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HOUSE BILL 570

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Bob Wooley

AN ACT

RELATING TO EXECUTIVE ORGANIZATION; MERGING THE AGING AND LONG-TERM SERVICES AND CHILDREN, YOUTH AND FAMILIES DEPARTMENTS; PROVIDING POWERS AND DUTIES; TRANSFERRING MEDICAID PROGRAMS FROM THE AGING AND LONG-TERM SERVICES DEPARTMENT TO THE HUMAN SERVICES DEPARTMENT; PROVIDING FOR TRANSFERS OF FUNCTIONS, PERSONNEL, MONEY, RECORDS, OTHER PROPERTY, CONTRACTUAL OBLIGATIONS AND REFERENCES IN LAW; PROVIDING FOR A TRANSITION TEAM.

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

SECTION 1. Section 9-2A-2 NMSA 1978 (being Laws 1992, Chapter 57, Section 2, as amended) is amended to read:

"9-2A-2. PURPOSE.--The purpose of the Children, Youth and Families Department Act is to establish a department of state government that shall:

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1 A. administer all laws and exercise all functions
2 formerly administered and exercised by the youth authority and
3 the aging and long-term services department, as well as
4 administering certain functions related to children, youth,
5 [~~and~~] families and seniors that were formerly administered by
6 other departments or agencies of the state;

7 B. assist in the development of state policies and
8 plans for services to children, youth, [~~and~~] families and
9 seniors, including policies and plans that endeavor to
10 strengthen client self-sufficiency and that emphasize
11 prevention without jeopardizing the necessary provision of
12 essential treatment and early intervention services;

13 C. advocate for services for children, youth, [~~and~~]
14 families and seniors as an enduring priority in New Mexico; and

15 D. provide leadership to other agencies that serve
16 children, youth, [~~and~~] families and seniors to ensure a
17 coordinated and integrated system of care and services for
18 children, youth, [~~and~~] families and seniors."

19 **SECTION 2.** Section 9-2A-4 NMSA 1978 (being Laws 1992,
20 Chapter 57, Section 4, as amended) is amended to read:

21 "9-2A-4. DEPARTMENT CREATED--DIVISIONS.--

22 A. The "children, youth and families department" is
23 created. The department is a cabinet department and consists
24 of, but is not limited to, [~~six~~] nine divisions as follows:

25 [~~(1) the protective services division;~~

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- 1 ~~(2) the juvenile justice division;~~
- 2 ~~(3) the prevention and intervention division;~~
- 3 ~~(4) the financial services division;~~
- 4 ~~(5) the employee support division; and~~
- 5 ~~(6) the information technology division.]~~
- 6 (1) the administrative services division;
- 7 (2) the adult protective services division;
- 8 (3) the aging network services division;
- 9 (4) the child protective services division;
- 10 (5) the consumer and elder rights division;
- 11 (6) the early childhood services division;
- 12 (7) the juvenile justice division;
- 13 (8) the long-term care division; and
- 14 (9) the youth and family services division.

15 B. The secretary is empowered to organize the
16 department and the divisions specified in Subsection A of this
17 section and may transfer or merge functions between divisions
18 in the interest of efficiency and economy.

19 C. The governor is empowered to merge divisions and
20 to abolish or create divisions of the department by executive
21 order in the interest of efficiency and economy."

22 SECTION 3. Section 9-2A-8 NMSA 1978 (being Laws 1992,
23 Chapter 57, Section 8, as amended) is amended to read:

24 "9-2A-8. DEPARTMENT--ADDITIONAL DUTIES.--In addition to
25 other duties provided by law or assigned to the department by

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1 the governor, the department shall:

2 A. develop priorities for department services and
3 resources for children, youth, adults and seniors based on
4 state policy and national best-practice standards and local
5 considerations and priorities;

6 B. strengthen collaboration and coordination in
7 state and local services for children, youth and families,
8 including seniors, by integrating critical functions as
9 appropriate, including service delivery, and contracting for
10 services across divisions and related agencies;

11 C. develop and maintain a statewide database,
12 including client tracking of services for children, youth and
13 families, including seniors;

14 D. develop standards of service within the
15 department that focus on prevention, monitoring and outcomes;

16 E. analyze policies of other departments that
17 affect children, youth and families, including seniors, to
18 encourage common contracting procedures, common service
19 definitions and a uniform system of access;

20 F. enact [~~regulations~~] rules to control disposition
21 and placement of children under the Children's Code, including
22 [~~regulations~~] rules to limit or prohibit the out-of-state
23 placement of children, including those who have developmental
24 disabilities or emotional, neurobiological or behavioral
25 disorders, when in-state alternatives are available;

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1 G. develop reimbursement criteria for licensed
2 child care centers and licensed home providers establishing
3 that accreditation by a department-approved national
4 accrediting body is sufficient qualification for the child care
5 center or home provider to receive the highest reimbursement
6 rate paid by the department;

7 H. assume and implement responsibility for
8 children's mental health and substance abuse services in the
9 state, coordinating with the human services department and the
10 department of health;

11 I. assume and implement the lead responsibility
12 among all departments for domestic violence services;

13 J. implement prevention and early intervention for
14 children and adults, including seniors, as a departmental
15 focus;

16 K. conduct biennial assessments of service gaps and
17 needs and establish outcome measurements to address those
18 service gaps and needs, including recommendations from the
19 governor's children's cabinet, ~~[and]~~ the children, youth and
20 families advisory committee and the advisory committee on
21 aging;

22 L. ensure that behavioral health services provided,
23 including mental health and substance abuse services for
24 children and adolescents and their families, shall be in
25 compliance with requirements of Section 9-7-6.4 NMSA 1978; and

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1 M. fingerprint and conduct nationwide criminal
2 history record searches on all department employees whose jobs
3 involve direct contact with department clients, including
4 prospective employees and employees who are promoted,
5 transferred or hired into new positions."

6 SECTION 4. A new section of the Children, Youth and
7 Families Department Act is enacted to read:

8 "[NEW MATERIAL] DIVISIONS--GENERAL DUTIES.--In addition to
9 the duties assigned to each division of the department by the
10 secretary:

11 A. the administrative services division shall
12 provide clerical, recordkeeping and administrative support to
13 the department in the areas of personnel, budget, procurement
14 and contracting;

15 B. the adult protective services division shall
16 provide adult protective services;

17 C. the aging network services division shall
18 administer the federal Older Americans Act of 1965 programs;

19 D. the child protective services division shall
20 administer foster care, abuse and neglect care and other child
21 protective programs;

22 E. the consumer and elder rights division shall
23 administer the long-term care ombudsman program and provide
24 health insurance and benefits counseling and legal services;

25 F. the early childhood services division shall

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1 administer child development, family nutrition and other early
2 childhood programs;

3 G. the juvenile justice division shall administer
4 community corrections, probation and parole and reintegration
5 and secure facilities and other programs;

6 H. the long-term care division shall administer
7 home- and community-based long-term care programs; and

8 I. the youth and family services division shall
9 administer behavioral health, domestic violence, licensing and
10 certification and other programs."

11 SECTION 5. A new section of the Children, Youth and
12 Families Department Act is enacted to read:

13 "[NEW MATERIAL] OFFICE OF INDIAN ELDER AFFAIRS CREATED.--
14 The "office of Indian elder affairs" is created within the
15 office of the secretary. The office of Indian elder affairs
16 shall assume the responsibilities of the Indian area agency on
17 aging, including contract management, program compliance
18 monitoring, technical assistance, advocacy and training to
19 pueblo and Apache tribe federal Older Americans Act of 1965
20 programs and to establish relationships that support the
21 efforts of the Navajo area agency on aging, and shall
22 participate with the other divisions of the department to
23 review and make recommendations regarding other health and
24 social programs of the department that serve Indian elders.
25 Abolishment or transfer of the office of Indian elder affairs

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1 out of the department shall require approval of the
2 legislature."

3 SECTION 6. Section 24-17-7 NMSA 1978 (being Laws 1985,
4 Chapter 102, Section 7) is amended to read:

5 "24-17-7. DISCLOSURE STATEMENTS FILED WITH THE [~~STATE~~
6 ~~AGENCY ON AGING~~] CHILDREN, YOUTH AND FAMILIES DEPARTMENT FOR
7 PUBLIC INSPECTION.--A provider shall file a copy of the
8 disclosure statement and any amendments to that statement with
9 the [~~state agency on aging~~] children, youth and families
10 department for public inspection during regular working hours."

11 SECTION 7. Section 24-17-16 NMSA 1978 (being Laws 1991,
12 Chapter 263, Section 5) is amended to read:

13 "24-17-16. IDENTIFICATION AND PROCEDURES FOR CORRECTION
14 OF VIOLATIONS.--

15 A. If the [~~state agency on aging~~] children, youth
16 and families department determines that a person or an
17 organization has engaged in or is about to engage in an act or
18 practice constituting a violation of the Continuing Care Act or
19 any rule adopted pursuant to that act, the [~~state agency on~~
20 ~~aging~~] department shall issue a notice of violation in writing
21 to that person or organization and send copies to the resident
22 association of any facility affected by the notice.

23 B. The notice of violation shall state the
24 following:

25 (1) a description of a violation at issue;

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1 (2) the action that, in the judgment of the
2 [~~state agency on aging~~] department, the provider should take to
3 conform to the law or the assurances that the [~~state agency on~~
4 ~~aging~~] department requires to establish that no violation is
5 about to occur;

6 (3) the compliance date by which the provider
7 shall correct any violation or submit assurances;

8 (4) the requirements for filing a report of
9 compliance; and

10 (5) the applicable sanctions for failure to
11 correct the violation or failure to file the report of
12 compliance according to the terms of the notice of violation.

13 C. At any time after receipt of a notice of
14 violation, the person or organization to which the notice is
15 addressed or the [~~state agency on aging~~] department may request
16 a conference. The [~~state agency on aging~~] department shall
17 schedule a conference within seven days of a request.

18 D. The purpose of the conference is to discuss the
19 contents of the notice of violation and to assist the addressee
20 to comply with the requirements of the Continuing Care Act.
21 Subject to rules that the [~~state agency on aging~~] department
22 may promulgate, a representative of the resident association at
23 any facility affected by the notice shall have a right to
24 attend the conference.

25 E. A person receiving a notice of violation shall

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1 submit a signed report of compliance as provided by the notice.
2 The ~~[state agency on aging]~~ department shall send a copy to the
3 resident association of any facility affected by the notice.

4 F. Upon receipt of the report of compliance, the
5 ~~[state agency on aging]~~ department shall take steps to
6 determine that compliance has been achieved."

7 SECTION 8. Section 24-17-18 NMSA 1978 (being Laws 1991,
8 Chapter 263, Section 7) is amended to read:

9 "24-17-18. REPORT TO ATTORNEY GENERAL--CIVIL ACTION--
10 CIVIL PENALTIES.--Any time after the ~~[state agency on aging]~~
11 children, youth and families department issues a notice of
12 violation, the ~~[state agency on aging]~~ department may send the
13 attorney general a written report alleging a possible violation
14 of the Continuing Care Act or any rule adopted pursuant to that
15 act. Upon receipt of that report, the attorney general shall
16 promptly conduct an investigation to determine whether grounds
17 exist for formally finding a violation. If the attorney
18 general makes that finding, ~~[he]~~ the attorney general shall
19 file an appropriate action against the alleged violator in a
20 court of competent jurisdiction. Upon finding violations of
21 any provisions of the Continuing Care Act or any rule adopted
22 pursuant to that act, the court may impose a civil penalty in
23 the amount of five dollars (\$5.00) per resident or up to five
24 hundred dollars (\$500), in the discretion of the court, for
25 each day that the violation remains uncorrected after the

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1 compliance date stipulated in a notice of violation issued
2 pursuant to the Continuing Care Act."

3 SECTION 9. Section 24-26-2 NMSA 1978 (being Laws 2004,
4 Chapter 53, Section 2) is amended to read:

5 "24-26-2. DEFINITIONS.--As used in the Patient Care
6 Monitoring Act:

7 A. [~~"agency"~~] "department" means the [~~state agency~~
8 ~~on aging~~] children, youth and families department;

9 B. "facility" means a long-term care facility
10 licensed pursuant to the provisions of Section 24-1-5 NMSA
11 1978, other than an intermediate care facility for the mentally
12 retarded, and may also include:

- 13 (1) a skilled nursing facility;
14 (2) an intermediate care nursing facility;
15 (3) a nursing facility;
16 (4) an adult residential shelter care home;
17 (5) a boarding home;
18 (6) any adult care home or adult residential
19 care facility; and
20 (7) any swing bed in an acute care facility or
21 extended care facility;

22 C. "monitoring device" means a surveillance
23 instrument that broadcasts or records activity, but does not
24 include a still camera;

25 D. "patient" means a person who is a resident of a

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1 facility;

2 E. "program" means the New Mexico long-term care
3 ombudsman program; and

4 F. "surrogate" means a legal guardian or a legally
5 appointed substitute decision-maker who is authorized to act on
6 behalf of a patient."

7 SECTION 10. Section 27-7-16 NMSA 1978 (being Laws 1989,
8 Chapter 389, Section 3, as amended) is amended to read:

9 "27-7-16. DEFINITIONS.--As used in the Adult Protective
10 Services Act:

11 A. "ability to consent" means an adult's ability to
12 understand and appreciate the nature and consequences of
13 proposed protective services or protective placement, including
14 benefits, risks and alternatives to the proposed services or
15 placement and to make or communicate an informed decision;

16 B. "abuse" means:

17 (1) knowingly, intentionally or negligently
18 and without justifiable cause inflicting physical pain, injury
19 or mental anguish;

20 (2) the intentional deprivation by a caretaker
21 or other person of services necessary to maintain the mental
22 and physical health of an adult; or

23 (3) sexual abuse, including criminal sexual
24 contact, incest and criminal sexual penetration;

25 C. "adult" means a person eighteen years of age or

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1 older;

2 D. "caretaker" means a facility, provider or
3 individual that has assumed the responsibility for the care of
4 an adult;

5 E. "conservator" means a person who is appointed by
6 a court to manage the property or financial affairs, or both,
7 of an incapacitated adult;

8 F. "court" means the district court having
9 jurisdiction;

10 G. "department" means the [~~aging and long-term~~
11 ~~services~~] children, youth and families department;

12 H. "emergency" means that an adult is living in
13 conditions that present a substantial risk of death or
14 immediate and serious physical harm to the adult or others;

15 I. "exploitation" means an unjust or improper use
16 of an adult's money or property for another person's profit or
17 advantage, pecuniary or otherwise;

18 J. "facility" means a hospital, nursing home,
19 residential care facility, group home, foster care home,
20 assisted living facility or other facility licensed by the
21 state, but does not include a jail, prison or detention
22 facility;

23 K. "guardian" means a person who has qualified to
24 provide for the care, custody or control of an incapacitated
25 adult pursuant to testamentary or court appointment, but

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1 excludes one who is a guardian ad litem;

2 L. "incapacitated adult" means any adult with a
3 mental, physical or developmental condition that substantially
4 impairs the adult's ability to provide adequately for the
5 adult's own care or protection;

6 M. "multidisciplinary team" means a team composed
7 of diverse professionals who meet periodically to consult on or
8 enhance appropriate community responses to abuse, neglect or
9 exploitation of adults;

10 N. "neglect" means the failure of the caretaker of
11 an adult to provide for the basic needs of the adult, such as
12 clothing, food, shelter, supervision and care for the physical
13 and mental health of that adult; "neglect" includes self-
14 neglect;

15 O. "protected adult" means an adult for whom a
16 guardian or conservator has been appointed or other protective
17 order has been made or an abused, neglected or exploited adult
18 who has consented to protective services or protective
19 placement;

20 P. "protective placement" means the placement of an
21 adult with a provider or in a facility or the transfer of an
22 adult from one provider or facility to another;

23 Q. "protective services" means the services
24 furnished by the department or its delegate, as described in
25 Section 27-7-21 NMSA 1978;

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1 R. "provider" means a private-residence or health
2 care worker or an unlicensed residential or nonresidential
3 entity that provides personal, custodial or health care;

4 S. "self-neglect" means an act or omission by an
5 incapacitated adult that results in the deprivation of
6 essential services or supports necessary to maintain the
7 incapacitated adult's minimal mental, emotional or physical
8 health and safety;

9 T. "substantiated" means a determination, based on
10 a preponderance of collected and assessed credible information,
11 that abuse, neglect or exploitation of an incapacitated or
12 protected adult has occurred; and

13 U. "surrogate" means a person legally authorized to
14 act on an adult's behalf."

15 **SECTION 11.** Section 27-7A-2 NMSA 1978 (being Laws 2005,
16 Chapter 256, Section 2) is amended to read:

17 "27-7A-2. DEFINITIONS.--As used in the Employee Abuse
18 Registry Act:

- 19 A. "abuse" means:
- 20 (1) knowingly, intentionally or negligently
 - 21 and without justifiable cause inflicting physical pain, injury
 - 22 or mental anguish; or
 - 23 (2) the intentional deprivation by a caretaker
 - 24 or other person of services necessary to maintain the mental
 - 25 and physical health of a person;

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1 B. "department" means the department of health;

2 C. "direct care" means face-to-face services
3 provided or routine and unsupervised physical or financial
4 access to a recipient of services;

5 D. "employee" means a person employed by or on
6 contract with a provider, either directly or through a third
7 party arrangement to provide direct care. "Employee" does not
8 include a New Mexico licensed health care professional
9 practicing within the scope of the profession's license or a
10 certified nurse aide;

11 E. "exploitation" means an unjust or improper use
12 of a person's money or property for another person's profit or
13 advantage, pecuniary or otherwise;

14 F. "neglect" means, subject to a person's right to
15 refuse treatment and subject to a provider's right to exercise
16 sound medical discretion, the failure of an employee to provide
17 basic needs such as clothing, food, shelter, supervision and
18 care for the physical and mental health of a person or failure
19 by a person that may cause physical or psychological harm;

20 G. "provider" means an intermediate care facility
21 for the mentally retarded; a rehabilitation facility; a home
22 health agency; a homemaker agency; a home for the aged or
23 disabled; a group home; an adult foster care home; a case
24 management entity that provides services to elderly people or
25 people with developmental disabilities; a corporate guardian; a

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1 private residence that provides personal care, adult
2 residential care or natural and surrogate family services
3 provided to persons with developmental disabilities; an adult
4 daycare center; a boarding home; an adult residential care
5 home; a residential service or habilitation service authorized
6 to be reimbursed by medicaid; any licensed or medicaid-
7 certified entity or any program funded by the [~~aging and long-~~
8 ~~term~~] human services department that provides respite,
9 companion or personal care services; programs funded by the
10 children, youth and families department that provide homemaker
11 or adult daycare services; and any other individual, agency or
12 organization that provides respite care or delivers home- and
13 community-based services to adults or children with
14 developmental disabilities or physical disabilities or to the
15 elderly, but excluding a managed care organization unless the
16 employees of the managed care organization provide respite care
17 or deliver home- and community-based services to adults or
18 children with developmental disabilities or physical
19 disabilities or to the elderly;

20 H. "registry" means an electronic database that
21 provides information on substantiated employee abuse, neglect
22 or exploitation; and

23 I. "secretary" means the secretary of health."

24 SECTION 12. Section 27-15-2 NMSA 1978 (being Laws 2006,
25 Chapter 112, Section 2) is amended to read:

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1 "27-15-2. DEFINITION.--As used in the Money Follows the
2 Person in New Mexico Act, "department" means the [~~aging and~~
3 ~~long-term~~] human services department."

4 SECTION 13. Section 28-4-5 NMSA 1978 (being Laws 1979,
5 Chapter 203, Section 2) is amended to read:

6 "28-4-5. [~~AGENCY~~] DEPARTMENT DUTIES.--The [~~state agency~~
7 ~~on aging~~] children, youth and families department shall
8 establish and maintain a comprehensive statewide program
9 designed to meet the social service needs of the state's aged
10 population, including but not limited to the following:

11 A. strengthen and coordinate services of state and
12 local public bodies for the benefit of the aged;

13 B. promote the utilization of older persons in all
14 phases of employment;

15 C. disseminate information to the aged relative to
16 federal, state and local services for the aged;

17 D. encourage training programs, retraining programs
18 and opportunities for older workers;

19 E. develop new methods of job placement for older
20 workers;

21 F. promote public recognition of the advantages of
22 hiring and retaining older workers; and

23 G. promote and develop programs of community
24 resources and facilities designed to meet the social needs of
25 older persons."

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1 SECTION 14. Section 28-4-6 NMSA 1978 (being Laws 1979,
2 Chapter 203, Section 3, as amended) is amended to read:

3 "28-4-6. [AGENCY] DEPARTMENT POWERS.--

4 A. The [~~state agency on aging~~] children, youth and
5 families department:

6 (1) may receive on behalf of the state any
7 gifts, donations or bequests from any source to be used in
8 carrying out its duties; and

9 (2) is designated as the state agency for
10 handling all programs of the federal government related to the
11 aged, except those designated by law as the responsibility of
12 another state agency, and may enter into agreements and
13 contracts with agencies of the federal government for this
14 purpose.

15 ~~[B. The state agency on aging may adopt and~~
16 ~~promulgate such reasonable rules and regulations as are deemed~~
17 ~~necessary to carry out its duties. Unless otherwise provided~~
18 ~~by law, no rule or regulation affecting any person or agency~~
19 ~~outside the state agency on aging shall be adopted, amended or~~
20 ~~repealed without a public hearing on the proposed action before~~
21 ~~the director of the state agency on aging or a hearing officer~~
22 ~~designated by him. The public hearing shall be held in Santa~~
23 ~~Fe unless otherwise permitted by statute. Notice of the~~
24 ~~subject matter of the rule or regulation, the action proposed~~
25 ~~to be taken, the time and place of the hearing, the manner in~~

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1 ~~which interested persons may present their views and the method~~
2 ~~by which copies of the proposed rule or regulation or proposed~~
3 ~~amendment or repeal of an existing rule or regulation may be~~
4 ~~obtained shall be published once at least thirty days prior to~~
5 ~~the hearing in a newspaper of general circulation and mailed at~~
6 ~~least thirty days prior to the hearing date to all persons who~~
7 ~~have made a written request for advance notice of hearing. The~~
8 ~~director of the state agency on aging shall also provide such~~
9 ~~notice to the director of each senior citizen center no later~~
10 ~~than forty days prior to the public hearing. All rules and~~
11 ~~regulations shall be filed in accordance with the State Rules~~
12 ~~Act.~~

13 G.] B. To ensure that the health and safety needs
14 of the state's aged population are being met, the [~~state agency~~
15 ~~on aging~~] department may conduct unannounced quality care
16 evaluations of health and long-term care facilities that
17 provide services to the aged, including the use of undercover
18 patients or employees. Any employee or contractor of the
19 [~~state agency on aging~~] department who participates in such an
20 evaluation shall be immune from liability in any civil action
21 related to the evaluation, provided it is conducted in good
22 faith. The purpose of this subsection is to confirm and
23 clarify the authority of the [~~state agency on aging~~] department
24 to conduct quality care evaluations to protect the interests of
25 the state's aged population."

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1 SECTION 15. Section 28-4-8 NMSA 1978 (being Laws 1979,
2 Chapter 203, Section 5) is amended to read:

3 "28-4-8. REPORTS.--The [~~state agency on aging~~] children,
4 youth and families department shall submit reports on its work
5 for the preceding year to the governor and the legislature at
6 least forty-five days prior to each regular legislative
7 session. The reports shall contain recommendations on present
8 and future needs of the aged."

9 SECTION 16. Section 28-4-9 NMSA 1978 (being Laws 1979,
10 Chapter 203, Section 6, as amended) is amended to read:

11 "28-4-9. ADVISORY COMMITTEE.--The governor shall appoint
12 an eleven-member advisory committee on aging to the [~~state~~
13 ~~agency on aging~~] children, youth and families department in
14 accordance with the provisions of the Executive Reorganization
15 Act. In establishing the committee, the governor shall take
16 note of any federal requirements regarding membership and shall
17 appoint members for staggered terms of four years. Members of
18 the committee shall be reimbursed for services as provided for
19 in the Per Diem and Mileage Act and shall receive no other
20 compensation, perquisite or allowance."

21 SECTION 17. Section 28-17-3 NMSA 1978 (being Laws 1989,
22 Chapter 208, Section 3, as amended) is amended to read:

23 "28-17-3. DEFINITIONS.--As used in the Long-Term Care
24 Ombudsman Act:

25 A. "adult protective services" means the services

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1 provided by the children, youth and families department or its
2 delegate pursuant to the Adult Protective Services Act;

3 B. "agency" means the [~~state agency on aging~~]
4 children, youth and families department;

5 C. "care" means assistance with the activities of
6 daily living, including eating, dressing, oral hygiene,
7 bathing, mobility, toileting, grooming, taking medications,
8 transferring from a bed or chair and walking;

9 D. "director" or "secretary" means the [~~director of~~
10 ~~the state agency on aging~~] secretary of children, youth and
11 families;

12 E. "licensing and certification" means the
13 licensing and certification bureau of the public health
14 division of the department of health;

15 F. "long-term care facility" means any residential
16 facility that provides care to one or more persons unrelated to
17 the owner or operator of the facility, including:

18 (1) a skilled nursing facility;

19 (2) an intermediate care nursing facility,
20 including an intermediate care facility for the mentally
21 retarded;

22 (3) a nursing facility;

23 (4) an adult residential shelter care home;

24 (5) a boarding home;

25 (6) any other adult care home or adult

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1 residential care facility;

2 (7) a continuing care community;

3 (8) any swing bed in an acute care facility or
4 extended care facility; and

5 (9) any adult day care facility;

6 G. "office" means the [~~office of the~~] state
7 [~~long-term care~~] ombudsman;

8 H. "Older Americans Act" means the federal Older
9 Americans Act;

10 I. "ombudsman" means an individual trained and
11 certified to act as a representative of the [~~office of the~~]
12 state [~~long-term care~~] ombudsman;

13 J. "ombudsman coordinator" means the coordinator of
14 a regional or local ombudsman program designated by the [~~office~~
15 ~~of the~~] state ombudsman;

16 K. "program" means the New Mexico long-term care
17 ombudsman program;

18 L. "resident" means any patient, client or person
19 residing in and receiving care in a long-term care facility;

20 M. "state ombudsman" means the state long-term care
21 ombudsman; and

22 N. "surrogate decision maker" means a legally
23 appointed agent, guardian or surrogate who is authorized to act
24 on behalf of a resident."

25 SECTION 18. Section 29-17-2 NMSA 1978 (being Laws 1998,

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1 Chapter 68, Section 1) is amended to read:

2 "29-17-2. SHORT TITLE.--~~[Sections 1 through 5 of this act]~~

3 Chapter 29, Article 17 NMSA 1978 may be cited as the

4 "Caregivers Criminal History Screening Act".

5 **SECTION 19.** Section 29-17-4 NMSA 1978 (being Laws 1998,
6 Chapter 68, Section 3, as amended) is amended to read:

7 "29-17-4. DEFINITIONS.--As used in the Caregivers
8 Criminal History Screening Act:

9 A. "applicant" means a person who seeks and is
10 offered employment or contractual service as a caregiver or
11 hospital caregiver with a care provider;

12 B. "caregiver" means a person, not otherwise
13 required to undergo a nationwide criminal history screening by
14 the New Mexico Children's and Juvenile Facility Criminal
15 Records Screening Act, whose employment or contractual service
16 with a care provider includes direct care or routine and
17 unsupervised physical or financial access to any care recipient
18 served by that provider;

19 C. "care provider" or "provider" means a skilled
20 nursing facility; an intermediate care facility; a care
21 facility for the mentally retarded; a general acute care
22 facility; a psychiatric facility; a rehabilitation facility; a
23 home health agency; a homemaker agency; a home for the aged or
24 disabled; a group home; an adult foster care home; a guardian
25 service provider; a case management entity that provides

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1 services to people with developmental disabilities; a private
2 residence that provides personal care, adult residential care
3 or nursing care for two or more persons not related by blood or
4 marriage to the facility's operator or owner; an adult daycare
5 center; a boarding home; an adult residential care home; a
6 residential service or habilitation service authorized to be
7 reimbursed by medicaid; any licensed or medicaid-certified
8 entity or any program funded by the [~~aging and long-term~~] human
9 services department that provides respite, companion or
10 personal care services; or programs funded by the [~~children,~~
11 ~~youth and families~~] human services department that provide
12 homemaker or adult daycare services. "Care provider" or
13 "provider" does not include resident care facilities located at
14 or performing services exclusively for any correctional
15 facility, outpatient treatment facilities, diagnostic and
16 treatment facilities, ambulatory surgical centers and
17 facilities, end-stage renal dialysis and treatment facilities,
18 rural health clinics, private physicians' offices or other
19 clinics that operate in the same manner as private physicians'
20 offices in group practice settings;

21 D. "care recipient" means any person under the care
22 of a provider who has a physical or mental illness, injury or
23 disability or who suffers from any cognitive impairment that
24 restricts or limits the person's activities;

25 E. "conviction" means a plea, judgment or verdict

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1 of guilty, a plea of nolo contendere, an Alford plea or any
2 plea or judgment entered in connection with a suspended
3 sentence, in this state or any other state or jurisdiction;

4 F. "hospital caregiver" means a person who provides
5 direct unsupervised patient care in an inpatient setting and is
6 not a licensed New Mexico health care professional practicing
7 within the scope of a profession's license;

8 G. "nationwide criminal history screening" means a
9 criminal history background investigation of an applicant,
10 caregiver or hospital caregiver through the use of fingerprints
11 collected by the department of public safety and submitted to
12 the federal bureau of investigation, resulting in generation of
13 a nationwide criminal history record for that applicant,
14 caregiver or hospital caregiver;

15 H. "nationwide criminal history record" means
16 information concerning a person's arrests, indictments or other
17 formal criminal charges and any dispositions arising therefrom,
18 including convictions, dismissals, acquittals, sentencing and
19 correctional supervision, and collected by criminal justice
20 agencies; and

21 I. "statewide criminal history screening" means a
22 criminal history background investigation of an applicant or
23 caregiver through the comparison of identifying information
24 with the department of public safety's criminal record
25 repository."

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1 SECTION 20. TEMPORARY PROVISION--LONG-TERM SERVICES

2 PROGRAMS--TRANSFER OF PROPERTY, CONTRACTS AND RULES.--

3 A. On the effective date of this act, all
4 functions, appropriations, money, records, furniture,
5 equipment, supplies and other property directly related to the
6 following programs located at the aging and long-term services
7 department shall be transferred to the human services
8 department:

9 (1) the coordination of long-term services
10 program for disabled, elderly or brain-injured persons;

11 (2) that component of the Mi Via self-directed
12 waiver program that services disabled, elderly or brain-injured
13 persons who meet the criterion of needing a nursing facility
14 level of care;

15 (3) the program of all-inclusive care for the
16 elderly;

17 (4) the brain injury services program; and

18 (5) quality assurance programs related to any
19 of the programs listed in this subsection.

20 B. On the effective date of this act, all contracts
21 relating to the programs listed in Subsection A of this section
22 that are binding on the aging and long-term services department
23 shall be binding on the human services department.

24 C. Rules of the aging and long-term services
25 department related to the programs listed in Subsection A of

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1 this section shall be the rules of the human services
2 department for those programs until amended or repealed by the
3 human services department.

4 SECTION 21. TEMPORARY PROVISION--TRANSFER OF PROPERTY,
5 CONTRACTS, STATUTORY REFERENCES AND RULES.--

6 A. On the effective date of this act, all
7 functions, appropriations, money, records, furniture,
8 equipment, supplies and other property of the aging and long-
9 term services department, except for the programs listed in
10 Section 20 of this act, are transferred to the children, youth
11 and families department.

12 B. On the effective date of this act, all
13 contractual obligations that are binding on the aging and long-
14 term services department, except for contractual obligations
15 related to the programs listed in Section 20 of this act, shall
16 be binding on the children, youth and families department.

17 C. On the effective date of this act, all statutory
18 references to the aging and long-term services department or
19 the state agency on aging shall be deemed to be references to
20 the children, youth and families department.

21 SECTION 22. TEMPORARY PROVISION--TRANSITION AND
22 INTEGRATION PLANS--TRANSITION TEAM.--The department of finance
23 and administration shall form a transition team made up of
24 representatives of the aging and long-term services department,
25 the children, youth and families department, the human services

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1 department and the state personnel office to develop and
2 implement transition and integration plans to move aging and
3 long-term services department functions to the children, youth
4 and families department and the human services department. The
5 plans shall include proposed budgets to be submitted to the
6 state budget division of the department of finance and
7 administration and the legislative finance committee on
8 September 1, 2011.

9 SECTION 23. REPEAL.--Sections 9-2A-13, 9-23-1 through
10 9-23-12, 28-4-1 through 28-4-4 and 28-4-7 NMSA 1978 (being Laws
11 1992, Chapter 57, Section 13, Laws 2004, Chapter 23, Sections 1
12 through 11, Laws 2004, Chapter 46, Section 15, Laws 1969,
13 Chapter 55, Section 2, Laws 1977, Chapter 252, Section 17, Laws
14 1969, Chapter 55, Section 3 and Laws 1979, Chapter 203,
15 Sections 1 and 4, as amended) are repealed.

16 SECTION 24. EFFECTIVE DATES.--

17 A. The effective date of the provisions of Sections
18 1 through 21 and 23 of this act is January 1, 2012.

19 B. The effective date of the provisions of Section
20 22 of this act is June 17, 2011.

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