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HOUSE BILL 120

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO HEALTH CARE; ENACTING THE AMERICAN INDIAN HEALTH CARE IMPROVEMENT ACT; CREATING THE AMERICAN INDIAN HEALTH DIVISION IN THE DEPARTMENT OF HEALTH; CREATING THE AMERICAN INDIAN HEALTH COUNCIL; CREATING A FUND; REQUIRING TRIBAL LIAISON POSITIONS IN CERTAIN DEPARTMENTS; MAKING APPROPRIATIONS.

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

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 8 of this act may be cited as the "American Indian Health Care Improvement Act".

Section 2. [NEW MATERIAL] PURPOSES.--The purposes of the American Indian Health Care Improvement Act are to:

A. increase accessibility of health care to all New Mexicans, including American Indians, an essential public

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1 health responsibility of all governments, including the state
2 government of New Mexico;

3 B. address the chronic health disparities between
4 American Indians and other populations that result in part from
5 the federal government's failure to fully implement its federal
6 trust responsibilities for Indian health care;

7 C. promote collaboration to improve the health of
8 American Indians and prevent disease;

9 D. encourage, through directed funding, the use of
10 existing and evolving technologies to improve health care
11 delivery and services for American Indians;

12 E. strengthen the infrastructure for health care
13 delivery programs, health care education and health care
14 research to benefit and improve the health of American Indians;

15 F. reduce costs, improve coverage and quality of
16 health care for American Indians; and

17 G. strengthen the capacity of state and tribal
18 policymakers to improve health care delivery systems for
19 American Indians.

20 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the
21 American Indian Health Care Improvement Act:

22 A. "American Indian" means a person who meets the
23 federal Indian health service eligibility requirements and who
24 is a resident of New Mexico;

25 B. "applicant" means:

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1 (1) a tribe, tribal entity, tribal
2 organization or off-reservation nonprofit corporate body
3 governed by an Indian-controlled board of directors, to the
4 extent that the nonprofit organization is eligible pursuant to
5 the constitution of New Mexico; or

6 (2) an organization that performs more than
7 fifty percent of its research on improving health care services
8 to, or the overall health of, American Indians;

9 C. "council" means the American Indian health
10 council;

11 D. "department" means the department of health;

12 E. "designee" means a person selected by a council
13 member to serve in the council member's absence;

14 F. "director" means the director of the division;

15 G. "division" means the American Indian health
16 division of the department of health;

17 H. "fund" means the American Indian health care
18 improvement fund;

19 I. "governor" means the governor of New Mexico;

20 J. "grant project" means a project, program,
21 service or research initiative approved by the council for a
22 grant funded pursuant to the American Indian Health Care
23 Improvement Act;

24 K. "proposal" means a request for funding by an
25 applicant to the council to implement a specific project,

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1 program, service or research initiative that provides the
2 American Indian community that the applicant represents with:

- 3 (1) improved health care delivery;
4 (2) improved health of American Indians;
5 (3) community-based programs for the provision
6 of health care; or
7 (4) research or development of tools that can
8 improve either health care delivery or the health of American
9 Indians;

10 L. "resident" means an individual who is domiciled
11 and resides in this state;

12 M. "secretary" means the secretary of health;

13 N. "stakeholder departments" means the department,
14 the human services department, the aging and long-term services
15 department, the children, youth and families department and the
16 Indian affairs department; and

17 O. "tribe" means a federally recognized Indian
18 nation, tribe or pueblo located wholly or partly in New Mexico.

19 Section 4. [NEW MATERIAL] AMERICAN INDIAN HEALTH COUNCIL
20 CREATED--MEMBERSHIP--STAFF.--

21 A. The "American Indian health council" is created
22 to replace existing boards that advise the department on
23 American Indian health issues and is administratively attached
24 to the department. The council shall oversee the
25 implementation of the American Indian Health Care Improvement

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1 Act.

2 B. The council shall encourage, facilitate and
3 ensure coordination among stakeholder departments and
4 collaborate with tribes, other health-related committees,
5 councils and task forces working for American Indian
6 communities in the state to improve access to health care and
7 improve the health status and health outcomes for American
8 Indians.

9 C. The department shall provide staff support for
10 the council. The director shall oversee, manage and implement
11 the activities of the council.

12 D. Tribal leaders and their designees may attend
13 council meetings and be seated with appointed members.

14 E. Only gubernatorial appointees to the American
15 Indian health council or their designees shall vote.

16 F. The council shall consist of the following
17 eighteen voting members, appointed by the governor:

18 (1) five ex-officio members or their designees
19 as follows:

20 (a) the secretary of health, who shall
21 serve as a co-chair of the council;

22 (b) the secretary of Indian affairs;

23 (c) the secretary of aging and long-term
24 services;

25 (d) the secretary of human services; and

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1 (e) the secretary of children, youth and
2 families;

3 (2) eight members or their designees, one of
4 whom shall serve as a co-chair, each representing one or more
5 tribes, as follows:

6 (a) three members from the nineteen
7 Indian pueblos in New Mexico selected from lists submitted from
8 the eight northern Indian pueblos council, the southern Indian
9 pueblos council and the western pueblos;

10 (b) three members selected from a list
11 submitted by the president of the Navajo Nation representing
12 the geographic distribution of Navajo people in the Navajo
13 Nation located in New Mexico;

14 (c) one member selected from a list
15 submitted by the president of the Jicarilla Apache Nation; and

16 (d) one member selected from a list
17 submitted by the president of the Mescalero Apache Tribe;

18 (3) one member who is American Indian and is a
19 representative of the behavioral health planning council;

20 (4) one member engaged in providing health
21 care services to American Indians not living on a reservation;

22 (5) two members who are American Indians not
23 living on a reservation; and

24 (6) one member engaged in providing health
25 care to American Indians living within a tribal community.

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1 G. Council members shall be appointed to terms of
2 two years and are eligible to serve two complete terms.
3 Vacancies shall be filled by appointment by the governor for
4 unexpired terms.

5 H. Council members and designees who are not state
6 employees already being paid are entitled to per diem and
7 mileage paid from the fund as provided in the Per Diem and
8 Mileage Act.

9 I. The council shall meet at the call of the chair,
10 but no fewer than four times per year.

11 J. A quorum consists of ten members of the council,
12 one of whom shall be a co-chair.

13 K. Official action of the council shall be taken
14 upon a majority vote.

15 Section 5. [NEW MATERIAL] AMERICAN INDIAN HEALTH
16 COUNCIL--DUTIES.--The council shall:

17 A. provide input to the interagency behavioral
18 health purchasing collaborative established in Section 9-7-6.4
19 NMSA 1978 and the behavioral health planning council created in
20 Section 24-1-28 NMSA 1978 regarding the parts of the
21 comprehensive behavioral health plan developed by the
22 interagency behavioral health purchasing collaborative and the
23 behavioral health planning council to address the mental health
24 and substance abuse needs of American Indians in New Mexico;

25 B. provide guidance to the department to address

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1 health issues that have an impact on American Indians and
2 develop strategies to eliminate health disparities between
3 American Indian populations and other populations;

4 C. advise and recommend analyses of policies and
5 programs regarding American Indian health coverage and health
6 care delivery, working with tribal and pueblo health care
7 planning processes;

8 D. recommend policies and programs to improve
9 access to health care for American Indian communities and to
10 improve the health status of American Indians;

11 E. analyze ways to improve strategic planning for
12 healthier American Indian communities and recommend ways to
13 maximize analytical input;

14 F. identify training and technical assistance needs
15 and strategize how to address them for all American Indian
16 communities;

17 G. identify gaps in existing health care delivery
18 systems and develop strategies to address these gaps;

19 H. provide input on any proposed changes to state
20 policies that would affect the health of American Indians;

21 I. provide input on the allocation of department
22 resources and federal resources flowing through the department
23 used to remedy health disparities that disproportionately
24 affect American Indian communities;

25 J. develop a five-year strategic plan that defines

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1 a general strategy for improving health care for American
2 Indians;

3 K. identify priorities that need to be accomplished
4 each year to further the purposes of the American Indian Health
5 Care Improvement Act in order to maximize available funding;

6 L. prepare and revise at least each year an action
7 plan that sets forth the actions to be undertaken in the next
8 year that will lead to:

9 (1) achieving the priorities identified by the
10 council to meet the goals set forth in the strategic plan; and

11 (2) coordinate the use of available funding
12 for improvement of health care delivery to and the health of
13 American Indians;

14 M. issue requests for proposals and review
15 proposals submitted for grants from the fund or through sources
16 of capital outlay funding;

17 N. identify and prioritize proposals and capital
18 improvement projects that meet strategic plan priorities,
19 research initiatives and capacity-building for American Indian
20 communities, including:

21 (1) projects, services or training that
22 advance the goals of the strategic plan and are within the
23 action plan;

24 (2) capital improvement projects necessary to
25 achieve the goals of the strategic plan;

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1 (3) research that corresponds to the overall
2 purpose of the American Indian Health Care Improvement Act;

3 (4) capacity building for organizations
4 providing health care services to American Indians; and

5 (5) successful models of health care provision
6 in tribal or other American Indian communities;

7 O. conduct training sessions to familiarize
8 applicants and grant recipients with the purposes of the
9 American Indian Health Care Improvement Act, the strategic plan
10 and the most recent action plan developed by the council and
11 train applicants and grant recipients as to the purposes and
12 priorities of the American Indian Health Care Improvement Act
13 and the council's annual priorities;

14 P. formalize collaborations for improved access to
15 and quality of American Indian health care, research and
16 services focused on diabetes, alcohol or substance abuse and
17 other critical behavioral health concerns, disease prevention
18 and post-traumatic stress disorder;

19 Q. require submission of progress reports at least
20 two times during each fiscal year to ensure the satisfactory
21 completion of grant projects, including submission of a final
22 report to the council prior to final payment;

23 R. disseminate information about successful
24 programs providing American Indian health care to encourage
25 replication of successful programs;

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1 S. encourage through funding and other support the
2 cooperative use of existing technology infrastructure,
3 including telehealth services; and

4 T. develop collaboration and information sharing
5 consistent with state and federal law regarding medical records
6 and state-tribal agreements.

7 Section 6. [NEW MATERIAL] AMERICAN INDIAN HEALTH CARE
8 IMPROVEMENT FUND--CREATED--DISTRIBUTIONS--REQUIREMENTS FOR
9 FUNDING.--

10 A. The "American Indian health care improvement
11 fund" is created in the state treasury. The fund consists of
12 money appropriated by the legislature and grants, bequests,
13 gifts or money otherwise distributed to or designated for the
14 fund from government or private sources. Earnings from
15 investment of the fund shall be credited to the fund for
16 planning, development and coordination of improvements for
17 health care infrastructure and health care services for
18 American Indians residing in New Mexico and for grants as
19 authorized by the council.

20 B. The department shall administer the fund.

21 C. The fund may be divided into accounts as deemed
22 necessary by the department, one of which shall be the account
23 required pursuant to Subsection F of this section.

24 D. Money in the fund is appropriated to the council
25 to implement the provisions of and to administer the American

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1 Indian Health Care Improvement Act.

2 E. Money in the fund may be disbursed to fund
3 grants authorized by the council.

4 F. Money in the fund may be used for administration
5 of the fund, implementing the American Indian Health Care
6 Improvement Act and paying related per diem and mileage, in an
7 amount equal to no more than ten percent of the fund, not to
8 exceed four hundred thousand dollars (\$400,000) in a fiscal
9 year.

10 G. Expenditures shall be made from the fund on
11 warrants issued by the secretary of finance and administration
12 on vouchers signed by the secretary of health.

13 H. Balances in the fund shall not revert to the
14 general fund at the end of any fiscal year.

15 Section 7. [NEW MATERIAL] AMERICAN INDIAN HEALTH
16 COUNCIL--GRANTS.--

17 A. The council shall authorize an amount of funding
18 for grants in accordance with the council's priorities. The
19 secretary shall enter into contracts with grantees and
20 distribute money from the fund for proposals approved and
21 funding authorized by the council and made available by the
22 legislature or other private or public funding sources.

23 B. The council shall approve proposals only from
24 applicants who demonstrate knowledge of current capacity to
25 provide health care in the community in which the applicant

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1 will be working and who fit with the council's annual
2 priorities and strategic plan, the need for the project in that
3 community and the need for the grant project in furthering the
4 goals of the American Indian Health Care Improvement Act.

5 C. A grant project may be revised or terminated at
6 the request of the council through the division if the grant
7 project as implemented is not achieving goals.

8 Section 8. [NEW MATERIAL] AMERICAN INDIAN HEALTH DIVISION
9 CREATED--DIRECTOR--POWERS AND DUTIES.--

10 A. The "American Indian health division" is created
11 within the department. The secretary shall appoint a director
12 for the division, who shall direct the activities of the
13 division and advise the secretary on the development of
14 policies and programs that address the health care needs of
15 American Indians.

16 B. The secretary and the director, in cooperation
17 with the council, shall collaborate with state and federal
18 departments and agencies and tribal governments to identify
19 strategies for implementing the American Indian Health Care
20 Improvement Act and to improve access to health care services
21 for American Indians.

22 C. The secretary and the director shall coordinate
23 with appropriate administrators and state agencies to ensure
24 that the department:

25 (1) makes implementation of the American

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1 Indian Health Care Improvement Act a priority;

2 (2) supplements rather than supplants existing
3 programs benefiting American Indian health accessibility and
4 quality of care; and

5 (3) promotes government-to-government
6 relationships between the tribes and the state of New Mexico
7 based on mutual respect and open communications.

8 D. The director shall:

9 (1) direct the staffing of the division and
10 the council;

11 (2) review and evaluate proposals submitted to
12 the council and recommend approval, modification or rejection
13 of a proposal;

14 (3) issue contracts or joint powers agreements
15 with tribal governments as authorized by the secretary pursuant
16 to the Joint Powers Agreements Act;

17 (4) oversee the grants awarded by the council,
18 gather information necessary to evaluate the effectiveness of
19 grant projects, report the findings to the council on a monthly
20 basis and recommend revisions or termination of grant projects
21 as deemed necessary to achieve the objectives of the American
22 Indian Health Care Improvement Act;

23 (5) by July 31 of each year, provide the
24 council with an assessment of the progress or shortcomings of
25 grants authorized by the council in the previous fiscal year;

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1 (6) when requested by a prospective applicant,
2 provide:

3 (a) technical assistance to assess a
4 tribe's needs and develop a health care improvement plan for a
5 tribe or agency; or

6 (b) training to assist in the
7 development of proposals to improve the health of or the
8 delivery of health care to American Indians of the applicant;

9 (7) provide technical assistance to implement
10 a grant project to help the grantee successfully complete the
11 grant project or to revise the project to redirect the funding
12 in a manner that leads to the successful completion of the
13 project;

14 (8) recommend best practices identified and
15 successful programs that can be duplicated in other American
16 Indian communities to the council; and

17 (9) propose rules for the council to adopt to
18 implement the American Indian Health Care Improvement Act that
19 are necessary to carry out the purposes of that act.

20 Section 9. Section 9-2A-3 NMSA 1978 (being Laws 1992,
21 Chapter 57, Section 3) is amended to read:

22 "9-2A-3. DEFINITIONS.--As used in the Children, Youth and
23 Families Department Act:

24 A. "department" means the children, youth and
25 families department; [~~and~~]

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1 B. "secretary" means the secretary of children,
2 youth and families;

3 C. "tribal" means of or belonging to a tribe; and

4 D. "tribe" means a federally recognized Indian
5 nation, tribe or pueblo located wholly or partly in New
6 Mexico."

7 Section 10. Section 9-2A-7 NMSA 1978 (being Laws 1992,
8 Chapter 57, Section 7, as amended) is amended to read:

9 "9-2A-7. SECRETARY--DUTIES AND GENERAL POWERS.--

10 A. The secretary is responsible to the governor for
11 the operation of the department. It is the secretary's duty to
12 manage all operations of the department and to administer and
13 enforce the laws with which [he] the secretary or the
14 department is charged.

15 B. To perform [his] the secretary's duties, the
16 secretary has every power expressly enumerated in the law,
17 whether granted to the secretary, the department or any
18 division of the department, except when any division is
19 explicitly exempted from the secretary's power by statute. In
20 accordance with these provisions, the secretary shall:

21 (1) except as otherwise provided in the
22 Children, Youth and Families Department Act, exercise general
23 supervisory and appointing power over all department employees,
24 subject to applicable personnel laws and regulations;

25 (2) delegate power to subordinates as [he] the

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1 secretary deems necessary and appropriate, clearly delineating
2 such delegated power and the limitations to that power;

3 (3) organize the department into
4 organizational units as necessary to enable it to function most
5 efficiently, subject to any provisions of law requiring or
6 establishing specific organizational units;

7 (4) within the limitations of available
8 appropriations and applicable laws, employ and fix the
9 compensation of those persons necessary to discharge [~~his~~] the
10 secretary's duties;

11 (5) take administrative action by issuing
12 orders and instructions, not inconsistent with law, to assure
13 implementation of and compliance with the provisions of law for
14 which administration or execution [~~he~~] the secretary is
15 responsible and to enforce those orders and instructions by
16 appropriate administrative action in the courts;

17 (6) conduct research and studies that will
18 improve the operation of the department and the provision of
19 services to the citizens of the state;

20 (7) provide courses of instruction and
21 practical training for employees of the department and other
22 persons involved in the administration of programs with the
23 objectives of improving the operations and efficiency of
24 administration and of promoting comprehensive, coordinated,
25 culturally sensitive services that address the whole child;

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1 (8) prepare an annual budget for the
2 department;

3 (9) provide cooperation, at the request of
4 administratively attached agencies and adjunct agencies, in
5 order to:

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

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

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

14 (10) provide for surety bond coverage for all
15 employees of the department as provided in the Surety Bond Act.
16 The department shall pay the costs of [~~such~~] the bonds.

17 C. The secretary may apply for and receive, with
18 the governor's approval, in the name of the department, any
19 public or private funds, including United States government
20 funds, available to the department to carry out its programs,
21 duties or services.

22 D. The secretary may make and adopt such reasonable
23 and procedural rules and regulations as may be necessary to
24 carry out the duties of the department and its divisions. No
25 rule or regulation promulgated by the director of any division

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1 in carrying out the functions and duties of the division shall
2 be effective until approved by the secretary. Unless otherwise
3 provided by statute, no regulation affecting any person or
4 agency outside the department shall be adopted, amended or
5 repealed without a public hearing on the proposed action before
6 the secretary or a hearing officer designated by the secretary.
7 The public hearing shall be held in Santa Fe unless otherwise
8 permitted by statute. Notice of the subject matter of the
9 regulation, the action proposed to be taken, the time and place
10 of the hearing, the manner in which interested persons may
11 present their views and the method by which copies of the
12 proposed regulation or proposed amendment or repeal of an
13 existing regulation may be obtained shall be published once at
14 least thirty days prior to the hearing date in a newspaper of
15 general circulation and mailed at least thirty days prior to
16 the hearing date to all persons who have made a written request
17 for advance notice of hearing. All rules and regulations shall
18 be filed in accordance with the State Rules Act.

19 E. If the secretary certifies to the secretary of
20 finance and administration and gives contemporaneous notice of
21 such certification through the human services register that the
22 department has insufficient state funds to operate any of the
23 programs it administers and that reductions in services or
24 benefit levels are necessary, the secretary may engage in
25 interim rulemaking. Notwithstanding any provision to the

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1 contrary in the State Rules Act, interim rulemaking shall be
2 conducted pursuant to Subsection D of this section, except:

3 (1) the period of notice of public hearing
4 shall be fifteen days;

5 (2) the department shall send individual
6 notices of the interim rulemaking and of the public hearing to
7 affected providers and beneficiaries;

8 (3) rules and regulations promulgated ~~[under]~~
9 pursuant to the provisions of this subsection shall be in
10 effect not less than five days after the public hearing;

11 (4) rules and regulations promulgated under
12 this subsection shall not be in effect for more than ninety
13 days; and

14 (5) if final rules and regulations are
15 necessary to replace the interim rules and regulations, the
16 department shall give notice of intent to promulgate final
17 rules and regulations at the time of notice herein. The final
18 rules and regulations shall be promulgated not more than forty-
19 five days after the public hearing and filed in accordance with
20 the State Rules Act.

21 F. The secretary shall employ in a full-time
22 classified position a tribal liaison, who reports directly to
23 the secretary, to:

24 (1) serve as a contact person to aid in
25 communication between the department and tribal communities or

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1 American Indians residing in New Mexico;

2 (2) provide training to the staff of the
3 department in protocol, culturally competent behavior and
4 cultural history to assist the department in providing
5 effective service to tribes;

6 (3) work with the tribes, tribal members,
7 American Indians not living on a reservation and American
8 Indians representing off-reservation American Indian
9 populations to resolve issues that arise with actions or
10 programs of the department; and

11 (4) interact with other state agency tribal
12 liaisons and attend meetings of legislative committees that are
13 discussing issues that involve both the department and American
14 Indian communities in New Mexico."

15 Section 11. Section 9-7-2 NMSA 1978 (being Laws 1977,
16 Chapter 253, Section 2, as amended) is amended to read:

17 "9-7-2. DEFINITIONS.--As used in the Department of Health
18 Act:

19 A. "department" means the department of health
20 created under the Department of Health Act; [~~and~~]

21 B. "secretary" means the secretary of health;

22 C. "tribal" means of or belonging to a tribe; and

23 D. "tribe" means a federally recognized Indian
24 nation, tribe or pueblo located wholly or partly in New
25 Mexico."

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1 Section 12. Section 9-7-6 NMSA 1978 (being Laws 1977,
2 Chapter 253, Section 7, as amended) is amended to read:

3 "9-7-6. SECRETARY--DUTIES AND GENERAL POWERS.--

4 A. The secretary is responsible to the governor for
5 the operation of the department. It is [~~his~~] the secretary's
6 duty to manage all operations of the department and to
7 administer and enforce the laws with which [~~he~~] the secretary
8 or the department is charged.

9 B. To perform [~~his~~] the secretary's duties, the
10 secretary has every power expressly enumerated in the laws,
11 whether granted to the secretary or the department or any
12 division of the department, except where authority conferred
13 upon any division is explicitly exempted from the secretary's
14 authority by statute. In accordance with these provisions, the
15 secretary shall:

16 (1) except as otherwise provided in the
17 Department of Health Act, exercise general supervisory and
18 appointing authority over all department employees, subject to
19 any applicable personnel laws and regulations;

20 (2) delegate authority to subordinates as [~~he~~]
21 the secretary deems necessary and appropriate, clearly
22 delineating such delegated authority and the limitations
23 thereto;

24 (3) organize the department into those
25 organizational units [~~he~~] the secretary deems will enable it to

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1 function most efficiently, subject to any provisions of law
2 requiring or establishing specific organizational units;

3 (4) within the limitations of available
4 appropriations and applicable laws, employ and fix the
5 compensation of those persons necessary to discharge [~~his~~] the
6 secretary's duties;

7 (5) take administrative action by issuing
8 orders and instructions, not inconsistent with the law, to
9 assure implementation of and compliance with the provisions of
10 law for which administration or execution [~~he~~] the secretary is
11 responsible and to enforce those orders and instructions by
12 appropriate administrative action in the courts;

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

16 (7) conduct quality assurance and quality
17 improvement activities;

18 (8) provide courses of instruction and
19 practical training for employees of the department and other
20 persons involved in the administration of programs with the
21 objective of improving the operations and efficiency of
22 administration;

23 (9) prepare an annual budget of the
24 department;

25 (10) appoint, with the governor's consent, a

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1 "director" for each division. These appointed positions are
2 exempt from the provisions of the Personnel Act. Persons
3 appointed to these positions shall serve at the pleasure of the
4 secretary;

5 (11) give bond in the penal sum of twenty-five
6 thousand dollars (\$25,000) and require directors to each give
7 bond in the penal sum of ten thousand dollars (\$10,000)
8 conditioned upon the faithful performance of duties, as
9 provided in the Surety Bond Act. The department shall pay the
10 costs of those bonds; and

11 (12) require performance bonds of such
12 department employees and officers as [~~he~~] the secretary deems
13 necessary, as provided in the Surety Bond Act. The department
14 shall pay the costs of those bonds.

15 C. The secretary may apply for and receive, with
16 the governor's approval, in the name of the department any
17 public or private funds, including but not limited to United
18 States government funds, available to the department to carry
19 out its programs, duties or services.

20 D. The secretary shall be responsible for providing
21 appropriate educational programs for all school-age persons, as
22 defined in Section 22-1-2 NMSA 1978, who are clients, as
23 defined in Section 43-1-3 NMSA 1978, of institutions under
24 [~~his~~] the secretary's authority as follows:

25 (1) [~~he~~] the secretary shall arrange with

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1 school districts for the enrollment of all school-age residents
2 of institutions under [~~his~~] the secretary's authority who have
3 been evaluated and recommended for placement in a public school
4 according to the provisions of the Department of Health
5 Education Act. [~~He~~] The secretary shall notify the
6 [~~superintendent of public instruction~~] secretary of public
7 education prior to public school enrollment of any school-age
8 resident under [~~his~~] the secretary's authority; and

9 (2) [~~he~~] the secretary shall provide
10 educational programs, in accordance with the special education
11 rules of the [~~state board of~~] public education department, for
12 school-age persons who are clients of institutions under [~~his~~]
13 the secretary's authority but who are enrolled in a public
14 school by:

15 (a) using the facilities and personnel
16 of the department;

17 (b) contracting with a school district
18 for the provision of educational services; or

19 (c) using a combination of Subparagraphs
20 (a) and (b) of this paragraph.

21 E. The secretary may make and adopt such reasonable
22 and procedural rules as may be necessary to carry out the
23 duties of the department and its divisions. No rule
24 promulgated by the director of any division in carrying out the
25 functions and duties of the division shall be effective until

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1 approved by the secretary unless otherwise provided by statute.
2 Unless otherwise provided by statute, no rule affecting any
3 person or agency outside the department shall be adopted,
4 amended or repealed without a public hearing on the proposed
5 action before the secretary or a hearing officer designated by
6 ~~[him]~~ the secretary. The public hearing shall be held in Santa
7 Fe unless otherwise permitted by statute. Notice of the
8 subject matter of the rule, the action proposed to be taken,
9 the time and place of the hearing, the manner in which
10 interested persons may present their views and the method by
11 which copies of the proposed rule, proposed amendment or repeal
12 of an existing rule may be obtained shall be published once at
13 least thirty days prior to the hearing date in a newspaper of
14 general circulation and mailed at least thirty days prior to
15 the hearing date to all persons who have made a written request
16 for advance notice of hearing. All rules shall be filed in
17 accordance with the State Rules Act.

18 F. The secretary shall employ in a full-time
19 classified position a tribal liaison, who reports directly to
20 the secretary, to:

21 (1) serve as a contact person to aid in
22 communication between the department and tribal communities or
23 American Indians residing in New Mexico;

24 (2) provide training to the staff of the
25 department in protocol, culturally competent behavior and

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1 cultural history to assist the department in providing
2 effective service to tribes;

3 (3) work with the tribes, tribal members,
4 American Indians not living on a reservation and American
5 Indians representing off-reservation American Indian
6 populations to resolve issues that arise with actions or
7 programs of the department; and

8 (4) interact with other state agency tribal
9 liaisons and attend meetings of legislative committees that are
10 discussing issues that involve both the department and American
11 Indian communities in New Mexico."

12 Section 13. Section 9-8-2 NMSA 1978 (being Laws 1977,
13 Chapter 252, Section 2) is amended to read:

14 "9-8-2. DEFINITIONS.--As used in the Human Services
15 Department Act:

16 A. "department" means the human services department
17 created under the Human Services Department Act; ~~[and]~~

18 B. "secretary" means the secretary of the
19 department;

20 C. "tribal" means of or belonging to a tribe; and

21 D. "tribe" means a federally recognized Indian
22 nation, tribe or pueblo located wholly or partly in New
23 Mexico."

24 Section 14. Section 9-8-6 NMSA 1978 (being Laws 1977,
25 Chapter 252, Section 7, as amended) is amended to read:

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1 "9-8-6. SECRETARY--DUTIES AND GENERAL POWERS.--

2 A. The secretary is responsible to the governor for
3 the operation of the department. It is [~~his~~] the secretary's
4 duty to manage all operations of the department and to
5 administer and enforce the laws with which [~~he~~] the secretary
6 or the department is charged.

7 B. To perform [~~his~~] duties of office, the secretary
8 has every power expressly enumerated in the laws, whether
9 granted to the secretary or the department or any division of
10 the department, except where authority conferred upon any
11 division is explicitly exempted from the secretary's authority
12 by statute. In accordance with these provisions, the secretary
13 shall:

14 (1) except as otherwise provided in the Human
15 Services Department Act, exercise general supervisory and
16 appointing authority over all department employees, subject to
17 any applicable personnel laws and regulations;

18 (2) delegate authority to subordinates as [~~he~~]
19 the secretary deems necessary and appropriate, clearly
20 delineating such delegated authority and the limitations
21 thereto;

22 (3) organize the department into those
23 organizational units [~~he~~] the secretary deems will enable it to
24 function most efficiently, subject to any provisions of law
25 requiring or establishing specific organizational units;

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1 (4) within the limitations of available
2 appropriations and applicable laws, employ and fix the
3 compensation of those persons necessary to discharge [~~his~~] the
4 secretary's duties;

5 (5) take administrative action by issuing
6 orders and instructions, not inconsistent with the law, to
7 assure implementation of and compliance with the provisions of
8 law for whose administration or execution [~~he~~] the secretary is
9 responsible and to enforce those orders and instructions by
10 appropriate administrative action in the courts;

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

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

19 (8) prepare an annual budget of the
20 department;

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

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

25 (b) coordinate activities and resolve

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1 problems of mutual concern; and

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

6 (10) appoint, with the governor's consent, a
7 "director" for each division. These appointed positions are
8 exempt from the provisions of the Personnel Act. Persons
9 appointed to these positions shall serve at the pleasure of the
10 secretary, except as provided in Section 9-8-9 NMSA 1978;

11 (11) give bond in the penal sum of twenty-five
12 thousand dollars (\$25,000) and require directors to each give
13 bond in the penal sum of ten thousand dollars (\$10,000)
14 conditioned upon the faithful performance of duties as provided
15 in the Surety Bond Act. The department shall pay the costs of
16 these bonds; and

17 (12) require performance bonds of such
18 department employees and officers as ~~[he]~~ the secretary deems
19 necessary as provided in the Surety Bond Act. The department
20 shall pay the costs of these bonds.

21 C. The secretary may apply for and receive, with
22 the governor's approval, in the name of the department, any
23 public or private funds, including United States government
24 funds, available to the department to carry out its programs,
25 duties or services.

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

6 E. The secretary may make and adopt such reasonable
7 and procedural rules and regulations as may be necessary to
8 carry out the duties of the department and its divisions. No
9 rule or regulation promulgated by the director of any division
10 in carrying out the functions and duties of the division shall
11 be effective until approved by the secretary unless otherwise
12 provided by statute. Unless otherwise provided by statute, no
13 regulation affecting any person or agency outside the
14 department shall be adopted, amended or repealed without a
15 public hearing on the proposed action before the secretary or a
16 hearing officer designated by ~~[him]~~ the secretary. The public
17 hearing shall be held in Santa Fe unless otherwise permitted by
18 statute. Notice of the subject matter of the regulation, the
19 action proposed to be taken, the time and place of the hearing,
20 the manner in which interested persons may present their views
21 and the method by which copies of the proposed regulation,
22 proposed amendment or repeal of an existing regulation may be
23 obtained shall be published once at least thirty days prior to
24 the hearing date in a newspaper of general circulation and
25 mailed at least thirty days prior to the hearing date to all

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1 persons who have made a written request for advance notice of
2 hearing.

3 F. In the event the secretary anticipates that
4 adoption, amendment or repeal of a rule or regulation will be
5 required by a cancellation, reduction or suspension of federal
6 funds or order by a court of competent jurisdiction:

7 (1) if the secretary is notified by
8 appropriate federal authorities at least sixty days prior to
9 the effective date of such cancellation, reduction or
10 termination of federal funds, the department is required to
11 promulgate regulations through the public hearing process to be
12 effective on the date mandated by the appropriate federal
13 authority; or

14 (2) if the secretary is notified by
15 appropriate federal authorities or court less than sixty days
16 prior to the effective date of such cancellation, reduction or
17 suspension of federal funds or court order, the department is
18 authorized without a public hearing to promulgate interim rules
19 or regulations effective for a period not to exceed ninety
20 days. Interim regulations shall not be promulgated without
21 first providing a written notice twenty days in advance to
22 providers of medical or behavioral health services and
23 beneficiaries of department programs. At the time of the
24 promulgation of the interim rules or regulations, the
25 department shall give notice of the public hearing on the final

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1 rules or regulations in accordance with Subsection E of this
2 section.

3 G. If the secretary certifies to the secretary of
4 finance and administration and gives contemporaneous notice of
5 such certification through the human services register that the
6 department has insufficient state funds to operate any of the
7 programs it administers and that reductions in services or
8 benefit levels are necessary, the secretary may engage in
9 interim rulemaking. Notwithstanding any provision to the
10 contrary in the State Rules Act, interim rulemaking shall be
11 conducted pursuant to Subsection E of this section, except:

12 (1) the period of notice of public hearing
13 shall be fifteen days;

14 (2) the department shall also send individual
15 notices of the interim rulemaking and of the public hearing to
16 affected providers and beneficiaries;

17 (3) rules and regulations promulgated pursuant
18 to the provisions of this subsection shall be in effect not
19 less than five days after the public hearing;

20 (4) rules and regulations promulgated pursuant
21 to the provisions of this subsection shall not be in effect for
22 more than ninety days; and

23 (5) if final rules and regulations are
24 necessary to replace the interim rules and regulations, the
25 department shall give notice of intent to promulgate final

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1 rules and regulations at the time of notice herein. The final
2 rules and regulations shall be promulgated not more than forty-
3 five days after the public hearing and filed in accordance with
4 the State Rules Act.

5 H. At the time of the promulgation of the interim
6 rules or regulations, the department shall give notice of the
7 public hearing on the final rules or regulations in accordance
8 with Subsection E of this section.

9 I. The secretary shall ensure that any behavioral
10 health services, including mental health and substance abuse
11 services, provided, contracted for or approved are in
12 compliance with the requirements of Section 9-7-6.4 NMSA 1978.

13 J. All rules and regulations shall be filed in
14 accordance with the State Rules Act.

15 K. The secretary shall employ in a full-time
16 classified position a tribal liaison, who reports directly to
17 the secretary, to:

18 (1) serve as a contact person to aid in
19 communication between the department and tribal communities or
20 American Indians residing in New Mexico;

21 (2) provide training to the staff of the
22 department in protocol, culturally competent behavior and
23 cultural history to assist the department in providing
24 effective service to tribes;

25 (3) work with the tribes, tribal members,

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1 American Indians not living on a reservation and American
2 Indians representing off-reservation American Indian
3 populations to resolve issues that arise with actions or
4 programs of the department; and

5 (4) interact with other state agency tribal
6 liaisons and attend meetings of legislative committees that are
7 discussing issues that involve both the department and American
8 Indian communities in New Mexico."

9 Section 15. Section 9-23-3 NMSA 1978 (being Laws 2004,
10 Chapter 23, Section 3) is amended to read:

11 "9-23-3. DEFINITIONS.--As used in the Aging and Long-Term
12 Services Department Act:

13 A. "department" means the aging and long-term
14 services department; [~~and~~]

15 B. "secretary" means the secretary of aging and
16 long-term services;

17 C. "tribal" means of or belonging to a tribe; and

18 D. "tribe" means a federally recognized Indian
19 nation, tribe or pueblo located wholly or partly in New
20 Mexico."

21 Section 16. Section 9-23-6 NMSA 1978 (being Laws 2004,
22 Chapter 23, Section 6) is amended to read:

23 "9-23-6. SECRETARY--DUTIES AND GENERAL POWERS.--

24 A. The secretary is responsible to the governor for
25 the operation of the department. It is the secretary's duty to

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1 manage all operations of the department and to administer and
2 enforce the laws with which the secretary or the department is
3 charged.

4 B. To perform the secretary's duties, the secretary
5 has every power expressly enumerated in the laws, whether
6 granted to the secretary or the department or any division of
7 the department, except where authority conferred upon any
8 division is explicitly exempted from the secretary's authority
9 by statute. In accordance with these provisions, the secretary
10 shall:

11 (1) except as otherwise provided in the Aging
12 and Long-Term Services Department Act, exercise general
13 supervisory and appointing authority over all department
14 employees, subject to any applicable personnel laws and
15 regulations;

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

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

23 (4) within the limitations of available
24 appropriations and applicable laws, employ and fix the
25 compensation of those persons necessary to discharge the

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1 secretary's duties;

2 (5) take administrative action by issuing
3 orders and instructions, not inconsistent with the law, to
4 ensure implementation of and compliance with the provisions of
5 law for whose administration or execution the secretary is
6 responsible and to enforce those orders and instructions by
7 appropriate administrative action in the courts;

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

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

16 (8) prepare an annual budget of the
17 department;

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

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

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

24 (c) resolve by agreement the manner and
25 extent to which the department shall provide budgeting, record-

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1 keeping and related clerical assistance to administratively
2 attached agencies; and

3 (10) appoint, with the governor's consent, for
4 each division, a "director". These appointed positions are
5 exempt from the provisions of the Personnel Act. Persons
6 appointed to these positions shall serve at the pleasure of the
7 secretary.

8 C. The secretary may apply for and receive, with
9 the governor's approval, in the name of the department, any
10 public or private funds, including United States government
11 funds, available to the department to carry out its programs,
12 duties or services.

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

18 E. The secretary may make and adopt such reasonable
19 procedural rules as may be necessary to carry out the duties of
20 the department and its divisions. A rule promulgated by the
21 director of any division in carrying out the functions and
22 duties of the division shall not be effective until approved by
23 the secretary unless otherwise provided by statute. Unless
24 otherwise provided by statute, no rule affecting any person or
25 agency outside the department shall be adopted, amended or

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1 repealed without a public hearing on the proposed action before
2 the secretary or a hearing officer designated by the secretary.
3 The public hearing shall be held in Santa Fe unless otherwise
4 permitted by statute. Notice of the subject matter of the
5 rule, the action proposed to be taken, the time and place of
6 the hearing, the manner in which interested persons may present
7 their views and the method by which copies of the proposed
8 rule, proposed amendment or repeal of an existing rule may be
9 obtained shall be published once at least thirty days prior to
10 the hearing date in a newspaper of general circulation and
11 mailed at least thirty days prior to the hearing date to all
12 persons who have made a written request for advance notice of
13 hearing. Rules shall be filed in accordance with the State
14 Rules Act.

15 F. The secretary shall employ in a full-time
16 classified position a tribal liaison, who reports directly to
17 the secretary, to:

18 (1) serve as a contact person to aid in
19 communication between the department and tribal communities or
20 American Indians residing in New Mexico;

21 (2) provide training to the staff of the
22 department in protocol, culturally competent behavior and
23 cultural history to assist the department in providing
24 effective service to tribes;

25 (3) work with the tribes, tribal members,

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1 American Indians not living on a reservation and American
2 Indians representing off-reservation American Indian
3 populations to resolve issues that arise with actions or
4 programs of the department; and

5 (4) interact with other state agency tribal
6 liaisons and attend meetings of legislative committees that are
7 discussing issues that involve both the department and American
8 Indian communities in New Mexico."

9 Section 17. APPROPRIATIONS.--

10 A. Fifteen million dollars (\$15,000,000) is
11 appropriated from the general fund to the American Indian
12 health care improvement fund for expenditure in fiscal year
13 2009 and subsequent fiscal years for the following purposes:

14 (1) two million two hundred thousand dollars
15 (\$2,200,000) to support the development of local plans for
16 improvement of the delivery of health care to American Indian
17 people and to conduct studies and analyses of health care and
18 health coverage functions and trends, including type of
19 coverage and cost of coverage, with a long-term trend analysis
20 of all health care practices available for Americans Indians in
21 New Mexico;

22 (2) ten million dollars (\$10,000,000) to
23 support, supplement or expand the existing components of the
24 health care system providing services to American Indian people
25 to improve delivery of health care to the American Indian

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1 population, including enrolling as many eligible American
2 Indians who meet the federal poverty level requirements;

3 (3) five hundred thousand dollars (\$500,000)
4 to expand the scope of investigation and research of the center
5 for American Indian health of the health sciences center of the
6 university of New Mexico;

7 (4) six hundred thousand dollars (\$600,000)
8 for recruitment and retention of students training for careers
9 in medicine or ancillary fields to become medical practitioners
10 or medical researchers;

11 (5) five hundred thousand dollars (\$500,000)
12 for research and epidemiological studies;

13 (6) four hundred thousand dollars (\$400,000)
14 for technical assistance and outreach provided by the center
15 for Native American studies of the health sciences center of
16 the university of New Mexico to implement the components of the
17 American Indian Health Care Improvement Act;

18 (7) four hundred thousand dollars (\$400,000)
19 for information systems and technology support for tribal
20 community health care delivery systems; and

21 (8) four hundred thousand dollars (\$400,000)
22 for the staffing and operations of the American Indian health
23 division of the department of health.

24 B. Any unexpended or unencumbered balance remaining
25 at the end of a fiscal year shall not revert to the general

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1 fund but shall remain in the American Indian health care
2 improvement fund for future expenditure pursuant to the
3 American Indian Health Care Improvement Act.

4 C. Appropriations made pursuant to this section
5 shall be made to supplement rather than to supplant existing
6 American Indian health initiatives.

7 Section 18. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2008.