

AN ACT

RELATING TO EXECUTIVE ORGANIZATION; CREATING THE AGING AND LONG-TERM SERVICES DEPARTMENT; PROVIDING POWERS AND DUTIES; PROVIDING FOR A PHASED TRANSITION TO THE NEW DEPARTMENT; APPROVING TRANSFERS OF FUNCTIONS, PERSONNEL, MONEY, APPROPRIATIONS AND PROPERTY.

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

Section 1. SHORT TITLE.--Sections 1 through 11 of this act may be cited as the "Aging and Long-Term Services Department Act".

Section 2. PURPOSE.--The purpose of the Aging and Long-Term Services Department Act is to create a single, unified department to administer all laws and exercise all functions formerly administered by the state agency on aging and to administer laws and exercise functions of the human services department, the department of health and the children, youth and families department that relate to aging, adults with disabilities or long-term care services.

Section 3. DEFINITIONS.--As used in the Aging and Long-Term Services Department Act:

A. "department" means the aging and long-term services department; and

B. "secretary" means the secretary of aging and long-term services.

Section 4. DEPARTMENT CREATED--DIVISIONS.--

A. The "aging and long-term services department" is created. The department is a cabinet department and includes the following divisions:

- (1) administrative services division;
- (2) consumer and elder rights division;
- (3) aging network services division;
- (4) long-term care division; and
- (5) adult protective services division.

B. The secretary may organize the department and the divisions specified in Subsection A of this section and may transfer or merge functions between divisions in the interest of efficiency and economy.

Section 5. SECRETARY OF AGING AND LONG-TERM SERVICES--
APPOINTMENT.--

A. The chief executive and administrative officer of the department is the "secretary of aging and long-term services". The secretary shall be appointed by the governor with the consent of the senate. The secretary shall hold that office at the pleasure of the governor and shall serve in the executive cabinet.

B. An appointed secretary shall serve and have all of the duties, responsibilities and authority of that office during the period of time prior to final action by the senate confirming or rejecting the secretary-designate's appointment.

Section 6. SECRETARY--DUTIES AND GENERAL POWERS.--

A. The secretary is responsible to the governor for the operation of the department. It is the secretary's duty to manage all operations of the department and to administer and enforce the laws with which the secretary or the department is charged.

B. To perform the secretary's 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 Aging and Long-Term Services Department 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 the secretary deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units the secretary deems will enable it to function most efficiently, subject to 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 the secretary's duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to ensure implementation of and compliance with the provisions of law for whose administration or execution the secretary 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) 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;

(8) prepare an annual budget of the department;

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

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

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

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, record-keeping and related clerical assistance to administratively attached agencies; and

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

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 United States government funds, available to the department to carry out its programs, duties or services.

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

E. The secretary may make and adopt such reasonable procedural rules as may be necessary to carry out the duties of the department and its divisions. A rule promulgated by the director of any division in carrying out

the functions and duties of the division shall not 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 the secretary. 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. Rules shall be filed in accordance with the State Rules Act.

Section 7. DIVISION DIRECTORS.--The secretary shall appoint, with the approval of the governor, "directors" of divisions established in the department. The directors so appointed are exempt from the Personnel Act.

Section 8. BUREAUS--CHIEFS.--The secretary may establish in the divisions such bureaus as the secretary deems necessary to carry out the provisions of the Aging and

Long-Term Services Department Act. The secretary shall employ a "chief" to be the administrative head of a bureau.

Section 9. DIVISIONS--GENERAL DUTIES.--In addition to the duties assigned to each division of the department by the secretary:

A. the administrative services division shall provide clerical, recordkeeping and administrative support to the department in the areas of personnel, budget, procurement and contracting;

B. the consumer and elder rights division shall administer the long-term care ombudsman program and provide health insurance and benefits counseling and legal services;

C. the aging network services division shall administer the federal Older Americans' Act programs;

D. the long-term care division shall administer home- and community-based long-term care programs; and

E. the adult protective services division shall provide adult protective services.

Section 10. OFFICE OF INDIAN ELDER AFFAIRS CREATED.--The "office of Indian elder affairs" is created within the office of the secretary. The office of Indian elder affairs shall assume the responsibilities of the Indian area agency on aging, including contract management, program compliance monitoring, technical assistance, advocacy and training to pueblo and Apache tribe Older Americans Act of 1965 programs,

and to establish relationships that support the efforts of the Navajo area agency on aging, and shall participate with the other divisions of the department to review and make recommendations regarding other health and social programs of the department that serve Indian elders. Abolishment or transfer of the office of Indian elder affairs out of the department shall require approval of the legislature.

Section 11. ORGANIZATIONAL UNITS OF THE DEPARTMENT--
POWERS AND DUTIES SPECIFIED BY LAW--ACCESS TO INFORMATION.--
Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, who shall retain the final decision-making authority and responsibility for the administration of any such laws as provided in Subsection B of Section 6 of the Aging and Long-Term Services Act. The department shall have access to all records, data and information of other state departments, agencies and institutions, including its own organizational units, not specifically held confidential by law.

Section 12. Section 9-8-8 NMSA 1978 (being Laws 1977, Chapter 252, Section 9, as amended) is amended to read:

"9-8-8. ADMINISTRATIVELY ATTACHED AGENCIES.--The commission on the status of women is administratively attached

to the human services department in accordance with the Executive Reorganization Act."

Section 13. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS, PERSONNEL, PROPERTY, CONTRACTS AND REFERENCES IN LAW.--

A. The transfer of functions, personnel, appropriations, money, records, equipment, supplies, other property and contractual obligations of the state agency on aging to the aging and long-term care department pursuant to executive order issued in accordance with Laws 2003, Chapter 403 is approved and transferred to the aging and long-term services department. All references in law to the state agency on aging shall be deemed to be references to the aging and long-term services department.

B. It is the intent of the legislature that consolidation of state services and programs into the aging and long-term services department be accomplished as quickly as practicable, without disruption in services, as follows:

(1) the functions of the traumatic brain injury program that was administered by the department of health shall be transferred to the aging and long-term services department by July 1, 2004;

(2) the functions of the home- and community-based medicaid waiver program for the disabled and elderly, the medicaid centralized screening and intake services program, the medicaid personal care option program,

the program of all-inclusive care for the elderly and other home- and community-based long-term care programs that serve seniors or adults with disabilities that were administered by the human services department shall be transferred to the aging and long-term services department by no later than January 1, 2005; and

(3) the functions of the adult protective services, adult day care, attendant care and other home- and community-based long-term care programs that serve seniors or adults with disabilities that were administered by the children, youth and families department shall be transferred to the aging and long-term services department by no later than January 1, 2006.

C. At the time of transfer of an agency or program, all personnel, money, appropriations, records, files, furniture, equipment and other property related to that agency or program shall be transferred to the aging and long-term services department. The governor's office and the state budget division of the department of finance and administration shall assist in the identification of personnel, money, appropriations and property to be transferred and shall certify to the legislature that resources transferred from other agencies to the aging and long-term services department are sufficient to continue the same level of services.

D. Contractual and other obligations of an agency or program shall be obligations of the aging and long-term services department.

E. After the effective date of the transfers provided in Subsection B of this section, references in law to the programs being transferred shall be deemed to be references to the aging and long-term services department.

F. The secretary of aging and long-term services shall provide periodic updates to the legislative finance committee and the legislative health and human services committee on the progress of the transition and integration plan and the establishment of the aging and long-term services department. By November 1, 2005, the secretary shall provide the legislative health and human services committee with a comprehensive plan to provide long-term care and related services for all populations, including recommendations, if any, for the transfer of additional long-term services programs from other departments to the aging and long-term services department. Such plan shall be developed with public input and the assistance of an advisory committee representing consumers, advocacy organizations, providers, other departments and stakeholders.
