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SENATE BILL 350

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

RAYMOND L. KYSAR

FOR THE HEALTH CARE REFORM COMMITTEE

AN ACT

RELATING TO HOSPITALS; PROVIDING FOR THE CONSOLIDATION OF
LICENSE APPLICATIONS FOR HOSPITALS OPERATING AS HOSPITAL-BASED
PRIMARY CARE CLINICS.

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

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

"24-1-5. LICENSURE OF HEALTH FACILITIES. --

A. No health facility shall be operated without a
license issued by the department. If a health facility is found
to be operating without a license, in order to protect human
health or safety the secretary may issue a cease-and-desist
order. The health facility may request a hearing, which shall
be held in the manner provided in this section. The department
may also proceed pursuant to the Health Facility Receivership

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1 Act.

2 B. The department is authorized to make inspections
3 and investigations and to prescribe regulations it deems
4 necessary or desirable to promote the health, safety and welfare
5 of persons [~~utilizing~~] using health facilities.

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

16 D. Upon inspection of any health facility, if the
17 department finds any violation of its regulations, it may deny
18 the application for a license, whether initial or renewal, or it
19 may issue a temporary license. A temporary license shall not be
20 issued for a period exceeding one hundred twenty days, nor shall
21 more than two consecutive temporary licenses be issued.

22 E. A one-year nontransferable license shall be
23 issued to any health facility complying with all regulations of
24 the department. The license shall be renewable for successive
25 one-year periods, upon filing of a renewal application, if the

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1 department is satisfied that the health facility is in
2 compliance with all regulations of the department or, if not in
3 compliance with any regulation, has been granted a waiver or
4 variance of that regulation by the department pursuant to
5 procedures, conditions and guidelines adopted by regulation of
6 the department. Licenses shall be posted in a conspicuous place
7 on the licensed premises, except that child-care centers that
8 receive no state or federal funds may apply for and receive from
9 the department a waiver from the requirement that a license be
10 posted or kept on the licensed premises.

11 F. Any health facility that has been inspected and
12 licensed by the department and that has received certification
13 for participation in federal reimbursement programs and that has
14 been fully accredited by the joint commission on accreditation
15 of health care organizations or the American osteopathic
16 association shall be granted a license renewal based on that
17 accreditation. Health facilities receiving less than full
18 accreditation by the joint commission on the accreditation of
19 health care organizations or by the American osteopathic
20 association may be granted a license renewal based on such
21 accreditation. License renewals shall be issued upon
22 application submitted by the facility upon forms prescribed by
23 the department. This subsection does not limit in any way the
24 department's various duties and responsibilities under other
25 provisions of the Public Health Act or under any other

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1 subsection of this section, including any of the department's
2 responsibilities for the health and safety of the public.

3 G. The department may charge a reasonable fee not to
4 exceed three dollars (\$3.00) per bed for an in-patient health
5 facility or one hundred dollars (\$100) for any other health
6 facility for each license application, whether initial or
7 renewal, of an annual license or the second consecutive issuance
8 of a temporary license. Fees collected shall not be refundable.
9 All fees collected pursuant to licensure applications shall be
10 deposited with the state treasurer for credit to the general
11 fund.

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

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1 child-care centers and facilities, may proceed ex parte pursuant
2 to the Health Facility Receivership Act.

3 I. The department shall schedule a hearing pursuant
4 to Subsection H of this section if the department receives a
5 request for a hearing from a licensee:

6 (1) within ten working days after receipt by
7 the licensee of notice of suspension, revocation, imposition of
8 an intermediate sanction or civil monetary penalty or denial of
9 an initial or renewal application;

10 (2) within four working days after receipt by
11 the licensee of an emergency suspension order or emergency
12 intermediate sanction imposition and notice of hearing, if the
13 licensee wishes to waive the early hearing scheduled and request
14 a hearing at a later date; or

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

17 The department shall also provide timely notice to the
18 licensee of the date, time and place for the hearing, identity
19 of the hearing officer, subject matter of the hearing and
20 alleged violations.

21 J. Any hearing [~~under~~] held pursuant to provisions
22 of this section shall be conducted in accordance with
23 adjudicatory hearing rules and procedures adopted by regulation
24 of the department. The licensee has the right to be represented
25 by counsel, to present all relevant evidence by means of

1 witnesses and books, papers, documents, records, files and other
2 evidence and to examine all opposing witnesses who appear on any
3 matter relevant to the issues. The hearing officer has the
4 power to administer oaths on request of any party and issue
5 subpoenas and subpoenas duces tecum prior to or after the
6 commencement of the hearing to compel discovery and the
7 attendance of witnesses and the production of relevant books,
8 papers, documents, records, files and other evidence. Documents
9 or records pertaining to abuse, neglect or exploitation of a
10 resident, client or patient of a health facility or other
11 documents, records or files in the custody of the human services
12 department or the office of the state long-term care ombudsman
13 at the state agency on aging that are relevant to the alleged
14 violations are discoverable and admissible as evidence in any
15 hearing.

16 K. Any party may appeal to the court of appeals on
17 the record within thirty days after the final decision of the
18 department. The court shall set aside the final decision only
19 if it is found to be arbitrary, capricious or an abuse of
20 discretion; not supported by substantial evidence in the record;
21 outside the authority of the department; or otherwise not in
22 accordance with law.

23 L. Every complaint about a health facility received
24 by the department pursuant to this section shall be promptly
25 investigated to substantiate the allegation and to take

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1 appropriate action if substantiated. The department shall
2 coordinate with the human services department, the office of the
3 state long-term care ombudsman at the state agency on aging and
4 any other appropriate agency to develop a joint protocol
5 establishing responsibilities and procedures to assure prompt
6 investigation of complaints, including prompt and appropriate
7 referrals and necessary action regarding allegations of abuse,
8 neglect or exploitation of residents, clients or patients in a
9 health facility.

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

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

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1 a decision, and, if it is determined that any child is in
2 imminent danger of abuse or neglect in the child-care facility,
3 the ~~[director]~~ secretary may suspend operation of the child-care
4 facility for a period not in excess of fifteen days. Prior to
5 the date of the hearing, the department shall make a reasonable
6 effort to notify the parents of children in the child-care
7 facility of the notice and opportunity for hearing given to the
8 owner or operator.

9 0. Nothing contained in this section or in the
10 Public Health Act shall authorize either the secretary or the
11 department to make any inspection or investigation or to
12 prescribe any regulations concerning group homes as defined in
13 Section 9-8-13 NMSA 1978 except as are reasonably necessary or
14 desirable to promote the health and safety of persons
15 ~~[utilizing]~~ using group homes. "

1 FORTY-THIRD LEGISLATURE
2 FIRST SESSION, 1997
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5 February 17, 1997
6

7 Mr. President:
8

9 Your PUBLIC AFFAIRS COMMITTEE, to whom has been
10 referred
11

12 SENATE BILL 350
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14 has had it under consideration and reports same with
15 recommendation that it DO PASS, and thence referred to the
16 CORPORATIONS & TRANSPORTATION COMMITTEE.
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18 Respectfully submitted,
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22 _____
23 Shannon Robinson, Chairman
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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

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Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Adair, Boitano, Ingle, Vernon

Absent: None

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1 FORTY-THIRD LEGISLATURE
2 FIRST SESSION, 1997
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5 February 26, 1997
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7 Mr. President:
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9 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
10 whom has been referred
11

12 SENATE BILL 350
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14 has had it under consideration and reports same with
15 recommendation that it DO PASS.
16

17 Respectfully submitted,
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21 _____
22 Roman M. Maes, III, Chairman
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25 Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

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Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Fidel, Griego, Leavell, McKibben

Absent: None

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