

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 secretary or the department or any division of the department, except where authority conferred upon any division is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

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

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

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

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

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

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

(7) conduct quality assurance and quality improvement activities;

(8) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the

objective of improving the operations and efficiency of administration;

(9) prepare an annual budget of the department;

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

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

(12) require performance bonds of such department employees and officers as he deems necessary, as provided in the Surety Bond Act. The department shall pay the costs of those bonds.

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

D. The secretary shall be responsible for

providing appropriate educational programs for all school-age persons, as defined in Section 22-1-2 NMSA 1978, who are clients, as defined in Section 43-1-3 NMSA 1978, of institutions under his authority as follows:

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

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

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

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

(c) using a combination of Subparagraphs (a) and (b) of this paragraph.

E. The secretary may make and adopt such reasonable and procedural rules as may be necessary to carry

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

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

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

A. receive such grants, subsidies, donations,

allotments or bequests as may be offered to the state by the federal government or any department thereof or by any public or private foundation or individuals;

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

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

D. establish, maintain and enforce isolation and quarantine;

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

F. establish programs and adopt rules to prevent infant mortality, birth defects and morbidity;

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

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

I. maintain and enforce rules for the licensure of health facilities;

J. bring action in court for the enforcement of health laws and rules and orders issued by the department;

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

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

M maintain and enforce rules for the control of communicable diseases deemed to be dangerous to public health;

N. maintain and enforce rules for immunization against diseases deemed to be dangerous to the public health;

O. maintain and enforce such rules as may be necessary to carry out the provisions of the Public Health Act and to publish the rules;

P. supervise state public health activities, operate a dental public health program and operate state laboratories for the investigation of public health matters;

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

R. regulate the practice of midwifery;

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

T. inspect such premises or vehicles as necessary to ascertain the existence or nonexistence of conditions dangerous to public health or safety;

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

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

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

V. do all other things necessary to carry out its duties. "
