cross-reference among agencies pursuant to
11 this subsection of an allegation of abuse, neglect or
12 exploitation;

13 (2) an investigation, within the strict
14 priority time frames established by each protocol member's
15 rules, of an allegation or referral of abuse, neglect or
16 exploitation after the department has made a good cause
17 determination that abuse, neglect or exploitation occurred;

18 (3) an agency to share its investigative
19 information and findings with other agencies, unless otherwise
20 prohibited by law; and

21 (4) require the receiving agency to accept the
22 information provided pursuant to Paragraph (3) of this
23 subsection as potential evidence to initiate and conduct
24 investigations.

25 M A complaint received by the department pursuant

. 153337. 1

underscored material = new
[bracketed material] = delete

1 to this section shall not be disclosed publicly in a manner as
2 to identify any individuals or health facilities if upon
3 investigation the complaint is unsubstantiated.

4 N. Notwithstanding any other provision of this
5 section, when there are reasonable grounds to believe that a
6 child is in imminent danger of abuse or neglect while in the
7 care of a child care facility, whether or not licensed, or upon
8 the receipt of a report pursuant to Section 32A-4-3 NMSA 1978,
9 the department shall consult with the owner or operator of the
10 child care facility. Upon a finding of probable cause, the
11 department shall give the owner or operator notice of its
12 intent to suspend operation of the child care facility and
13 provide an opportunity for a hearing to be held within three
14 working days, unless waived by the owner or operator. Within
15 seven working days from the day of notice, the secretary shall
16 make a decision, and, if it is determined that any child is in
17 imminent danger of abuse or neglect in the child care facility,
18 the secretary may suspend operation of the child care facility
19 for a period not in excess of fifteen days. Prior to the date
20 of the hearing, the department shall make a reasonable effort
21 to notify the parents of children in the child care facility of
22 the notice and opportunity for hearing given to the owner or
23 operator.

24 0. Nothing contained in this section or in the
25 Public Health Act shall authorize either the secretary or the

. 153337. 1

underscored material = new
[bracketed material] = delete

1 department to make any inspection or investigation or to
2 prescribe any rules concerning group homes as defined in
3 Section 9-8-13 NMSA 1978 except as are reasonably necessary or
4 desirable to promote the health and safety of persons using
5 group homes. "

6 Section 2. Section 24-1-5.2 NMSA 1978 (being Laws 1990,
7 Chapter 105, Section 2, as amended) is amended to read:

8 "24-1-5.2. HEALTH FACILITIES--INTERMEDIATE SANCTIONS--
9 CIVIL PENALTY.--

10 A. Upon a determination that a health facility is
11 not in compliance with any licensing requirement of the
12 department, the department, subject to the provisions of this
13 section and Section 24-1-5 NMSA 1978, may:

14 (1) impose any intermediate sanction
15 established by ~~[regulation]~~ rule, including but not limited to:

- 16 (a) a directed plan of correction;
- 17 (b) facility monitors;
- 18 (c) denial of payment for new medicaid
19 admissions to the facility;
- 20 (d) temporary ~~management~~ or
21 receivership; and

22 (e) restricted admissions;

23 (2) assess a civil monetary penalty, with
24 interest, for each day the facility is or was out of
25 compliance. Civil monetary penalties shall not exceed a total

. 153337. 1

underscored material = new
[bracketed material] = delete

1 of [~~five thousand dollars (\$5,000)~~] ten thousand dollars
2 (\$10,000) per day. Penalties and interest amounts assessed
3 under this paragraph and recovered on behalf of the state shall
4 be remitted to the [~~state treasurer for deposit in the general~~
5 ~~fund, except as otherwise provided by federal law for medicaid-~~
6 ~~certified nursing facilities]~~ department in a recurring account
7 in the state treasury for the sole purpose of funding the
8 nonreimbursed cost of facility monitors, temporary management
9 and health facility receiverships. The civil monetary
10 penalties contained in this paragraph are cumulative and may be
11 imposed in addition to any other fines or penalties provided by
12 law; and

13 (3) with respect to health facilities other
14 than childcare centers or facilities, proceed pursuant to the
15 Health Facility Receivership Act.

16 B. The secretary shall adopt and promulgate
17 [~~regulations~~] rules specifying the criteria for imposition of
18 any intermediate sanction and civil monetary penalty. The
19 criteria shall provide for more severe sanctions for a
20 violation that results in any abuse, neglect or exploitation of
21 residents, clients or patients as defined in the [~~regulations~~]
22 rules or that places one or more residents, clients or patients
23 of a health facility at substantial risk of serious physical or
24 mental harm.

25 [~~C. The provisions of this section for intermediate~~

underscored material = new
[bracketed material] = delete

1 ~~sanctions and civil monetary penalties shall not apply to~~
2 ~~certified nursing facilities except upon a determination by the~~
3 ~~federal health care financing administration that these~~
4 ~~provisions comply with the provisions for nursing facility~~
5 ~~remedies and civil monetary penalties pursuant to 42 U.S.C.~~
6 ~~1395 and 1396, as amended, and upon a determination by the~~
7 ~~department that no other state or federal agency is authorized~~
8 ~~to impose the same remedies, sanctions or penalties.]~~

9 C. The provisions of this section for intermediate
10 sanctions and civil monetary penalties shall apply to certified
11 nursing facilities except when a federal agency has imposed the
12 same remedies, sanctions or penalties for the same violations.

13 D. Rules adopted by the department shall permit
14 sanctions pursuant to Paragraphs (1) and (2) of Subsection A of
15 this section for a specific violation in a certified nursing
16 facility if:

17 (1) the state statute or rule is not
18 duplicated by a federal certification rule; or

19 (2) the department determines intermediate
20 sanctions are necessary if sanctions permitted pursuant to
21 Paragraphs (1) and (2) of Subsection A of this section do not
22 duplicate a sanction imposed under the authority of 42 U.S.C.
23 1395 or 1396 for a particular deficiency.

24 ~~[D.]~~ E. A health facility is liable for the
25 reasonable costs of a directed plan of correction, facility

underscored material = new
[bracketed material] = delete

1 monitors, temporary management or receivership imposed pursuant
2 to this section and Section 24-1-5 NMSA 1978. The department
3 may take all necessary and appropriate legal action to recover
4 these costs from a health facility. All money recovered from a
5 health facility pursuant to this subsection shall be paid into
6 the general fund. "

7 Section 3. EFFECTIVE DATE. --The effective date of the
8 provisions of this act is July 1, 2005.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25