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HOUSE BILL 500

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Micaela Lara Cadena and Willie D. Madrid

AN ACT

RELATING TO MINORS; AMENDING SECTIONS OF THE PUBLIC HEALTH ACT
TO PROVIDE FOR CHILDREN, YOUTH AND FAMILIES DEPARTMENT
REGULATION OF PROGRAMS FOR AT-RISK YOUTH.

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) is amended to read:

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

A. "condition of public health importance" means an
infection, a disease, a syndrome, a symptom, an injury or other
threat that is identifiable on an individual or community level
and can reasonably be expected to lead to adverse health
effects in the community;

B. "crisis triage center" means a health facility
that:

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1 (1) is licensed by the department of health;
2 and

3 (2) provides stabilization of behavioral
4 health crises and may include residential and nonresidential
5 stabilization;

6 C. "department" means:

7 (1) the department of health; or

8 (2) the children, youth and families

9 department as to child care centers, residential treatment
10 centers that serve persons up to twenty-one years of age,
11 community mental health centers that serve only persons up to
12 twenty-one years of age, day treatment centers that serve
13 persons up to twenty-one years of age, shelter care homes,
14 programs for at-risk youth and those outpatient facilities that
15 are also community-based behavioral health facilities serving
16 only persons up to twenty-one years of age;

17 D. "director" means the secretary;

18 E. "health care provider" means an individual
19 licensed to provide health care in the ordinary course of
20 business, except as otherwise defined in the Public Health Act;

21 F. "health facility" means a public hospital,
22 profit or nonprofit private hospital, general or special
23 hospital, outpatient facility, crisis triage center,
24 freestanding birth center, adult daycare facility, nursing
25 home, intermediate care facility, assisted living facility,

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1 boarding home not under the control of an institution of higher
2 learning, child care center, shelter care home, programs for
3 at-risk youth, diagnostic and treatment center, rehabilitation
4 center, infirmary, community mental health center that serves
5 both children and adults or adults only, residential treatment
6 center that serves persons up to twenty-one years of age,
7 community mental health center that serves only persons up to
8 twenty-one years of age and day treatment center that serves
9 persons up to twenty-one years of age or a health service
10 organization operating as a freestanding hospice or a home
11 health agency. The designation of these entities as health
12 facilities is only for the purposes of definition in the Public
13 Health Act and does not imply that a freestanding hospice or a
14 home health agency is considered a health facility for the
15 purposes of other provisions of state or federal laws. "Health
16 facility" also includes those facilities that, by federal
17 regulation, must be licensed by the state to obtain or maintain
18 full or partial, permanent or temporary federal funding. It
19 does not include the offices and treatment rooms of licensed
20 private practitioners;

21 G. "program for at-risk youth" means a residential,
22 wilderness or boot camp program that serves children or youth
23 identified as:

24 (1) living with a behavioral health condition
25 or emotional disturbance or presenting with disruptive

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1 behaviors; or

2 (2) having had, or being at risk of having,
3 involvement in the juvenile justice system;

4 [~~G.~~] H. "screening" means a preliminary procedure,
5 including a test or examination, that:

6 (1) may require further investigation; and
7 (2) can identify individuals with unrecognized
8 health risk factors or asymptomatic disease conditions in
9 populations;

10 [~~H.~~] I. "secretary" means:

11 (1) the secretary of health; or
12 (2) the secretary of children, youth and
13 families as to child care centers, residential treatment
14 centers that serve persons up to twenty-one years of age,
15 community mental health centers that serve only persons up to
16 twenty-one years of age, day treatment centers that serve
17 persons up to twenty-one years of age, shelter care homes,
18 programs for at-risk youth and those outpatient facilities that
19 are also community-based behavioral health facilities serving
20 only persons up to twenty-one years of age; and

21 [~~I.~~] J. "test" means any diagnostic or
22 investigative analysis or medical procedure that determines the
23 presence of, absence of or exposure to a condition of public
24 health importance or its precursor in an individual."

25 SECTION 2. Section 24-1-5 NMSA 1978 (being Laws 1973,

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1 Chapter 359, Section 5, as amended) is amended to read:

2 "24-1-5. LICENSURE OF HEALTH FACILITIES--HEARINGS--
3 APPEALS.--

4 A. A health facility shall not be operated without
5 a license issued by the department. If a health facility is
6 found to be operating without a license, in order to protect
7 human health or safety, the secretary may issue a cease-and-
8 desist order. The health facility may request a hearing that
9 shall be held in the manner provided in this section. The
10 department may also proceed pursuant to the Health Facility
11 Receivership Act.

12 B. The department is authorized to make inspections
13 and investigations and to prescribe rules it deems necessary or
14 desirable to promote the health, safety and welfare of persons
15 using health facilities.

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

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1 D. Upon inspection of a health facility, if the
2 department finds a violation of its rules, the department may
3 deny the application for a license, whether initial or renewal,
4 or it may issue a temporary license. A temporary license shall
5 not be issued for a period exceeding one hundred twenty days,
6 nor shall more than two consecutive temporary licenses be
7 issued.

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

22 F. A health facility that has been inspected and
23 licensed by the department, that has received certification for
24 participation in federal reimbursement programs and that has
25 been fully accredited by a national accrediting organization

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1 approved by the federal centers for medicare and medicaid
2 services or the department shall be granted a license renewal
3 based on that accreditation. A freestanding birth center that
4 has been inspected and licensed by the department and is
5 accredited by the commission for accreditation of birth centers
6 or its successor accreditation body shall be granted a license
7 renewal based on that accreditation. Health facilities
8 receiving less than full accreditation by an approved
9 accrediting body may be granted a license renewal based on that
10 accreditation. License renewals shall be issued upon
11 application submitted by the health facility upon forms
12 prescribed by the department. This subsection does not limit
13 in any way the department's various duties and responsibilities
14 under other provisions of the Public Health Act or under any
15 other subsection of this section, including any of the
16 department's responsibilities for the health and safety of the
17 public.

18 G. The department may charge a reasonable fee not
19 to exceed twelve dollars (\$12.00) per bed for an inpatient
20 health facility or three hundred dollars (\$300) for any other
21 health facility for each license application, whether initial
22 or renewal, of an annual license or the second consecutive
23 issuance of a temporary license. Fees collected shall not be
24 refundable. All fees collected pursuant to licensure
25 applications shall be deposited with the state treasurer for

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1 credit in a designated department recurring account for use in
2 health facility licensure and certification operations.

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

19 I. The department shall schedule a hearing pursuant
20 to Subsection H of this section if the department receives a
21 request for a hearing from a licensee within:

22 (1) [~~within~~] ten working days after receipt by
23 the licensee of notice of suspension, revocation, imposition of
24 an intermediate sanction or civil monetary penalty or denial of
25 an initial or renewal application;

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1 (2) ~~[within]~~ four working days after receipt
2 by the licensee of an emergency suspension order or emergency
3 intermediate sanction imposition and notice of hearing if the
4 licensee wishes to waive the early hearing scheduled and
5 request a hearing at a later date; or

6 (3) ~~[within]~~ five working days after receipt
7 of a cease-and-desist order.

8 The department shall also provide timely notice to the
9 licensee of the date, time and place of the hearing, identity
10 of the hearing officer, subject matter of the hearing and
11 alleged violations.

12 J. A hearing held pursuant to provisions of this
13 section shall be conducted in accordance with adjudicatory
14 hearing rules and procedures adopted by rule of the department.
15 The licensee has the right to be represented by counsel, to
16 present all relevant evidence by means of witnesses and books,
17 papers, documents, records, files and other evidence and to
18 examine all opposing witnesses who appear on any matter
19 relevant to the issues. The hearing officer has the power to
20 administer oaths on request of any party and issue subpoenas
21 and subpoenas duces tecum prior to or after the commencement of
22 the hearing to compel discovery and the attendance of witnesses
23 and the production of relevant books, papers, documents,
24 records, files and other evidence. Documents or records
25 pertaining to abuse, neglect or exploitation of a resident,

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1 client or patient of a health facility or other documents,
2 records or files in the custody of the human services
3 department or the office of the state long-term care ombudsman
4 at the aging and long-term services department that are
5 relevant to the alleged violations are discoverable and
6 admissible as evidence in any hearing.

7 K. Any party may appeal the final decision of the
8 department pursuant to the provisions of Section 39-3-1.1 NMSA
9 1978.

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

20 (1) cross-reference among agencies pursuant to
21 this subsection of an allegation of abuse, neglect or
22 exploitation;

23 (2) an investigation, within the strict
24 priority time frames established by each protocol member's
25 rules, of an allegation or referral of abuse, neglect or

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1 exploitation after the department has made a good cause
2 determination that abuse, neglect or exploitation occurred;

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

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

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

14 N. The name and information regarding the person
15 making a complaint pursuant to this section shall not be
16 disclosed absent the consent of the informant or a court order.

17 O. Notwithstanding any other provision of this
18 section, when there are reasonable grounds to believe that a
19 child is in imminent danger of abuse or neglect while in the
20 care of a child care facility or a program for at-risk youth,
21 whether or not licensed, or upon the receipt of a report
22 pursuant to Section 32A-4-3 NMSA 1978, the department shall
23 consult with the owner or operator of the child care facility
24 or program for at-risk youth. Upon a finding of probable
25 cause, the department shall give the owner or operator notice

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1 of its intent to suspend operation of the child care facility
2 or program for at-risk youth and provide an opportunity for a
3 hearing to be held within three working days, unless waived by
4 the owner or operator. Within seven working days from the day
5 of notice, the secretary shall make a decision, and, if it is
6 determined that any child is in imminent danger of abuse or
7 neglect in the child care facility or program for at-risk
8 youth, the secretary may suspend operation of the child care
9 facility or program for at-risk youth for a period not in
10 excess of fifteen days. Prior to the date of the hearing, the
11 department shall make a reasonable effort to notify the parents
12 of children in the child care facility or program for at-risk
13 youth of the notice and opportunity for hearing given to the
14 owner or operator.

15 P. Nothing contained in this section or in the
16 Public Health Act shall authorize either the secretary or the
17 department to make any inspection or investigation or to
18 prescribe any rules concerning group homes as defined in
19 Section 9-8-13 NMSA 1978 except as are reasonably necessary or
20 desirable to promote the health and safety of persons using
21 group homes."