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HOUSE BILL 267

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

Yvette Herrell

AN ACT

RELATING TO STATE GOVERNMENT; AMENDING A SECTION OF THE HUMAN SERVICES DEPARTMENT ACT TO REQUIRE CERTAIN BACKGROUND CHECKS AND PROCEDURES FOR HUMAN SERVICES DEPARTMENT PERSONNEL; PROVIDING A PENALTY.

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

SECTION 1. Section 9-8-6 NMSA 1978 (being Laws 1977, Chapter 252, Section 7, as amended) is amended to read:

"9-8-6. SECRETARY--DUTIES AND GENERAL POWERS.--

A. The secretary is responsible to the governor for the operation of the department. It is [~~his~~] the secretary's duty to manage all operations of the department and to administer and enforce the laws with which [~~he~~] the secretary or the department is charged.

B. To perform [~~his~~] duties of office, the secretary

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1 has every power expressly enumerated in the laws, whether  
2 granted to the secretary or the department or any division of  
3 the department, except where authority conferred upon any  
4 division is explicitly exempted from the secretary's authority  
5 by statute. In accordance with these provisions, the secretary  
6 shall:

7 (1) except as otherwise provided in the Human  
8 Services Department Act, exercise general supervisory and  
9 appointing authority over all department employees, subject to  
10 any applicable personnel laws and ~~[regulations]~~ rules;

11 (2) delegate authority to subordinates as ~~[he]~~  
12 the secretary deems necessary and appropriate, clearly  
13 delineating such delegated authority and the limitations  
14 thereto;

15 (3) organize the department into those  
16 organizational units ~~[he]~~ the secretary deems will enable it to  
17 function most efficiently, subject to any provisions of law  
18 requiring or establishing specific organizational units;

19 (4) within the limitations of available  
20 appropriations and applicable laws, employ and fix the  
21 compensation of those persons necessary to discharge ~~[his]~~ the  
22 secretary's duties;

23 (5) conduct background checks on department  
24 employees and prospective department employees that have or  
25 will have access to sensitive, confidential or private

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1 information of applicants for, and recipients enrolled in,  
2 public assistance programs; provided that:

3 (a) local law enforcement agency  
4 criminal history record checks shall be conducted on all  
5 employees, prospective employees, contractors, prospective  
6 contractors, subcontractors and prospective subcontractors with  
7 access to federal tax information;

8 (b) record checks for any identified  
9 arrests shall be conducted through local law enforcement  
10 agencies in jurisdictions where the subject has lived, worked  
11 or attended school within the last five years preceding the  
12 record check;

13 (c) federal bureau of investigation  
14 fingerprinting shall be conducted on all employees, prospective  
15 employees, contractors, prospective contractors, subcontractors  
16 and prospective subcontractors with access to federal tax  
17 information;

18 (d) for the purpose of conducting a  
19 national agency background check, the department shall submit  
20 to the department of public safety and the federal bureau of  
21 investigation a fingerprint card for each of the following  
22 personnel who have or will have access to federal tax  
23 information: 1) employees; 2) prospective employees; 3)  
24 contractors; 4) prospective contractors; 5) subcontractors; and  
25 6) prospective subcontractors;

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1                   (e) the department shall conduct a check  
2 for eligibility to legally work as a citizen or legal resident  
3 of the United States on all employees, prospective employees,  
4 contractors, prospective contractors, subcontractors and  
5 prospective subcontractors with access to federal tax  
6 information. The department shall complete a citizenship or  
7 residency check for each new employee and any employee with  
8 expiring employment eligibility and shall document and monitor  
9 the employee's citizenship or residency status for continued  
10 compliance;

11                   (f) criminal history records obtained by  
12 the department pursuant to the provisions of this paragraph and  
13 the information contained in those records are confidential,  
14 shall not be used for any purpose other than conducting  
15 background checks for the purpose of determining eligibility  
16 for employment and shall not be released or disclosed to any  
17 other person or agency except pursuant to a court order or with  
18 the written consent of the person who is the subject of the  
19 records;

20                   (g) a person who releases or discloses  
21 criminal history records or information contained in those  
22 records in violation of the provisions of this paragraph is  
23 guilty of a misdemeanor and shall be sentenced pursuant to the  
24 provisions of Section 31-19-1 NMSA 1978;

25                   (h) the secretary shall adopt and

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1 promulgate rules to establish procedures to provide for  
2 background checks, and criteria according to which background  
3 checks are evaluated, for all present and prospective personnel  
4 identified in the provisions of this paragraph;

5 (i) contractors, prospective  
6 contractors, subcontractors and prospective subcontractors  
7 shall bear any costs associated with ordering or conducting  
8 background checks pursuant to this paragraph; and

9 (j) a department employee or prospective  
10 department employee who is denied employment or terminated  
11 employment based on information obtained in a background check  
12 shall be entitled to review the information obtained pursuant  
13 to this paragraph and to appeal the decision;

14 [~~(5)~~] (6) take administrative action by  
15 issuing orders and instructions, not inconsistent with the law,  
16 to assure implementation of and compliance with the provisions  
17 of law for whose administration or execution [~~he~~] the secretary  
18 is responsible and to enforce those orders and instructions by  
19 appropriate administrative action in the courts;

20 [~~(6)~~] (7) conduct research and studies that  
21 will improve the operations of the department and the provision  
22 of services to the citizens of the state;

23 [~~(7)~~] (8) provide courses of instruction and  
24 practical training for employees of the department and other  
25 persons involved in the administration of programs with the

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1 objective of improving the operations and efficiency of  
2 administration;

3 ~~[(8)]~~ (9) prepare an annual budget of the  
4 department;

5 ~~[(9)]~~ (10) provide cooperation, at the request  
6 of heads of administratively attached agencies, in order to:

7 (a) minimize or eliminate duplication of  
8 services and jurisdictional conflicts;

9 (b) coordinate activities and resolve  
10 problems of mutual concern; and

11 (c) resolve by agreement the manner and  
12 extent to which the department shall provide budgeting,  
13 recordkeeping and related clerical assistance to  
14 administratively attached agencies;

15 ~~[(10)]~~ (11) appoint, with the governor's  
16 consent, a "director" for each division. These appointed  
17 positions are exempt from the provisions of the Personnel Act.  
18 Persons appointed to these positions shall serve at the  
19 pleasure of the secretary, except as provided in Section 9-8-9  
20 NMSA 1978;

21 ~~[(11)]~~ (12) give bond in the penal sum of  
22 twenty-five thousand dollars (\$25,000) and require directors to  
23 each give bond in the penal sum of ten thousand dollars  
24 (\$10,000) conditioned upon the faithful performance of duties  
25 as provided in the Surety Bond Act. The department shall pay

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1 the costs of these bonds; and

2 [~~(12)~~] (13) require performance bonds of such  
3 department employees and officers as [~~he~~] the secretary deems  
4 necessary as provided in the Surety Bond Act. The department  
5 shall pay the costs of these bonds.

6 C. The secretary may apply for and receive, with  
7 the governor's approval, in the name of the department, any  
8 public or private funds, including United States government  
9 funds, available to the department to carry out its programs,  
10 duties or services.

11 D. Where functions of departments overlap or a  
12 function assigned to one department could better be performed  
13 by another department, the secretary may recommend appropriate  
14 legislation to the next session of the legislature for its  
15 approval.

16 E. The secretary may make and adopt such reasonable  
17 [~~and~~] procedural rules [~~and regulations~~] as may be necessary to  
18 carry out the duties of the department and its divisions. No  
19 rule [~~or regulation~~] promulgated by the director of any  
20 division in carrying out the functions and duties of the  
21 division shall be effective until approved by the secretary  
22 unless otherwise provided by statute. Unless otherwise  
23 provided by statute, no [~~regulation~~] rule affecting any person  
24 or agency outside the department shall be adopted, amended or  
25 repealed without a public hearing on the proposed action before

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1 the secretary or a hearing officer designated by [~~him~~] the  
2 secretary. The public hearing shall be held in Santa Fe unless  
3 otherwise permitted by statute. Notice of the subject matter  
4 of the [~~regulation~~] rule, the action proposed to be taken, the  
5 time and place of the hearing, the manner in which interested  
6 persons may present their views and the method by which copies  
7 of the proposed [~~regulation~~] rule or proposed amendment or  
8 repeal of an existing [~~regulation~~] rule may be obtained shall  
9 be published once at least thirty days prior to the hearing  
10 date in a newspaper of general circulation and mailed at least  
11 thirty days prior to the hearing date to all persons who have  
12 made a written request for advance notice of hearing.

13 F. In the event the secretary anticipates that  
14 adoption, amendment or repeal of a rule [~~or regulation~~] will be  
15 required by a cancellation, reduction or suspension of federal  
16 funds or order by a court of competent jurisdiction:

17 (1) if the secretary is notified by  
18 appropriate federal authorities at least sixty days prior to  
19 the effective date of such cancellation, reduction or  
20 termination of federal funds, the department is required to  
21 promulgate [~~regulations~~] rules through the public hearing  
22 process to be effective on the date mandated by the appropriate  
23 federal authority; or

24 (2) if the secretary is notified by  
25 appropriate federal authorities or court less than sixty days

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1 prior to the effective date of such cancellation, reduction or  
2 suspension of federal funds or court order, the department is  
3 authorized without a public hearing to promulgate interim rules  
4 [~~or regulations~~] effective for a period not to exceed ninety  
5 days. Interim [~~regulations~~] rules shall not be promulgated  
6 without first providing a written notice twenty days in advance  
7 to providers of medical or behavioral health services and  
8 beneficiaries of department programs. At the time of the  
9 promulgation of the interim rules [~~or regulations~~], the  
10 department shall give notice of the public hearing on the final  
11 rules [~~or regulations~~] in accordance with Subsection E of this  
12 section.

13 G. If the secretary certifies to the secretary of  
14 finance and administration and gives contemporaneous notice of  
15 such certification through the human services register that the  
16 department has insufficient state funds to operate any of the  
17 programs it administers and that reductions in services or  
18 benefit levels are necessary, the secretary may engage in  
19 interim rulemaking. Notwithstanding any provision to the  
20 contrary in the State Rules Act, interim rulemaking shall be  
21 conducted pursuant to Subsection E of this section, except:

22 (1) the period of notice of public hearing  
23 shall be fifteen days;

24 (2) the department shall also send individual  
25 notices of the interim rulemaking and of the public hearing to

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1 affected providers and beneficiaries;

2 (3) rules [~~and regulations~~] promulgated  
3 pursuant to the provisions of this subsection shall be in  
4 effect not less than five days after the public hearing;

5 (4) rules [~~and regulations~~] promulgated  
6 pursuant to the provisions of this subsection shall not be in  
7 effect for more than ninety days; and

8 (5) if final rules [~~and regulations~~] are  
9 necessary to replace the interim rules [~~and regulations~~], the  
10 department shall give notice of intent to promulgate final  
11 rules [~~and regulations~~] at the time of notice herein. The  
12 final rules [~~and regulations~~] shall be promulgated not more  
13 than forty-five days after the public hearing and filed in  
14 accordance with the State Rules Act.

15 H. At the time of the promulgation of the interim  
16 rules [~~or regulations~~], the department shall give notice of the  
17 public hearing on the final rules [~~or regulations~~] in  
18 accordance with Subsection E of this section.

19 I. The secretary shall ensure that any behavioral  
20 health services, including mental health and substance abuse  
21 services, provided, contracted for or approved are in  
22 compliance with the requirements of Section 9-7-6.4 NMSA 1978.

23 J. All rules [~~and regulations~~] shall be filed in  
24 accordance with the State Rules Act."