SENATE BILL 350

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

INTRODUCED BY
RAYMOND L. KYSAR

FOR THE HEALTH CARE REFORM COMMITTEE

AN ACT

RELATING TO HOSPITALS; PROVIDING FOR THE CONSOLIDATION OF LICENSE APPLICATIONS FOR HOSPITALS OPERATING AS HOSPITAL-BASED PRIMARY CARE CLINICS.

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

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

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B. The department is authorized to make inspections and investigations and to prescribe regulations it deems necessary or desirable to promote the health, safety and welfare of persons using health facilities.

C. Except as provided in Subsection F of this section, upon receipt of an application for a license to operate a health facility, the department shall promptly inspect the health facility to determine if it is in compliance with all regulations of the department. Applications for hospital licenses shall include evidence that the bylaws or regulations of the hospital apply equally to osteopathic and medical physicians. The department shall consolidate the applications and inspections for a hospital that also operates as a hospital-based primary care clinic.

D. Upon inspection of any health facility, if the department finds any violation of its regulations, it may deny the application for a license, whether initial or renewal, or it may issue a temporary license. A temporary license shall not be issued for a period exceeding one hundred twenty days, nor shall more than two consecutive temporary licenses be issued.

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

F. Any health facility that has been inspected and licensed by the department and that has received certification for participation in federal reimbursement programs and that has been fully accredited by the joint commission on accreditation of health care organizations or the American osteopathic association shall be granted a license renewal based on that accreditation. Health facilities receiving less than full accreditation by the joint commission on the accreditation of health care organizations or by the American osteopathic association may be granted a license renewal based on such accreditation. License renewals shall be issued upon application submitted by the facility upon forms prescribed by the department. This subsection does not limit in any way the department’s various duties and responsibilities under other provisions of the Public Health Act or under any other
subsection of this section, including any of the department's responsibilities for the health and safety of the public.

G. The department may charge a reasonable fee not to exceed three dollars ($3.00) per bed for an in-patient health facility or one hundred dollars ($100) for any other health facility for each license application, whether initial or renewal, of an annual license or the second consecutive issuance of a temporary license. Fees collected shall not be refundable. All fees collected pursuant to licensure applications shall be deposited with the state treasurer for credit to the general fund.

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

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

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

(2) within four working days after receipt by
the licensee of an emergency suspension order or emergency
intermediate sanction imposition and notice of hearing, if the
licensee wishes to waive the early hearing scheduled and request
a hearing at a later date; or

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

The department shall also provide timely notice to the
licensee of the date, time and place for the hearing, identity
of the hearing officer, subject matter of the hearing and
alleged violations.

J. Any hearing [under] held pursuant to provisions
of this section shall be conducted in accordance with
adjudicatory hearing rules and procedures adopted by regulation
of the department. The licensee has the right to be represented
by counsel, to present all relevant evidence by means of
witnesses and books, papers, documents, records, files and other
evidence and to examine all opposing witnesses who appear on any
matter relevant to the issues. The hearing officer has the
power to administer oaths on request of any party and issue
subpoenas and subpoenas duces tecum prior to or after the
commencement of the hearing to compel discovery and the
attendance of witnesses and the production of relevant books,
papers, documents, records, files and other evidence. Documents
or records pertaining to abuse, neglect or exploitation of a
resident, client or patient of a health facility or other
documents, records or files in the custody of the human services
department or the office of the state long-term care ombudsman
at the state agency on aging that are relevant to the alleged
violations are discoverable and admissible as evidence in any
hearing.

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

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

M. Complaints received by the department pursuant to
this section shall not be disclosed publicly in such manner as
to identify any individuals or health facilities if upon
investigation the complaint is unsubstantiated.

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

O. Nothing contained in this section or in the
Public Health Act shall authorize either the secretary or the
department to make any inspection or investigation or to
prescribe any regulations concerning group homes as defined in
Section 9-8-13 NMSA 1978 except as are reasonably necessary or
desirable to promote the health and safety of persons
[utilizing] using group homes."
Mr. President:

Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred

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has had it under consideration and reports same with

recommendation that it DO PASS, and thence referred to the

CORPORATIONS & TRANSPORTATION COMMITTEE.

Respectfully submitted,

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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, Boitano, Ingle, Vernon
Absent:  None

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Mr. President:

Your CORPORATIONS & TRANSPORTATION COMMITTEE, to whom has been referred

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

Respectfully submitted,

Roman M. Maes, III, Chairman

Adopted_______________________ Not Adopted_____________________
The roll call vote was 6 For 0 Against
Yes: 6
No: 0
Excused: Fidel, Griego, Leavell, McKibben
Absent: None