

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

underscored material = new
[bracketed material] = del ete

HOUSE BILL 676
44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999
INTRODUCED BY
Sheryl Williams Stapleton

AN ACT
RELATING TO RESIDENTIAL CARE; MAKING CHANGES OF DEFINITIONS,
PENALTIES AND PROCEDURES IN THE RESIDENT ABUSE AND NEGLECT
ACT; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 30-47-3 NMSA 1978 (being Laws 1990,
Chapter 55, Section 3) is amended to read:

"30-47-3. DEFINITIONS. -- As used in the Resident Abuse
and Neglect Act:

A. "abuse" means any act or failure to act
performed intentionally, knowingly or recklessly that causes
or is likely to cause harm to a resident, including:

- (1) physical contact that harms or is likely
to harm a resident of a care facility;
- (2) inappropriate use of a physical

underscored material = new
[bracketed material] = del ete

1 restraint, isolation or medication that harms or is likely to
2 harm a resident;

3 (3) inappropriate use of a physical or
4 chemical restraint, medication or isolation as punishment or
5 in conflict with a physician's order;

6 (4) medically inappropriate conduct that
7 causes or is likely to cause physical harm to a resident;

8 (5) medically inappropriate conduct that
9 causes or is likely to cause great psychological harm to a
10 resident; or

11 (6) an unlawful act, a threat or menacing
12 conduct directed toward a resident that results and might
13 reasonably be expected to result in fear or emotional or
14 mental distress to a resident;

15 B. "care facility" means a hospital; skilled
16 nursing facility; intermediate care facility; care facility
17 for the mentally retarded; psychiatric facility;
18 rehabilitation facility; kidney disease treatment center; home
19 health agency; ambulatory surgical or outpatient facility;
20 home for the aged or disabled; group home; adult foster care
21 home; private residence that provides personal care, sheltered
22 care or nursing care for one or more persons; adult day care
23 center; boarding home; adult residential shelter care home;
24 and any other health or resident care related facility or
25 home, but does not include a care facility located at or

underscored material = new
[bracketed material] = del ete

1 performing services for any correctional facility;

2 C. "criminally negligent" means any act or failure
3 to act in willful disregard of the rights or safety of others
4 and in a manner that endangers any person or property;

5 [~~C.~~] D. "department" means the human services
6 department or its successor, contractor, employee or designee;

7 [~~D.~~] E. "great psychological harm" means
8 psychological harm that causes mental or emotional
9 incapacitation for a prolonged period of time or that causes
10 extreme behavioral change or severe physical symptoms that
11 require psychological or psychiatric care;

12 [~~E.~~] F. "great physical harm" means physical harm
13 of a type that causes physical loss of a bodily member or
14 organ or functional loss of a bodily member or organ for a
15 prolonged period of time;

16 [~~F.~~] G. "neglect" means, subject to the resident's
17 right to refuse treatment and subject to the caregiver's right
18 to exercise sound medical discretion, the grossly negligent:

19 (1) failure to provide any treatment,
20 service, care, medication or item that is necessary to
21 maintain the health or safety of a resident;

22 (2) failure to take any reasonable precaution
23 that is necessary to prevent damage to the health or safety of
24 a resident; or

25 (3) failure to carry out a duty to supervise

underscored material = new
[bracketed material] = delete

1 properly or control the provision of any treatment, care,
2 good, service or medication necessary to maintain the health
3 or safety of a resident;

4 [G. ~~"person" means any individual, corporation,~~
5 ~~partnership, unincorporated association or other governmental~~
6 ~~or business entity;~~]

7 H. "physical harm" means an injury to the body
8 that causes substantial pain or incapacitation; and

9 I. "resident" means [any] a person who resides in
10 a care facility or who receives treatment from a care
11 facility. "

12 Section 2. Section 30-47-4 NMSA 1978 (being Laws 1990,
13 Chapter 55, Section 4) is amended to read:

14 "30-47-4. ABUSE OF A RESIDENT--CRIMINAL PENALTIES. --

15 A. Whoever commits abuse of a care facility
16 resident that results in no harm or in an injury that is not
17 likely to result in death, physical harm or great
18 psychological harm to the resident is guilty of a [petty]
19 misdemeanor and [upon conviction] shall be sentenced pursuant
20 to the provisions of [Subsection B of] Section 31-19-1 NMSA
21 1978.

22 B. Whoever commits abuse of a resident that
23 results in physical harm or great psychological harm to the
24 resident is guilty of a fourth degree felony and [upon
25 conviction] shall be sentenced pursuant to the provisions of

underscored material = new
[bracketed material] = delete

1 Section 31-18-15 NMSA 1978.

2 C. Whoever commits abuse of a resident that
3 results in great physical harm to the resident is guilty of a
4 third degree felony and [~~upon conviction~~] shall be sentenced
5 pursuant to the provisions of Section 31-18-15 NMSA 1978.

6 D. Whoever commits abuse of a resident that
7 results in the death of the resident is guilty of a second
8 degree felony and [~~upon conviction~~] shall be sentenced
9 pursuant to the provisions of Section 31-18-15 NMSA 1978."

10 Section 3. Section 30-47-5 NMSA 1978 (being Laws 1990,
11 Chapter 55, Section 5) is amended to read:

12 "30-47-5. NEGLECT OF A RESIDENT--CRIMINAL PENALTIES. --

13 A. Whoever commits neglect of a resident that
14 results in no harm or in an injury that is not likely to
15 result in death, physical harm or great psychological harm to
16 the resident is guilty of a [~~petty~~] misdemeanor and [~~upon~~
17 ~~conviction~~] shall be sentenced pursuant to the provisions of
18 [~~Subsection B of~~] Section 31-19-1 NMSA 1978.

19 B. Whoever commits neglect of a resident that
20 results in physical harm or great psychological harm to the
21 resident is guilty of a fourth degree felony and [~~upon~~
22 ~~conviction~~] shall be sentenced pursuant to the provisions of
23 Section 31-18-15 NMSA 1978.

24 C. Whoever commits neglect of a resident that
25 results in great physical harm to the resident is guilty of a

underscored material = new
[bracketed material] = delete

1 third degree felony and [~~upon conviction~~] shall be sentenced
2 pursuant to the provisions of Section 31-18-15 NMSA 1978.

3 D. Whoever commits neglect of a resident that
4 results in the death of the resident is guilty of a second
5 degree felony and [~~upon conviction~~] shall be sentenced
6 pursuant to the provisions of Section 31-18-15 NMSA 1978. "

7 Section 4. Section 30-47-9 NMSA 1978 (being Laws 1990,
8 Chapter 55, Section 9) is amended to read:

9 "30-47-9. REPORTING REQUIREMENTS--FAILURE TO REPORT--
10 CRIME CREATED--CRIMINAL PENALTY--DISCRIMINATION OR RETALIATION
11 FOR FILING A REPORT PROHIBITED. --

12 A. [~~Any~~] A person paid in whole or part for
13 providing to a resident any treatment, care, good, service or
14 medication who has reasonable cause to believe that the
15 resident has been abused, neglected or exploited shall report
16 the abuse, neglect or exploitation in accordance with the
17 provisions of Section 27-7-30 NMSA 1978.

18 B. [~~Any~~] A person required to make a report
19 pursuant to Subsection A of this section who fails or refuses
20 to do so, or obstructs or impedes an investigation, is guilty
21 of a misdemeanor and [~~upon conviction~~] shall be sentenced
22 pursuant to the provisions of [~~Subsection A of~~] Section
23 31-19-1 NMSA 1978.

24 C. In addition to those persons required to report
25 pursuant to Subsection A of this section, any other person

underscored material = new
[bracketed material] = delete

1 shall make a report if the person has reasonable cause to
2 believe that a patient or resident of a facility has been
3 abused, neglected or exploited.

4 D. ~~[Any]~~ A person making a report pursuant to
5 Subsection C of this section shall not be liable in any civil
6 or criminal action based on the report if it was made in good
7 faith.

8 E. No facility shall, without just cause,
9 discharge or in any manner discriminate or retaliate against
10 ~~[any]~~ a person who in good faith makes a report required or
11 permitted by the Resident Abuse and Neglect Act or who
12 testifies or is about to testify in any proceeding about the
13 abuse, neglect or exploitation of a resident in that facility.
14 For the purposes of this section, "retaliate" includes
15 transferring a resident, who has reported an incident pursuant
16 to this section, to another facility, without just cause, over
17 the objection of the resident or the resident's guardian [~~any~~
18 ~~resident who has reported an incident pursuant to this~~
19 ~~section~~]. "

20 F. Any person or care facility engaging in any of
21 the proscribed conduct set forth in Subsection E of this
22 section is guilty of a misdemeanor and shall be sentenced
23 pursuant to the provisions of Section 31-19-1 NMSA 1978. "

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

3
4
5
6 March 8, 1999

7
8 Mr. Speaker:

9
10 Your JUDICIARY COMMITTEE, to whom has been referred

11
12 HOUSE BILL 676

13
14 has had it under consideration and reports same with
15 recommendation that it DO PASS, amended as follows:

16 1. On Page 3, line 12, after "great" strike "physical"
17 and insert in lieu thereof "bodily".

18
19 2. On page 3, line 18, strike "grossly" and insert in
20 lieu thereof "criminally".

21
22 3. On page 4, line 7, strike "an injury to the body"
23 strike all of line 8 up to the semicolon, and insert in lieu
24 thereof "a serious injury not constituting great bodily
25 harm".

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HJC/HB 676

Page 9

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

4. On page 4, line 16, after "no" insert "physical".

5. On page 4, line 16, strike "harm or in an injury that is not", and strike line 17 in its entirety and insert in lieu thereof "physical harm does not constitute great bodily harm".

6. On page 4, line 18, strike "psychological harm".

7. On page 5, line 3, strike "physical" and insert in lieu thereof "bodily".

8. On page 5, line 14, after "no" insert "physical".

9. On page 5, lines 14 and 15 strike "or in an injury that is not likely to result in death, physical harm or great psychological harm".

10. On page 5, line 25, strike "physical" and insert in lieu thereof "bodily".

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HJC/HB 676

Page 10

Respectfully submitted,

R. David Pederson, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

underscored material = new
[bracketed material] = delete

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HJC/HB 676

Page 11

4 The roll call vote was 10 For 0 Against

5 Yes: 10

6 Excused: Luna, Sanchez

7 Absent: None

11 128566. 1

12 128715. 1

13 J: \99Bill\SWP\H0676

. 127086. 1

underscored material = new
[bracketed material] = delete

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

FORTY- FOURTH LEGISLATURE
FIRST SESSION

March 11, 1999

HOUSE FLOOR AMENDMENT number _____ to HOUSE BILL 676, as amended

Amendment sponsored by Representative R. David Pederson

1. Strike House Judiciary Committee Amendment 5.

2. On page 4, line 16, strike "or in an injury that is not" and strike line 17 in its entirety.

underscored material = new
[bracketed material] = delete

FORTY- FOURTH LEGISLATURE
FIRST SESSION

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

HF1/hb 676, aa

Page 13

R. David Pedersen

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

Date _____

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