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HOUSE BILL 85

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Yvette Herrell

AN ACT

RELATING TO CHILD CARE; ALLOWING FOR WAIVERS FROM CERTAIN CHILDREN, YOUTH AND FAMILIES DEPARTMENT RULES AND REGULATIONS FOR CHILD CARE PROVIDERS THAT RECEIVE NO STATE OR FEDERAL FUNDS.

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

SECTION 1. Section 9-2A-7 NMSA 1978 (being Laws 1992, Chapter 57, Section 7, as amended) is amended to read:

"9-2A-7. SECRETARY--DUTIES AND GENERAL POWERS.--

A. The secretary is responsible to the governor for the operation of the department. It is the secretary's duty to manage all operations of the department and to administer and enforce the laws with which ~~he~~ the secretary or the department is charged.

B. To perform ~~his~~ the secretary's duties, the

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1 secretary has every power expressly enumerated in the law,
2 whether granted to the secretary, the department or any
3 division of the department, except when any division is
4 explicitly exempted from the secretary's power by statute. In
5 accordance with these provisions, the secretary shall:

6 (1) except as otherwise provided in the
7 Children, Youth and Families Department Act, exercise general
8 supervisory and appointing power over all department employees,
9 subject to applicable personnel laws and regulations;

10 (2) delegate power to subordinates as [~~he~~] the
11 secretary deems necessary and appropriate, clearly delineating
12 such delegated power and the limitations to that power;

13 (3) organize the department into
14 organizational units as necessary to enable it to function most
15 efficiently, subject to any provisions of law requiring or
16 establishing specific organizational units;

17 (4) within the limitations of available
18 appropriations and applicable laws, employ and fix the
19 compensation of those persons necessary to discharge [~~his~~] the
20 secretary's duties;

21 (5) take administrative action by issuing
22 orders and instructions, not inconsistent with law, to assure
23 implementation of and compliance with the provisions of law for
24 which administration or execution [~~he~~] the secretary is
25 responsible and to enforce those orders and instructions by

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1 appropriate administrative action in the courts;

2 (6) conduct research and studies that will
3 improve the operation of the department and the provision of
4 services to the citizens of the state;

5 (7) provide courses of instruction and
6 practical training for employees of the department and other
7 persons involved in the administration of programs with the
8 objectives of improving the operations and efficiency of
9 administration and of promoting comprehensive, coordinated,
10 culturally sensitive services that address the whole child;

11 (8) prepare an annual budget for the
12 department;

13 (9) provide cooperation, at the request of
14 administratively attached agencies and adjunct agencies, in
15 order to:

16 (a) minimize or eliminate duplication of
17 services and jurisdictional conflicts;

18 (b) coordinate activities and resolve
19 problems of mutual concern; and

20 (c) resolve by agreement the manner and
21 extent to which the department shall provide budgeting,
22 recordkeeping and related clerical assistance to
23 administratively attached agencies; and

24 (10) provide for surety bond coverage for all
25 employees of the department as provided in the Surety Bond Act.

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1 The department shall pay the costs of [~~such~~] the bonds.

2 C. The secretary may apply for and receive, with
3 the governor's approval, in the name of the department, any
4 public or private funds, including United States government
5 funds, available to the department to carry out its programs,
6 duties or services.

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

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1 the hearing date to all persons who have made a written request
2 for advance notice of hearing. All rules and regulations shall
3 be filed in accordance with the State Rules Act.

4 E. Child care providers that do not receive any
5 state or federal funds may apply for and, upon application,
6 shall receive from the secretary waivers of department rules
7 and regulations, except for the following:

8 (1) rules and regulations regarding screening
9 of a child care center's personnel; and

10 (2) the minimum requirements of applicable
11 local governing bodies as to health, sanitation and safety.

12 [~~E.~~] F. If the secretary certifies to the secretary
13 of finance and administration and gives contemporaneous notice
14 of such certification through the human services register that
15 the department has insufficient state funds to operate any of
16 the programs it administers and that reductions in services or
17 benefit levels are necessary, the secretary may engage in
18 interim rulemaking. Notwithstanding any provision to the
19 contrary in the State Rules Act, interim rulemaking shall be
20 conducted pursuant to Subsection D of this section, except:

21 (1) the period of notice of public hearing
22 shall be fifteen days;

23 (2) the department shall send individual
24 notices of the interim rulemaking and of the public hearing to
25 affected providers and beneficiaries;

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1 (3) rules and regulations promulgated ~~[under]~~
2 pursuant to the provisions of this subsection shall be in
3 effect not less than five days after the public hearing;

4 (4) rules and regulations promulgated ~~[under]~~
5 pursuant to the provisions of this subsection shall not be in
6 effect for more than ninety days; and

7 (5) if final rules and regulations are
8 necessary to replace the interim rules and regulations, the
9 department shall give notice of intent to promulgate final
10 rules and regulations at the time of notice herein. The final
11 rules and regulations shall be promulgated not more than forty-
12 five days after the public hearing and filed in accordance with
13 the State Rules Act."