

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
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  
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  
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 RESIDENTIAL CARE

.186371.4

underscored material = new  
[bracketed material] = delete

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

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

8 (1) the name and business address of the  
9 facility;

10 (2) if the facility is owned or operated by a  
11 partnership, corporation or association, the names and  
12 addresses of its facility manager or administrator and all of  
13 its officers, directors, trustees and partners;

14 (3) disclosure of any felony conviction of the  
15 owner or operator;

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

21 (5) whether the owner or operator has had a  
22 state or federal license or permit to operate a facility  
23 suspended or revoked or had any state or federal agency or  
24 industry regulatory agency commence an action against the  
25 facility owner or operator after an investigation;

.186371.4

1 (6) a statement as to whether the facility  
2 owner or operator is, or is associated with another entity that  
3 is, responsible for the financial and contractual obligations  
4 of the facility owner or operator, and the extent to which the  
5 associate entity is responsible;

6 (7) the name and location of any other  
7 facility that the facility owns or operates or in which  
8 facility owner or operator owns any interest;

9 (8) if the facility owner or operator is a  
10 corporation, a copy of the articles of incorporation; if the  
11 facility owner or operator is a partnership or other  
12 unincorporated association, a copy of the partnership  
13 agreement, articles of association or other membership  
14 agreement; and if the facility owner or operator is a trust, a  
15 copy of the trust agreement or instruments; and

16 (9) resumes of the facility owner or  
17 operator's officers, directors, trustees or partners.

18 B. The department shall deny a license to a  
19 facility if the facility owner or operator, its facility  
20 manager or administrator or any of its officers, directors,  
21 trustees or partners, within ten years prior to the date of  
22 application, was convicted of any of the following felonies:

23 (1) homicide;

24 (2) trafficking controlled substances;

25 (3) kidnapping, false imprisonment, aggravated

.186371.4

1 assault or aggravated battery;

2 (4) rape, criminal sexual penetration,  
3 criminal sexual contact, incest, indecent exposure or other  
4 related sexual offenses;

5 (5) crimes involving adult abuse, neglect or  
6 financial exploitation;

7 (6) crimes involving child abuse or neglect;

8 (7) robbery, larceny, burglary, fraud,  
9 extortion, forgery, embezzlement, credit card fraud or  
10 receiving stolen property; or

11 (8) an attempt, solicitation or conspiracy  
12 involving any of the felonies in this subsection.

13 C. The secretary may deny a license or renewal of a  
14 license after a finding based upon substantial evidence that a  
15 facility's owner or operator for any of the following reasons:

16 (1) a conviction for a felony other than those  
17 listed in Subsection B of this section;

18 (2) failure to comply with any provision of  
19 governing administrative rules relating to facilities;

20 (3) failure to allow a survey or inspection by  
21 a licensing authority;

22 (4) the employment of any staff member who is  
23 under the influence of alcohol or narcotics or who has been  
24 convicted of a felony listed in Subsection B of this section;

25 (5) misrepresentation or falsification of any

.186371.4

1 information or application forms or other documents to a  
2 licensing authority;

3 (6) repeated violations of rules relating to  
4 facilities;

5 (7) failure to provide the required care and  
6 services as provided in rules relating to facilities;

7 (8) failure to provide an acceptable plan of  
8 correction within the time period established by a licensing  
9 authority;

10 (9) failure to correct deficiencies within the  
11 time period established by a licensing authority;

12 (10) failure to comply with incident reporting  
13 required by the licensing authority;

14 (11) failure to pay any civil monetary  
15 penalties levied;

16 (12) exceeding licensed capacity; or

17 (13) abuse, neglect or exploitation of any  
18 patient, client or resident.

19 D. In determining whether a license or renewal will  
20 be denied by the secretary due to any of the factors listed in  
21 Paragraphs (1) through (13) of Subsection C of this section,  
22 the secretary may consider:

23 (1) the total number of convictions or  
24 violations;

25 (2) the time elapsed since the last conviction

.186371.4

1 or violation;

2 (3) the circumstances of a crime or violation;

3 (4) activities evidencing rehabilitation,  
4 including substance abuse or other rehabilitation programs;

5 (5) whether conviction for a crime was  
6 expunged by the court or whether an unconditional pardon was  
7 granted;

8 (6) evidence that the person convicted or  
9 found in violation of a rule poses no risk of harm to the  
10 health and safety of residents; and

11 (7) the age of the person convicted or found  
12 in violation of a rule at the time of the conviction or  
13 violation.

14 E. As used in this section:

15 (1) "facility" means a residential care  
16 facility or a long-term care facility;

17 (2) "long-term care facility" means an  
18 intermediate care facility, an intermediate care facility for  
19 the mentally retarded or a skilled nursing facility;

20 (3) "operator" means a person who carries out  
21 the daily administration, management and maintenance for the  
22 actual operation of a facility;

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

25 (a) all or part of the legal title to

1 property, but shall not include the limited partner in an  
 2 association regulated under the Uniform Revised Limited  
 3 Partnership Act; or

4 (b) all or part of the beneficial  
 5 ownership and a right to present use and enjoyment of the  
 6 premises and includes a mortgagee in possession and the  
 7 lessors; and

8 (5) "residential care facility" means:

9 (a) any care facility institution  
 10 required to be licensed under state law as a facility by the  
 11 department, whether proprietary or nonprofit, including skilled  
 12 long-term care facilities;

13 (b) a facility that is licensed by the  
 14 department as an assisted living facility; or

15 (c) any residential care provider  
 16 serving recipients of services under the coordinated long-term  
 17 services home- and community-based medicaid waiver or that is  
 18 an intermediate care facility for the mentally retarded, but  
 19 "residential care facility" does not include any other  
 20 residential care provider for developmentally disabled  
 21 individuals."

22 SECTION 2. [NEW MATERIAL] DISABLED AND ELDERLY  
 23 RESIDENCES--STUDY--REPORTING.--

24 A. The secretary of aging and long-term services  
 25 and the secretary of health shall conduct a study of the health

.186371.4

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

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

15 (2) the types of disclosures and background  
16 checks that should be required, if any, of owners and operators  
17 of supportive residences;

18 (3) the type and frequency of any  
19 investigations of supportive residences, and the agency best  
20 suited to perform them; and

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

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