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SENATE BILL 9

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO HEALTH; ENACTING THE HEALTH CARE REGISTRY ACT;  
ESTABLISHING A REGISTRY OF EMPLOYEES GUILTY OF ABUSE, NEGLECT  
OR EXPLOITATION; MAKING AN APPROPRIATION.

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

Section 1. SHORT TITLE.--This act may be cited as the  
"Health Care Registry Act".

Section 2. DEFINITIONS.--As used in the Health Care  
Registry Act:

- A. "department" means the department of health;
- B. "employee" means a person providing services to  
the developmentally disabled, physically disabled or elderly,  
including a personal care attendant funded through the medicaid  
program;
- C. "provider" means a managed care organization or

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1 a community provider of services to the developmentally  
2 disabled, physically disabled or elderly; and

3 D. "secretary" means the secretary of health.

4 Section 3. REGISTRY OF EMPLOYEES GUILTY OF ABUSE, NEGLECT  
5 OR EXPLOITATION. --

6 A. The department shall establish a registry of  
7 employees who have been found guilty of committing abuse,  
8 neglect or exploitation pursuant to the provisions of the  
9 Health Care Registry Act.

10 B. Before a provider or governmental entity hires,  
11 contracts with or employs an employee, the provider or  
12 governmental entity shall inquire whether the employee is  
13 included in the registry.

14 C. When the department receives an inquiry  
15 regarding whether the employee is included in the registry, the  
16 department shall inform the person making the inquiry whether  
17 the employee is included in the registry.

18 D. Providers and governmental entities that hire  
19 employees shall maintain documentation demonstrating  
20 affirmative proof of having checked the registry for each  
21 applicant.

22 E. A provider or a governmental entity shall not  
23 hire, contract with or employ an employee who is included in  
24 the registry.

25 F. A division of the department or a governmental

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1 agency representing the developmentally disabled, physically  
2 disabled or elderly or contracting for the personal care  
3 attendant option of the medicaid program shall not enter into a  
4 new contract or renew a contract with a provider or a  
5 governmental entity that fails to comply with the provisions of  
6 Subsection E of this section.

7 G. A provider or a governmental entity that fails  
8 to hire or retain an employee or applicant because the employee  
9 or applicant is included in the registry shall not be liable  
10 for damages in a civil action brought by the employee or  
11 applicant for employment.

12 H. An employee may petition the department for  
13 removal of the employee's name from the registry if there was a  
14 finding of neglect. Petitions for removal will not be accepted  
15 when the finding is for abuse or exploitation. Petitions for  
16 removal shall be in writing and mailed or hand-delivered to the  
17 department.

18 I. The department shall promulgate rules as  
19 necessary to carry out the provisions of the Health Care  
20 Registry Act.

21 Section 4. REVIEW OF REPORT OF ABUSE, NEGLECT OR  
22 EXPLOITATION--HEARING--INCLUDING IN THE REGISTRY.--

23 A. In addition to other actions required by law,  
24 the department shall review each report it receives of abuse or  
25 neglect of an individual with developmental disabilities or

1 physical disabilities or an elderly individual or exploitation  
2 of such an individual's property that includes an allegation  
3 that an employee was responsible for the abuse, neglect or  
4 exploitation. The department shall review the reports it  
5 receives from the children, youth and families department or an  
6 adult protective services agency only after the human services  
7 department completes its investigation pursuant to Section  
8 27-7-19 NMSA 1978.

9 B. The department shall:

10 (1) investigate the allegation and determine  
11 whether there is a reasonable basis for the allegation; and

12 (2) if it determines there is a reasonable  
13 basis for the allegation, conduct a fair hearing pursuant to  
14 the provisions of the Administrative Procedures Act at the  
15 request of the employee who has been determined to be guilty of  
16 abuse, neglect or exploitation.

17 C. If the secretary, or the secretary's designee,  
18 determines that abuse, neglect or exploitation has occurred,  
19 the secretary, or the secretary's designee, shall notify by  
20 mail the employee implicated in the investigation and the  
21 provider or governmental entity that employs the implicated  
22 employee:

- 23 (1) of the nature of the allegation;  
24 (2) of the date and time of the occurrence;  
25 (3) of the employee's right to a hearing;

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1 (4) of the department's intent to report the  
2 substantiated findings, once the employee has had the  
3 opportunity for a hearing, to the registry and other  
4 appropriate licensing authorities; and

5 (5) that the employee's failure to request a  
6 hearing in writing within thirty days from the date of the  
7 notice shall result in the department's reporting the  
8 substantiated findings to the provider or governmental entity  
9 that employs the implicated employee and to the registry.

10 D. The secretary shall not include in the registry  
11 an employee who has been found not guilty by a court of an  
12 offense arising from the same facts.

13 Section 5. APPROPRIATION. -- Fifty thousand dollars  
14 (\$50,000) is appropriated from the general fund to the  
15 department of health for expenditure in fiscal years 2005 and  
16 subsequent fiscal years to administer a registry of employees  
17 who have been found guilty of committing abuse, neglect or  
18 exploitation of the developmentally disabled, physically  
19 disabled or elderly. Any unexpended or unencumbered balance  
20 remaining at the end of a fiscal year shall not revert to the  
21 general fund.