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HOUSE BILL 924

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Edward C. Sandoval

AN ACT

RELATING TO RESIDENT ABUSE AND NEGLECT; AMENDING CERTAIN
SECTIONS OF THE RESIDENT ABUSE AND NEGLECT ACT.

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

Section 1. Section 30-47-3 NMSA 1978 (being Laws 1990,
Chapter 55, Section 3) is amended to read:

"30-47-3. DEFINITIONS. -- As used in the Resident Abuse and
Neglect Act:

A. "abuse" means any act or failure to act
performed intentionally, knowingly or recklessly that causes or
is likely to cause harm to a resident, including, but not
limited to:

(1) physical contact that harms or is likely
to harm a resident of a care facility;

(2) inappropriate use of a physical restraint,

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[bracketed material] = delete

1 isolation or medication that harms or is likely to harm a
2 resident;

3 (3) inappropriate use of a physical or
4 chemical restraint, medication or isolation as punishment or in
5 conflict with a physician's order;

6 (4) medically inappropriate conduct that
7 causes or is likely to cause physical harm to a resident;

8 (5) medically inappropriate conduct that
9 causes or is likely to cause great psychological harm to a
10 resident; and

11 (6) an unlawful act, a threat or menacing
12 conduct directed toward a resident that results and might
13 reasonably be expected to result in fear or emotional or mental
14 distress to a resident;

15 B. "care facility" means a hospital; skilled
16 nursing facility; intermediate care facility; care facility for
17 the mentally retarded; psychiatric facility; rehabilitation
18 facility; kidney disease treatment center; home health agency;
19 ambulatory surgical or out-patient facility; home for the aged
20 or disabled; group home; adult foster care home; private
21 residence that provides personal care, sheltered care or
22 nursing care for one or more persons; adult day care center;
23 boarding home; adult residential shelter care home; and any
24 other health or resident care related facility or home, but
25 does not include a care facility located at or performing

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1 services for any correctional facility;

2 C. "department" means the human services department
3 or its successor, contractor, employee or designee;

4 D. "great psychological harm" means psychological
5 harm that causes mental or emotional incapacitation for a
6 prolonged period of time or that causes extreme behavioral
7 change or severe physical symptoms that require psychological
8 or psychiatric care;

9 E. "great physical harm" means physical harm of a
10 type that causes physical loss of a bodily member or organ or
11 functional loss of a bodily member or organ for a prolonged
12 period of time;

13 F. "neglect" means, subject to the resident's right
14 to refuse treatment and subject to the caregiver's right to
15 exercise sound medical discretion, the [~~grossly~~] criminally
16 negligent:

17 (1) failure to provide any treatment, service,
18 care, medication or item that is necessary to maintain the
19 health or safety of a resident;

20 (2) failure to take any reasonable precaution
21 that is necessary to prevent damage to the health or safety of
22 a resident; or

23 (3) failure to carry out a duty to supervise
24 properly or control the provision of any treatment, care, good,
25 service or medication necessary to maintain the health or

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1 safety of a resident;

2 G. "person" means any individual, corporation,
3 partnership, unincorporated association or other governmental
4 or business entity;

5 H. "physical harm" means an injury to the body that
6 causes substantial pain or incapacitation; and

7 I. "resident" means any person who resides in a
8 care facility or who receives treatment from a care facility."

9 Section 2. Section 30-47-6 NMSA 1978 (being Laws 1990,
10 Chapter 55, Section 6) is amended to read:

11 "30-47-6. EXPLOITATION--CRIMINAL PENALTIES.--

12 A. Exploitation of a resident's property consists
13 of [~~the act or process, performed~~] intentionally, knowingly or
14 recklessly [~~of~~] using or converting a resident's property [~~for~~]
15 to one's own or another person's use, profit, advantage or
16 benefit without legal entitlement to do so.

17 B. Whoever commits exploitation of a resident's
18 property when the value of the property exploited is one
19 hundred dollars (\$100) or less is guilty of a petty misdemeanor
20 and upon conviction shall be sentenced pursuant to the
21 provisions of Subsection B of Section 31-19-1 NMSA 1978.

22 C. Whoever commits exploitation of a resident's
23 property when the value of the property exploited is over one
24 hundred dollars (\$100) but not more than two hundred fifty
25 dollars (\$250) is guilty of a misdemeanor and upon conviction

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1 shall be sentenced pursuant to the provisions of Subsection A
2 of Section 31-19-1 NMSA 1978.

3 D. Whoever commits exploitation of a resident's
4 property when the value of the property exploited is over two
5 hundred fifty dollars (\$250) but not more than two thousand
6 five hundred dollars (\$2,500) is guilty of a fourth degree
7 felony and upon conviction shall be sentenced pursuant to the
8 provisions of Section 31-18-15 NMSA 1978.

9 E. Whoever commits exploitation of a resident's
10 property when the value of the property exploited is over two
11 thousand five hundred dollars (\$2,500) but not more than twenty
12 thousand dollars (\$20,000) is guilty of a third degree felony
13 and upon conviction shall be sentenced pursuant to the
14 provisions of Section 31-18-15 NMSA 1978.

15 F. Whoever commits exploitation of a resident's
16 property when the value of the property exploited is over
17 twenty thousand dollars (\$20,000) is guilty of a second degree
18 felony and upon conviction shall be sentenced pursuant to the
19 provisions of Section 31-18-15 NMSA 1978. "

20 Section 3. EFFECTIVE DATE. --The effective date of the
21 provisions of this act is July 1, 2003.