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SENATE BILL 718

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

INTRODUCED BY

SUE F. WILSON

AN ACT

RELATING TO HEALTH FACILITIES; PROVIDING FOR THE DEVELOPMENT OF
CRITERIA FOR INSPECTION; INCREASING FEES; CREATING A FUND;
AMENDING AND ENACTING SECTIONS OF THE PUBLIC HEALTH ACT; MAKING
AN APPROPRIATION.

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

Section 1. Section 24-1-1 NMSA 1978 (being Laws 1973,
Chapter 359, Section 1) is amended to read:

"24-1-1. SHORT TITLE. -- [~~Sections 1 through 22 of this act~~]
Chapter 24, Article 1 NMSA 1978 may be cited as the "Public
Health Act". "

Section 2. Section 24-1-5 NMSA 1978 (being Laws 1973,
Chapter 359, Section 5, as amended) is amended to read:

"24-1-5. LICENSURE OF HEALTH FACILITIES. --

A. No health facility shall be operated without a

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1 license issued by the department. If a health facility is found
2 to be operating without a license, in order to protect human
3 health or safety the secretary may issue a cease and desist
4 order. The health facility may request a hearing, which shall
5 be held in the manner provided in this section. The department
6 may also proceed pursuant to the Health Facility Receivership
7 Act.

8 B. The department is authorized to make inspections
9 and investigations and to prescribe regulations it deems
10 necessary or desirable to promote the health, safety and welfare
11 of persons [utilizing] using health facilities. The department
12 may develop risk-based criteria to determine the frequency of
13 inspections. The annual license may be issued without an annual
14 inspection for those health facilities that are determined to be
15 low risk based on that criteria.

16 C. Except as provided in Subsection F of this
17 section, upon receipt of an application for a license to operate
18 a health facility, the department shall promptly inspect the
19 health facility to determine if it is in compliance with all
20 regulations of the department. Applications for hospital
21 licenses shall include evidence that the bylaws or regulations
22 of the hospital apply equally to osteopathic and medical
23 physicians.

24 D. Upon inspection of any health facility, if the
25 department finds any violation of its regulations, it may deny

1 the application for a license, whether initial or renewal, or it
2 may issue a temporary license. A temporary license shall not be
3 issued for a period exceeding one hundred twenty days, nor shall
4 more than two consecutive temporary licenses be issued.

5 E. A one-year nontransferable license shall be
6 issued to any health facility complying with all regulations of
7 the department. The license shall be renewable for successive
8 one-year periods, upon filing of a renewal application, if the
9 department is satisfied that the health facility is in
10 compliance with all regulations of the department or, if not in
11 compliance with any regulation, has been granted a waiver or
12 variance of that regulation by the department pursuant to
13 procedures, conditions and guidelines adopted by regulation of
14 the department. Licenses shall be posted in a conspicuous place
15 on the licensed premises, except that child-care centers that
16 receive no state or federal funds may apply for and receive from
17 the department a waiver from the requirement that a license be
18 posted or kept on the licensed premises.

19 F. Any health facility that has been inspected and
20 licensed by the department and that has received certification
21 for participation in federal reimbursement programs and that has
22 been fully accredited by the joint commission on accreditation
23 of health care organizations or the American osteopathic
24 association shall be granted a license renewal based on that
25 accreditation. Health facilities receiving less than full

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1 accreditation by the joint commission on the accreditation of
2 health care organizations or by the American osteopathic
3 association may be granted a license renewal based on such
4 accreditation. License renewals shall be issued upon
5 application submitted by the facility upon forms prescribed by
6 the department. This subsection does not limit in any way the
7 department's various duties and responsibilities under other
8 provisions of the Public Health Act or under any other
9 subsection of this section, including any of the department's
10 responsibilities for the health and safety of the public.

11 G. The department may charge a reasonable fee not to
12 exceed [~~three dollars (\$3.00) per bed for an in-patient health~~
13 ~~facility or one hundred dollars (\$100) for any other] five
14 hundred dollars (\$500) for a health facility for each license
15 application, whether initial or renewal, of an annual license or
16 the second consecutive issuance of a temporary license. In
17 addition to the license fee applicable to all health facilities,
18 the department may include an additional charge for each
19 inpatient bed, surgical suite in the case of ambulatory care
20 facilities or station in the case of dialysis facilities. The
21 fee shall not exceed eight dollars (\$8.00) per bed or fifty
22 dollars (\$50.00) per surgical suite or dialysis station. Fees
23 collected shall not be refundable. All fees collected pursuant
24 to licensure applications shall be deposited with the state
25 treasurer for credit to the [general] health facility license~~

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1 fund.

2 H. The department may revoke or suspend the license
3 of any health facility or may impose on any health facility any
4 intermediate sanction and civil monetary penalty provided in
5 Section 24-1-5.2 NMSA 1978 after notice and an opportunity for a
6 hearing before a hearing officer designated by the department to
7 hear the matter and, except for child-care centers and
8 facilities, may proceed pursuant to the Health Facility
9 Receivership Act upon a determination that the health facility
10 is not in compliance with any regulation of the department. If
11 immediate action is required to protect human health and safety,
12 the ~~[director]~~ secretary may suspend any license or impose any
13 intermediate sanction pending a hearing, provided the hearing is
14 held within five working days of the suspension or imposition of
15 the sanction, unless waived by the licensee, and, except for
16 child-care centers and facilities, may proceed ex parte pursuant
17 to the Health Facility Receivership Act.

18 I. The department shall schedule a hearing pursuant
19 to Subsection H of this section if the department receives a
20 request for a hearing from a licensee:

21 (1) within ten working days after receipt by
22 the licensee of notice of suspension, revocation, imposition of
23 an intermediate sanction or civil monetary penalty or denial of
24 an initial or renewal application;

25 (2) within four working days after receipt by

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1 the licensee of an emergency suspension order or emergency
2 intermediate sanction imposition and notice of hearing, if the
3 licensee wishes to waive the early hearing scheduled and request
4 a hearing at a later date; or

5 (3) within five working days after receipt of a
6 cease and desist order.

7 J. The department shall [~~also~~] provide timely notice
8 to the licensee of the date, time and place for the hearing,
9 identity of the hearing officer, subject matter of the hearing
10 and alleged violations.

11 [~~J.~~] K. Any hearing [~~under~~] held pursuant to
12 provisions of this section shall be conducted in accordance with
13 adjudicatory hearing rules and procedures adopted by regulation
14 of the department. The licensee has the right to be represented
15 by counsel, to present all relevant evidence by means of
16 witnesses and books, papers, documents, records, files and other
17 evidence and to examine all opposing witnesses who appear on any
18 matter relevant to the issues. The hearing officer has the
19 power to administer oaths on request of any party and issue
20 subpoenas and subpoenas duces tecum prior to or after the
21 commencement of the hearing to compel discovery and the
22 attendance of witnesses and the production of relevant books,
23 papers, documents, records, files and other evidence. Documents
24 or records pertaining to abuse, neglect or exploitation of a
25 resident, client or patient of a health facility or other

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1 documents, records or files in the custody of the human services
2 department or the office of the state long-term care ombudsman
3 at the state agency on aging that are relevant to the alleged
4 violations are discoverable and admissible as evidence in any
5 hearing.

6 [K-] L. Any party may appeal to the court of appeals
7 on the record within thirty days after the final decision of the
8 department. The court shall set aside the final decision only
9 if it is found to be arbitrary, capricious or an abuse of
10 discretion; not supported by substantial evidence in the record;
11 outside the authority of the department; or otherwise not in
12 accordance with law.

13 [E-] M. Every complaint about a health facility
14 received by the department pursuant to this section shall be
15 promptly investigated to substantiate the allegation and to take
16 appropriate action if substantiated. The department shall
17 coordinate with the human services department, the office of the
18 state long-term care ombudsman at the state agency on aging and
19 any other appropriate agency to develop a joint protocol
20 establishing responsibilities and procedures to assure prompt
21 investigation of complaints, including prompt and appropriate
22 referrals and necessary action regarding allegations of abuse,
23 neglect or exploitation of residents, clients or patients in a
24 health facility.

25 [M-] N. Complaints received by the department

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1 pursuant to this section shall not be disclosed publicly in such
2 manner as to identify any individuals or health facilities if
3 upon investigation the complaint is unsubstantiated.

4 [N-] O. Notwithstanding any other provision of this
5 section, where there are reasonable grounds to believe that any
6 child is in imminent danger of abuse or neglect while in the
7 care of a child-care facility, whether or not licensed, or upon
8 the receipt of a report pursuant to Section 32A-4-3 NMSA 1978,
9 the department shall consult with the owner or operator of the
10 child-care facility. Upon a finding of probable cause, the
11 department shall give the owner or operator notice of its intent
12 to suspend operation of the facility and provide an opportunity
13 for a hearing to be held within three working days, unless
14 waived by the owner or operator. Within seven working days from
15 the day of notice, the [~~director~~] secretary shall make a
16 decision, and, if it is determined that any child is in imminent
17 danger of abuse or neglect in the child-care facility, the
18 [~~director~~] secretary may suspend operation of the facility for a
19 period not in excess of fifteen days. Prior to the date of the
20 hearing, the department shall make a reasonable effort to notify
21 the parents of children in the child-care facility of the notice
22 and opportunity for hearing given to the owner or operator.

23 [0-] P. Nothing contained in this section or in the
24 Public Health Act shall authorize either the secretary or the
25 department to make any inspection or investigation or to

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1 prescribe any regulations concerning group homes as defined in
2 Section 9-8-13 NMSA 1978 except as are reasonably necessary or
3 desirable to promote the health and safety of persons
4 [~~utilizing~~] using group homes.

5 Q. The department shall maintain a full and accurate
6 account of costs incurred in operating the health facility
7 licensure program."

8 Section 3. A new Section 24-1-5.4 NMSA 1978 is enacted to
9 read:

10 "24-1-5.4. [~~NEW MATERIAL~~] HEALTH FACILITY LICENSE FUND. --
11 The "health facility license fund" is created in the state
12 treasury. The fund shall consist of appropriations, health
13 facility license fees, gifts, grants and donations. Money in
14 the fund shall not revert to the general fund at the end of any
15 fiscal year. Expenditures from the fund are subject to annual
16 appropriation by the legislature for costs of the department in
17 performing its health facility licensure responsibilities.
18 Disbursements from the fund shall be made on warrant drawn by
19 the secretary of finance and administration pursuant to vouchers
20 signed by the secretary of health or his designee."

FORTY-THIRD LEGISLATURE

FIRST SESSION, 1997

SB 718/a

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March 5, 1997

Mr. President:

Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred

SENATE BILL 718

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

1. On page 1, lines 11 and 12, strike "PROVIDING FOR THE DEVELOPMENT OF CRITERIA FOR INSPECTION;".
2. On page 2, line 8, after "make" insert "annual".
3. On page 2, line 11, strike "The department" and strike lines 12 through 15.
4. On page 4, line 11, after "fee" insert "based on a health facility's type and size,".

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

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and thence referred to the FINANCE COMMITTEE.

Respectfully submitted,

Shannon Robinson, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Adair, Garcia, Vernon, Rodarte

Absent: None

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FORTY-THIRD LEGISLATURE SB 718/a
FIRST SESSION, 1997

March 15, 1997

Mr. President:

Your FINANCE COMMITTEE, to whom has been referred

SENATE BILL 718, as amended

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

1. On page 5, line 1, after "fund." insert "No monies from
penalties, sanctions, gifts, grants or donations shall be
deposited to such fund."

2. On page 9, line 13, after "fees" delete "gifts, grants and
donations."

Respectfully submitted,

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

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Ben D. Altamirano, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Aragon, Carraro, Ingle, Lyons, McKibben

Absent: None

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State of New Mexico
House of Representatives

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 21, 1997

Mr. Speaker:

Your LABOR AND HUMAN RESOURCES COMMITTEE, to whom
has been referred

SENATE BILL 718, as amended

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

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Respectfully submitted,

Rick Mi era, Chair man

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

Excused: Foy, Gentry, Silva

Absent: None

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