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AN ACT  
RELATING TO CHILD PLACEMENT AGENCIES AND FOSTER HOMES;  
CLARIFYING RESPONSIBILITIES OF CHILD PLACEMENT AGENCIES;  
CLARIFYING REVOCATIONS, SUSPENSIONS, DENIALS AND NONRENEWALS  
OF LICENSES TO OPERATE A CHILD PLACEMENT AGENCY OR A FOSTER  
HOME; AMENDING SECTIONS OF THE CHILD PLACEMENT AGENCY  
LICENSING ACT.

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

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

"40-7A-1. SHORT TITLE.--Chapter 40, Article 7A NMSA  
1978 may be cited as the "Child Placement Agency Licensing  
Act"."

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

"40-7A-3. DEFINITIONS.--As used in the Child Placement  
Agency Licensing Act:

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

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

1 C. "department" means the children, youth and  
2 families department;

3 D. "division" means the protective services  
4 division of the department;

5 E. "foster home" means a home maintained by an  
6 individual having the care and control, for periods exceeding  
7 twenty-four hours, of a child who is not placed for adoption;

8 F. "person" means any individual, partnership,  
9 unincorporated association or corporation; and

10 G. "secretary" means the secretary of children,  
11 youth and families."

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

14 "40-7A-4. LICENSING--RULES--APPLICATION FOR LICENSE.--

15 A. An application for a license to operate a child  
16 placement agency shall be made to the division on forms  
17 provided and in the manner prescribed by the division. A  
18 child placement agency may be licensed either to place  
19 children in foster homes or in homes for adoption, or both.  
20 The division shall investigate the applicant to ascertain  
21 whether the applicant qualifies under the rules promulgated  
22 by the division. If qualified, the division shall issue a  
23 license valid for one year from date of issuance. A license  
24 shall be renewed for successive periods of time not to exceed  
25 three years, as determined by the division, if the division

1 is satisfied that the child placement agency is in compliance  
2 with the division's rules. No fee shall be charged for a  
3 license.

4 B. No person shall operate a child placement  
5 agency without first being licensed to operate the agency by  
6 the division. An individual desiring to operate a foster  
7 home shall obtain a license from the division or the child  
8 placement agency under which it will operate. The child  
9 placement agency shall notify the division when the  
10 individual is licensed to operate a foster home. The  
11 notification shall be on a form provided by the division and  
12 shall contain such information as the division requires. No  
13 foster home shall be licensed by more than one child  
14 placement agency. A license shall be renewed for successive  
15 one- or two-year periods if the child placement agency is  
16 satisfied that the foster home is in compliance with the  
17 division's rules.

18 C. Upon licensure to operate a foster home, the  
19 child placement agency may place a child for foster care in  
20 the licensed foster home.

21 D. The division shall prescribe and publish  
22 minimum standards and other rules for licensing of child  
23 placement agencies and licensing of foster homes. The  
24 prescribed minimum standards and other rules shall be  
25 promulgated by the division and shall be restricted to:

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

4 (2) the character, suitability and  
5 qualifications of the applicant for a license and of other  
6 persons directly responsible for the health and safety of the  
7 child served;

8 (3) the general financial ability of the  
9 applicant for a license to provide care for the child served;

10 (4) the maintenance of records pertaining to  
11 the admission, progress, health and discharge of the child  
12 served;

13 (5) the maintenance of records concerning  
14 agency personnel, foster parents and foster parent  
15 applicants; and

16 (6) the filing of reports with the division.

17 E. The regulations shall not proscribe or  
18 interfere with the religious beliefs or religious training of  
19 child placement agencies and foster homes, except when the  
20 beliefs or training endanger the child's health or safety.

21 F. The division may inspect child placement  
22 agencies and foster homes as necessary to ensure that they  
23 are in compliance with the rules of the division.

24 G. Any person licensed to operate a child  
25 placement agency under the provisions of the Child Placement

1 Agency Licensing Act has the right to appeal any rule that  
2 the person believes has been improperly applied by  
3 representatives of the division or that exceeds the authority  
4 granted to the division by the Child Placement Agency  
5 Licensing Act. The secretary shall designate a hearing  
6 officer or officers from the department to hear an appeal.  
7 The hearing officer or officers shall make a written  
8 recommendation to the secretary for resolution of the appeal.  
9 The secretary's decision shall be in writing and shall be the  
10 final administrative determination of the matter.

11 H. Any individual licensed to operate a foster  
12 home under the provisions of the Child Placement Agency  
13 Licensing Act has the right to appeal a decision by the  
14 division or by a child placement agency to revoke, suspend or  
15 not renew a license and has the right to request an  
16 administrative review of a denial of a license."

17 SECTION 4. Section 40-7A-5 NMSA 1978 (being Laws 1981,  
18 Chapter 171, Section 5) is amended to read:

19 "40-7A-5. VARIANCES.--Upon written application from a  
20 child placement agency, the division in exercise of its sole  
21 discretion may issue a variance that permits a noncompliance  
22 with the division's rules. The variance shall be in writing  
23 and may be temporary or permanent. No variance shall be  
24 issued that is contrary to the Child Placement Agency  
25 Licensing Act. There shall be no right to a variance."

1 SECTION 5. Section 40-7A-6 NMSA 1978 (being Laws 1981,  
2 Chapter 171, Section 6, as amended) is amended to read:

3 "40-7A-6. REVOCATION OR SUSPENSION OF LICENSE--NOTICE--  
4 REINSTATEMENT--APPEAL.--

5 A. The division may deny, revoke, suspend, place  
6 on probation or refuse to renew the license of any child  
7 placement agency for failure to comply with the division's  
8 rules. The holder of the license that is to be denied,  
9 revoked, suspended or placed on probation or that is not  
10 renewed shall be given notice in writing of the proposed  
11 action and the reason therefor and shall, at a date and place  
12 to be specified in the notice, be given a hearing before a  
13 hearing officer appointed by the secretary with an  
14 opportunity to produce testimony in the holder's behalf and  
15 to be assisted by counsel. The hearing shall be held no  
16 earlier than twenty days after service of notice thereof  
17 unless the time limitations are waived or a child safety or  
18 health issue is present. A person whose license has been  
19 denied, revoked, suspended, placed on probation or not  
20 renewed may, on application to the division, have the license  
21 issued, reinstated or reissued upon proof that the  
22 noncompliance with the rules has ceased.

23 B. A child placement agency adversely affected by  
24 a decision of the division denying, revoking, suspending,  
25 placing on probation or refusing to renew a license may

1 obtain a review by appealing to the district court pursuant  
2 to the provisions of Section 39-3-1.1 NMSA 1978.

3 C. The division or a child placement agency may  
4 deny, revoke, suspend or refuse to renew the license of any  
5 foster home for failure to comply with the division's rules.  
6 The holder of a license that is to be revoked or suspended or  
7 that is not renewed shall be given notice in writing of the  
8 proposed action and the reason for the proposed action and  
9 shall be given the opportunity to appeal the decision. A  
10 foster home that is denied a license shall be given the  
11 opportunity to request an administrative review of the  
12 reasons for the denial of the license.

13 D. When any foster home license is denied,  
14 suspended, revoked or not renewed, the care and control of any  
15 child placed pursuant to the Child Placement Agency Licensing  
16 Act shall be transferred to the child placement agency or the  
17 division."

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