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HOUSE BILL 915

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

INTRODUCED BY

Ni ck L. Salazar

AN ACT

RELATING TO EXECUTIVE REORGANIZATION; CREATING THE ADULT SERVICES DEPARTMENT; PROVIDING FOR A PHASED TRANSITION TO THE NEW DEPARTMENT; TRANSFERRING FUNCTIONS, PERSONNEL, MONEY, APPROPRIATIONS AND PROPERTY FROM THE STATE AGENCY ON AGING, THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT, THE DEPARTMENT OF HEALTH AND THE HUMAN SERVICES DEPARTMENT; MAKING AN APPROPRIATION.

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

Section 1. [NEW MATERIAL] SHORT TITLE. --Sections 1 through 9 of this act may be cited as the "Adult Services Department Act".

Section 2. [NEW MATERIAL] PURPOSE. --The purpose of the Adult Services Department Act is to create a single, unified department to administer all laws and exercise all functions

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1 formerly administered by the state agency on aging, children,
2 youth and families department, department of health and human
3 services department that relate to long-term care and
4 comprehensive services for seniors and other adults.

5 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
6 Adult Services Department Act:

7 A. "department" means the adult services
8 department; and

9 B. "secretary" means the secretary of adult
10 services.

11 Section 4. [NEW MATERIAL] DEPARTMENT CREATED--
12 DIVISIONS. --The "adult services department" is created. The
13 department is a cabinet department and includes the following
14 divisions:

15 A. administrative services division;

16 B. adult protective services division;

17 C. consumer protection division;

18 D. disabled adult programs division;

19 E. medicaid programs division; and

20 F. senior programs division.

21 Section 5. [NEW MATERIAL] SECRETARY OF ADULT SERVICES--
22 APPOINTMENT. --

23 A. The chief executive and administrative officer
24 of the department is the "secretary of adult services". The
25 secretary shall be appointed by the governor with the consent

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1 of the senate. The secretary shall hold that office at the
2 pleasure of the governor and shall serve in the executive
3 cabinet.

4 B. An appointed secretary shall serve and have all
5 of the duties, responsibilities and authority of that office
6 during the period of time prior to final action by the senate
7 confirming or rejecting his appointment.

8 Section 6. [NEW MATERIAL] SECRETARY--DUTIES AND GENERAL
9 POWERS.--

10 A. The secretary is responsible to the governor
11 for the operation of the department. It is his duty to manage
12 all operations of the department and to administer and enforce
13 the laws with which he or the department is charged.

14 B. To perform his duties, the secretary has every
15 power expressly enumerated in the laws, whether granted to the
16 secretary or the department or any division of the department,
17 except where authority conferred upon any division is
18 explicitly exempted from the secretary's authority by statute.

19 In accordance with these provisions, the secretary shall:

20 (1) except as otherwise provided in the Adult
21 Services Department Act, exercise general supervisory and
22 appointing authority over all department employees, subject to
23 any applicable personnel laws and rules;

24 (2) delegate authority to subordinates as he
25 deems necessary and appropriate, clearly delineating such

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1 delegated authority and the limitations thereto;

2 (3) organize the department into those
3 organizational units he deems will enable it to function most
4 efficiently, subject to provisions of law requiring or
5 establishing specific organizational units;

6 (4) within the limitations of available
7 appropriations and applicable laws, employ and fix the
8 compensation of those persons necessary to discharge his
9 duties;

10 (5) take administrative action by issuing
11 orders and instructions, not inconsistent with the law, to
12 assure implementation of and compliance with the provisions of
13 law for whose administration or execution he is responsible
14 and to enforce those orders and instructions by appropriate
15 administrative action in the courts;

16 (6) conduct research and studies that will
17 improve the operations of the department and the provision of
18 services to the citizens of the state;

19 (7) provide courses of instruction and
20 practical training for employees of the department and other
21 persons involved in the administration of programs with the
22 objective of improving the operations and efficiency of
23 administration;

24 (8) prepare an annual budget of the
25 department;

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1 (9) provide cooperation, at the request of
2 heads of administratively attached agencies, in order to:

3 (a) minimize or eliminate duplication
4 of services and jurisdictional conflicts;

5 (b) coordinate activities and resolve
6 problems of mutual concern; and

7 (c) resolve by agreement the manner and
8 extent to which the department shall provide budgeting,
9 recordkeeping and related clerical assistance to
10 administratively attached agencies; and

11 (10) appoint, with the governor's consent, a
12 "director" for each division.

13 C. The secretary may apply for and receive, with
14 the governor's approval, in the name of the department, any
15 public or private funds, including United States government
16 funds, available to the department to carry out its programs,
17 duties or services.

18 D. Where functions of departments overlap or a
19 function assigned to one department could better be performed
20 by another department, the secretary may recommend appropriate
21 legislation to the next session of the legislature for its
22 approval.

23 E. The secretary may make and adopt such
24 reasonable procedural rules as may be necessary to carry out
25 the duties of the department and its divisions. No rule

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1 promulgated by the director of any division in carrying out
2 the functions and duties of the division shall be effective
3 until approved by the secretary unless otherwise provided by
4 statute. Unless otherwise provided by statute, no rule
5 affecting any person or agency outside the department shall be
6 adopted, amended or repealed without a public hearing on the
7 proposed action before the secretary or a hearing officer
8 designated by him. The public hearing shall be held in
9 Santa Fe unless otherwise permitted by statute. Notice of the
10 subject matter of the rule, the action proposed to be taken,
11 the time and place of the hearing, the manner in which
12 interested persons may present their views and the method by
13 which copies of the proposed rule, proposed amendment or
14 repeal of an existing rule may be obtained shall be published
15 once at least thirty days prior to the hearing date in a
16 newspaper of general circulation and mailed at least thirty
17 days prior to the hearing date to all persons who have made a
18 written request for advance notice of hearing. Rules shall be
19 filed in accordance with the State Rules Act.

20 Section 7. [NEW MATERIAL] DIVISION DIRECTORS. -- Except as
21 otherwise provided by law, the secretary shall appoint, with
22 the approval of the governor, "directors" of divisions
23 established in the department. The directors so appointed are
24 exempt from the Personnel Act.

25 Section 8. [NEW MATERIAL] BUREAUS-- CHIEFS. -- The

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1 secretary shall establish in the divisions such bureaus as he
2 deems necessary to carry out the provisions of the Adult
3 Services Department Act. He shall appoint a "chief" to be the
4 administrative head of the bureau. The chief and subsidiary
5 employees of the department shall be covered by the Personnel
6 Act unless otherwise provided by law.

7 Section 9. [NEW MATERIAL] DEPARTMENT RESPONSIBILITIES--
8 TRANSITION AND INTEGRATION PLAN. --

9 A. The adult services department shall be
10 responsible for the administration of the Older Americans Act
11 of 2001 and other programs and services that were provided by
12 the state agency on aging; adult protective services and other
13 programs that serve disabled adults and the elderly that were
14 administered by the children, youth and families department;
15 the home and community-based medicaid waiver program for the
16 disabled and elderly; the medicaid centralized screening and
17 intake services program; the medicaid personal care option
18 program; the program of all-inclusive care for the elderly;
19 and other related long-term care programs for seniors and
20 disabled adults that were administered by other state
21 agencies.

22 B. It is the intent of the legislature that
23 consolidation of state services and programs into the adult
24 services department be accomplished as quickly as is feasible
25 within the following two-year period:

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1 (1) the functions of the state agency on
2 aging, the medicaid centralized intake and screening program
3 of the human services department, the home and community-based
4 medicaid waiver program for disabled and elderly persons of
5 the department of health and the medicaid personal care option
6 program of the human services department shall be transferred
7 to the adult services department by January 1, 2002; and

8 (2) the adult protective services program of
9 the children, youth and families department and the program of
10 all-inclusive care for the elderly of the human services
11 department shall be transferred to the adult services
12 department by January 1, 2003.

13 C. The governor may by executive order move other
14 existing programs for seniors and disabled adults in executive
15 agencies under his control to the adult services department.

16 D. The governor's office and the department of
17 finance and administration shall assist the secretary in the
18 establishment of the adult services department. The secretary
19 of adult services may delay the organization of individual
20 divisions until their functions have been transferred to the
21 adult services department.

22 E. At the time of transfer of an agency or
23 program, all personnel, money, appropriations, records, files,
24 furniture, equipment and other property related to that agency
25 or program shall be transferred to the adult services

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1 department. The governor's office and the state budget
2 division of the department of finance and administration shall
3 assist in the identification of personnel, money,
4 appropriations and property to be transferred. Contractual
5 and other obligations of an agency or program shall be
6 obligations of the adult services department.

7 F. After the effective date of the transfers
8 provided in Subsection B of this section, references in law to
9 the following agencies or programs shall be deemed to be
10 references to the adult services department:

11 (1) state agency on aging;

12 (2) children, youth and families department
13 as references relate to adult protective services, attendant
14 care and Title 20 of the federal Social Security Act as it
15 relates to elderly and disabled persons;

16 (3) human services department as references
17 relate to medicaid centralized intake and screening, personal
18 care option program and program of all-inclusive care for the
19 elderly; and

20 (4) department of health as references relate
21 to the home and community-based medicaid waiver program for
22 disabled and elderly persons.

23 G. The secretary of adult services shall provide
24 periodic updates to the legislative finance committee and the
25 legislative health and human services committee on the

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1 progress of the transition and integration plan and the
2 establishment of the adult services department. By November 1
3 of 2001 and 2002, the secretary shall provide the legislative
4 health and human services committee with recommendations for
5 statutory changes necessary to implement fully the Adult
6 Services Department Act, including correcting statutory
7 references.

8 Section 10. Section 9-8-8 NMSA 1978 (being Laws 1977,
9 Chapter 252, Section 9, as amended) is amended to read:

10 "9-8-8. ADMINISTRATIVELY ATTACHED AGENCIES. -- The New
11 Mexico office of Indian affairs and the commission on the
12 status of women [~~and the state agency on aging~~] are
13 administratively attached to the human services department in
14 accordance with the Executive Reorganization Act. "

15 Section 11. APPROPRIATION. -- Two hundred fifty thousand
16 dollars (\$250,000) is appropriated from the general fund to
17 the office of the governor for expenditure in fiscal years
18 2001 through 2003 for transition expenses needed to establish
19 the adult services department. The office of the governor
20 shall provide periodic reports to the legislative finance
21 committee on expenditures from the appropriation. Any
22 unexpended or unencumbered balance remaining at the end of
23 fiscal year 2003 shall revert to the general fund.

24 Section 12. REPEAL. -- Sections 28-4-1 through 28-4-9 NMSA
25 1978 (being Laws 1969, Chapter 55, Section 2, Laws 1977,

1 Chapter 252, Section 17, Laws 1969, Chapter 55, Section 3 and
2 Laws 1979, Chapter 203, Sections 1 through 6, as amended) are
3 repealed.

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