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HOUSE BILL 101

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

J. PAUL TAYLOR

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO ADULT PROTECTIVE SERVICES; AMENDING SECTIONS OF THE  
NMSA 1978 TO PROVIDE PROTECTION FOR INCAPACITATED ADULTS AND TO  
FACILITATE INVESTIGATION OF ABUSE; PROVIDING EXPANDED IMMUNITY.

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

Section 1. Section 27-7-15 NMSA 1978 (being Laws 1989,  
Chapter 389, Section 2) is amended to read:

"27-7-15. LEGISLATIVE FINDINGS--PURPOSE. --

A. The legislature recognizes that many adults in  
the state are unable to manage their own affairs or protect  
themselves from exploitation, abuse or neglect. Often such  
adults cannot find others able or willing to render assistance.

B. It is the purpose of the Adult Protective  
Services Act to establish a system of protective services  
designed to fill this need and to assure the availability of

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1 those services to all adults. It is also the purpose of the  
2 Adult Protective Services Act to authorize only the least  
3 possible restriction on the exercise of personal and civil  
4 rights and religious beliefs consistent with the adult's need  
5 for services and to require that due process be followed in  
6 imposing those restrictions."

7 Section 2. Section 27-7-16 NMSA 1978 (being Laws 1989,  
8 Chapter 389, Section 3, as amended) is amended to read:

9 "27-7-16. DEFINITIONS. --As used in the Adult Protective  
10 Services Act:

11 A. "abuse" means:

12 (1) knowingly, intentionally or negligently and  
13 without justifiable cause inflicting physical pain, injury or  
14 mental anguish; or

15 (2) the intentional deprivation by a caretaker  
16 or other person of services necessary to maintain the mental and  
17 physical health of an adult;

18 B. "adult" means a person eighteen years of age or  
19 older;

20 C. "appropriate facility" means any facility other  
21 than a jail or detention facility;

22 D. "caretaker" means an individual or institution  
23 that has assumed the responsibility for the care of an adult;

24 E. "conservator" means a person who is appointed by  
25 a court to manage the ~~[estate of a protected adult]~~ property or

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1 financial affairs or both of an incapacitated person or a minor  
2 ward;

3 F. "court" means the district court having  
4 jurisdiction;

5 G. "department" means the [~~human services~~] children,  
6 youth and families department;

7 H. "emergency" means that an adult is living in  
8 conditions that present a substantial risk of death or immediate  
9 and serious physical harm to himself or others;

10 I. "exploitation" means an unjust or improper use of  
11 an adult's [~~resources~~] money or property for [~~another's~~] another  
12 person's profit or advantage, pecuniary or otherwise;

13 J. "guardian" means a person who [~~is a guardian of~~  
14 ~~an incapacitated adult pursuant to a court order~~] has qualified  
15 to provide for the care, custody or control of the person or a  
16 minor or incapacitated person pursuant to testamentary or court  
17 appointment, but excludes one who is merely a guardian ad litem;

18 K. "inability to manage his personal care" means the  
19 inability, as evidenced by recent behavior, to meet one's needs  
20 for medical care, nutrition, clothing, shelter, hygiene or  
21 safety so that physical injury, illness or disease has occurred  
22 or is likely to occur in the near future;

23 L. "inability to manage his property or financial  
24 affairs" means gross mismanagement, waste or dissipation, as  
25 evidenced by recent behavior, of an adult's income and resources

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1 which has led or is likely in the near future to lead to  
2 financial vulnerability, which threatens the adult's ability to  
3 obtain or pay for his basic requirements for living:

4 [K-] M. "incapacitated adult" means any adult who  
5 demonstrates over time partial or complete functional impairment  
6 by reason of mental illness, mental deficiency, physical illness  
7 or disability, chronic use of drugs, chronic intoxication or  
8 other causes to the extent that he is unable to manage his  
9 personal ~~[care]~~ affairs or he is unable to manage his ~~[personal-~~  
10 ~~property and]~~ estate or financial affairs, but does not include  
11 a person who refuses services without other evidence of  
12 incapacity;

13 [L-] N. "independent living arrangements" means a  
14 mode of life maintained on a continuing basis outside of a  
15 hospital, veterans' administration hospital, nursing home or  
16 other facility licensed by or under the jurisdiction of any  
17 state agency;

18 [M-] O. "interested person" means any adult  
19 relative, any person who has an interest in the welfare of the  
20 adult to be protected under the Adult Protective Services Act or  
21 any official or representative of a protective services agency  
22 or of any public or nonprofit agency, corporation, board or  
23 organization eligible for designation as a protective services  
24 agency;

25 [N-] P. "neglect" means failure of the caretaker of

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1 an adult to provide basic needs such as clothing, food, shelter,  
2 supervision and care for the physical and mental health for that  
3 adult or failure by an adult to provide such basic needs for  
4 himself;

5 [0.] Q. "protected adult" means an adult for whom a  
6 guardian or conservator has been appointed or other protective  
7 order has been made or an abused, neglected or exploited adult  
8 who has requested protective services;

9 [P.] R. "protective placement" means the transfer of  
10 an adult from independent living arrangements to a hospital,  
11 nursing home, domiciliary or residential care facility or from  
12 one such institution to another;

13 [Q.] S. "protective services" means the services  
14 furnished by the department or a protective services agency or  
15 its delegate, as described in Section 27-7-21 NMSA 1978; and

16 [R.] T. "protective services agency" means a  
17 corporation, board or organization authorized by the department  
18 pursuant to the Adult Protective Services Act to furnish  
19 protective services to protected or incapacitated adults or to  
20 serve as conservators or guardians of protected or incapacitated  
21 adults upon appointment by a court. "

22 Section 3. Section 27-7-17 NMSA 1978 (being Laws 1989,  
23 Chapter 389, Section 4) is amended to read:

24 "27-7-17. ADULT PROTECTIVE SERVICES SYSTEM --

25 A. The department shall develop a coordinated system

1 of protective services for incapacitated or protected adults.  
2 In planning this system, the department shall obtain the advice  
3 of agencies, corporations, boards and associations involved in  
4 the provision of social, health, legal, nutritional and other  
5 services to adults, as well as of organizations of adults.

6 B. Upon establishment of the adult protective  
7 services system, the department shall be responsible for  
8 continuing coordination and supervision of the system. In  
9 carrying out these duties, the department shall:

10 (1) adopt rules and regulations necessary to  
11 implement and operate the system;

12 (2) monitor and evaluate the effectiveness of  
13 the system; and

14 (3) use to the extent available grants from  
15 federal, state and other public and private sources to support  
16 the system.

17 C. The department shall administer a public  
18 information program regarding the problem, reporting and  
19 prevention of adult abuse, neglect and exploitation and the  
20 availability of treatment and protective services for those  
21 adults. "

22 Section 4. Section 27-7-18 NMSA 1978 (being Laws 1989,  
23 Chapter 389, Section 5) is amended to read:

24 "27-7-18. ADULT PROTECTIVE SERVICES ADVISORY BOARD  
25 CREATED.--The "adult protective services advisory board" is

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1 created, consisting of nine members appointed by the secretary  
2 of [~~human services~~] the department. At least four members shall  
3 be involved in the direct provision of adult protective  
4 services. The advisory board shall provide continuing advice to  
5 the department concerning the protective services system. "

6 Section 5. Section 27-7-19 NMSA 1978 (being Laws 1989,  
7 Chapter 389, Section 6) is amended to read:

8 "27-7-19. DEPARTMENT--INVESTIGATIONS--ORDERS--SERVICES AND  
9 CONTRACTS. --

10 A. The department shall investigate all reports of  
11 suspected abuse, neglect or exploitation of adults. Upon  
12 receipt of a report, the department shall determine whether the  
13 adult is abused, neglected or exploited and in need of  
14 protective services and what services are needed, unless the  
15 department determines that the adult is knowingly and  
16 voluntarily refusing services or that the report is frivolous or  
17 is patently without a factual basis. In determining the need  
18 for protective services, the department shall visit the person  
19 and [~~consult with~~] gather information from others having  
20 knowledge of the facts of the particular case. After making the  
21 determination, the department or the protective services agency  
22 shall make a written report of its findings and recommendations  
23 and take whatever action is necessary.

24 B. The department may petition the court for a  
25 protective order or an order for appointment of a guardian or

1 conservator.

2 C. The department may provide direct protective  
3 services and may contract with any protective services agency  
4 for the provision of protective services. To the extent  
5 appropriate and available, the department shall utilize existing  
6 resources and services of public and nonprofit private agencies  
7 in providing protective services.

8 D. Except when prohibited by law, the department  
9 shall have immediate access to and may reproduce any record,  
10 including medical, personal, psychological and financial  
11 records, of the patient, resident or client of any private or  
12 public facility or agency which the department determines is  
13 necessary to pursue any investigation mandated by this section  
14 or by Sections 30-47-1 through 30-47-10 NMSA 1978.

15 If the patient, resident or client:

16 (1) has the ability to consent, access may only  
17 be obtained by the written consent of the patient, resident or  
18 client;

19 (2) is unable to consent in writing, oral  
20 consent may be given in the presence of a third party as  
21 witness;

22 (3) is under a New Mexico guardianship or  
23 conservatorship that provides the guardian or conservator with  
24 the authority to approve review of the records, the department  
25 shall obtain the permission of the guardian or conservator for

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1 review of the record, unless any of the following applies:

2 (a) the existence of the guardianship or  
3 conservatorship is unknown to the department or facility; or

4 (b) the guardian or conservator cannot be  
5 reached within five working days; and

6 (4) is unable to express written or oral consent and  
7 there is no guardian or conservator or the guardian or  
8 conservator refuses to give consent or notification of the  
9 guardian or conservator is not applicable for reasons set forth  
10 in Paragraph (3) of this subsection or the patient, resident or  
11 client is deceased, inspection of records may be made by  
12 employees of the department upon petition to the district court  
13 for an order requiring appropriate access if the department can  
14 demonstrate that access is denied because of the incapacity,  
15 coercion, extortion or justifiable fear of future abuse,  
16 neglect, exploitation or abandonment of the adult client.

17 E. Upon request by the department, a long-term care  
18 facility shall provide to the department the name, address and  
19 telephone number of the guardian, conservator, attorney-in-fact,  
20 legal representative or next of kin of any patient, resident or  
21 client.

22 F. The department shall have immediate access to the  
23 person who is alleged to be abused, neglected or exploited to  
24 determine the accuracy of the report and the necessity of  
25 protective services and placement, to evaluate the client's

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1 needs and develop a service plan to meet those needs and to  
2 provide for the delivery of services by the department or by  
3 other service providers that the department deems to be  
4 appropriate. If the department is denied access to the person  
5 alleged to be abused, neglected or exploited, the department's  
6 investigator may gain access upon petition to the district court  
7 for an order requiring appropriate access if the department can  
8 demonstrate that a care provider or third party has interfered  
9 with the department's attempts to access the adult client under  
10 investigation.

11 G. Anyone interfering with an investigation of adult  
12 abuse, neglect or exploitation, pursuant to this section, is  
13 guilty of a misdemeanor. Interference under this section shall  
14 include investigations by facilities or individuals of their own  
15 alleged abuse, neglect or exploitation without first reporting  
16 that alleged abuse, neglect or exploitation to the department. "

17 Section 6. Section 27-7-20 NMSA 1978 (being Laws 1989,  
18 Chapter 389, Section 7, as amended) is amended to read:

19 "27-7-20. PROTECTIVE SERVICES AGENCIES DESIGNATION--  
20 POWERS.--

21 A. The department may designate any corporation,  
22 board or organization as a protective services agency. The  
23 department shall adopt and promulgate regulations establishing  
24 criteria and procedures for the designation of protective  
25 services agencies.

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1                   B. A protective services agency is authorized to:

2                   (1) furnish protective services to an adult  
3 with his consent;

4                   (2) petition the court for an appointment of a  
5 conservator or guardian, issuance of an emergency order for  
6 protective services or an order for protective placement;

7                   (3) furnish protective services to an adult  
8 without his consent in an emergency pursuant to Section 27-7-25  
9 NMSA 1978;

10                   (4) furnish protective services to an  
11 incapacitated or protected adult with the consent of the person  
12 or his guardian;

13                   (5) serve as conservator, guardian or temporary  
14 guardian of a protected or incapacitated adult; and

15                   (6) make such reports as the department or a  
16 court may require.

17                   ~~[C. No corporation, board or organization, other~~  
18 ~~than one designated by the department as a protective services~~  
19 ~~agency, shall furnish protective services to an adult.~~

20                   D.] C. The department shall designate for each  
21 county the department itself or at least one protective services  
22 agency that shall be responsible for rendering protective  
23 services in an emergency. "

24                   Section 7. Section 27-7-21 NMSA 1978 (being Laws 1989,  
25 Chapter 389, Section 8, as amended) is amended to read:

1 "27-7-21. NATURE OF PROTECTIVE SERVICES-- COSTS. --

2 A. Protective services are services furnished by the  
3 department or a protective services agency or its delegate to an  
4 incapacitated or protected person with the person's consent or  
5 appropriate legal authority.

6 B. The services furnished in a protective services  
7 system may include [~~but are not limited to~~] social case work,  
8 psychiatric and health evaluation, home care, day care, legal  
9 assistance, social services, health care, case management,  
10 guardianship, conservatorship and other services consistent with  
11 the Adult Protective Services Act.

12 C. In order to provide the services listed in  
13 Subsection B of this section, the adult protective services  
14 system established by the department may include [~~but is not~~  
15 ~~limited to,~~] outreach, identifying persons in need of services,  
16 counseling, referring persons for services, evaluating  
17 individuals, arranging for services, tracking and following up  
18 cases, petitioning the courts for the appointment of a  
19 conservator or guardian of the person and other activities  
20 consistent with the Adult Protective Services Act.

21 D. The costs of providing protective services shall  
22 be borne by the provider of those services or the department or  
23 other appropriate agency, subject to available appropriations  
24 and resources, unless the adult agrees to pay for them or a  
25 court authorizes the provider or the department or other agency

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1 to receive reasonable reimbursement from the adult's assets  
2 after a finding that the person is financially able to make  
3 payment. "

4 Section 8. Section 27-7-23 NMSA 1978 (being Laws 1989,  
5 Chapter 389, Section 10) is amended to read:

6 "27-7-23. VOLUNTARY PROTECTIVE SERVICES--PROTECTIVE  
7 PLACEMENT. --

8 A. Any adult who has been abused, neglected or  
9 exploited and is in need of protective services or protective  
10 placement as determined by the department and who requests those  
11 services shall receive them, subject to available appropriations  
12 and resources. If the person withdraws or refuses consent,  
13 voluntary protective services or protective placement shall not  
14 be provided. No legal rights are relinquished as a result of  
15 acceptance of voluntary protective services or protective  
16 placement.

17 B. No person shall interfere with the provision of  
18 protective services or protective placement to an adult who  
19 requests and consents to receive those services or placement.  
20 In the event that interference occurs on a continuing basis, the  
21 department or a protective services agency may petition the  
22 court to enjoin that interference or, at the department's  
23 discretion, may request criminal prosecution. "

24 Section 9. Section 27-7-24 NMSA 1978 (being Laws 1989,  
25 Chapter 389, Section 11) is amended to read:

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1 "27-7-24. INVOLUNTARY PROTECTIVE SERVICES. --

2 A. If an adult is unable to consent to receive  
3 protective services, those services may be ordered by a court on  
4 an involuntary basis through an emergency order pursuant to the  
5 Adult Protective Services Act or through appointment of a  
6 guardian or conservator.

7 B. In ordering involuntary protective services, the  
8 court shall authorize only that intervention which it finds to  
9 be least restrictive of the adult's liberty and rights  
10 consistent with the adult's welfare and safety. The basis for  
11 such a finding shall be stated in the record by the court.

12 C. The incapacitated or protected adult shall not be  
13 required to pay for involuntary protective services unless that  
14 payment is authorized by the court upon a showing that the adult  
15 is financially able to pay. In this event, the court shall  
16 provide for reimbursement of the reasonable costs of the  
17 services. The costs of involuntary protective services shall be  
18 borne by the provider of those services or the department or  
19 other appropriate agency, subject to available appropriations  
20 and resources, if the adult is not financially able to cover  
21 those costs.

22 D. No person shall interfere with the provision of  
23 involuntary protective services to an adult. In the event that  
24 interference occurs on a continuing basis, the department or  
25 protective services agency may petition the court to enjoin

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1 interference. "

2 Section 10. Section 27-7-25 NMSA 1978 (being Laws 1990,  
3 Chapter 79, Section 6) is amended to read:

4 "27-7-25. EX-PARTE ORDERS FOR EMERGENCY PROTECTIVE  
5 SERVICES OR EMERGENCY PROTECTIVE PLACEMENT--NOTICE--PETITION.--

6 A. Upon petition by the department, the court may  
7 issue an order authorizing the provision of involuntary  
8 protective services or protective placement on an emergency  
9 basis to an adult under the criteria set forth in Subsection B  
10 of this section.

11 B. At the time a petition is filed or any time  
12 thereafter, the court may issue an ex-parte order authorizing  
13 the provision of involuntary protective services or involuntary  
14 protective placement upon a sworn written statement of facts  
15 showing probable cause exists to believe that:

- 16 (1) the adult is incapacitated;  
17 (2) an emergency exists;  
18 (3) the adult lacks the capacity to consent to  
19 receive protective services; and  
20 (4) no person authorized by law or court order  
21 to give consent for the adult is available or willing to consent  
22 to the provision of protective services or protective placement  
23 on an emergency basis.

24 C. An affidavit for an ex-parte order for emergency  
25 protective services or emergency protective placement may be

1 signed by any person who has knowledge of the facts alleged or  
2 is informed of them and believes that they are true.

3 D. The Rules of Evidence do not apply to the  
4 issuance of an emergency ex-parte protective services or  
5 protective placement order or to hearings held on an application  
6 for renewal of the original emergency order.

7 E. In issuing an emergency ex-parte order, the court  
8 shall adhere to the following limitations:

9 (1) only the protective services or protective  
10 placement necessary to remove the conditions creating the  
11 emergency shall be ordered, and the order shall specifically  
12 designate the proposed protective services or protective  
13 placement;

14 (2) protective services or protective placement  
15 authorized by an emergency ex-parte order shall not include  
16 hospitalization or a change of residence, unless the order gives  
17 specific approval for the action;

18 (3) protective services or protective placement  
19 may be provided by emergency ex-parte order only for ten days;  
20 provided that the original order may be renewed once for a  
21 period of twenty additional days upon application to the court  
22 showing that continuation of the original order is necessary to  
23 remove the conditions creating the emergency. An application  
24 for renewal of the original order shall be supported by a  
25 written report of the results of the evaluation required by

1 Section 27-7-22 NMSA 1978 and copies of the actual evaluations;

2 (4) the issuance of an emergency ex-parte order  
3 shall not deprive the adult of any rights except those provided  
4 for in the order;

5 (5) the department and its employees are  
6 prohibited from:

7 (a) taking custody;

8 (b) acting as guardians or conservators  
9 for any adult in need of protective services, except that an  
10 employee may serve in that capacity when related by affinity or  
11 consanguinity to an adult;

12 (c) acting as treatment guardians under  
13 the Mental Health and Developmental Disabilities Code except  
14 that an employee may serve in that capacity when related by  
15 affinity or consanguinity to an adult;

16 (d) acting as qualified health care  
17 professionals; and

18 (e) acting as visitors under the Probate  
19 Code for any adult in need of protective services;

20 (6) to implement an emergency ex-parte order,  
21 the court may authorize forcible entry of premises for the  
22 purposes of rendering protective services or transporting the  
23 adult to another location for the provision of services only if  
24 facts contained in the affidavit supporting the petition for ex-  
25 parte order show that attempts to gain voluntary access to the

1 premises have failed and forcible entry is necessary. Persons  
2 making an authorized forcible entry shall be accompanied by a  
3 law enforcement officer; and

4 (7) service of an ex-parte order authorizing  
5 forcible entry shall be according to the following procedure.  
6 The order shall be served on the alleged incapacitated adult by  
7 a person authorized to serve arrest warrants and shall direct  
8 the officer to advise the adult of the nature of the protective  
9 services that have been ordered by the court. If the order  
10 authorizes emergency protective placement, the order shall  
11 direct the officer to assist in transfer of the adult to a place  
12 designated by the court.

13 F. The petition for an emergency ex-parte order  
14 shall set forth:

- 15 (1) the name, address and interest of the  
16 petitioner;
- 17 (2) the name, age and address of the adult in  
18 need of protective services;
- 19 (3) facts describing the nature of the  
20 emergency;
- 21 (4) facts describing the nature of the adult's  
22 incapacity;
- 23 (5) the proposed protective services;
- 24 (6) the petitioner's reasonable belief,  
25 together with supporting facts, about the need for emergency

1 intervention; and

2 (7) facts showing the petitioner's attempts to  
3 obtain the adult's consent to the proposed services and the  
4 outcome of those attempts.

5 G. Notice of the filing of the petition and the  
6 issuance of the emergency ex-parte order, including a copy of  
7 the petition and the affidavit for ex-parte order, shall be  
8 given to the adult and the adult's spouse or, if none, his adult  
9 children or next of kin, or guardian, if any. The notice shall  
10 be given in language reasonably understandable by its intended  
11 recipients within twenty-four hours, excluding Saturdays,  
12 Sundays and legal holidays, from the time that the ex-parte  
13 order authorizing protective services is served upon the  
14 incapacitated adult. The notice shall inform the recipients  
15 that a hearing will be held no later than ten days after the  
16 date the petition is filed to determine whether the conditions  
17 creating the emergency have been removed and whether the adult  
18 should be released from the court's order for protective  
19 services.

20 H. Within ten days from the filing of a petition for  
21 an emergency order for protective services or protective  
22 placement, the court shall hold a hearing upon any application  
23 for renewal of the emergency order. The hearing upon an  
24 application for renewal shall be held pursuant to the provisions  
25 of Section 27-7-27 NMSA 1978.

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1 I. The protected adult or any interested person may  
2 petition the court to have the emergency order set aside or  
3 modified at any time, notwithstanding any prior findings by the  
4 court that the adult is incapacitated.

5 J. If the adult continues to need protective  
6 services or protective placement after the renewal order  
7 provided in Paragraph (3) of Subsection E of this section has  
8 expired, the department or original petitioner shall immediately  
9 petition the court to appoint a conservator or guardian or to  
10 order non-emergency protective placement pursuant to Section  
11 27-7-26 NMSA 1978.

12 K. The petitioner shall not be liable for filing the  
13 petition if he acted in good faith. "

14 Section 11. Section 27-7-25.1 NMSA 1978 (being Laws 1990,  
15 Chapter 79, Section 7) is amended to read:

16 "27-7-25.1. EMERGENCY PLACEMENT BY A LAW ENFORCEMENT  
17 OFFICER WITHOUT A COURT ORDER. --

18 A. When, from personal observation of a law  
19 enforcement officer, it appears probable that an incapacitated  
20 adult will suffer immediate and irreparable physical injury or  
21 death if not immediately placed in an appropriate facility, that  
22 the adult is unable to give consent and that it is not possible  
23 to follow the procedures of Section 27-7-25 NMSA 1978, the law  
24 enforcement officer making that observation may transport the  
25 adult to an appropriate facility. No court order is required to

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1 authorize the law enforcement officer to act upon his  
2 observation pursuant to this section.

3 B. A law enforcement officer who transports an  
4 incapacitated adult to an appropriate facility pursuant to the  
5 provisions of this section shall immediately notify the  
6 department of the placement.

7 C. The department shall file a petition pursuant to  
8 Subsection A of Section 27-7-25 NMSA 1978 within two working  
9 days after the placement of the adult by the law enforcement  
10 officer has occurred unless the department determines that the  
11 criteria for emergency removal and placement have not been met  
12 or that there is no further need for involuntary protective  
13 services or placement.

14 D. Upon receipt of notice from a law enforcement  
15 officer that an adult has been placed in a facility pursuant to  
16 the authority of this section, the department shall give notice  
17 pursuant to Subsection G of Section 27-7-25 NMSA 1978 within two  
18 working days after the transfer of the adult has taken place.

19 E. The court shall hold a hearing on the petition  
20 filed by the department as a result of the law enforcement  
21 officer's emergency placement within ten days of the filing of  
22 the petition, pursuant to the provisions of Section 27-7-27 NMSA  
23 1978, to determine whether the conditions creating the need for  
24 the emergency placement have been removed and whether the adult  
25 should be released from the protective placement. "

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1           Section 12. Section 27-7-26 NMSA 1978 (being Laws 1989,  
2 Chapter 389, Section 13, as amended) is amended to read:

3           "27-7-26. NON-EMERGENCY PROTECTIVE PLACEMENT-- FINDINGS--  
4 PETITION-- ORDER. --

5           A. If the adult refuses to consent, non-emergency  
6 protective placement shall not take place unless ordered by a  
7 court after a finding on the record based on clear and  
8 convincing evidence that:

9                           (1) the adult is incapacitated;

10                          (2) the adult is incapable of providing for his  
11 own care or custody and his condition creates a substantial risk  
12 of serious physical harm to himself or others;

13                          (3) the adult needs care or treatment;

14                          (4) the proposed order is substantially  
15 supported by the evaluation provided for in Subsection [F] E of  
16 this section or, if not so supported, there are compelling  
17 reasons for ordering that placement; and

18                          (5) no less restrictive alternative course of  
19 care or treatment is available that is consistent with the  
20 incapacitated person's welfare and safety.

21           ~~[B. The department, a protective services agency, a~~  
22 ~~conservator, a guardian or any interested person may petition~~  
23 ~~the court for non-emergency protective placement.~~

24           ~~C.]~~ B. The petition for non-emergency protective  
25 placement or protective services shall state with particularity

Underscored material = new  
[bracketed material] = delete

1 the factual basis for the allegations specified in Subsection A  
2 of this section and shall be based on the most reliable  
3 information available to the petitioner.

4 [D-] C. Written notice of a petition for non-  
5 emergency protective placement shall be served upon the adult by  
6 personal service at least [~~ten~~] fourteen days prior to the time  
7 set for a hearing. Notice shall also be given to the adult's  
8 legal counsel, care providers, guardian, spouse and adult  
9 children or next of kin, [~~and persons having physical custody of~~  
10 ~~the adult~~] whose names and addresses are known to the petitioner  
11 or can with reasonable diligence be ascertained. The person  
12 serving the notice shall certify to the court that the petition  
13 has been delivered and how the required notice was given. The  
14 notice shall be in language reasonably understandable by the  
15 adult who is the subject of the petition and also shall be given  
16 orally if necessary. The notice shall include:

- 17 (1) the names of all petitioners;
- 18 (2) the factual basis of the belief that  
19 protective placement is needed;
- 20 (3) the rights of the adult in the court  
21 proceedings; and
- 22 (4) the name and address of the proposed  
23 placement or services.

24 [E-] D. Upon the filing of a petition for non-  
25 emergency protective placement, the court shall hold a hearing

Underscored material = new  
[bracketed material] = delete

1 pursuant to the provisions of Section 27-7-27 NMSA 1978.

2 [F-] E. In order to make the findings required in  
3 Paragraphs (2) through (5) of Subsection A of this section, the  
4 court shall direct that a comprehensive evaluation of the adult  
5 alleged to be in need of placement be conducted as provided in  
6 Section 27-7-22 NMSA 1978.

7 [G-] E. In ordering non-emergency protective  
8 placement, the court shall give consideration to the choice of  
9 residence of the adult. The court may order placement in  
10 facilities such as hospitals, nursing homes, domiciliary or  
11 personal care facilities, sheltered care residences or other  
12 appropriate facilities licensed by the state.

13 [H-] G. The court may authorize non-emergency  
14 protective placement of or protective services for an adult for  
15 a period not to exceed six months.

16 [I-] H. At the time of expiration of an order for  
17 non-emergency protective placement or protective services, [the  
18 guardian] the original petitioner [~~or any interested person~~]  
19 may petition the court to extend its order for protective  
20 placement or protective services for an additional period not to  
21 exceed six months. The contents of the petition shall conform  
22 to the provisions of Subsections A and [C] B of this section.  
23 Notice of the petition for the extension of placement or  
24 services shall be made in conformity with Subsection [D] C of  
25 this section. The court shall hold a hearing to determine

Underscored material = new  
[bracketed material] = delete

1 whether to renew the order. Any person entitled to a notice  
2 under Subsection ~~[D]~~ C of this section may appear at the hearing  
3 and challenge the petition. In this event, the court shall  
4 conduct the hearing pursuant to the provisions in Section  
5 27-7-27 NMSA 1978.

6 ~~[J-]~~ I. The residence of or services provided to an  
7 adult that had been established pursuant to an order for non-  
8 emergency protective placement or protective services shall not  
9 be changed unless the court authorizes the transfer of residence  
10 ~~[after finding compelling reasons to justify the transfer]~~ or  
11 change of services.

12 ~~[K-]~~ J. Prior to the expiration of the non-emergency  
13 protective placement or protective services, the department  
14 shall review the need for continued protective services,  
15 including the necessity for appointment of a conservator or  
16 guardian, ~~[That recommendation and report shall be made to the~~  
17 ~~department, the protective services agency, the adult's~~  
18 ~~conservator or guardian and all persons notified of the original~~  
19 ~~petition for protective placement and the court, where appro-~~  
20 ~~priate.~~

21 ~~L. Any adult may request non-emergency protective~~  
22 ~~placement under the Adult Protective Services Act. No legal~~  
23 ~~rights are relinquished or modified as a result of that~~  
24 ~~placement]~~ and shall make such recommendation to the court."

25 Section 13. Section 27-7-29 NMSA 1978 (being Laws 1989,

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1 Chapter 389, Section 16) is amended to read:

2 "27-7-29. CONFIDENTIALITY OF RECORDS--PENALTY. --

3 A. All records of the department, the court, state  
4 and local agencies and protective services agencies that are  
5 [protected] created or maintained pursuant to investigations  
6 under the Adult Protective Services Act or for whom application  
7 has ever been made for protection shall be confidential and  
8 shall not be disclosed directly or indirectly to the public.

9 B. The records described in Subsection A of this  
10 section shall be open to inspection only by ~~[court personnel,~~  
11 ~~department personnel, personnel of any state agency with a~~  
12 ~~legitimate interest in the records and any other person or~~  
13 ~~entity, by order of the court, having a legitimate interest in~~  
14 ~~the case or the work of the court]~~ the following:

15 (1) the alleged abused, neglected or  
16 exploited person, except as to the identity of the referral  
17 source and second source information such as medical  
18 psychological evaluations;

19 (2) court personnel;

20 (3) personnel of any state agency with a  
21 legitimate interest in the records;

22 (4) law enforcement officials;

23 (5) department personnel;

24 (6) any state government social services  
25 agency in any other state;

1                   (7) health care or mental health  
2 professionals involved in the evaluation, treatment, residential  
3 care or protection of the adult;

4                   (8) parties and their counsel in all  
5 legal proceedings pursuant to the Adult Protective Services Act  
6 or legal actions pursuant to the Probate Code;

7                   (9) persons who have been, or will be in  
8 the immediate future, providing care or services to the adult  
9 except the alleged abuser;

10                  (10) persons appointed by the court  
11 pursuant to the Probate Code to be the adult's guardian ad  
12 litem, guardian, conservator, visitor or qualified health care  
13 professional;

14                  (11) any of the persons who the  
15 department intends to nominate or recommend to the court to be  
16 appointed pursuant to the Probate Code;

17                  (12) any other person or entity, by order  
18 of the court, having a legitimate interest in the case or the  
19 work of the court; and

20                  (13) protection and advocacy  
21 representatives pursuant to the federal Developmental  
22 Disabilities Assistance and Bill of Rights Act and Protection  
23 and Advocacy for Mentally Ill Individuals Act.

24                  C. Records of cases involving substantiated abuse,  
25 neglect or exploitation shall be provided as appropriate to the

Underscored material = new  
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1 department of health [~~and environment department~~], the district  
2 attorney's office, the medicaid fraud control unit in New Mexico  
3 and the office of the long-term care ombudsman for appropriate  
4 additional action.

5 D. Whoever intentionally and unlawfully releases any  
6 information or records closed to the public pursuant to this  
7 section or releases or makes other unlawful use of records in  
8 violation of this section is guilty of a petty misdemeanor. "

9 Section 14. Section 27-7-30 NMSA 1978 (being Laws 1989,  
10 Chapter 389, Section 17, as amended) is amended to read:

11 "27-7-30. DUTY TO REPORT. --

12 A. Any person having reasonable cause to believe  
13 that an incapacitated adult is being abused, neglected or  
14 exploited shall immediately report that information to the  
15 department [~~or other appropriate agency~~].

16 B. The report required in Subsection A of this  
17 section may be made orally or in writing. The report shall  
18 include the name, age and address of the adult, the name and  
19 address of any other person responsible for the adult's care,  
20 the nature and extent of the adult's condition, the basis of the  
21 reporter's knowledge and other relevant information.

22 C. Any person failing or refusing to report, or  
23 obstructing or impeding any investigation, as required by  
24 Subsection A of this section is guilty of a misdemeanor. "

25 Section 15. Section 27-7-31 NMSA 1978 (being Laws 1989,

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Chapter 389, Section 18) is amended to read:

"27-7-31. IMMUNITY.--Any person making a report pursuant to Section [~~17 of the Adult Protective Services Act~~] 27-7-30 NMSA 1978, testifying in any judicial proceeding arising from the report or participating in a required evaluation pursuant to [~~that~~] the Adult Protective Services Act or any law enforcement officer carrying out his responsibilities under that act or any person providing records or information as required under that act shall be immune from civil or criminal liability on account of that report, testimony or participation, unless the person acted in bad faith or with a malicious purpose."

# State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

February 6, 1997

Mr. Speaker:

Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to  
whom has been referred

HOUSE BILL 101

has had it under consideration and reports same with  
recommendation that it DO PASS, amended as follows:

1. On page 8, line 14, strike the period and insert in lieu  
thereof a colon, and on line 15, strike "If" and insert "if".

2. On page 10, line 16, following the period insert  
"Interference under this section shall not include efforts by  
facilities or individuals to establish whether there is reasonable  
cause to believe that there is adult abuse, neglect or  
exploitation."

3. On page 17, line 17, between "professionals" and the

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

HCPAC/HB 101

Page 31

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semicolon insert "pursuant to the Probate Code".

4. On page 22, line 5, strike "refuses" and insert in lieu thereof "is unable".

5. On page 22, line 6, after "placement" insert "or services".

6. On page 25, between lines 24 and 25, insert the following new section:

"Section 13. Section 27-7-27 NMSA 1978 (being Laws 1989, Chapter 389, Section 14, as amended) is amended to read:

"27-7-27. HEARING ON PETITION. --

A. The hearing on a petition for renewal of an emergency ex-parte order for protective services or for an order for non-emergency protective placement or services shall be held under the following conditions:

(1) the adult shall be present unless the court determines it is impossible for the adult to be present or it is not in the adult's best interest because of a threat to that adult's health and safety;

(2) the adult has the right to counsel whether or not the adult is present at the hearing. If the person is

Underscored material = new  
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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

HCPAC/HB 101

Page 32

1  
2 indigent, the court shall appoint counsel no later than the time  
3 of the filing of the petition;

4  
5 (3) counsel appointed by the court pursuant to  
6 Paragraph (2) of this subsection shall interview the allegedly  
7 incapacitated adult prior to any hearing on the petition or any  
8 application for renewal of the original emergency order;

9  
10 (4) the adult shall have the right to trial by  
11 jury upon request by the adult or his counsel only in hearings  
12 held on petitions for non-emergency protective placement or  
13 services; and

14  
15 (5) the adult has the right at his own expense  
16 or, if indigent, at the expense of the state to secure an  
17 independent medical, psychological or psychiatric examination  
18 relevant to the issue involved in any hearing under this section  
19 and to present a report of this independent evaluation or the  
20 evaluator's personal testimony as evidence at the hearing.

21  
22 B. The duty of counsel representing an adult for whom  
23 a petition for an order for emergency protective services or for  
24 non-emergency protective placement or services has been filed  
25 shall be to represent the adult by presenting his declared  
position to the court.

C. The court shall issue for the record a statement of  
its findings in support of any order for renewal of emergency pro-

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

HCPAC/HB 101

Page 33

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protective services or for non-emergency protective placement or  
services. "".

7. Renumber succeeding sections accordingly.

8. On page 27, strike lines 15 and 16, and insert in lieu  
thereof "department petitions the court appoint pursuant to the  
Probate Code;".

Respectfully submitted,

\_\_\_\_\_  
Gary King, Chairman

Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

HCPAC/HB 101

Page 34

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The roll call vote was 9 For 0 Against

Yes: 9

Excused: Sandel

Absent: None

114896.2

116063.1

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~~[bracketed material] = delete~~

# State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

February 22, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 101, as amended

has had it under consideration and reports same with  
recommendation that it DO PASS, amended as follows:

1. On page 2, line 6, delete the closing quotation mark, and  
between lines 6 and 7, insert the following new subsection:

"C. Nothing in this act shall be construed to mean an  
adult, including an incapacitated adult or a protected adult, is  
abused, neglected, being denied essential services or in need of  
protective services for the sole reason he relies upon or is being  
furnished with spiritual treatment through prayer alone in  
accordance with the express or implied intent of the adult; nor  
shall anything in this act be construed to authorize or require  
any medical care or treatment in contravention of the express or  
implied wish of that adult."

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

HJC/HB 101, aa

Page 36

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2. On page 10, line 14, strike "their own".

3. On page 10, line 15, after the word "exploitation" insert  
"within their facilities, operation and control".

4. On page 28, line 8, strike the word "petty".

Respectfully submitted,

\_\_\_\_\_  
Thomas P. Foy, Chairman

Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

Underscored material = new  
[bracketed material] = delete

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

HJC/HB 101, aa

Page 37

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The roll call vote was 9 For 0 Against

Yes: 9

Excused: M P. Garcia, Mallory, Rios, Sanchez

Absent: None

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

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

1 HJC/HB 101, aa

Page 38

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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March 14, 1997

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10 Mr. President:

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12 Your PUBLIC AFFAIRS COMMITTEE, to whom has been  
13 referred

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14

HOUSE BILL 101, as amended

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16 has had it under consideration and reports same with  
17 recommendation that it DO PASS, and thence referred to the  
18 JUDICIARY COMMITTEE.

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20 Respectfully submitted,

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Shannon Robinson, Chairman

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Underscored material = new  
[bracketed material] = delete

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

1 HJC/HB 101, aa

Page 39

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 0 Against  
Yes: 7  
No: 0  
Excused: Garcia, Smith  
Absent: None

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[bracketed material] = delete

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

1 HJC/HB 101, aa

Page 40

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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March 19, 1997

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10 Mr. President:

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Your JUDICIARY COMMITTEE, to whom has been referred

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HOUSE BILL 101, as amended

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has had it under consideration and reports same with

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recommendation that it DO PASS.

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Respectfully submitted,

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Fernando R. Macias, Chairman

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Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

1 HJC/HB 101, aa

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Date \_\_\_\_\_

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The roll call vote was 5 For 0 Against

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Yes: 5

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No: 0

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Excused: Sanchez, Tsosie, Vernon

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Absent: None

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