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SENATE BILL 176

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Nancy Rodriguez

AN ACT

RELATING TO HEALTH; AMENDING THE PUBLIC HEALTH ACT TO PROVIDE FOR THE LICENSURE BY THE DEPARTMENT OF HEALTH OF FREESTANDING BIRTH CENTERS.

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

SECTION 1. Section 24-1-2 NMSA 1978 (being Laws 1973, Chapter 359, Section 2, as amended by Laws 2007, Chapter 325, Section 6 and by Laws 2007, Chapter 326, Section 1) is amended to read:

"24-1-2. DEFINITIONS.--As used in the Public Health Act:

A. "department" or "division" means the children, youth and families department as to child care centers, residential treatment centers that serve persons up to twenty-one years of age, community mental health centers that serve only persons up to twenty-one years of age, day treatment

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1 centers that serve persons up to twenty-one years of age,  
2 shelter care homes and those outpatient facilities that are  
3 also community-based behavioral health facilities serving only  
4 persons up to twenty-one years of age and the department of  
5 health as to all other health facilities, unless otherwise  
6 designated;

7 B. "director" means the secretary;

8 C. "person", when used without further  
9 qualification, means an individual or any other form of entity  
10 recognized by law;

11 D. "health facility" means a public hospital,  
12 profit or nonprofit private hospital, general or special  
13 hospital, outpatient facility, maternity home or shelter,  
14 freestanding birth center, adult daycare facility, nursing  
15 home, intermediate care facility, boarding home not under the  
16 control of an institution of higher learning, child care  
17 center, shelter care home, diagnostic and treatment center,  
18 rehabilitation center, infirmary, community mental health  
19 center that serves both children and adults or adults only,  
20 residential treatment center that serves persons up to twenty-  
21 one years of age, community mental health center that serves  
22 only persons up to twenty-one years of age and day treatment  
23 center that serves persons up to twenty-one years of age or a  
24 health service organization operating as a freestanding hospice  
25 or a home health agency. The designation of these entities as

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1 health facilities is only for the purposes of definition in the  
2 Public Health Act and does not imply that a freestanding  
3 hospice or a home health agency is considered a health facility  
4 for the purposes of other provisions of state or federal laws.  
5 "Health facility" also includes those facilities that, by  
6 federal regulation, must be licensed by the state to obtain or  
7 maintain full or partial, permanent or temporary federal  
8 funding. It does not include the offices and treatment rooms  
9 of licensed private practitioners; and

10 E. "secretary" means the secretary of children,  
11 youth and families as to child care centers, residential  
12 treatment centers that serve persons up to twenty-one years of  
13 age, community mental health centers that serve only persons up  
14 to twenty-one years of age, day treatment centers that serve  
15 persons up to twenty-one years of age, shelter care homes and  
16 those outpatient facilities that are also community-based  
17 behavioral health facilities serving only persons up to twenty-  
18 one years of age and the secretary of health as to all other  
19 health facilities."

20 SECTION 2. Section 24-1-5 NMSA 1978 (being Laws 1973,  
21 Chapter 359, Section 5, as amended) is amended to read:

22 "24-1-5. LICENSURE OF HEALTH FACILITIES--HEARINGS--  
23 APPEALS.--

24 A. A health facility shall not be operated without  
25 a license issued by the department. If a health facility is

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1 found to be operating without a license, in order to protect  
2 human health or safety, the secretary may issue a  
3 cease-and-desist order. The health facility may request a  
4 hearing that shall be held in the manner provided in this  
5 section. The department may also proceed pursuant to the  
6 Health Facility Receivership Act.

7 B. The department is authorized to make inspections  
8 and investigations and to prescribe rules it deems necessary or  
9 desirable to promote the health, safety and welfare of persons  
10 using health facilities.

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

21 D. Upon inspection of a health facility, if the  
22 department finds a violation of its rules, the department may  
23 deny the application for a license, whether initial or renewal,  
24 or it may issue a temporary license. A temporary license shall  
25 not be issued for a period exceeding one hundred twenty days,

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1 nor shall more than two consecutive temporary licenses be  
2 issued.

3 E. A one-year nontransferable license shall be  
4 issued to any health facility complying with all rules of the  
5 department. The license shall be renewable for successive one-  
6 year periods, upon filing of a renewal application, if the  
7 department is satisfied that the health facility is in  
8 compliance with all rules of the department or, if not in  
9 compliance with a rule, has been granted a waiver or variance  
10 of that rule by the department pursuant to procedures,  
11 conditions and guidelines adopted by rule of the department.  
12 Licenses shall be posted in a conspicuous place on the licensed  
13 premises, except that child care centers that receive no state  
14 or federal funds may apply for and receive from the department  
15 a waiver from the requirement that a license be posted or kept  
16 on the licensed premises.

17 F. A health facility that has been inspected and  
18 licensed by the department [~~and~~], that has received  
19 certification for participation in federal reimbursement  
20 programs and that has been fully accredited by the joint  
21 commission [~~on accreditation of health care organizations~~] or  
22 the American osteopathic association shall be granted a license  
23 renewal based on that accreditation. A freestanding birth  
24 center that is accredited by the commission for accreditation  
25 of birth centers or its successor accreditation body shall be

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1 granted a license renewal based on that accreditation. Health  
2 facilities receiving less than full accreditation by the joint  
3 commission [~~on the accreditation of health care organizations~~]  
4 or by the American osteopathic association may be granted a  
5 license renewal based on that accreditation. License renewals  
6 shall be issued upon application submitted by the health  
7 facility upon forms prescribed by the department. This  
8 subsection does not limit in any way the department's various  
9 duties and responsibilities under other provisions of the  
10 Public Health Act or under any other subsection of this  
11 section, including any of the department's responsibilities for  
12 the health and safety of the public.

13 G. The department may charge a reasonable fee not  
14 to exceed twelve dollars (\$12.00) per bed for an inpatient  
15 health facility or three hundred dollars (\$300) for any other  
16 health facility for each license application, whether initial  
17 or renewal, of an annual license or the second consecutive  
18 issuance of a temporary license. Fees collected shall not be  
19 refundable. All fees collected pursuant to licensure  
20 applications shall be deposited with the state treasurer for  
21 credit in a designated department recurring account for use in  
22 health facility licensure and certification operations.

23 H. The department may revoke or suspend the license  
24 of a health facility or may impose on a health facility an  
25 intermediate sanction and a civil monetary penalty provided in

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1 Section 24-1-5.2 NMSA 1978 after notice and an opportunity for  
2 a hearing before a hearing officer designated by the department  
3 to hear the matter and, except for child care centers and  
4 facilities, may proceed pursuant to the Health Facility  
5 Receivership Act upon a determination that the health facility  
6 is not in compliance with any rule of the department. If  
7 immediate action is required to protect human health and  
8 safety, the secretary may suspend a license or impose an  
9 intermediate sanction pending a hearing, provided the hearing  
10 is held within five working days of the suspension or  
11 imposition of the sanction, unless waived by the licensee, and,  
12 except for child care centers and facilities, may proceed ex  
13 parte pursuant to the Health Facility Receivership Act.

14 I. The department shall schedule a hearing pursuant  
15 to Subsection H of this section if the department receives a  
16 request for a hearing from a licensee:

17 (1) within ten working days after receipt by  
18 the licensee of notice of suspension, revocation, imposition of  
19 an intermediate sanction or civil monetary penalty or denial of  
20 an initial or renewal application;

21 (2) within four working days after receipt by  
22 the licensee of an emergency suspension order or emergency  
23 intermediate sanction imposition and notice of hearing if the  
24 licensee wishes to waive the early hearing scheduled and  
25 request a hearing at a later date; or

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

3 The department shall also provide timely notice to the  
4 licensee of the date, time and place of the hearing, identity  
5 of the hearing officer, subject matter of the hearing and  
6 alleged violations.

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

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1 admissible as evidence in any hearing.

2 K. Any party may appeal the final decision of the  
3 department pursuant to the provisions of Section 39-3-1.1 NMSA  
4 1978.

5 L. A complaint about a health facility received by  
6 the department pursuant to this section shall be promptly  
7 investigated and appropriate action shall be taken if  
8 substantiated. The department shall develop a health  
9 facilities protocol in conjunction with the human services  
10 department, the protective services division of the children,  
11 youth and families department, the office of the state  
12 long-term care ombudsman and other appropriate agencies to  
13 ensure the health, safety and rights of individuals in health  
14 facilities. The health facilities protocol shall require:

15 (1) cross-reference among agencies pursuant to  
16 this subsection of an allegation of abuse, neglect or  
17 exploitation;

18 (2) an investigation, within the strict  
19 priority time frames established by each protocol member's  
20 rules, of an allegation or referral of abuse, neglect or  
21 exploitation after the department has made a good cause  
22 determination that abuse, neglect or exploitation occurred;

23 (3) an agency to share its investigative  
24 information and findings with other agencies, unless otherwise  
25 prohibited by law; and

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

5                   M. A complaint received by the department pursuant  
6 to this section shall not be disclosed publicly in a manner as  
7 to identify any individuals or health facilities if upon  
8 investigation the complaint is unsubstantiated.

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

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1 to notify the parents of children in the child care facility of  
2 the notice and opportunity for hearing given to the owner or  
3 operator.

4 O. Nothing contained in this section or in the  
5 Public Health Act shall authorize either the secretary or the  
6 department to make any inspection or investigation or to  
7 prescribe any rules concerning group homes as defined in  
8 Section 9-8-13 NMSA 1978 except as are reasonably necessary or  
9 desirable to promote the health and safety of persons using  
10 group homes."

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