

1 AN ACT

2 RELATING TO THE EXECUTIVE DEPARTMENT; TRANSFERRING THE
3 BEHAVIORAL HEALTH SERVICES DIVISION FROM THE DEPARTMENT OF
4 HEALTH TO THE HUMAN SERVICES DEPARTMENT; PROVIDING FOR THE
5 TRANSFER OF PERSONNEL, PROPERTY, CONTRACTS AND REFERENCES IN
6 LAW; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA
7 1978.

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

10 Section 1. Section 9-7-4 NMSA 1978 (being Laws 1991,
11 Chapter 25, Section 16, as amended) is amended to read:

12 "9-7-4. DEPARTMENT ESTABLISHED.--

13 A. There is created in the executive branch the
14 "department of health". The department shall be a cabinet
15 department and shall include, but not be limited to, the
16 programs and functions of the public health division and the
17 scientific laboratory.

18 B. All references in the law to the public health
19 division of the health and environment department, the state
20 department of public health, the public health department,
21 the health services division or the state board of health
22 shall be construed as referring to the department.

23 C. The administrative services division of the
24 department shall provide clerical, recordkeeping and
25 administrative support to the department, including, but not

1 limited to, the areas of personnel, budget, procurement and
2 contracting.

3 D. The information technology division shall have
4 all those powers and duties conferred upon it by the
5 secretary with the consent of the governor."

6 Section 2. Section 9-8-1 NMSA 1978 (being Laws 1977,
7 Chapter 252, Section 1) is amended to read:

8 "9-8-1. SHORT TITLE.--Chapter 9, Article 8 NMSA 1978
9 may be cited as the "Human Services Department Act"."

10 Section 3. Section 9-8-4 NMSA 1978 (being Laws 1977,
11 Chapter 252, Section 4, as amended) is amended to read:

12 "9-8-4. DEPARTMENT ESTABLISHED.--

13 A. There is created in the executive branch the
14 "human services department". The department shall be a
15 cabinet department and shall consist of, but not be limited
16 to, six divisions as follows:

- 17 (1) the income support division;
- 18 (2) the administrative services division;
- 19 (3) the medical assistance division;
- 20 (4) the child support enforcement division;
- 21 (5) the behavioral health services division;

22 and

- 23 (6) the information technology division.

24 B. All references in the law to the behavioral
25 health services division of the department of health or to

1 the mental health division of the department of health in
2 Section 29-11-3 NMSA 1978 or to the department of health in
3 Sections 43-2-1.1 through 43-2-23 NMSA 1978 shall be
4 construed as referring to the human services department."

5 Section 4. A new section of the Human Services
6 Department Act is enacted to read:

7 "BEHAVIORAL HEALTH SERVICES DIVISION--POWERS AND DUTIES
8 OF THE HUMAN SERVICES DEPARTMENT.--Subject to appropriation,
9 the department shall:

10 A. contract for behavioral health treatment and
11 support services, including mental health, alcoholism and
12 other substance abuse services;

13 B. establish standards for the delivery of
14 behavioral health services, including quality management and
15 improvement, performance measures, accessibility and
16 availability of services, utilization management,
17 credentialing and recredentialing, rights and
18 responsibilities of providers, preventive behavioral health
19 services, clinical treatment and evaluation and the
20 documentation and confidentiality of client records;

21 C. ensure that all behavioral health services,
22 including mental health and substance abuse services, that
23 are provided, contracted for or approved are in compliance
24 with the requirements of Section 9-7-6.4 NMSA 1978;

25 D. assume responsibility for and implement adult

1 mental health and substance abuse services in the state in
2 coordination with the children, youth and families
3 department;

4 E. establish criteria for determining individual
5 eligibility for behavioral health services; and

6 F. maintain a management information system in
7 accordance with standards for reporting clinical and fiscal
8 information."

9 Section 5. Section 11-7-2 NMSA 1978 (being Laws 1969,
10 Chapter 118, Section 2, as amended) is amended to read:

11 "11-7-2. COMPACT COORDINATOR--POWERS AND DUTIES.--
12 Pursuant to the Interstate Compact on Mental Health, the
13 director of the behavioral health services division of the
14 human services department is designated as the compact
15 administrator and, acting jointly with like officers of other
16 party states, shall promulgate rules and regulations to carry
17 out more effectively the terms of the compact. The compact
18 administrator is authorized, empowered and directed to
19 cooperate with all departments, agencies and officers of and
20 in the government of this state and its subdivisions in
21 facilitating the proper administration of the compact or of
22 any supplementary agreement entered into by this state under
23 the compact."

24 Section 6. Section 24-1-2 NMSA 1978 (being Laws 1973,
25 Chapter 359, Section 2, as amended) is amended to read:

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

3 A. "department" or "division" means the children,
4 youth and families department as to child care centers,
5 residential treatment centers that serve persons up to
6 twenty-one years of age, community mental health centers that
7 serve only persons up to twenty-one years of age and day
8 treatment centers that serve persons up to twenty-one years
9 of age, and the department of health as to all other health
10 facilities, unless otherwise designated;

11 B. "director" means the secretary;

12 C. "person", when used without further
13 qualification, means an individual or any other form of
14 entity recognized by law;

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

1 persons up to twenty-one years of age and day treatment
2 center that serves persons up to twenty-one years of age or a
3 health service organization operating as a free-standing
4 hospice or a home health agency. The designation of these
5 entities as health facilities is only for the purposes of
6 definition in the Public Health Act and does not imply that a
7 free-standing hospice or a home health agency is considered a
8 health facility for the purposes of other provisions of state
9 or federal laws. "Health facility" also includes those
10 facilities that, by federal regulation, must be licensed by
11 the state to obtain or maintain full or partial, permanent or
12 temporary federal funding. It does not include the offices
13 and treatment rooms of licensed private practitioners; and

14 E. "secretary" means the secretary of children,
15 youth and families as to child care centers and facilities
16 and the secretary of health as to all other health
17 facilities."

18 Section 7. Section 24-1-5.7 NMSA 1978 (being Laws 2003,
19 Chapter 190, Section 1) is amended to read:

20 "24-1-5.7. METHADONE CLINICS--REGULATION BY THE HUMAN
21 SERVICES DEPARTMENT.--

22 A. The federal government requires the state to
23 approve the establishment of all new methadone clinics. In
24 an effort to maintain compliance with the federal
25 requirement, the human services department shall regulate the

1 establishment and continuance of methadone clinics in New
2 Mexico in accordance with its powers and duties.

3 B. In regulating methadone clinics, the human
4 services department shall perform an assessment of the need
5 for clinics and develop clinical and administrative standards
6 as required by federal law. The human services department
7 may consider other factors it deems necessary to ensure the
8 provision of drug abuse treatment services and the protection
9 of the health and safety of New Mexico residents.

10 C. For the purposes of this section, "methadone
11 clinic" means a public or private facility that dispenses
12 methadone for the detoxification treatment or maintenance
13 treatment of narcotic addicts."

14 Section 8. Section 28-10-1 NMSA 1978 (being Laws 1973,
15 Chapter 349, Section 1, as amended) is amended to read:

16 "28-10-1. GOVERNOR'S COMMISSION ON DISABILITY.--

17 A. There is created the "governor's commission on
18 disability" consisting of fifteen members, nine of whom shall
19 be appointed by the governor. The six remaining members
20 shall be the director of the vocational rehabilitation
21 division of the public education department, the secretary of
22 labor or the secretary's designee, the director of the
23 behavioral health services division of the human services
24 department, the secretary of children, youth and families or
25 the secretary's designee, the secretary of aging and

1 long-term services or the secretary's designee and the
2 secretary of human services or the secretary's designee.
3 Initially, three members shall be appointed for terms ending
4 December 31, 1978, three members for terms ending December
5 31, 1980 and three members for terms ending December 31,
6 1982. Thereafter, appointments shall be for six years
7 expiring on December 31 of even-numbered years. Appointed
8 members shall be appointed from different geographic areas of
9 the state and from the major disability services in the
10 state. Appointed members shall include individuals with
11 disabilities, representatives of government and private
12 enterprise, parents or guardians of individuals with
13 disabilities and professionals in, or those who are
14 interested in, service for individuals with disabilities.
15 Not more than five of the members appointed by the governor
16 shall be of the same political party.

17 B. A majority of the members of the commission
18 constitutes a quorum for the transaction of business. The
19 commission shall meet at least twice a year and shall
20 annually elect a chair and a vice chair.

21 C. The commission shall be primarily concerned
22 with those individuals with disabilities who have a condition
23 that, regardless of its physical or mental origin,
24 constitutes a substantial occupational disadvantage."

25 Section 9. Section 43-1-3 NMSA 1978 (being Laws 1977,

1 Chapter 279, Section 2, as amended) is amended to read:

2 "43-1-3. DEFINITIONS.--As used in the Mental Health and
3 Developmental Disabilities Code:

4 A. "aversive stimuli" means anything that, because
5 it is believed to be unreasonably unpleasant, uncomfortable
6 or distasteful to the client, is administered or done to the
7 client for the purpose of reducing the frequency of a
8 behavior, but does not include verbal therapies, physical
9 restrictions to prevent imminent harm to self or others or
10 psychotropic medications that are not used for purposes of
11 punishment;

12 B. "client" means any patient who is requesting or
13 receiving mental health services or any person requesting or
14 receiving developmental disabilities services or who is
15 present in a mental health or developmental disabilities
16 facility for the purpose of receiving such services or who
17 has been placed in a mental health or developmental
18 disabilities facility by the person's parent or guardian or
19 by any court order;

20 C. "code" means the Mental Health and
21 Developmental Disabilities Code;

22 D. "consistent with the least drastic means
23 principle" means that the habilitation or treatment and the
24 conditions of habilitation or treatment for the client,
25 separately and in combination:

1 (1) are no more harsh, hazardous or
2 intrusive than necessary to achieve acceptable treatment
3 objectives for the client;

4 (2) involve no restrictions on physical
5 movement and no requirement for residential care except as
6 reasonably necessary for the administration of treatment or
7 for the protection of the client or others from physical
8 injury; and

9 (3) are conducted at the suitable available
10 facility closest to the client's place of residence;

11 E. "convulsive treatment" means any form of mental
12 health treatment that depends upon creation of a convulsion
13 by any means, including but not limited to electroconvulsive
14 treatment and insulin coma treatment;

15 F. "court" means a district court of New Mexico;

16 G. "department" or "division" means the behavioral
17 health services division of the human services department;

18 H. "developmental disability" means a disability
19 of a person that is attributable to mental retardation,
20 cerebral palsy, autism or neurological dysfunction that
21 requires treatment or habilitation similar to that provided
22 to persons with mental retardation;

23 I. "evaluation facility" means a community mental
24 health or developmental disability program or a medical
25 facility that has psychiatric or developmental disability

1 services available, including the New Mexico behavioral
2 health institute at Las Vegas, the Los Lunas medical center
3 or, if none of the foregoing is reasonably available or
4 appropriate, the office of a licensed physician or a
5 certified psychologist, and that is capable of performing a
6 mental status examination adequate to determine the need for
7 involuntary treatment;

8 J. "experimental treatment" means any mental
9 health or developmental disabilities treatment that presents
10 significant risk of physical harm, but does not include
11 accepted treatment used in competent practice of medicine and
12 psychology and supported by scientifically acceptable
13 studies;

14 K. "grave passive neglect" means failure to
15 provide for basic personal or medical needs or for one's own
16 safety to such an extent that it is more likely than not that
17 serious bodily harm will result in the near future;

18 L. "habilitation" means the process by which
19 professional persons and their staff assist the
20 developmentally disabled client in acquiring and maintaining
21 those skills and behaviors that enable the person to cope
22 more effectively with the demands of the person's self and
23 environment and to raise the level of the person's physical,
24 mental and social efficiency. "Habilitation" includes but is
25 not limited to programs of formal, structured education and

1 treatment;

2 M. "likelihood of serious harm to oneself" means
3 that it is more likely than not that in the near future the
4 person will attempt to commit suicide or will cause serious
5 bodily harm to the person's self by violent or other
6 self-destructive means, including but not limited to grave
7 passive neglect;

8 N. "likelihood of serious harm to others" means
9 that it is more likely than not that in the near future a
10 person will inflict serious, unjustified bodily harm on
11 another person or commit a criminal sexual offense, as
12 evidenced by behavior causing, attempting or threatening such
13 harm, which behavior gives rise to a reasonable fear of such
14 harm from the person;

15 O. "mental disorder" means substantial disorder of
16 a person's emotional processes, thought or cognition that
17 grossly impairs judgment, behavior or capacity to recognize
18 reality, but does not mean developmental disability;

19 P. "mental health or developmental disabilities
20 professional" means a physician or other professional who by
21 training or experience is qualified to work with individuals
22 with mental disorders or developmental disabilities;

23 Q. "physician" or "certified psychologist", when
24 used for the purpose of hospital admittance or discharge,
25 means a physician or certified psychologist who has been

1 granted admitting privileges at a hospital licensed by the
2 department of health, if such privileges are required;

3 R. "psychosurgery":

4 (1) means those operations currently
5 referred to as lobotomy, psychiatric surgery and behavioral
6 surgery and all other forms of brain surgery if the surgery
7 is performed for the purpose of the following:

8 (a) modification or control of
9 thoughts, feelings, actions or behavior rather than the
10 treatment of a known and diagnosed physical disease of the
11 brain;

12 (b) treatment of abnormal brain
13 function or normal brain tissue in order to control thoughts,
14 feelings, actions or behavior; or

15 (c) treatment of abnormal brain
16 function or abnormal brain tissue in order to modify
17 thoughts, feelings, actions or behavior when the abnormality
18 is not an established cause for those thoughts, feelings,
19 actions or behavior; and

20 (2) does not include prefrontal sonic
21 treatment in which there is no destruction of brain tissue;

22 S. "residential treatment or habilitation program"
23 means diagnosis, evaluation, care, treatment or habilitation
24 rendered inside or on the premises of a mental health or
25 developmental disabilities facility, hospital, clinic,

1 institution or supervisory residence or nursing home when the
2 client resides on the premises; and

3 T. "treatment" means any effort to accomplish a
4 significant change in the mental or emotional condition or
5 behavior of the client."

6 Section 10. Section 43-3-10 NMSA 1978 (being Laws 1985,
7 Chapter 185, Section 3, as amended) is amended to read:

8 "43-3-10. DEFINITIONS.--As used in Chapter 43, Article
9 3 NMSA 1978:

10 A. "board" means the board of county commissioners
11 of a county;

12 B. "department" means the human services
13 department;

14 C. "DWI program" means a community program
15 specifically designed to provide treatment, aftercare or
16 prevention of or education regarding driving while under the
17 influence of alcohol or drugs;

18 D. "incarceration and treatment facility" means a
19 minimum security detention facility that provides a DWI
20 program;

21 E. "planning council" means a county DWI planning
22 council;

23 F. "screening program" means a program that
24 provides screening or examination by alcoholism treatment
25 professionals of persons charged with or convicted of driving

1 while intoxicated or other offenses to determine whether the
2 person is:

3 (1) physically dependent on alcohol and thus
4 suffering from the disease of alcoholism;

5 (2) an alcohol abuser who has not yet
6 developed the alcoholism disease syndrome but has an
7 entrenched pattern of pathological use of alcohol and social
8 or occupational impairment in function from alcohol abuse; or

9 (3) neither an alcoholic nor an alcohol
10 abuser such that alcoholism treatment is not necessary; and
11 that provides referral or recommendation of such persons to
12 the most appropriate treatment; and

13 G. "statewide substance abuse services plan" means
14 the comprehensive plan for a statewide services network
15 developed by the department that documents the extent of New
16 Mexico's substance abuse problem and statewide needs for
17 prevention, screening, detoxification, short-term and
18 long-term rehabilitation, outpatient programs and DWI
19 programs. The plan shall be based on the continuum of care
20 concept of a comprehensive prevention and treatment system."

21 Section 11. Section 52-4-1 NMSA 1978 (being Laws 1983,
22 Chapter 116, Section 1, as amended) is amended to read:

23 "52-4-1. DEFINITION--HEALTH CARE PROVIDER.--As used in
24 Chapter 52 NMSA 1978, "health care provider" means:

25 A. a hospital maintained by the state or a

1 political subdivision of the state or any place currently
2 licensed as a hospital by the department of health that has:

3 (1) accommodations for resident bed
4 patients;

5 (2) a licensed professional registered nurse
6 always on duty or call;

7 (3) a laboratory; and

8 (4) an operating room where surgical
9 operations are performed;

10 B. an optometrist licensed pursuant to the
11 provisions of Chapter 61, Article 2 NMSA 1978;

12 C. a chiropractic physician licensed pursuant to
13 the provisions of Chapter 61, Article 4 NMSA 1978;

14 D. a dentist licensed pursuant to the provisions
15 of Chapter 61, Article 5 NMSA 1978;

16 E. a physician licensed pursuant to the provisions
17 of Chapter 61, Article 6 NMSA 1978;

18 F. a podiatrist licensed pursuant to the
19 provisions of Chapter 61, Article 8 NMSA 1978;

20 G. an osteopathic physician licensed pursuant to
21 the provisions of Chapter 61, Article 10 NMSA 1978;

22 H. a physician assistant registered pursuant to
23 the provisions of Section 61-6-7 NMSA 1978;

24 I. a certified nurse practitioner licensed
25 pursuant to Section 61-3-23.2 NMSA 1978;

1 J. a physical therapist licensed pursuant to the
2 provisions of Chapter 61, Article 12 NMSA 1978;

3 K. an occupational therapist licensed pursuant to
4 the provisions of Chapter 61, Article 12A NMSA 1978;

5 L. a doctor of oriental medicine licensed pursuant
6 to the provisions of Chapter 61, Article 14A NMSA 1978;

7 M. a psychologist who is duly licensed or
8 certified in the state where the service is rendered, holding
9 a doctorate degree in psychology and having at least two
10 years clinical experience in a recognized health setting, or
11 who has met the standards of the national register of health
12 services providers in psychology;

13 N. a certified nurse-midwife licensed by the board
14 of nursing as a registered nurse and registered with the
15 behavioral health services division of the human services
16 department as a certified nurse-midwife; or

17 O. any person or facility that provides
18 health-related services in the health care industry, as
19 approved by the director."

20 Section 12. Section 59A-23-6 NMSA 1978 (being Laws
21 1983, Chapter 64, Section 1) is amended to read:

22 "59A-23-6. ALCOHOL DEPENDENCY COVERAGE.--

23 A. Each insurer that delivers or issues for
24 delivery in this state a group health insurance policy shall
25 offer and make available benefits for the necessary care and

1 treatment of alcohol dependency. Such benefits shall:

2 (1) be subject to annual deductibles and
3 coinsurance consistent with those imposed on other benefits
4 within the same policy;

5 (2) provide no less than thirty days
6 necessary care and treatment in an alcohol dependency
7 treatment center and thirty outpatient visits for alcohol
8 dependency treatment; and

9 (3) be offered for benefit periods of no
10 more than one year and may be limited to a lifetime maximum
11 of no less than two benefit periods. Such offer of benefits
12 shall be subject to the rights of the group health insurance
13 holder to reject the coverage or to select any alternative
14 level of benefits if that right is offered by or negotiated
15 with that insurer.

16 B. For purposes of this section, "alcohol
17 dependency treatment center" means a facility that provides a
18 program for the treatment of alcohol dependency pursuant to a
19 written treatment plan approved and monitored by a physician
20 or meeting the quality standards of the behavioral health
21 services division of the human services department and which
22 facility also:

23 (1) is affiliated with a hospital under a
24 contractual agreement with an established system for patient
25 referral;

1 (2) is accredited as such a facility by the
2 joint commission on accreditation of hospitals; or

3 (3) meets at least the minimum standards
4 adopted by the behavioral health services division for
5 treatment of alcoholism in regional treatment centers.

6 C. This section applies to policies delivered or
7 issued for delivery or renewed, extended or amended in this
8 state on or after July 1, 1983 or upon expiration of a
9 collective bargaining agreement applicable to a particular
10 policyholder, whichever is later; provided that this section
11 does not apply to blanket, short-term travel, accident-only,
12 limited or specified disease, individual conversion policies
13 or policies designed for issuance to persons eligible for
14 coverage under Title 18 of the Social Security Act, known as
15 medicare, or any other similar coverage under state or
16 federal governmental plans. With respect to any policy forms
17 approved by the insurance division of the public regulation
18 commission prior to the effective date of this section, an
19 insurer is authorized to comply with this section by the use
20 of endorsements or riders, provided such endorsements or
21 riders are approved by the insurance division as being in
22 compliance with this section and applicable provisions of the
23 Insurance Code.

24 D. If an organization offering group health
25 benefits to its members makes more than one health insurance

1 policy or nonprofit health care plan available to its members
2 on a member option basis, the organization shall not require
3 alcohol dependency coverage from one health insurer or health
4 care plan without requiring the same level of alcohol
5 dependency coverage for all other health insurance policies
6 or health care plans that the organization makes available to
7 its members."

8 Section 13. TEMPORARY PROVISION--TRANSFER OF PERSONNEL,
9 PROPERTY, CONTRACTS AND REFERENCES IN LAW.--On July 1, 2007:

10 A. all personnel, appropriations, money, records,
11 equipment, supplies and other property of the behavioral
12 health services division of the department of health shall be
13 transferred to the human services department; and

14 B. all contracts of the behavioral health services
15 division of the department of health shall be binding and
16 effective on the human services department.

17 Section 14. REPEAL.--Sections 9-7-6.1 and 9-7-6.2 NMSA
18 1978 (being Laws 1999, Chapter 270, Sections 1 and 2, as
19 amended) are repealed.