

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 334

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

AN ACT

RELATING TO DISABLED AND ELDERLY RESIDENTIAL SERVICES;  
REQUIRING THAT OWNERS OR OPERATORS OF LONG-TERM CARE AND ADULT  
RESIDENTIAL CARE FACILITIES PROVIDE THE SECRETARY OF HEALTH  
WITH CERTAIN DISCLOSURES AS A CONDITION OF LICENSING OR RENEWAL  
OF LICENSURE; PROVIDING FOR DENIAL OF LONG-TERM CARE AND ADULT  
RESIDENTIAL FACILITY LICENSURE FOR PRIOR CRIMINAL ACTS OR CIVIL  
VIOLATIONS BY OWNERS OR OPERATORS; REQUIRING THE SECRETARY OF  
AGING AND LONG-TERM SERVICES AND THE SECRETARY OF HEALTH TO  
UNDERTAKE A STUDY OF THE HEALTH AND SAFETY NEEDS AND CHALLENGES  
OF RESIDENTS OF SUPPORTIVE RESIDENCES.

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

SECTION 1. A new section of the Public Health Act is  
enacted to read:

"[NEW MATERIAL] LONG-TERM CARE AND ADULT RESIDENTIAL CARE

.185605.2

underscored material = new  
[bracketed material] = delete

1 FACILITIES--DISCLOSURES--BACKGROUND INVESTIGATIONS--CONDITION  
2 OF LICENSING.--

3 A. In addition to ensuring that an adult  
4 residential care facility meets the requirements of Section  
5 24-1-5 NMSA 1978, the department shall license an adult  
6 residential care facility or renew its license only if the  
7 adult residential care facility provides the department with a  
8 current annual disclosure statement that includes the following  
9 information:

10 (1) the name and business address of the adult  
11 residential care facility;

12 (2) if the adult residential care facility is  
13 owned or operated by a partnership, corporation or association,  
14 the names and addresses of its officers, directors, trustees,  
15 partners, managers and affiliates;

16 (3) disclosure of any felony conviction of the  
17 owner or operator;

18 (4) whether the owner or operator has been  
19 held liable or enjoined in a civil action in any jurisdiction  
20 by final judgment, if the civil action involved fraud,  
21 embezzlement, fraudulent conversion or misappropriation of  
22 property;

23 (5) whether the owner or operator has had a  
24 state or federal license or permit to operate an adult  
25 residential care facility suspended or revoked or had any state

.185605.2

1 or federal agency or industry regulatory agency commence an  
2 action against the adult residential care facility owner or  
3 operator;

4 (6) a statement as to whether the adult  
5 residential care facility owner or operator is, or is  
6 associated with another entity that is, responsible for the  
7 financial and contractual obligations of the adult residential  
8 care facility owner or operator, and the extent to which the  
9 associate entity is responsible;

10 (7) the location and description of any adult  
11 residential care facilities or other long-term services  
12 facilities that the adult residential care facility owner or  
13 operator, or an associated entity, operates or owns any  
14 interest;

15 (8) if the adult residential care facility  
16 owner or operator is a corporation, a copy of the articles of  
17 incorporation; if the adult residential care facility owner or  
18 operator is a partnership or other unincorporated association,  
19 a copy of the partnership agreement, articles of association or  
20 other membership agreement; and if the adult residential care  
21 facility owner or operator is a trust, a copy of the trust  
22 agreement or instruments; and

23 (9) resumes of the adult residential care  
24 facility owner or operator's officers, directors, trustees,  
25 partners or managers.

.185605.2

1           B. The department shall deny a license to an adult  
2 residential care facility if the facility owner or operator or  
3 any of its officers, directors, trustees, partners, managers or  
4 affiliates, within ten years prior to the date of application  
5 was convicted of a felony, a crime that if committed in New  
6 Mexico would be a felony or any crime having to do with the  
7 provision of long-term or adult residential facility care.

8           C. The secretary may deny a license or renewal of a  
9 license after a finding based upon substantial evidence that an  
10 adult residential care facility's owner or operator has engaged  
11 in a pattern or practice of civil violations related to  
12 fraudulent acts or resident health, safety or quality of life,  
13 or has had a prior license to operate a facility suspended or  
14 revoked for these reasons.

15           D. As used in this section:

16                 (1) "adult residential care facility" means:

17                         (a) any adult care facility institution  
18 required to be licensed under state law as an adult residential  
19 care facility by the public health division of the department  
20 of health, whether proprietary or nonprofit, including skilled  
21 long-term care facilities;

22                         (b) a facility that is licensed by the  
23 department of health as an assisted living facility; or

24                         (c) any residential care provider  
25 serving recipients of services under the developmental

.185605.2

1 disabilities waiver or the coordinated long-term services  
2 waiver;

3 (2) "long-term care facility" means an  
4 intermediate care facility, an intermediate care facility for  
5 the mentally retarded or a skilled nursing facility;

6 (3) "operator" means a person who carries out  
7 the daily administration, management and maintenance for the  
8 actual operation of an adult residential care facility; and

9 (4) "owner" means one or more persons, jointly  
10 or severally, in whom is vested:

11 (a) all or part of the legal title to  
12 property, but shall not include the limited partner in an  
13 association regulated under the Uniform Revised Limited  
14 Partnership Act; or

15 (b) all or part of the beneficial  
16 ownership and a right to present use and enjoyment of the  
17 premises and agents thereof and includes a mortgagee in  
18 possession and the lessors."

19 SECTION 2. [NEW MATERIAL] DISABLED AND ELDERLY  
20 RESIDENCES--STUDY--REPORTING.--

21 A. The secretary of aging and long-term services  
22 and the secretary of health shall conduct a study of the health  
23 and safety needs and challenges of residents of supportive  
24 residences in the state and provide recommendations for  
25 legislation regarding the operation of supportive residences in

.185605.2

1 a manner that provides quality living environments and greater  
2 protection from abuse, fraud and exploitation for residents of  
3 supportive residences. By October 1, 2011, the secretary of  
4 aging and long-term services and the secretary of health shall  
5 report their findings and recommendations to the legislative  
6 health and human services committee. These recommendations  
7 shall include:

8 (1) whether supportive residences should be  
9 licensed or certified as supportive residences and an  
10 identification of the proper state agency for licensure or  
11 certification and related rulemaking;

12 (2) the types of disclosures and background  
13 checks that should be required, if any, of owners and operators  
14 of supportive residences;

15 (3) the type and frequency of any  
16 investigations of supportive residences, and the agency best  
17 suited to perform them; and

18 (4) identification of funding sources for  
19 carrying out any requirements for licensure, certification,  
20 investigation or other recommended actions to protect residents  
21 and maintain a quality living environment in supportive  
22 residences.

23 B. As used in this section, "supportive residence"  
24 means a residence that:

25 (1) operates as a residence exclusively for

.185605.2

underscoring material = new  
~~[bracketed material] = delete~~

1 disabled individuals or individuals over the age of fifty-five  
2 or provides on-site attendant, medical, meal or housekeeping  
3 services pursuant to a lease or other agreement; and

4 (2) is not a residence regulated pursuant to  
5 the provisions of the Continuing Care Act.

6 - 7 -

underscored material = new  
[bracketed material] = delete

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25