

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 363

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Patsy Trujillo Knauer

AN ACT

RELATING TO PUBLIC HEALTH; CREATING AN EXCEPTION FOR THE  
RENEWAL OF LICENSES OF HEALTH FACILITIES TREATING CHILDREN;  
AMENDING A SECTION OF NMSA 1978.

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--HEARINGS--  
APPEALS. --

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 that  
shall be held in the manner provided in this section. The

underscored material = new  
[bracketed material] = del ete

underscored material = new  
[bracketed material] = delete

1 department may also proceed pursuant to the Health Facility  
2 Receivership Act.

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

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

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

24 E. A one-year nontransferable license shall be  
25 issued to any health facility complying with all rules of the

underscored material = new  
[bracketed material] = delete

1 department. The license shall be renewable for successive  
2 one-year periods, upon filing of a renewal application, if the  
3 department is satisfied that the health facility is in  
4 compliance with all rules of the department or, if not in  
5 compliance with a rule, has been granted a waiver or variance  
6 of that rule by the department pursuant to procedures,  
7 conditions and guidelines adopted by rule of the department.  
8 Licenses shall be posted in a conspicuous place on the  
9 licensed premises, except that child-care centers that receive  
10 no state or federal funds may apply for and receive from the  
11 department a waiver from the requirement that a license be  
12 posted or kept on the licensed premises.

13 F. Any health facility that has been inspected and  
14 licensed by the department and that has received certification  
15 for participation in federal reimbursement programs and that  
16 has been fully accredited by the joint commission on  
17 accreditation of health care organizations or the American  
18 osteopathic association shall be granted a license renewal  
19 based on that accreditation. Health facilities receiving less  
20 than full accreditation by the joint commission on the  
21 accreditation of health care organizations or by the American  
22 osteopathic association may be granted a license renewal based  
23 on that accreditation. License renewals shall be issued upon  
24 application submitted by the facility upon forms prescribed by  
25 the department. This subsection does not limit in any way the

underscored material = new  
[bracketed material] = delete

1 department's various duties and responsibilities under other  
2 provisions of the Public Health Act or under any other  
3 subsection of this section, including any of the department's  
4 responsibilities for the health and safety of the public.

5 Nothing in this subsection shall apply to licensing or  
6 certification of a facility treating or caring for children.

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

16 H. The department may revoke or suspend the  
17 license of a health facility or may impose on a health  
18 facility an intermediate sanction and a civil monetary penalty  
19 provided in Section 24-1-5.2 NMSA 1978 after notice and an  
20 opportunity for a hearing before a hearing officer designated  
21 by the department to hear the matter and, except for child-  
22 care centers and facilities, may proceed pursuant to the  
23 Health Facility Receivership Act upon a determination that the  
24 health facility is not in compliance with any rule of the  
25 department. If immediate action is required to protect human

underscored material = new  
[bracketed material] = delete

1 health and safety, the secretary may suspend a license or  
2 impose an intermediate sanction pending a hearing, provided  
3 the hearing is held within five working days of the suspension  
4 or imposition of the sanction, unless waived by the licensee,  
5 and, except for child-care centers and facilities, may proceed  
6 ex parte pursuant to the Health Facility Receivership Act.

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

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

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

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

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

25 J. Any hearing held pursuant to provisions of this

. 126049. 1

underscored material = new  
[bracketed material] = delete

1 section shall be conducted in accordance with adjudicatory  
2 hearing rules and procedures adopted by regulation of the  
3 department. The licensee has the right to be represented by  
4 counsel, to present all relevant evidence by means of  
5 witnesses and books, papers, documents, records, files and  
6 other evidence and to examine all opposing witnesses who  
7 appear on any matter relevant to the issues. The hearing  
8 officer has the power to administer oaths on request of any  
9 party and issue subpoenas and subpoenas duces tecum prior to  
10 or after the commencement of the hearing to compel discovery  
11 and the attendance of witnesses and the production of relevant  
12 books, papers, documents, records, files and other evidence.  
13 Documents or records pertaining to abuse, neglect or  
14 exploitation of a resident, client or patient of a health  
15 facility or other documents, records or files in the custody  
16 of the human services department or the office of the state  
17 long-term care ombudsman at the state agency on aging that are  
18 relevant to the alleged violations are discoverable and  
19 admissible as evidence in any hearing.

20 K. Any party may appeal the final decision of the  
21 department pursuant to the provisions of Section [ ~~12-8A-1~~  
22 39-3-1.1 NMSA 1978.

23 L. Every complaint about a health facility  
24 received by the department pursuant to this section shall be  
25 promptly investigated to substantiate the allegation and to

underscored material = new  
[bracketed material] = delete

1 take appropriate action if substantiated. The department  
2 shall coordinate with the human services department, the  
3 office of the state long-term care ombudsman at the state  
4 agency on aging and any other appropriate agency to develop a  
5 joint protocol establishing responsibilities and procedures to  
6 assure prompt investigation of complaints, including prompt  
7 and appropriate referrals and necessary action regarding  
8 allegations of abuse, neglect or exploitation of residents,  
9 clients or patients in a health facility.

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

14 N. Notwithstanding any other provision of this  
15 section, where there are reasonable grounds to believe that  
16 any child is in imminent danger of abuse or neglect while in  
17 the care of a child-care facility, whether or not licensed, or  
18 upon the receipt of a report pursuant to Section 32A-4-3 NMSA  
19 1978, the department shall consult with the owner or operator  
20 of the child-care facility. Upon a finding of probable cause,  
21 the department shall give the owner or operator notice of its  
22 intent to suspend operation of the child-care facility and  
23 provide an opportunity for a hearing to be held within three  
24 working days, unless waived by the owner or operator. Within  
25 seven working days from the day of notice, the secretary shall

. 126049. 1

underscored material = new  
[bracketed material] = delete

1 make a decision, and, if it is determined that any child is in  
2 imminent danger of abuse or neglect in the child-care  
3 facility, the secretary may suspend operation of the child-  
4 care facility for a period not in excess of fifteen days.  
5 Prior to the date of the hearing, the department shall make a  
6 reasonable effort to notify the parents of children in the  
7 child-care facility of the notice and opportunity for hearing  
8 given to the owner or operator.

9           0. Nothing contained in this section or in the  
10 Public Health Act shall authorize either the secretary or the  
11 department to make any inspection or investigation or to  
12 prescribe any regulations concerning group homes as defined in  
13 Section 9-8-13 NMSA 1978 except as are reasonably necessary or  
14 desirable to promote the health and safety of persons using  
15 group homes. "

1 FORTY-FOURTH LEGISLATURE  
2 FIRST SESSION, 1999  
3  
4  
5

6 February 16, 1999  
7

8 Mr. Speaker:  
9

10 Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to  
11 whom has been referred  
12

13 HOUSE BILL 363  
14

15 has had it under consideration and reports same with  
16 recommendation that it DO PASS, and thence referred to the  
17 BUSINESS & INDUSTRY COMMITTEE.

18 Respectfully submitted,  
19  
20  
21

22 \_\_\_\_\_  
23 Patsy Trujillo Knauer,  
24 Chairwoman  
25

underscored material = new  
[bracketed material] = delete

FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

HCPAC/HB 363

Page 10

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

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 0 Against

Yes: 7

Excused: None

Absent: None

J: \99BillSWP\H0363

underscored material = new  
[bracketed material] = delete