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HOUSE BILL 364

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

INTRODUCED BY

J. PAUL TAYLOR

FOR THE HEALTH CARE REFORM COMMITTEE  
AND THE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO STATE REGULATIONS; PROVIDING FOR PUBLIC HEARINGS ON  
PROPOSED HEALTH AND HUMAN SERVICE RELATED REGULATIONS IN EACH OF  
THE GEOGRAPHIC QUADRANTS OF THE STATE.

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

Section 1. Section 9-7-6 NMSA 1978 (being Laws 1977,  
Chapter 253, Section 7, as amended) is amended to read:

"9-7-6. SECRETARY--DUTIES AND GENERAL POWERS. --

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

B. To perform his duties, the secretary has every  
power expressly enumerated in the laws, whether granted to the  
secretary or the department or any division of the department,

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1 except where authority conferred upon any division is explicitly  
2 exempted from the secretary's authority by statute. In  
3 accordance with these provisions, the secretary shall:

4 (1) except as otherwise provided in the  
5 Department of Health Act, exercise general supervisory and  
6 appointing authority over all department employees, subject to  
7 any applicable personnel laws and regulations;

8 (2) delegate authority to subordinates as he  
9 deems necessary and appropriate, clearly delineating such  
10 delegated authority and the limitations thereto;

11 (3) organize the department into those  
12 organizational units he deems will enable it to function most  
13 efficiently, subject to any provisions of law requiring or  
14 establishing specific organizational units;

15 (4) within the limitations of available  
16 appropriations and applicable laws, employ and fix the  
17 compensation of those persons necessary to discharge his duties;

18 (5) take administrative action by issuing  
19 orders and instructions, not inconsistent with the law, to  
20 assure implementation of and compliance with the provisions of  
21 law for which administration or execution he is responsible and  
22 to enforce those orders and instructions by appropriate  
23 administrative action [~~or actions~~] in the courts;

24 (6) conduct research and studies that will  
25 improve the operations of the department and the provision of

1 services to the citizens of the state;

2 (7) provide courses of instruction and  
3 practical training for employees of the department and other  
4 persons involved in the administration of programs with the  
5 objective of improving the operations and efficiency of  
6 administration;

7 (8) prepare an annual budget of the department;

8 (9) 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 the  
12 secretary;

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

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

23 C. The secretary may apply for and receive, with the  
24 governor's approval, in the name of the department any public or  
25 private funds, including but not limited to United States

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

3 D. The secretary shall be responsible for providing  
4 appropriate educational programs for all school age persons, as  
5 defined in Section 22-1-2 NMSA 1978, who are clients, as defined  
6 in Section 43-1-3 NMSA 1978, of institutions under his authority  
7 as follows:

8 (1) he shall arrange with school districts for  
9 the enrollment of all school age residents of institutions under  
10 his authority who have been evaluated and recommended for  
11 placement in a public school according to the provisions of the  
12 Department of Health Education Act. He shall notify the  
13 superintendent of public instruction prior to public school  
14 enrollment of any school age resident under his authority; and

15 (2) he shall provide educational programs, in  
16 accordance with the special education regulations of the state  
17 board of education, for school age persons who are clients of  
18 institutions under his authority but who are enrolled in a  
19 public school by:

20 (a) using the facilities and personnel of  
21 the department;

22 (b) contracting with a school district  
23 for the provision of educational services; or

24 (c) using a combination of Subparagraphs  
25 (a) and (b) of this ~~[subsection]~~ paragraph.

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1           E. The secretary may make and adopt such reasonable  
2 and procedural rules and regulations as may be necessary to  
3 carry out the duties of the department and its divisions. No  
4 rule or regulation promulgated by the director of any division  
5 in carrying out the functions and duties of the division shall  
6 be effective until approved by the secretary unless otherwise  
7 provided by statute. Unless otherwise provided by statute, no  
8 regulation affecting any person or agency outside the department  
9 shall be adopted, amended or repealed without [a] public  
10 [hearing] hearings on the proposed action before the secretary  
11 or a hearing officer designated by him. The public [hearing]  
12 hearings shall be held in [~~Santa Fe unless otherwise permitted~~  
13 ~~by statute~~] at least one location in each geographic quadrant of  
14 the state affected by the rule or regulation. Notice of the  
15 subject matter of the regulation, the action proposed to be  
16 taken, the time and place of the hearing, the manner in which  
17 interested persons may present their views and the method by  
18 which copies of the proposed regulation, proposed amendment or  
19 repeal of an existing regulation may be obtained shall be  
20 published once at least thirty days prior to the hearing date in  
21 a newspaper of general circulation in the affected quadrant and  
22 mailed at least thirty days prior to the hearing date to all  
23 persons who have made a written request for advance notice of  
24 hearing. All rules and regulations shall be filed in accordance  
25 with the State Rules Act. "

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1           Section 2. Section 9-8-6 NMSA 1978 (being Laws 1977,  
2 Chapter 252, Section 7, as amended) is amended to read:

3           "9-8-6. SECRETARY--DUTIES AND GENERAL POWERS. --

4           A. The secretary is responsible to the governor for  
5 the operation of the department. It is his duty to manage all  
6 operations of the department and to administer and enforce the  
7 laws with which he or the department is charged.

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

14                   (1) except as otherwise provided in the Human  
15 Services Department Act, exercise general supervisory and  
16 appointing authority over all department employees, subject to  
17 any applicable personnel laws and regulations;

18                   (2) delegate authority to subordinates as he  
19 deems necessary and appropriate, clearly delineating such  
20 delegated authority and the limitations thereto;

21                   (3) organize the department into those  
22 organizational units he deems will enable it to function most  
23 efficiently, subject to any provisions of law requiring or  
24 establishing specific organizational units;

25                   (4) within the limitations of available

1 appropriations and applicable laws, employ and fix the  
2 compensation of those persons necessary to discharge his duties;

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

9 (6) conduct research and studies that will  
10 improve the operations of the department and the provision of  
11 services to the citizens of the state;

12 (7) provide courses of instruction and  
13 practical training for employees of the department and other  
14 persons involved in the administration of programs with the  
15 objective of improving the operations and efficiency of  
16 administration;

17 (8) prepare an annual budget of the department;

18 (9) provide cooperation, at the request of  
19 heads of administratively attached agencies, in order to:

20 (a) minimize or eliminate duplication of  
21 services and jurisdictional conflicts;

22 (b) coordinate activities and resolve  
23 problems of mutual concern; and

24 (c) resolve by agreement the manner and  
25 extent to which the department shall provide budgeting,

1 recordkeeping and related clerical assistance to  
2 administratively attached agencies;

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

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

14 (12) require performance bonds of such  
15 department employees and officers as he deems necessary as  
16 provided in the Surety Bond Act. The department shall pay the  
17 costs of these bonds.

18 C. The secretary may apply for and receive, with the  
19 governor's approval, in the name of the department, any public  
20 or private funds, including but not limited to United States  
21 government funds, available to the department to carry out its  
22 programs, duties or services.

23 D. Where functions of departments overlap or a  
24 function assigned to one department could better be performed by  
25 another department, the secretary may recommend appropriate

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1 legislation to the next session of the legislature for its  
2 approval.

3 E. The secretary may make and adopt such reasonable  
4 and procedural rules and regulations as may be necessary to  
5 carry out the duties of the department and its divisions. No  
6 rule or regulation promulgated by the director of any division  
7 in carrying out the functions and duties of the division shall  
8 be effective until approved by the secretary unless otherwise  
9 provided by statute. Unless otherwise provided by statute, no  
10 regulation affecting any person or agency outside the department  
11 shall be adopted, amended or repealed without [a] public  
12 [hearing] hearings on the proposed action before the secretary  
13 or a hearing officer designated by him. The public [hearing]  
14 hearings shall be held in [~~Santa Fe unless otherwise permitted~~  
15 ~~by statute~~] at least one location in each geographic quadrant of  
16 the state affected by the rule or regulation. Notice of the  
17 subject matter of the regulation, the action proposed to be  
18 taken, the time and place of the hearing, the manner in which  
19 interested persons may present their views and the method by  
20 which copies of the proposed regulation, proposed amendment or  
21 repeal of an existing regulation may be obtained shall be  
22 published once at least thirty days prior to the hearing date in  
23 a newspaper of general circulation in the affected quadrant and  
24 mailed at least thirty days prior to the hearing date to all  
25 persons who have made a written request for advance notice of

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1 hearing.

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

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

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

18 [Such] Interim regulations shall not be promulgated without  
19 first providing a written notice twenty days in advance to  
20 providers of medical services and beneficiaries of department  
21 programs. At the time of the promulgation of the interim rules  
22 or regulations, the department shall give notice of the public  
23 hearing on the final rules or regulations in accordance with  
24 Subsection E of this section.

25 G. If the secretary certifies to the secretary of

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

9 (1) the period of notice of public hearing  
10 shall be fifteen days;

11 (2) the department shall also send individual  
12 notices of the interim rulemaking and of the public hearing to  
13 affected providers and beneficiaries;

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

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

20 (5) if final rules and regulations are  
21 necessary to replace the interim rules and regulations, the  
22 department shall give notice of intent to promulgate final rules  
23 and regulations at the time of notice herein. The final rules  
24 and regulations shall be promulgated not more than forty-five  
25 days after the public hearing and filed in accordance with the

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1 State Rules Act.

2 H. At the time of the promulgation of the interim  
3 rules or regulations, the department shall give notice of the  
4 public hearing on the final rules or regulations in accordance  
5 with Subsection E of this section.

6 [~~H.~~] I. All rules and regulations shall be filed in  
7 accordance with the State Rules Act. "

8 Section 3. EFFECTIVE DATE. -- The effective date of the  
9 provisions of this act is July 1, 1997.

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# State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

February 12, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 364

has had it under consideration and reports same with  
recommendation that it DO PASS, and thence referred to the  
APPROPRIATIONS AND FINANCE COMMITTEE.

Respectfully submitted,

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Thomas P. Foy, Chairman

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Luna, Pederson, Rios, Sanchez

Absent: None

M \H0364

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# State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

February 25, 1997

Mr. Speaker:

Your APPROPRIATIONS AND FINANCE COMMITTEE, to  
whom has been referred

HOUSE BILL 364

has had it under consideration and reports same with  
recommendation that it DO PASS.

Respectfully submitted,

---

Max Coll, Chairman

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 13 For 0 Against

Yes: 13

Excused: Heaton, ~~Harper, Townsend,~~

**State of New Mexico  
House of Representatives**

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

Mr. Speaker:

Your Varella

Absent: None

M: \H0364

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 14, 1997

Mr. President:

Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred

HOUSE BILL 364

has had it under consideration and reports same with recommendation that it DO PASS.

Respectfully submitted,

---

Shannon Robinson, Chairman

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

**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

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(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Smith, Garcia, Adair

Absent: None

H0364PA1

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