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HOUSE BILL 189

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

INTRODUCED BY

Al Park

AN ACT

RELATING TO EXECUTIVE ORGANIZATION; MERGING THE AGING AND LONG-TERM SERVICES DEPARTMENT AND THE HUMAN SERVICES DEPARTMENT; PROVIDING FOR THE TRANSFER OF FUNCTIONS, MONEY, APPROPRIATIONS, RECORDS, PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES; REPEALING THE AGING AND LONG-TERM SERVICES DEPARTMENT ACT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 9-8-3 NMSA 1978 (being Laws 1977, Chapter 252, Section 3, as amended) is amended to read:

"9-8-3. PURPOSE.--The purpose of the Human Services Department Act is to establish a single, unified department to administer laws and exercise functions relating to human services ~~and~~ formerly administered and exercised by the

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1 administrative services unit, the state welfare and social
2 services agencies of the health and social services department
3 [~~and~~], the committee on children and youth and the aging and
4 long-term services department."

5 SECTION 2. Section 9-8-4 NMSA 1978 (being Laws 1977,
6 Chapter 252, Section 4, as amended) is amended to read:

7 "9-8-4. DEPARTMENT ESTABLISHED.--

8 A. [~~There is created in the executive branch~~] The
9 "human services department" is created in the executive branch.
10 The department [~~shall be~~] is a cabinet department and [~~shall~~
11 ~~consist~~] consists of, but is not [~~be~~] limited to, [~~six~~] ten
12 divisions as follows:

- 13 (1) the administrative services division;
- 14 (2) the adult protective services division;
- 15 (3) the aging network services division;
- 16 (4) the consumer and elder rights division;
- 17 [~~(1)~~] (5) the income support division;
- 18 [~~(2)~~] ~~the administrative services division;~~
- 19 [~~(3)~~] (6) the medical assistance division;
- 20 [~~(4)~~] (7) the child support enforcement
21 division;
- 22 [~~(5)~~] (8) the behavioral health services
23 division; [~~and~~
- 24 [~~(6)~~] (9) the information technology division;
- 25 and

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1 (10) the long-term care division.

2 B. All references in the law to the behavioral
3 health services division of the department of health or to the
4 mental health division of the department of health in Sections
5 29-11-1 through 29-11-7 NMSA 1978 or to the department of
6 health in Sections 43-2-1.1 through 43-2-23 NMSA 1978 shall be
7 construed as referring to the human services department.

8 C. All references in law to the aging and long-term
9 services department shall be deemed to be references to the
10 human services department."

11 SECTION 3. A new section of the Human Services Department
12 Act is enacted to read:

13 "[NEW MATERIAL] DIVISIONS--GENERAL DUTIES.--In addition to
14 the duties assigned to each division of the department by the
15 secretary:

16 A. the adult protective services division shall
17 provide adult protective services;

18 B. the aging network services division shall
19 administer the federal Older Americans Act of 1965 programs;

20 C. the consumer and elder rights division shall
21 administer the long-term care ombudsman program and provide
22 health insurance and benefits counseling and legal services;
23 and

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

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1 SECTION 4. A new section of the Human Services Department
2 Act is enacted to read:

3 "[NEW MATERIAL] OFFICE OF INDIAN ELDER AFFAIRS CREATED.--
4 The "office of Indian elder affairs" is created within the
5 office of the secretary. The office of Indian elder affairs
6 shall assume the responsibilities of the Indian area agency on
7 aging, including contract management, program compliance
8 monitoring, technical assistance, advocacy and training to
9 pueblo and Apache tribe Older Americans Act of 1965 programs
10 and establishing relationships that support the efforts of the
11 Navajo area agency on aging and shall participate with the
12 other divisions of the department to review and make
13 recommendations regarding other health and social programs of
14 the department that serve Indian elders."

15 SECTION 5. A new section of the Human Services Department
16 Act is enacted to read:

17 "[NEW MATERIAL] INTERAGENCY BEHAVIORAL HEALTH PURCHASING
18 COLLABORATIVE--DUTY.--The secretary or the secretary's designee
19 shall serve as a member of the interagency behavioral health
20 purchasing collaborative and the department shall ensure that
21 any behavioral health services, including mental health and
22 substance abuse services funded, provided, contracted for or
23 approved, are in compliance with the requirements of Section
24 9-7-6.4 NMSA 1978."

25 SECTION 6. Section 24-17-7 NMSA 1978 (being Laws 1985,
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1 Chapter 102, Section 7) is amended to read:

2 "24-17-7. DISCLOSURE STATEMENTS FILED WITH THE [~~STATE~~
3 ~~AGENCY ON AGING~~] HUMAN SERVICES DEPARTMENT FOR PUBLIC
4 INSPECTION.--A provider shall file a copy of the disclosure
5 statement and any amendments to that statement with the [~~state~~
6 ~~agency on aging~~] human services department for public
7 inspection during regular working hours."

8 SECTION 7. Section 24-17-16 NMSA 1978 (being Laws 1991,
9 Chapter 263, Section 5) is amended to read:

10 "24-17-16. IDENTIFICATION AND PROCEDURES FOR CORRECTION
11 OF VIOLATIONS.--

12 A. If the [~~state agency on aging~~] human services
13 department determines that a person or an organization has
14 engaged in or is about to engage in an act or practice
15 constituting a violation of the Continuing Care Act or any rule
16 adopted pursuant to that act, the [~~state agency on aging~~]
17 department shall issue a notice of violation in writing to that
18 person or organization and send copies to the resident
19 association of any facility affected by the notice.

20 B. The notice of violation shall state the
21 following:

- 22 (1) a description of a violation at issue;
23 (2) the action that, in the judgment of the
24 [~~state agency on aging~~] department, the provider should take to
25 conform to the law or the assurances that the [~~state agency on~~

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1 ~~aging]~~ department requires to establish that no violation is
2 about to occur;

3 (3) the compliance date by which the provider
4 shall correct any violation or submit assurances;

5 (4) the requirements for filing a report of
6 compliance; and

7 (5) the applicable sanctions for failure to
8 correct the violation or failure to file the report of
9 compliance according to the terms of the notice of violation.

10 C. At any time after receipt of a notice of
11 violation, the person or organization to which the notice is
12 addressed or the ~~[state agency on aging]~~ department may request
13 a conference. The ~~[state agency on aging]~~ department shall
14 schedule a conference within seven days of a request.

15 D. The purpose of the conference is to discuss the
16 contents of the notice of violation and to assist the addressee
17 to comply with the requirements of the Continuing Care Act.
18 Subject to rules that the ~~[state agency on aging]~~ department
19 may promulgate, a representative of the resident association at
20 any facility affected by the notice shall have a right to
21 attend the conference.

22 E. A person receiving a notice of violation shall
23 submit a signed report of compliance as provided by the notice.
24 The ~~[state agency on aging]~~ department shall send a copy to the
25 resident association of any facility affected by the notice.

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1 F. Upon receipt of the report of compliance, the
2 [~~state agency on aging~~] department shall take steps to
3 determine that compliance has been achieved."

4 SECTION 8. Section 24-17-18 NMSA 1978 (being Laws 1991,
5 Chapter 263, Section 7) is amended to read:

6 "24-17-18. REPORT TO ATTORNEY GENERAL--CIVIL ACTION--
7 CIVIL PENALTIES.--Any time after the [~~state agency on aging~~]
8 human services department issues a notice of violation, the
9 [~~state agency on aging~~] department may send the attorney
10 general a written report alleging a possible violation of the
11 Continuing Care Act or any rule adopted pursuant to that act.
12 Upon receipt of that report, the attorney general shall
13 promptly conduct an investigation to determine whether grounds
14 exist for formally finding a violation. If the attorney
15 general makes that finding, [~~he~~] the attorney general shall
16 file an appropriate action against the alleged violator in a
17 court of competent jurisdiction. Upon finding violations of
18 any provisions of the Continuing Care Act or any rule adopted
19 pursuant to that act, the court may impose a civil penalty in
20 the amount of five dollars (\$5.00) per resident or up to five
21 hundred dollars (\$500), in the discretion of the court, for
22 each day that the violation remains uncorrected after the
23 compliance date stipulated in a notice of violation issued
24 pursuant to the Continuing Care Act."

25 SECTION 9. Section 24-17A-3 NMSA 1978 (being Laws 1998,

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1 Chapter 82, Section 3) is amended to read:

2 "24-17A-3. INTERAGENCY COMMITTEE CREATED--COORDINATED
3 SERVICE DELIVERY SYSTEM--LEAD AGENCY--SERVICE DELIVERY
4 SYSTEM.--

5 A. The "interagency committee on long-term care" is
6 created.

7 B. Members of the interagency committee on long-
8 term care shall be the heads of the following agencies or their
9 designated representatives:

10 [~~(1)~~] ~~the state agency on aging;~~

11 [~~(2)~~] (1) the human services department;

12 [~~(3)~~] (2) the department of health;

13 [~~(4)~~] (3) the children, youth and families
14 department;

15 [~~(5)~~] (4) the [~~labor~~] workforce solutions
16 department;

17 [~~(6)~~] (5) the governor's [~~committee on~~
18 ~~concerns of the handicapped~~] commission on disability;

19 [~~(7)~~] (6) the developmental disabilities
20 planning council; and

21 [~~(8)~~] (7) the [~~department of~~] insurance
22 division of the public regulation commission.

23 C. The interagency committee on long-term care
24 shall design and implement a coordinated service delivery
25 system that fulfills the legislative mandate to develop a

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1 coordinated long-term care system.

2 D. The governor shall appoint a chairperson from
3 the membership of the interagency committee on long-term care."

4 SECTION 10. Section 24-26-2 NMSA 1978 (being Laws 2004,
5 Chapter 53, Section 2) is amended to read:

6 "24-26-2. DEFINITIONS.--As used in the Patient Care
7 Monitoring Act:

8 A. [~~"agency"~~] "department" means the [~~state agency~~
9 ~~on aging~~] human services department;

10 B. "facility" means a long-term care facility
11 licensed pursuant to the provisions of Section 24-1-5 NMSA
12 1978, other than an intermediate care facility for the mentally
13 retarded, and may also include:

- 14 (1) a skilled nursing facility;
- 15 (2) an intermediate care nursing facility;
- 16 (3) a nursing facility;
- 17 (4) an adult residential shelter care home;
- 18 (5) a boarding home;
- 19 (6) any adult care home or adult residential
20 care facility; and
- 21 (7) any swing bed in an acute care facility or
22 extended care facility;

23 C. "monitoring device" means a surveillance
24 instrument that broadcasts or records activity, but does not
25 include a still camera;

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1 D. "patient" means a person who is a resident of a
2 facility;

3 E. "program" means the New Mexico long-term care
4 ombudsman program; and

5 F. "surrogate" means a legal guardian or a legally
6 appointed substitute decision-maker who is authorized to act on
7 behalf of a patient."

8 SECTION 11. Section 27-7-16 NMSA 1978 (being Laws 1989,
9 Chapter 389, Section 3, as amended) is amended to read:

10 "27-7-16. DEFINITIONS.--As used in the Adult Protective
11 Services Act:

12 A. "ability to consent" means an adult's ability to
13 understand and appreciate the nature and consequences of
14 proposed protective services or protective placement, including
15 benefits, risks and alternatives to the proposed services or
16 placement and to make or communicate an informed decision;

17 B. "abuse" means:

18 (1) knowingly, intentionally or negligently
19 and without justifiable cause inflicting physical pain, injury
20 or mental anguish;

21 (2) the intentional deprivation by a caretaker
22 or other person of services necessary to maintain the mental
23 and physical health of an adult; or

24 (3) sexual abuse, including criminal sexual
25 contact, incest and criminal sexual penetration;

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1 C. "adult" means a person eighteen years of age or
2 older;

3 D. "caretaker" means a facility, provider or
4 individual that has assumed the responsibility for the care of
5 an adult;

6 E. "conservator" means a person who is appointed by
7 a court to manage the property or financial affairs, or both,
8 of an incapacitated adult;

9 F. "court" means the district court having
10 jurisdiction;

11 G. "department" means the [~~aging and long-term~~
12 human services department;

13 H. "emergency" means that an adult is living in
14 conditions that present a substantial risk of death or
15 immediate and serious physical harm to the adult or others;

16 I. "exploitation" means an unjust or improper use
17 of an adult's money or property for another person's profit or
18 advantage, pecuniary or otherwise;

19 J. "facility" means a hospital, nursing home,
20 residential care facility, group home, foster care home,
21 assisted living facility or other facility licensed by the
22 state, but does not include a jail, prison or detention
23 facility;

24 K. "guardian" means a person who has qualified to
25 provide for the care, custody or control of an incapacitated

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1 adult pursuant to testamentary or court appointment, but
2 excludes one who is a guardian ad litem;

3 L. "incapacitated adult" means any adult with a
4 mental, physical or developmental condition that substantially
5 impairs the adult's ability to provide adequately for the
6 adult's own care or protection;

7 M. "multidisciplinary team" means a team composed
8 of diverse professionals who meet periodically to consult on or
9 enhance appropriate community responses to abuse, neglect or
10 exploitation of adults;

11 N. "neglect" means the failure of the caretaker of
12 an adult to provide for the basic needs of the adult, such as
13 clothing, food, shelter, supervision and care for the physical
14 and mental health of that adult; "neglect" includes self-
15 neglect;

16 O. "protected adult" means an adult for whom a
17 guardian or conservator has been appointed or other protective
18 order has been made or an abused, neglected or exploited adult
19 who has consented to protective services or protective
20 placement;

21 P. "protective placement" means the placement of an
22 adult with a provider or in a facility or the transfer of an
23 adult from one provider or facility to another;

24 Q. "protective services" means the services
25 furnished by the department or its delegate, as described in

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1 Section 27-7-21 NMSA 1978;

2 R. "provider" means a private-residence or health
3 care worker or an unlicensed residential or nonresidential
4 entity that provides personal, custodial or health care;

5 S. "self-neglect" means an act or omission by an
6 incapacitated adult that results in the deprivation of
7 essential services or supports necessary to maintain the
8 incapacitated adult's minimal mental, emotional or physical
9 health and safety;

10 T. "substantiated" means a determination, based on
11 a preponderance of collected and assessed credible information,
12 that abuse, neglect or exploitation of an incapacitated or
13 protected adult has occurred; and

14 U. "surrogate" means a person legally authorized to
15 act on an adult's behalf."

16 SECTION 12. Section 27-7A-2 NMSA 1978 (being Laws 2005,
17 Chapter 256, Section 2) is amended to read:

18 "27-7A-2. DEFINITIONS.--As used in the Employee Abuse
19 Registry Act:

20 A. "abuse" means:

21 (1) knowingly, intentionally or negligently
22 and without justifiable cause inflicting physical pain, injury
23 or mental anguish; or

24 (2) the intentional deprivation by a caretaker
25 or other person of services necessary to maintain the mental

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1 and physical health of a person;

2 B. "department" means the department of health;

3 C. "direct care" means face-to-face services
4 provided or routine and unsupervised physical or financial
5 access to a recipient of services;

6 D. "employee" means a person employed by or on
7 contract with a provider, either directly or through a third
8 party arrangement to provide direct care. "Employee" does not
9 include a New Mexico licensed health care professional
10 practicing within the scope of the profession's license or a
11 certified nurse aide;

12 E. "exploitation" means an unjust or improper use
13 of a person's money or property for another person's profit or
14 advantage, pecuniary or otherwise;

15 F. "neglect" means, subject to a person's right to
16 refuse treatment and subject to a provider's right to exercise
17 sound medical discretion, the failure of an employee to provide
18 basic needs such as clothing, food, shelter, supervision and
19 care for the physical and mental health of a person or failure
20 by a person that may cause physical or psychological harm;

21 G. "provider" means an intermediate care facility
22 for the mentally retarded; a rehabilitation facility; a home
23 health agency; a homemaker agency; a home for the aged or
24 disabled; a group home; an adult foster care home; a case
25 management entity that provides services to elderly people or

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1 people with developmental disabilities; a corporate guardian; a
2 private residence that provides personal care, adult
3 residential care or natural and surrogate family services
4 provided to persons with developmental disabilities; an adult
5 daycare center; a boarding home; an adult residential care
6 home; a residential service or habilitation service authorized
7 to be reimbursed by medicaid; any licensed or medicaid-
8 certified entity or any program funded by the ~~[aging and long-~~
9 ~~term]~~ human services department that provides respite,
10 companion or personal care services; programs funded by the
11 ~~[children, youth and families]~~ human services department that
12 provide homemaker or adult daycare services; and any other
13 individual, agency or organization that provides respite care
14 or delivers home- and community-based services to adults or
15 children with developmental disabilities or physical
16 disabilities or to the elderly, but excluding a managed care
17 organization unless the employees of the managed care
18 organization provide respite care or deliver home- and
19 community-based services to adults or children with
20 developmental disabilities or physical disabilities or to the
21 elderly;

22 H. "registry" means an electronic database that
23 provides information on substantiated employee abuse, neglect
24 or exploitation; and

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

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1 SECTION 13. Section 27-15-2 NMSA 1978 (being Laws 2006,
2 Chapter 112, Section 2) is amended to read:

3 "27-15-2. DEFINITION.--As used in the Money Follows the
4 Person in New Mexico Act, "department" means the [~~aging and~~
5 ~~long-term~~] human services department."

6 SECTION 14. Section 28-4-5 NMSA 1978 (being Laws 1979,
7 Chapter 203, Section 2) is amended to read:

8 "28-4-5. AGENCY DUTIES.--The [~~state agency on aging~~]
9 human services department shall establish and maintain a
10 comprehensive statewide program designed to meet the social
11 service needs of the state's aged population, including but not
12 limited to the following:

13 A. strengthen and coordinate services of state and
14 local public bodies for the benefit of the aged;

15 B. promote the [~~utilization~~] use of older persons
16 in all phases of employment;

17 C. disseminate information to the aged relative to
18 federal, state and local services for the aged;

19 D. encourage training programs, retraining programs
20 and opportunities for older workers;

21 E. develop new methods of job placement for older
22 workers;

23 F. promote public recognition of the advantages of
24 hiring and retaining older workers; and

25 G. promote and develop programs of community

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1 resources and facilities designed to meet the social needs of
2 older persons."

3 SECTION 15. Section 28-4-6 NMSA 1978 (being Laws 1979,
4 Chapter 203, Section 3, as amended) is amended to read:

5 "28-4-6. ~~[AGENCY]~~ DEPARTMENT POWERS.--

6 A. The ~~[state agency on aging]~~ human services
7 department:

8 (1) may receive on behalf of the state any
9 gifts, donations or bequests from any source to be used in
10 carrying out its duties; and

11 (2) is designated as the state agency for
12 handling all programs of the federal government related to the
13 aged, except those designated by law as the responsibility of
14 another state agency, and may enter into agreements and
15 contracts with agencies of the federal government for this
16 purpose.

17 ~~[B. The state agency on aging may adopt and~~
18 ~~promulgate such reasonable rules and regulations as are deemed~~
19 ~~necessary to carry out its duties. Unless otherwise provided~~
20 ~~by law, no rule or regulation affecting any person or agency~~
21 ~~outside the state agency on aging shall be adopted, amended or~~
22 ~~repealed without a public hearing on the proposed action before~~
23 ~~the director of the state agency on aging or a hearing officer~~
24 ~~designated by him. The public hearing shall be held in Santa~~
25 ~~Fe unless otherwise permitted by statute. Notice of the~~

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1 ~~subject matter of the rule or regulation, the action proposed~~
2 ~~to be taken, the time and place of the hearing, the manner in~~
3 ~~which interested persons may present their views and the method~~
4 ~~by which copies of the proposed rule or regulation or proposed~~
5 ~~amendment or repeal of an existing rule or regulation may be~~
6 ~~obtained shall be published once at least thirty days prior to~~
7 ~~the hearing in a newspaper of general circulation and mailed at~~
8 ~~least thirty days prior to the hearing date to all persons who~~
9 ~~have made a written request for advance notice of hearing. The~~
10 ~~director of the state agency on aging shall also provide such~~
11 ~~notice to the director of each senior citizen center no later~~
12 ~~than forty days prior to the public hearing. All rules and~~
13 ~~regulations shall be filed in accordance with the State Rules~~
14 ~~Act.~~

15 G.} B. To ensure that the health and safety needs
16 of the state's aged population are being met, the [~~state agency~~
17 ~~on aging~~] department may conduct unannounced quality care
18 evaluations of health and long-term care facilities that
19 provide services to the aged, including the use of undercover
20 patients or employees. Any employee or contractor of the
21 [~~state agency on aging~~] department who participates in such an
22 evaluation shall be immune from liability in any civil action
23 related to the evaluation, provided it is conducted in good
24 faith. The purpose of this subsection is to confirm and
25 clarify the authority of the [~~state agency on aging~~] department

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1 to conduct quality care evaluations to protect the interests of
2 the state's aged population."

3 SECTION 16. Section 28-4-9 NMSA 1978 (being Laws 1979,
4 Chapter 203, Section 6, as amended) is amended to read:

5 "28-4-9. ADVISORY COMMITTEE.--The governor shall appoint
6 an eleven-member advisory committee on aging to the [~~state~~
7 ~~agency on aging~~] human services department in accordance with
8 the provisions of the Executive Reorganization Act. In
9 establishing the committee, the governor shall take note of any
10 federal requirements regarding membership and shall appoint
11 members for staggered terms of four years. Members of the
12 committee shall be reimbursed for services as provided for in
13 the Per Diem and Mileage Act and shall receive no other
14 compensation, perquisite or allowance."

15 SECTION 17. Section 28-17-3 NMSA 1978 (being Laws 1989,
16 Chapter 208, Section 3, as amended) is amended to read:

17 "28-17-3. DEFINITIONS.--As used in the Long-Term Care
18 Ombudsman Act:

19 A. "adult protective services" means the [~~children,~~
20 ~~youth and families~~] services provided by the human services
21 department or its delegate pursuant to the Adult Protective
22 Services Act;

23 B. "agency" means the [~~state agency on aging~~] human
24 services department;

25 C. "care" means assistance with the activities of

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1 daily living, including eating, dressing, oral hygiene,
2 bathing, mobility, toileting, grooming, taking medications,
3 transferring from a bed or chair and walking;

4 D. "director" or "secretary" means the [~~director of~~
5 ~~the state agency on aging~~] secretary of human services;

6 E. "licensing and certification" means the
7 licensing and certification bureau of the public health
8 division of the department of health;

9 F. "long-term care facility" means any residential
10 facility that provides care to one or more persons unrelated to
11 the owner or operator of the facility, including:

- 12 (1) a skilled nursing facility;
- 13 (2) an intermediate care nursing facility,
14 including an intermediate care facility for the mentally
15 retarded;
- 16 (3) a nursing facility;
- 17 (4) an adult residential shelter care home;
- 18 (5) a boarding home;
- 19 (6) any other adult care home or adult
20 residential care facility;
- 21 (7) a continuing care community;
- 22 (8) any swing bed in an acute care facility or
23 extended care facility; and
- 24 (9) any adult day care facility;

25 G. "office" means the [~~office of the~~] state

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1 ~~[long-term care]~~ ombudsman;

2 H. "Older Americans Act" means the federal Older
3 Americans Act;

4 I. "ombudsman" means an individual trained and
5 certified to act as a representative of the ~~[office of the]~~
6 state ~~[long-term care]~~ ombudsman;

7 J. "ombudsman coordinator" means the coordinator of
8 a regional or local ombudsman program designated by the ~~[office~~
9 ~~of the]~~ state ombudsman;

10 K. "program" means the New Mexico long-term care
11 ombudsman program;

12 L. "resident" means any patient, client or person
13 residing in and receiving care in a long-term care facility;

14 M. "state ombudsman" means the state long-term care
15 ombudsman; and

16 N. "surrogate decision maker" means a legally
17 appointed agent, guardian or surrogate who is authorized to act
18 on behalf of a resident."

19 SECTION 18. Section 29-17-2 NMSA 1978 (being Laws 1998,
20 Chapter 68, Section 1) is amended to read:

21 "29-17-2. SHORT TITLE.--~~[Sections 1 through 5 of this act]~~
22 Chapter 29, Article 17 NMSA 1978 may be cited as the
23 "Caregivers Criminal History Screening Act"."

24 SECTION 19. Section 29-17-4 NMSA 1978 (being Laws 1998,
25 Chapter 68, Section 3, as amended) is amended to read:

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1 "29-17-4. DEFINITIONS.--As used in the Caregivers
2 Criminal History Screening Act:

3 A. "applicant" means a person who seeks and is
4 offered employment or contractual service as a caregiver or
5 hospital caregiver with a care provider;

6 B. "caregiver" means a person, not otherwise
7 required to undergo a nationwide criminal history screening by
8 the New Mexico Children's and Juvenile Facility Criminal
9 Records Screening Act, whose employment or contractual service
10 with a care provider includes direct care or routine and
11 unsupervised physical or financial access to any care recipient
12 served by that provider;

13 C. "care provider" or "provider" means a skilled
14 nursing facility; an intermediate care facility; a care
15 facility for the mentally retarded; a general acute care
16 facility; a psychiatric facility; a rehabilitation facility; a
17 home health agency; a homemaker agency; a home for the aged or
18 disabled; a group home; an adult foster care home; a guardian
19 service provider; a case management entity that provides
20 services to people with developmental disabilities; a private
21 residence that provides personal care, adult residential care
22 or nursing care for two or more persons not related by blood or
23 marriage to the facility's operator or owner; an adult daycare
24 center; a boarding home; an adult residential care home; a
25 residential service or habilitation service authorized to be

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1 reimbursed by medicaid; any licensed or medicaid-certified
2 entity or any program funded by the [~~aging and long-term~~] human
3 services department that provides respite, companion or
4 personal care services; or programs funded by the [~~children,~~
5 ~~youth and families~~] human services department that provide
6 homemaker or adult daycare services. "Care provider" or
7 "provider" does not include resident care facilities located at
8 or performing services exclusively for any correctional
9 facility, outpatient treatment facilities, diagnostic and
10 treatment facilities, ambulatory surgical centers and
11 facilities, end-stage renal dialysis and treatment facilities,
12 rural health clinics, private physicians' offices or other
13 clinics that operate in the same manner as private physicians'
14 offices in group practice settings;

15 D. "care recipient" means any person under the care
16 of a provider who has a physical or mental illness, injury or
17 disability or who suffers from any cognitive impairment that
18 restricts or limits the person's activities;

19 E. "conviction" means a plea, judgment or verdict
20 of guilty, a plea of nolo contendere, an Alford plea or any
21 plea or judgment entered in connection with a suspended
22 sentence, in this state or any other state or jurisdiction;

23 F. "hospital caregiver" means a person who provides
24 direct unsupervised patient care in an inpatient setting and is
25 not a licensed New Mexico health care professional practicing

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1 within the scope of a profession's license;

2 G. "nationwide criminal history screening" means a
3 criminal history background investigation of an applicant,
4 caregiver or hospital caregiver through the use of fingerprints
5 collected by the department of public safety and submitted to
6 the federal bureau of investigation, resulting in generation of
7 a nationwide criminal history record for that applicant,
8 caregiver or hospital caregiver;

9 H. "nationwide criminal history record" means
10 information concerning a person's arrests, indictments or other
11 formal criminal charges and any dispositions arising therefrom,
12 including convictions, dismissals, acquittals, sentencing and
13 correctional supervision, and collected by criminal justice
14 agencies; and

15 I. "statewide criminal history screening" means a
16 criminal history background investigation of an applicant or
17 caregiver through the comparison of identifying information
18 with the department of public safety's criminal record
19 repository."

20 SECTION 20. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,
21 APPROPRIATIONS, MONEY, RECORDS, PROPERTY, CONTRACTUAL
22 OBLIGATIONS AND STATUTORY REFERENCES--RULES.--

23 A. On the effective date of this act, all
24 functions, appropriations, money, records, furniture,
25 equipment, supplies and other property of the aging and long-

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1 term services department are transferred to the human services
2 department.

3 B. On the effective date of this act, all
4 contractual obligations of the aging and long-term services
5 department shall be deemed to be contractual obligations of the
6 human services department.

7 C. On the effective date of this act, all
8 references in law to the aging and long-term services
9 department or the state agency on aging shall be deemed to be
10 references to the human services department.

11 D. Rules of the aging and long-term services
12 department shall be deemed to be rules of the human services
13 department until amended or repealed by the human services
14 department.

15 SECTION 21. REPEAL.--Sections 9-23-1 through 9-23-12,
16 28-4-1 through 28-4-4 and 28-4-7 NMSA 1978 (being Laws 2004,
17 Chapter 23, Sections 1 through 11, Laws 2004, Chapter 46,
18 Section 15, Laws 1969, Chapter 55, Section 2, Laws 1977,
19 Chapter 252, Section 17, Laws 1969, Chapter 55, Section 3 and
20 Laws 1979, Chapter 203, Sections 1 and 4) are repealed.

21 SECTION 22. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2011.