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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; DECLARING AN EMERGENCY.

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 the secretary's  
duty to manage all operations of the department and to  
administer and enforce the laws with which the secretary or  
the department is charged.

B. To perform duties of office, the secretary has  
every power expressly enumerated in the laws, whether granted  
to the secretary or the department or any division of the  
department, except where authority conferred upon any  
division is explicitly exempted from the secretary's  
authority by statute. In accordance with these provisions,  
the secretary shall:

(1) except as otherwise provided in the  
Human Services Department Act, exercise general supervisory  
and appointing authority over all department employees,

1 subject to any applicable personnel laws and rules;

2 (2) delegate authority to subordinates as  
3 the secretary deems necessary and appropriate, clearly  
4 delineating such delegated authority and the limitations  
5 thereto;

6 (3) organize the department into those  
7 organizational units the secretary deems will enable it to  
8 function most efficiently, subject to any provisions of law  
9 requiring or establishing specific organizational units;

10 (4) within the limitations of available  
11 appropriations and applicable laws, employ and fix the  
12 compensation of those persons necessary to discharge the  
13 secretary's duties;

14 (5) conduct background checks on department  
15 employees and prospective department employees that have or  
16 will have access to federal tax information; provided that:

17 (a) local law enforcement agency  
18 criminal history record checks shall be conducted on all  
19 employees, prospective employees, contractors, prospective  
20 contractors, subcontractors and prospective subcontractors  
21 with access to federal tax information;

22 (b) record checks for any identified  
23 arrests shall be conducted through local law enforcement  
24 agencies in jurisdictions where the subject has lived, worked  
25 or attended school within the last five years preceding the

1 record check;

2 (c) federal bureau of investigation  
3 fingerprinting shall be conducted on all employees,  
4 prospective employees, contractors, prospective contractors,  
5 subcontractors and prospective subcontractors with access to  
6 federal tax information;

7 (d) for the purpose of conducting a  
8 national agency background check, the department shall submit  
9 to the department of public safety and the federal bureau of  
10 investigation a fingerprint card for each of the following  
11 personnel who have or will have access to federal tax  
12 information: 1) employees; 2) prospective employees; 3)  
13 contractors; 4) prospective contractors; 5) subcontractors;  
14 and 6) prospective subcontractors;

15 (e) the department shall conduct a  
16 check for eligibility to legally work as a citizen or legal  
17 resident of the United States on all employees, prospective  
18 employees, contractors, prospective contractors,  
19 subcontractors and prospective subcontractors with access to  
20 federal tax information. The department shall complete a  
21 citizenship or residency check for each new employee and any  
22 employee with expiring employment eligibility and shall  
23 document and monitor the employee's citizenship or residency  
24 status for continued compliance;

25 (f) criminal history records obtained

1 by the department pursuant to the provisions of this  
2 paragraph and the information contained in those records are  
3 confidential, shall not be used for any purpose other than  
4 conducting background checks for the purpose of determining  
5 eligibility for employment and shall not be released or  
6 disclosed to any other person or agency except pursuant to a  
7 court order or with the written consent of the person who is  
8 the subject of the records;

9 (g) a person who releases or discloses  
10 criminal history records or information contained in those  
11 records in violation of the provisions of this paragraph is  
12 guilty of a misdemeanor and shall be sentenced pursuant to  
13 the provisions of Section 31-19-1 NMSA 1978;

14 (h) the secretary shall adopt and  
15 promulgate rules to establish procedures to provide for  
16 background checks; provided that background checks shall not  
17 be evaluated for any purpose other than a person's  
18 department-related activities, and criteria according to  
19 which background checks are evaluated, for all present and  
20 prospective personnel identified in the provisions of this  
21 paragraph;

22 (i) contractors, prospective  
23 contractors, subcontractors and prospective subcontractors  
24 shall bear any costs associated with ordering or conducting  
25 background checks pursuant to this paragraph; and

1 (j) a department employee or  
2 prospective department employee who is denied employment or  
3 whose employment is terminated based on information obtained  
4 in a background check shall be entitled to review the  
5 information obtained pursuant to this paragraph and to appeal  
6 the decision;

7 (6) take administrative action by issuing  
8 orders and instructions, not inconsistent with the law, to  
9 assure implementation of and compliance with the provisions  
10 of law for whose administration or execution the secretary is  
11 responsible and to enforce those orders and instructions by  
12 appropriate administrative action in the courts;

13 (7) conduct research and studies that will  
14 improve the operations of the department and the provision of  
15 services to the citizens of the state;

16 (8) provide courses of instruction and  
17 practical training for employees of the department and other  
18 persons involved in the administration of programs with the  
19 objective of improving the operations and efficiency of  
20 administration;

21 (9) prepare an annual budget of the  
22 department;

23 (10) provide cooperation, at the request of  
24 heads of administratively attached agencies, in order to:

25 (a) minimize or eliminate duplication

1 of services and jurisdictional conflicts;

2 (b) coordinate activities and resolve  
3 problems of mutual concern; and

4 (c) resolve by agreement the manner and  
5 extent to which the department shall provide budgeting,  
6 recordkeeping and related clerical assistance to  
7 administratively attached agencies;

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

13 (12) give bond in the penal sum of twenty-  
14 five thousand dollars (\$25,000) and require directors to each  
15 give bond in the penal sum of ten thousand dollars (\$10,000)  
16 conditioned upon the faithful performance of duties as  
17 provided in the Surety Bond Act. The department shall pay  
18 the costs of these bonds; and

19 (13) require performance bonds of such  
20 department employees and officers as the secretary deems  
21 necessary as provided in the Surety Bond Act. The department  
22 shall pay the costs of these bonds.

23 C. The secretary may apply for and receive, with  
24 the governor's approval, in the name of the department, any  
25 public or private funds, including United States government

1 funds, available to the department to carry out its programs,  
2 duties or services.

3 D. Where functions of departments overlap or a  
4 function assigned to one department could better be performed  
5 by another department, the secretary may recommend  
6 appropriate legislation to the next session of the  
7 legislature for its approval.

8 E. The secretary may make and adopt such  
9 reasonable procedural rules as may be necessary to carry out  
10 the duties of the department and its divisions. No rule  
11 promulgated by the director of any division in carrying out  
12 the functions and duties of the division shall be effective  
13 until approved by the secretary unless otherwise provided by  
14 statute. Unless otherwise provided by statute, no rule  
15 affecting any person or agency outside the department shall  
16 be adopted, amended or repealed without a public hearing on  
17 the proposed action before the secretary or a hearing officer  
18 designated by the secretary. The public hearing shall be  
19 held in Santa Fe unless otherwise permitted by statute.  
20 Notice of the subject matter of the rule, the action proposed  
21 to be taken, the time and place of the hearing, the manner in  
22 which interested persons may present their views and the  
23 method by which copies of the proposed rule or proposed  
24 amendment or repeal of an existing rule may be obtained shall  
25 be published once at least thirty days prior to the hearing

1 date in a newspaper of general circulation and mailed at  
2 least thirty days prior to the hearing date to all persons  
3 who have made a written request for advance notice of  
4 hearing.

5 F. In the event the secretary anticipates that  
6 adoption, amendment or repeal of a rule will be required by a  
7 cancellation, reduction or suspension of federal funds or  
8 order by a court of competent jurisdiction:

9 (1) if the secretary is notified by  
10 appropriate federal authorities at least sixty days prior to  
11 the effective date of such cancellation, reduction or  
12 termination of federal funds, the department is required to  
13 promulgate rules through the public hearing process to be  
14 effective on the date mandated by the appropriate federal  
15 authority; or

16 (2) if the secretary is notified by  
17 appropriate federal authorities or court less than sixty days  
18 prior to the effective date of such cancellation, reduction  
19 or suspension of federal funds or court order, the department  
20 is authorized without a public hearing to promulgate interim  
21 rules effective for a period not to exceed ninety days.

22 Interim rules shall not be promulgated without first  
23 providing a written notice twenty days in advance to  
24 providers of medical or behavioral health services and  
25 beneficiaries of department programs. At the time of the



1 promulgation of the interim rules, the department shall give  
2 notice of the public hearing on the final rules in accordance  
3 with Subsection E of this section.

4 G. If the secretary certifies to the secretary of  
5 finance and administration and gives contemporaneous notice  
6 of such certification through the human services register  
7 that the department has insufficient state funds to operate  
8 any of the programs it administers and that reductions in  
9 services or benefit levels are necessary, the secretary may  
10 engage in interim rulemaking. Notwithstanding any provision  
11 to the contrary in the State Rules Act, interim rulemaking  
12 shall be conducted pursuant to Subsection E of this section,  
13 except:

14 (1) the period of notice of public hearing  
15 shall be fifteen days;

16 (2) the department shall also send  
17 individual notices of the interim rulemaking and of the  
18 public hearing to affected providers and beneficiaries;

19 (3) rules promulgated pursuant to the  
20 provisions of this subsection shall be in effect not less  
21 than five days after the public hearing;

22 (4) rules promulgated pursuant to the  
23 provisions of this subsection shall not be in effect for more  
24 than ninety days; and

25 (5) if final rules are necessary to replace

1 the interim rules, the department shall give notice of intent  
2 to promulgate final rules at the time of notice herein. The  
3 final rules shall be promulgated not more than forty-five  
4 days after the public hearing and filed in accordance with  
5 the State Rules Act.

6 H. At the time of the promulgation of the interim  
7 rules, the department shall give notice of the public hearing  
8 on the final rules in accordance with Subsection E of this  
9 section.

10 I. The secretary shall ensure that any behavioral  
11 health services, including mental health and substance abuse  
12 services, provided, contracted for or approved are in  
13 compliance with the requirements of Section 9-7-6.4 NMSA  
14 1978.

15 J. All rules shall be filed in accordance with the  
16 State Rules Act."

17 SECTION 2. EMERGENCY.--It is necessary for the public  
18 peace, health and safety that this act take effect  
19 immediately. \_\_\_\_\_