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**HOUSE BILL 377**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**Terry T. Marquardt**

**AN ACT**

**RELATING TO THE DEPARTMENT OF HEALTH; PROVIDING FOR MEDICAL AND CLINICAL RECORDS ACCESS FOR DEPARTMENTAL QUALITY ASSURANCE AND QUALITY IMPROVEMENT ACTIVITIES; AMENDING SECTIONS OF THE NMSA 1978.**

**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**

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1 secretary or the department or any division of the department,  
2 except where authority conferred upon any division is  
3 explicitly exempted from the secretary's authority by statute.

4 In accordance with these provisions, the secretary shall:

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

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

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

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

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

. 134317. 1

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1 (6) conduct research and studies that will  
2 improve the operations of the department and the provision of  
3 services to the citizens of the state;

4 (7) conduct quality assurance and quality  
5 improvement activities;

6 [~~(7)~~] (8) provide courses of instruction and  
7 practical training for employees of the department and other  
8 persons involved in the administration of programs with the  
9 objective of improving the operations and efficiency of  
10 administration;

11 [~~(8)~~] (9) prepare an annual budget of the  
12 department;

13 [~~(9)~~] (10) appoint, with the governor's  
14 consent, a "director" for each division. These appointed  
15 positions are exempt from the provisions of the Personnel Act.  
16 Persons appointed to these positions shall serve at the  
17 pleasure of the secretary;

18 [~~(10)~~] (11) give bond in the penal sum of  
19 twenty-five thousand dollars (\$25,000) and require directors  
20 to each give bond in the penal sum of ten thousand dollars  
21 (\$10,000) conditioned upon the faithful performance of duties,  
22 as provided in the Surety Bond Act. The department shall pay  
23 the costs of those bonds; and

24 [~~(11)~~] (12) require performance bonds of such  
25 department employees and officers as he deems necessary, as

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1 provided in the Surety Bond Act. The department shall pay the  
2 costs of those bonds.

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

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

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

21 (2) he shall provide educational programs, in  
22 accordance with the special education [~~regulations~~] rules of  
23 the state board of education, for school-age persons who are  
24 clients of institutions under his authority but who are  
25 enrolled in a public school by:

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1 (a) using the facilities and personnel  
2 of the department;

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

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

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

. 134317. 1

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1 date in a newspaper of general circulation and mailed at least  
2 thirty days prior to the hearing date to all persons who have  
3 made a written request for advance notice of hearing. All  
4 rules [~~and regulations~~] shall be filed in accordance with the  
5 State Rules Act. "

6 Section 2. Section 24-1-3 NMSA 1978 (being Laws 1973,  
7 Chapter 359, Section 3, as amended) is amended to read:

8 "24-1-3. POWERS AND AUTHORITY OF DEPARTMENT. -- The  
9 department has authority to:

10 A. receive such grants, subsidies, donations,  
11 allotments or bequests as may be offered to the state by the  
12 federal government or any department thereof or by any public  
13 or private foundation or individuals;

14 B. supervise the health and hygiene of the people  
15 of the state;

16 C. investigate, control and abate the causes of  
17 disease, especially epidemics, sources of mortality and other  
18 conditions of public health;

19 D. establish, maintain and enforce isolation and  
20 quarantine;

21 E. close any public place and forbid gatherings of  
22 people when necessary for the protection of the public health;

23 F. establish programs and adopt [~~regulations~~]  
24 rules to prevent infant mortality, birth defects and  
25 morbidity;

. 134317. 1

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1 G. prescribe the duties of public health nurses  
2 and school nurses;

3 H. provide educational programs and disseminate  
4 information on public health;

5 I. maintain and enforce [~~regulations~~] rules for  
6 the licensure of health facilities;

7 J. bring action in court for the enforcement of  
8 health laws and [~~regulations~~] rules and orders issued by the  
9 department;

10 K. enter into agreements with other states to  
11 carry out the powers and duties of the department;

12 L. cooperate and enter into contracts or  
13 agreements with the federal government or any other person to  
14 carry out the powers and duties of the department;

15 M. maintain and enforce [~~regulations~~] rules for  
16 the control of communicable diseases deemed to be dangerous to  
17 public health;

18 N. maintain and enforce [~~regulations~~] rules for  
19 immunization against diseases deemed to be dangerous to the  
20 public health;

21 O. maintain and enforce such rules [~~and~~  
22 ~~regulations~~] as may be necessary to carry out the provisions  
23 of the Public Health Act and to publish [~~same~~] the rules;

24 P. supervise state public health activities,  
25 operate a dental public health program and operate state

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1 laboratories for the investigation of public health matters;

2 Q. sue and, with the consent of the legislature,  
3 be sued;

4 R. regulate the practice of midwifery;

5 S. administer legislation enacted pursuant to  
6 Title VI of the Public Health Service Act, as amended and  
7 supplemented;

8 T. inspect such premises or vehicles as necessary  
9 to ascertain the existence or nonexistence of conditions  
10 dangerous to public health or safety; [~~and~~]

11 U. request and inspect, while maintaining federal  
12 and state confidentiality requirements, copies of:

13 (1) medical and clinical records reasonably  
14 required for the department's quality assurance and quality  
15 improvement activities; and

16 (2) all medical and clinical records  
17 pertaining to the individual whose death is the subject of  
18 inquiry by the department's mortality review activities; and

19 [~~U.~~] V. do all other things necessary to carry out  
20 its duties. "