

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 399

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

John T. L. Grubescic

AN ACT

RELATING TO HEALTH AND SAFETY; LIMITING RECEIVERSHIP LIABILITY;  
AMENDING THE HEALTH FACILITY RECEIVERSHIP ACT.

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

Section 1. Section 24-1E-5 NMSA 1978 (being Laws 1996,  
Chapter 35, Section 8) is amended to read:

"24-1E-5. RECEIVER'S POWERS AND DUTIES.--

A. In addition to the receiver's powers and duties  
under the Receivership Act, the secretary as receiver and any  
deputy receiver under the Health Facility Receivership Act  
shall, except as the district court may otherwise order:

(1) perform all acts that are necessary to:

(a) correct or remedy each condition on  
which the receiver's appointment was based;

(b) ensure adequate care and necessary

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1 services for each resident or other person in the health  
2 facility;

3 (c) bring the facility into compliance  
4 with all applicable state and federal laws, rules and  
5 regulations; and

6 (d) manage and operate the health  
7 facility, including closing down, expanding or initiating new  
8 operations, hiring and firing officers and employees,  
9 contracting for necessary services, personnel, supplies,  
10 equipment, facilities and all other appropriate things,  
11 purchasing, selling, marshaling and otherwise managing its  
12 property and assets, paying the facility's obligations that are  
13 directly related to the health facility's operations or for  
14 providing adequate care and necessary services to residents or  
15 for other persons in the health facility, borrowing money and  
16 property and giving security for these and expending funds of  
17 the facility;

18 (2) give notice of establishment of the  
19 receivership to interested persons and publish notice in a  
20 newspaper of general circulation in each county in which the  
21 health care facility and any of its satellite facilities is  
22 located;

23 (3) if [~~residents are~~] a resident or other  
24 person in the health facility is to be discharged or  
25 transferred, discuss the options for alternative placement with

.163523.1

underscored material = new  
[bracketed material] = delete

1 ~~[any]~~ the resident, other person in the health facility or the  
2 guardian of that resident or other person in the health  
3 facility, as applicable, and arrange to transfer the  
4 ~~[resident's]~~ records and personal property of the resident or  
5 other person in the health facility to the alternative  
6 placement facility; and

7 (4) with the court's approval, void any lease,  
8 mortgage, secured transaction, contract or other agreement made  
9 prior to the appointment of the receiver or any transfer of  
10 money or property made within one year prior to the filing of  
11 the petition if such lease, mortgage, secured transaction,  
12 contract, agreement or other transfer of money or property was  
13 made without fair consideration, including excessive interest  
14 rate, ~~[or]~~ was made with actual intent to hinder, delay or  
15 defraud either future or existing creditors, was made with  
16 shareholders or owners of the health facility or persons  
17 otherwise having an interest in the health facility or was  
18 unrelated to the normal and expected maintenance and operation  
19 of the health facility.

20 B. If, in the exercise of the receiver's powers  
21 pursuant to this section, the receiver is in possession of real  
22 estate, real or personal property or other goods or services  
23 subject to a lease, mortgage, secured transaction, contract or  
24 other agreement subject to being voided by the receiver  
25 pursuant to Paragraph (4) of Subsection A of this section, and

.163523.1

underscoring material = new  
[bracketed material] = delete

1 such real estate, real or personal property or other goods or  
2 services are necessary for the continued operation of the  
3 health facility during the receivership, the receiver may, in  
4 lieu or seeking to void such lease, mortgage, secured  
5 transaction, contract or other agreement, apply to the court to  
6 set a reasonable price, rate or rate of interest to be paid by  
7 the receiver under such lease, mortgage, secured transaction,  
8 contract or other agreement during the duration of the  
9 receivership. The receiver shall send notice of such an  
10 application to any known parties of the property, services or  
11 goods involved, and the court shall hold a hearing on the  
12 receiver's application within fifteen days after the filing of  
13 the application by the receiver. Payment by the receiver of  
14 the amount determined by the court to be reasonable is a  
15 defense to any action against the receiver for payment or  
16 possession of the real estate, real or personal property or  
17 other goods or services, or to revocation of such services  
18 subject to the lease, mortgage, secured transaction, contract  
19 or other agreement. Payment by the receiver of the amount  
20 determined by the court to be reasonable shall not relieve the  
21 health facility from any liability upon termination of the  
22 receivership for the difference between the amount paid by the  
23 receiver and the amount due under the original lease, mortgage,  
24 secured transaction, contract or other agreement.

25 C. Nonpayment by the receiver of any debt of the

.163523.1

underscored material = new  
[bracketed material] = delete

1 health facility under a lease, mortgage, secured transaction,  
2 contract or other agreement reasonably deemed by the receiver  
3 not to be directly related to the health facility's operations  
4 or for providing adequate care and necessary services to  
5 residents or other persons in the health facility shall not  
6 subject the receiver to liability for payment or to any action  
7 against the receiver for payment or possession of the real  
8 estate, real or personal property or other goods or services by  
9 the holder of such lease, mortgage, secured instrument,  
10 contract or other agreement. Nonpayment of any lease,  
11 mortgage, secured transaction, contract or other agreement  
12 reasonably deemed by the receiver not to be directly related to  
13 the health facility's operations or for providing adequate care  
14 and necessary services to residents or other persons in the  
15 health facility shall not relieve the health facility from any  
16 liability upon termination of the receivership for payment of  
17 the full amount due under the lease, mortgage, secured  
18 transaction, contract or other agreement.

19 [B-] D. A deputy receiver shall have the same  
20 powers and duties as the receiver, unless the court orders  
21 otherwise."

22 - 5 -  
23  
24  
25

.163523.1