

AN ACT

RELATING TO EXECUTIVE REORGANIZATION; CREATING THE ADULT SERVICES DEPARTMENT; PROVIDING FOR A PHASED TRANSITION TO THE NEW DEPARTMENT; TRANSFERRING FUNCTIONS, PERSONNEL, MONEY, APPROPRIATIONS AND PROPERTY FROM THE STATE AGENCY ON AGING, THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT, THE DEPARTMENT OF HEALTH AND THE HUMAN SERVICES DEPARTMENT.

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

Section 1. SHORT TITLE. -- Sections 1 through 9 of this act may be cited as the "Adult Services Department Act".

Section 2. PURPOSE. -- The purpose of the Adult Services Department Act is to create a single, unified department to administer all laws and exercise all functions formerly administered by the state agency on aging, children, youth and families department, department of health and human services department that relate to long-term care and comprehensive services for seniors and other adults.

Section 3. DEFINITIONS. -- As used in the Adult Services Department Act:

A. "department" means the adult services department; and

B. "secretary" means the secretary of adult services.

Section 4. DEPARTMENT CREATED-- DIVISIONS. -- The "adult

services department" is created. The department is a cabinet department and includes the following divisions:

- A. administrative services division;
- B. adult protective services division;
- C. consumer protection division;
- D. disabled adult programs division;
- E. medicaid programs division; and
- F. senior programs division.

Section 5. SECRETARY OF ADULT SERVICES-- APPOINTMENT. --

A. The chief executive and administrative officer of the department is the "secretary of adult services". The secretary shall be appointed by the governor with the consent of the senate. The secretary shall hold that office at the pleasure of the governor and shall serve in the executive cabinet.

B. An appointed secretary shall serve and have all of the duties, responsibilities and authority of that office during the period of time prior to final action by the senate confirming or rejecting his appointment.

Section 6. SECRETARY-- DUTIES AND GENERAL POWERS. --

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

B. To perform his duties, the secretary has every

power expressly enumerated in the laws, whether granted to the secretary or the department or any division of the department, except where authority conferred upon any division is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Adult Services Department Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and rules;

(2) delegate authority to subordinates as he deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units he deems will enable it to function most efficiently, subject to provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge his duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law for whose administration or execution he is

responsible and to enforce those orders and instructions by appropriate administrative action in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of services to the citizens of the state;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objective of improving the operations and efficiency of administration;

(8) prepare an annual budget of the department;

(9) provide cooperation, at the request of heads of administratively attached agencies, in order to:

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

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

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

(10) appoint, with the governor's consent, a "director" for each division.

C. The secretary may apply for and receive, with

the governor's approval, in the name of the department, any public or private funds, including United States government funds, available to the department to carry out its programs, duties or services.

D. Where functions of departments overlap or a function assigned to one department could better be performed by another department, the secretary may recommend appropriate legislation to the next session of the legislature for its approval.

E. The secretary may make and adopt such reasonable procedural rules as may be necessary to carry out the duties of the department and its divisions. No rule promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary unless otherwise provided by statute. Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule, proposed amendment or

repeal of an existing rule may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. Rules shall be filed in accordance with the State Rules Act.

Section 7. DIVISION DIRECTORS.--Except as otherwise provided by law, the secretary shall appoint, with the approval of the governor, "directors" of divisions established in the department. The directors so appointed are exempt from the Personnel Act.

Section 8. BUREAUS--CHIEFS.--The secretary shall establish in the divisions such bureaus as he deems necessary to carry out the provisions of the Adult Services Department Act. He shall appoint a "chief" to be the administrative head of the bureau. The chief and subsidiary employees of the department shall be covered by the Personnel Act unless otherwise provided by law.

Section 9. DEPARTMENT RESPONSIBILITIES--TRANSITION AND INTEGRATION PLAN.--

A. The adult services department shall be responsible for the administration of the Older Americans Act of 2001 and other programs and services that were provided by the state agency on aging; adult protective services and other programs that serve disabled adults and the elderly

that were administered by the children, youth and families department; the home and community-based medicaid waiver program for the disabled and elderly; the medicaid centralized screening and intake services program; the medicaid personal care option program; the program of all-inclusive care for the elderly; and other related long-term care programs for seniors and disabled adults that were administered by other state agencies.

B. It is the intent of the legislature that consolidation of state services and programs into the adult services department be accomplished as quickly as is feasible within the following two-year period:

(1) the functions of the state agency on aging, the medicaid centralized intake and screening program of the human services department, the home and community-based medicaid waiver program for disabled and elderly persons of the department of health and the medicaid personal care option program of the human services department shall be transferred to the adult services department by January 1, 2002; and

(2) the adult protective services program of the children, youth and families department and the program of all-inclusive care for the elderly of the human services department shall be transferred to the adult services department by January 1, 2003.

C. The governor may by executive order move other existing programs for seniors and disabled adults in executive agencies under his control to the adult services department.

D. The governor's office and the department of finance and administration shall assist the secretary in the establishment of the adult services department. The secretary of adult services may delay the organization of individual divisions until their functions have been transferred to the adult services department.

E. At the time of transfer of an agency or program, all personnel, money, appropriations, records, files, furniture, equipment and other property related to that agency or program shall be transferred to the adult services department. The governor's office and the state budget division of the department of finance and administration shall assist in the identification of personnel, money, appropriations and property to be transferred. Contractual and other obligations of an agency or program shall be obligations of the adult services department.

F. After the effective date of the transfers provided in Subsection B of this section, references in law to the following agencies or programs shall be deemed to be references to the adult services department:

- (1) state agency on aging;
- (2) children, youth and families department as references relate to adult protective services, attendant care and Title 20 of the federal Social Security Act as it relates to elderly and disabled persons;
- (3) human services department as references relate to medicaid centralized intake and screening, personal care option program and program of all-inclusive care for the elderly; and
- (4) department of health as references relate to the home and community-based medicaid waiver program for disabled and elderly persons.

G. The secretary of adult services shall provide periodic updates to the legislative finance committee and the legislative health and human services committee on the progress of the transition and integration plan and the establishment of the adult services department. By November 1 of 2001 and 2002, the secretary shall provide the legislative health and human services committee with recommendations for statutory changes necessary to implement fully the Adult Services Department Act, including correcting statutory references.

Section 10. Section 9-8-8 NMSA 1978 (being Laws 1977, Chapter 252, Section 9, as amended) is amended to read:

"9-8-8. ADMINISTRATIVELY ATTACHED AGENCIES. -- The New

Mexico office of Indian affairs and the commission on the status of women are administratively attached to the human services department in accordance with the Executive Reorganization Act. "

Section 11. REPEAL. -- Sections 28-4-1 through 28-4-9 NMSA 1978 (being Laws 1969, Chapter 55, Section 2, Laws 1977, Chapter 252, Section 17, Laws 1969, Chapter 55, Section 3 and Laws 1979, Chapter 203, Sections 1 through 6, as amended) are repealed.

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