

1 SENATE BILL 465

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

3 INTRODUCED BY

4 Gay G. Kernan

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9  
10 AN ACT

11 RELATING TO DOMESTIC AFFAIRS; REQUIRING THE CHILDREN, YOUTH AND  
12 FAMILIES DEPARTMENT TO PROVIDE BY RULE FOR DRUG TESTING OF A  
13 FOSTER HOME APPLICANT; PROVIDING FOR LICENSE DENIAL FOR A  
14 FOSTER HOME APPLICANT WHO FAILS OR REFUSES A DRUG TEST; MAKING  
15 AN APPROPRIATION.

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

18 Section 1. Section 40-7A-1 NMSA 1978 (being Laws 1981,  
19 Chapter 171, Section 1) is amended to read:

20 "40-7A-1. SHORT TITLE.--~~[Sections 1 through 8 of this~~  
21 ~~act]~~ Chapter 40, Article 7A NMSA 1978 may be cited as the  
22 "Child Placement Agency Licensing Act"."

23 Section 2. Section 40-7A-3 NMSA 1978 (being Laws 1981,  
24 Chapter 171, Section 3) is amended to read:

25 "40-7A-3. DEFINITIONS.--As used in the Child Placement

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1 Agency Licensing Act:

2 A. "child" means an individual under the age of  
3 eighteen years;

4 B. "child placement agency" means any individual,  
5 partnership, unincorporated association or corporation  
6 undertaking to place a child in a home in this or any other  
7 state for the purpose of foster care or adoption of the child;

8 C. "department" means the [~~human services~~]  
9 children, youth and families department;

10 D. "division" means the [~~social~~] protective  
11 services division of the department;

12 E. "drug test" means a reasonable collection and  
13 analysis procedure used to detect a controlled substance or  
14 controlled substance analog in the blood stream in violation of  
15 the Controlled Substances Act;

16 [~~E.~~] F. "foster home" means a home maintained by an  
17 individual having the care and control, for periods exceeding  
18 twenty-four hours, of a child who is abused, neglected,  
19 dependent or homeless and who is not placed for adoption;

20 [~~F.~~] G. "person" means any individual, partnership,  
21 unincorporated association or corporation; and

22 [~~G.~~] H. "secretary" means the secretary of [~~human~~  
23 ~~services~~] children, youth and families."

24 Section 3. Section 40-7A-4 NMSA 1978 (being Laws 1981,  
25 Chapter 171, Section 4, as amended) is amended to read:

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1 "40-7A-4. LICENSING--REGULATIONS--APPLICATION FOR  
2 LICENSE.--

3 A. An application for a license to operate a child  
4 placement agency shall be made to the division on forms  
5 provided and in the manner prescribed by the division. A child  
6 placement agency may be licensed either to place children in  
7 foster homes or in homes for adoption, or both. The division  
8 shall investigate the applicant to ascertain whether the  
9 applicant qualifies under the regulations promulgated by the  
10 division and shall provide by rule for performing a drug test  
11 on an applicant for a foster home license. If qualified, the  
12 division shall issue a license valid for one year from date of  
13 issuance. A license shall be renewed for successive periods of  
14 time not to exceed three years, as determined by the division,  
15 if the division is satisfied that the child placement agency is  
16 in compliance with the division's regulations. No fee shall be  
17 charged for a license.

18 B. No person shall operate a child placement agency  
19 or foster home without first being licensed to operate the  
20 agency or home by the division. Placement of a child in the  
21 home of a relative or guardian shall not require a license from  
22 the division under the Child Placement Agency Licensing Act. A  
23 person desiring to operate a foster home under the authority of  
24 a child placement agency shall submit to a drug test and shall  
25 obtain a license from the division through the child placement

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1 agency under which it will operate. The child placement agency  
2 shall certify to the division that the person is a suitable  
3 person to operate a foster home. The certification shall be on  
4 a form provided by the division and shall contain such  
5 information as the division requires. The division shall give  
6 notice of action taken upon a certification received from a  
7 child placement agency within thirty days from the receipt  
8 thereof and shall state the reasons for any denial. [~~No~~] A  
9 foster home shall not be certified by more than one child  
10 placement agency. A certificate shall be renewed for  
11 successive one-year periods if the child placement agency is  
12 satisfied that the foster home is in compliance with the  
13 division's regulations. When certified by a child placement  
14 agency, a foster home may receive a child for care from sources  
15 other than the certifying agency upon the written consent of  
16 the certifying agency.

17 C. Upon certification by a child placement agency  
18 that a person is suitable to operate a foster home, the child  
19 placement agency may place a child for foster care pending  
20 licensing of the foster home by the division. If the division  
21 declines to license, the child placement agency shall promptly  
22 remove the child from the placement.

23 D. The division shall prescribe and publish minimum  
24 standards and other regulations for licensing of child  
25 placement agencies and certification of foster homes. The

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1 prescribed minimum standards and other regulations shall be  
2 promulgated by the division no later than six months after the  
3 effective date of the Child Placement Agency Licensing Act and  
4 shall be restricted to:

5 (1) the responsibility assumed by the foster  
6 home or child placement agency for the shelter, health, diet,  
7 safety and education of the child served;

8 (2) the character, suitability and  
9 qualifications of the applicant for a license or certificate  
10 and of other persons directly responsible for the health and  
11 safety of the child served;

12 (3) the results of a drug test;

13 [~~(3)~~] (4) the general financial ability of the  
14 applicant for a license or certificate to provide care for the  
15 child served;

16 [~~(4)~~] (5) the maintenance of records  
17 pertaining to the admission, progress, health and discharge of  
18 the child served; and

19 [~~(5)~~] (6) the filing of reports with the  
20 division.

21 E. The regulations shall not proscribe or interfere  
22 with the religious beliefs or religious training of child  
23 placement agencies and foster homes, except when the beliefs or  
24 training endanger the child's health or safety.

25 F. The division may inspect child placement

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1 agencies and foster homes as necessary to ensure that they are  
2 in compliance with the provisions of the Child Placement Agency  
3 Licensing Act and regulations of the division.

4 G. Any person licensed or certified to operate a  
5 child placement agency or foster home under the provisions of  
6 the Child Placement Agency Licensing Act has the right to  
7 appeal any regulation [~~which~~] that the person believes has been  
8 improperly applied by representatives of the division or  
9 [~~which~~] that exceeds the authority granted to the division by  
10 the Child Placement Agency Licensing Act. The secretary shall  
11 designate a hearing officer or officers from the department to  
12 hear an appeal. The hearing officer or officers shall make a  
13 written recommendation to the secretary for resolution of the  
14 appeal. The secretary's decision shall be in writing and shall  
15 be the final administrative determination of the matter."

16 Section 4. APPROPRIATION.--One hundred ninety-nine  
17 thousand eight hundred dollars (\$199,800) is appropriated from  
18 the general fund to the children, youth and families department  
19 for expenditure in fiscal year 2009 for drug testing of each  
20 new applicant to become a foster parent. Any unexpended or  
21 unencumbered balance remaining at the end of fiscal year 2009  
22 shall revert to the general fund.