

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 9

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

AN ACT

RELATING TO HEALTH; ENACTING THE HEALTH CARE REGISTRY ACT;  
ESTABLISHING A REGISTRY OF EMPLOYEES DETERMINED TO HAVE  
COMMITTED ABUSE, NEGLIGENCE OR MISAPPROPRIATION OF PROPERTY;  
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. "abuse" means the willful infliction of injury,  
unreasonable confinement, intimidation or punishment with  
resulting physical harm, pain or mental anguish;

B. "department" means the department of health;

C. "direct care" means face-to-face services

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underscored material = new  
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1 provided to a service recipient;

2 D. "employee" means a non-licensed person employed  
3 or contracted to provide services to persons who are  
4 developmentally disabled, physically disabled or elderly,  
5 including a personal care attendant funded through the medicaid  
6 program;

7 E. "misappropriation of property" means the  
8 deliberate misplacement, exploitation or wrongful, temporary or  
9 permanent use of a resident's belongings or money without the  
10 resident's consent;

11 F. "neglect" means the failure to provide goods and  
12 services necessary to avoid physical harm, mental anguish or  
13 mental illness;

14 G. "provider" means an agency or organization that  
15 delivers home and community-based services to adults or  
16 children with developmental disabilities, including an  
17 intermediate care facility for the mentally retarded, an agency  
18 that delivers services to the elderly or an agency that  
19 delivers services to the physically disabled. "Provider" does  
20 not include managed care organizations, except for their  
21 employees who provide respite care to persons who are  
22 developmentally disabled, physically disabled or elderly;

23 H. "reasonable basis" means when facts and  
24 circumstances within the provider's knowledge and of which the  
25 provider had reasonably trustworthy information are sufficient

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1 in themselves to justify a determination that abuse, neglect or  
2 misappropriation of property has occurred;

3 I. "registry" means the health care registry; and

4 J. "secretary" means the secretary of health.

5 Section 3. REGISTRY OF EMPLOYEES DETERMINED TO HAVE  
6 COMMITTED ABUSE, NEGLECT OR MISAPPROPRIATION OF PROPERTY.--

7 A. The department shall establish a "health care  
8 registry" of employees determined by the department to have  
9 committed abuse, neglect or misappropriation of property  
10 pursuant to the Health Care Registry Act.

11 B. Before a provider hires or contracts with an  
12 employee, the provider shall inquire of the department whether  
13 the employee is included in the registry.

14 C. When the department receives an inquiry  
15 regarding whether the employee or prospective employee is  
16 included in the registry, the department shall inform the  
17 provider whether the employee or prospective employee is  
18 included in the registry.

19 D. Providers that hire employees shall maintain  
20 documentation demonstrating that they have checked the registry  
21 for each applicant being considered for employment.

22 E. A provider shall not hire or contract with an  
23 employee in a direct care setting or other setting that allows  
24 for routine and unsupervised physical or financial access to  
25 persons who are developmentally disabled, physically disabled

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1 or elderly if the employee is included in the registry.

2 F. A division of the department or other  
3 governmental agency funding services to the developmentally  
4 disabled, physically disabled or elderly or contracting for the  
5 personal care attendant option of the medicaid program may at  
6 its discretion not enter into or renew a contract with a  
7 provider that fails to comply with the provisions of Subsection  
8 E of this section.

9 G. A provider that reports allegations of abuse,  
10 neglect or misappropriation of property or that fails to hire  
11 an employee because the employee is included in the registry is  
12 presumed to be acting in good faith and shall be immune from  
13 liability as to that employee for both civil and criminal  
14 culpability. If, however, the provider acted in bad faith or  
15 with malicious purpose, the provider is not immune from  
16 liability as to that employee.

17 H. After a period of five years, an employee placed  
18 on the registry may petition the department for removal of the  
19 employee's name from the registry. Petitions for removal shall  
20 be in writing and mailed or hand-delivered to the department.  
21 Upon receipt of a petition, the department shall conduct a fair  
22 hearing. Judicial review pursuant to Section 39-3-1.1 NMSA  
23 1978 shall apply.

24 I. By January 1, 2005, the department shall  
25 promulgate rules necessary to carry out the provisions of the

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1 Health Care Registry Act, including an articulation of  
2 standards for determining neglect and a phase-in of the  
3 registry by July 1, 2006 for employees of:

4 (1) providers to adults and children with  
5 developmental disabilities;

6 (2) providers to adults and children with  
7 physical disabilities;

8 (3) providers to the elderly; and

9 (4) personal care attendants funded through  
10 the medicaid program.

11 J. The department shall promulgate rules necessary  
12 for the implementation of the Health Care Registry Act. The  
13 rules shall include:

14 (1) the information that shall appear in the  
15 registry;

16 (2) the procedure for making a determination  
17 of abuse, neglect or misappropriation of property pursuant to  
18 the provisions of this section;

19 (3) the time frame within which the department  
20 shall inform a provider whether an employee is included in the  
21 registry following the department's receipt of an inquiry by a  
22 provider pursuant to the provisions of this section;

23 (4) the procedure to be followed for reporting  
24 abuse, neglect or misappropriation of property, for reviewing  
25 and investigating a claim of abuse, neglect or misappropriation

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1 of property and for determining whether there is a reasonable  
2 basis for a complaint of abuse, neglect or misappropriation of  
3 property pursuant to the provisions of Section 4 of the Health  
4 Care Registry Act;

5 (5) the process by which the department  
6 informs the employee of the employee's due process rights,  
7 including the right to a hearing pursuant to the provisions of  
8 Section 4 of the Health Care Registry Act;

9 (6) what constitutes a reasonable basis for a  
10 complaint pursuant to the provisions of Section 4 of this act;

11 (7) the process by which the department shall  
12 access an employee's records; and

13 (8) the process by which a provider shall  
14 maintain documentation on accessing registry information.

15 Section 4. REVIEW OF REPORT OF ABUSE, NEGLECT OR  
16 MISAPPROPRIATION OF PROPERTY--HEARING.--

17 A. In addition to other actions required by law,  
18 the department shall review each report it receives of abuse,  
19 neglect or misappropriation of property of a person who is  
20 developmentally disabled, physically disabled or elderly being  
21 served by providers. The department shall also review the  
22 reports of abuse, neglect or misappropriation of property that  
23 involves employees of providers that it receives from the  
24 children, youth and families department or a protective  
25 services agency.

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1           B. The department shall investigate all allegations  
2 to determine whether there is a reasonable basis for a  
3 complaint of abuse, neglect or misappropriation of property.

4           C. If the department determines that abuse, neglect  
5 or misappropriation of property has occurred, the department  
6 shall notify the employee by personal service or by registered  
7 mail with a return receipt of the employee's right to a fair  
8 hearing. The notice, which shall also be mailed to the  
9 provider, shall include:

10                   (1) the nature of the determination of the  
11 abuse, neglect or misappropriation of property;

12                   (2) the date and time of the occurrence;

13                   (3) the employee's right to a fair hearing;

14                   (4) the department's intent to report the  
15 substantiated findings, once the employee has had the  
16 opportunity for a hearing, to the registry; and

17                   (5) that the employee's failure to request a  
18 hearing in writing within thirty days from the date of the  
19 notice shall result in the department's reporting of the  
20 employee's placement on the registry to the provider that  
21 employs the implicated employee, to the employee and to the  
22 registry.

23           D. If an employee waives the right to a hearing or  
24 receives a hearing pursuant to Subsection C of this section and  
25 the decision of the hearing upholds the department's

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1 determination that abuse, neglect or misappropriation of  
2 property has occurred, the department shall report the  
3 employee's placement on the registry to the provider that  
4 employs the implicated employee, to the employee and to the  
5 registry.

6 E. If an employee receives a hearing pursuant to  
7 Subsection C of this section and the decision of the hearing  
8 does not uphold the department's determination that abuse,  
9 neglect or misappropriation of property has occurred, the  
10 department shall notify the employee and the provider by mail  
11 that the department's determination was unsubstantiated and  
12 that the department will not report its findings to the  
13 registry.

14 F. If the department determines that the employee  
15 has committed abuse, neglect or misappropriation of property,  
16 the department shall notify the employee of the employee's  
17 right to judicial review pursuant to the provisions of Section  
18 39-3-1.1 NMSA 1978.

19 G. Records obtained by the department pursuant to  
20 the Health Care Registry Act shall be used only to determine  
21 whether an employee has committed abuse, neglect or  
22 misappropriation of property that would disqualify the employee  
23 from employment as a caregiver.

24 H. The department shall not implement the registry  
25 if funding is not available for implementation.

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