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HOUSE BILL 801

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Jose A. Campos II

AN ACT

RELATING TO PUBLIC HEALTH; IMPOSING INTERMEDIATE SANCTIONS ON HEALTH FACILITIES; CHANGING LICENSURE REQUIREMENTS; AMENDING SECTIONS OF THE PUBLIC HEALTH ACT.

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

Section 1. Section 24-1-5 NMSA 1978 (being Laws 1973, Chapter 359, Section 5, as amended) is amended to read:

"24-1-5. LICENSURE OF HEALTH FACILITIES--HEARINGS-- APPEALS.--

A. A health facility shall not be operated without a license issued by the department. If a health facility is found to be operating without a license, in order to protect human health or safety, the secretary may issue a cease-and-desist order. The health facility may request a hearing that shall be held in the manner provided in this section. The

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1 department may also proceed pursuant to the Health Facility
2 Receivership Act.

3 B. The department is authorized to make inspections
4 and investigations and to prescribe rules it deems necessary or
5 desirable to promote the health, safety and welfare of persons
6 using health facilities.

7 C. Except as provided in Subsection F of this
8 section, upon receipt of an application for a license to
9 operate a health facility, the department shall promptly
10 inspect the health facility to determine if it is in compliance
11 with all rules of the department. Applications for hospital
12 licenses shall include evidence that the bylaws or rules of the
13 hospital apply equally to osteopathic and medical physicians.
14 The department shall consolidate the applications and
15 inspections for a hospital that also operates as a hospital-
16 based primary care clinic.

17 D. Upon inspection of a health facility, if the
18 department finds a violation of its rules, the department may
19 deny the application for a license, whether initial or renewal,
20 or it may issue a temporary license. A temporary license shall
21 not be issued for a period exceeding one hundred twenty days,
22 nor shall more than two consecutive temporary licenses be
23 issued.

24 E. A one-year nontransferable license shall be
25 issued to any health facility complying with all rules of the

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1 department. The license shall be renewable for successive one-
2 year periods, upon filing of a renewal application, if the
3 department is satisfied that the health facility is in
4 compliance with all rules of the department or, if not in
5 compliance with a rule, has been granted a waiver or variance
6 of that rule by the department pursuant to procedures,
7 conditions and guidelines adopted by rule of the department.
8 Licenses shall be posted in a conspicuous place on the licensed
9 premises, except that child care centers that receive no state
10 or federal funds may apply for and receive from the department
11 a waiver from the requirement that a license be posted or kept
12 on the licensed premises.

13 F. A health facility that has been inspected and
14 licensed by the department and that has received certification
15 for participation in federal reimbursement programs and that
16 has been fully accredited by the joint commission on
17 accreditation of health care organizations or the American
18 osteopathic association shall be granted a license renewal
19 based on that accreditation. Health facilities receiving less
20 than full accreditation by the joint commission on the
21 accreditation of health care organizations or by the American
22 osteopathic association may be granted a license renewal based
23 on that accreditation. License renewals shall be issued upon
24 application submitted by the health facility upon forms
25 prescribed by the department. This subsection does not limit

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1 in any way the department's various duties and responsibilities
2 under other provisions of the Public Health Act or under any
3 other subsection of this section, including any of the
4 department's responsibilities for the health and safety of the
5 public.

6 G. ~~[The department may charge a reasonable fee not~~
7 ~~to exceed three dollars (\$3.00) per bed for an inpatient health~~
8 ~~facility or one hundred dollars (\$100) for any other health~~
9 ~~facility]~~ For each license application, whether initial or
10 renewal, of an annual license or the second consecutive
11 issuance of a temporary license, the department may charge a
12 reasonable fee not to exceed twelve dollars (\$12.00) per
13 inpatient bed in an inpatient health facility or three hundred
14 dollars (\$300) for any other health facility. Fees collected
15 shall not be refundable. All fees collected pursuant to
16 licensure applications shall be deposited with the state
17 treasurer for credit ~~[to the general fund]~~ in a designated
18 department recurring account for use in health facility
19 licensure and certification operations.

20 H. The department may revoke or suspend the license
21 of a health facility or may impose on a health facility an
22 intermediate sanction and a civil monetary penalty provided in
23 Section 24-1-5.2 NMSA 1978 after notice and an opportunity for
24 a hearing before a hearing officer designated by the department
25 to hear the matter and, except for child care centers and

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1 facilities, may proceed pursuant to the Health Facility
2 Receivership Act upon a determination that the health facility
3 is not in compliance with any rule of the department. If
4 immediate action is required to protect human health and
5 safety, the secretary may suspend a license or impose an
6 intermediate sanction pending a hearing, provided the hearing
7 is held within five working days of the suspension or
8 imposition of the sanction, unless waived by the licensee, and,
9 except for child care centers and facilities, may proceed ex
10 parte pursuant to the Health Facility Receivership Act.

11 I. The department shall schedule a hearing pursuant
12 to Subsection H of this section if the department receives a
13 request for a hearing from a licensee:

14 (1) within ten working days after receipt by
15 the licensee of notice of suspension, revocation, imposition of
16 an intermediate sanction or civil monetary penalty or denial of
17 an initial or renewal application;

18 (2) within four working days after receipt by
19 the licensee of an emergency suspension order or emergency
20 intermediate sanction imposition and notice of hearing if the
21 licensee wishes to waive the early hearing scheduled and
22 request a hearing at a later date; or

23 (3) within five working days after receipt of
24 a cease-and-desist order.

25 The department shall also provide timely notice to the

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1 licensee of the date, time and place of the hearing, identity
2 of the hearing officer, subject matter of the hearing and
3 alleged violations.

4 J. A hearing held pursuant to provisions of this
5 section shall be conducted in accordance with adjudicatory
6 hearing rules and procedures adopted by rule of the department.
7 The licensee has the right to be represented by counsel, to
8 present all relevant evidence by means of witnesses and books,
9 papers, documents, records, files and other evidence and to
10 examine all opposing witnesses who appear on any matter
11 relevant to the issues. The hearing officer has the power to
12 administer oaths on request of any party and issue subpoenas
13 and subpoenas duces tecum prior to or after the commencement of
14 the hearing to compel discovery and the attendance of witnesses
15 and the production of relevant books, papers, documents,
16 records, files and other evidence. Documents or records
17 pertaining to abuse, neglect or exploitation of a resident,
18 client or patient of a health facility or other documents,
19 records or files in the custody of the human services
20 department or the office of the state long-term care ombudsman
21 at the [~~state agency on~~] aging and long-term services
22 department that are relevant to the alleged violations are
23 discoverable and admissible as evidence in any hearing.

24 K. Any party may appeal the final decision of the
25 department pursuant to the provisions of Section 39-3-1.1 NMSA

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1 1978.

2 L. A complaint about a health facility received by
3 the department pursuant to this section shall be promptly
4 investigated and appropriate action shall be taken if
5 substantiated. The department shall develop a health
6 facilities protocol in conjunction with the human services
7 department, the protective services division of the children,
8 youth and families department, the office of the state long-
9 term care ombudsman and other appropriate agencies to ensure
10 the health, safety and rights of individuals in health
11 facilities. The health facilities protocol shall require:

12 (1) cross-reference among agencies pursuant to
13 this subsection of an allegation of abuse, neglect or
14 exploitation;

15 (2) an investigation, within the strict
16 priority time frames established by each protocol member's
17 rules, of an allegation or referral of abuse, neglect or
18 exploitation after the department has made a good cause
19 determination that abuse, neglect or exploitation occurred;

20 (3) an agency to share its investigative
21 information and findings with other agencies, unless otherwise
22 prohibited by law; and

23 (4) require the receiving agency to accept the
24 information provided pursuant to Paragraph (3) of this
25 subsection as potential evidence to initiate and conduct

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1 investigations.

2 M. A complaint received by the department pursuant
3 to this section shall not be disclosed publicly in a manner as
4 to identify any individuals or health facilities if upon
5 investigation the complaint is unsubstantiated.

6 N. Notwithstanding any other provision of this
7 section, when there are reasonable grounds to believe that a
8 child is in imminent danger of abuse or neglect while in the
9 care of a child care facility, whether or not licensed, or upon
10 the receipt of a report pursuant to Section 32A-4-3 NMSA 1978,
11 the department shall consult with the owner or operator of the
12 child care facility. Upon a finding of probable cause, the
13 department shall give the owner or operator notice of its
14 intent to suspend operation of the child care facility and
15 provide an opportunity for a hearing to be held within three
16 working days, unless waived by the owner or operator. Within
17 seven working days from the day of notice, the secretary shall
18 make a decision, and, if it is determined that any child is in
19 imminent danger of abuse or neglect in the child care facility,
20 the secretary may suspend operation of the child care facility
21 for a period not in excess of fifteen days. Prior to the date
22 of the hearing, the department shall make a reasonable effort
23 to notify the parents of children in the child care facility of
24 the notice and opportunity for hearing given to the owner or
25 operator.

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1 0. Nothing contained in this section or in the
2 Public Health Act shall authorize either the secretary or the
3 department to make any inspection or investigation or to
4 prescribe any rules concerning group homes as defined in
5 Section 9-8-13 NMSA 1978 except as are reasonably necessary or
6 desirable to promote the health and safety of persons using
7 group homes."

8 Section 2. Section 24-1-5.2 NMSA 1978 (being Laws 1990,
9 Chapter 105, Section 2, as amended) is amended to read:

10 "24-1-5.2. HEALTH FACILITIES--INTERMEDIATE SANCTIONS--
11 CIVIL PENALTY.--

12 A. Upon a determination that a health facility is
13 not in compliance with any licensing requirement of the
14 department, the department, subject to the provisions of this
15 section and Section 24-1-5 NMSA 1978, may:

16 (1) impose any intermediate sanction
17 established by [~~regulation~~] rule, including but not limited to:

- 18 (a) a directed plan of correction;
- 19 (b) facility monitors;
- 20 (c) denial of payment for new medicaid
21 admissions to the facility;
- 22 (d) temporary management or
23 receivership; and
- 24 (e) restricted admissions;

25 (2) assess a civil monetary penalty, with

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1 interest, for each day the facility is or was out of
2 compliance. Civil monetary penalties shall not exceed a total
3 of [~~five thousand dollars (\$5,000)~~] ten thousand dollars
4 (\$10,000) per day. Penalties and interest amounts assessed
5 under this paragraph and recovered on behalf of the state shall
6 be remitted to the [~~state treasurer for deposit in the general~~
7 ~~fund, except as otherwise provided by federal law for medicaid-~~
8 ~~certified nursing facilities]~~ department in a recurring account
9 in the state treasury for the sole purpose of funding the
10 nonreimbursed cost of facility monitors, temporary management
11 and health facility receiverships. The civil monetary
12 penalties contained in this paragraph are cumulative and may be
13 imposed in addition to any other fines or penalties provided by
14 law; and

15 (3) with respect to health facilities other
16 than childcare centers or facilities, proceed pursuant to the
17 Health Facility Receivership Act.

18 B. The secretary shall adopt and promulgate
19 [~~regulations~~] rules specifying the criteria for imposition of
20 any intermediate sanction and civil monetary penalty. The
21 criteria shall provide for more severe sanctions for a
22 violation that results in any abuse, neglect or exploitation of
23 residents, clients or patients as defined in the [~~regulations~~]
24 rules or that places one or more residents, clients or patients
25 of a health facility at substantial risk of serious physical or

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1 mental harm.

2 ~~[G. The provisions of this section for intermediate~~
3 ~~sanctions and civil monetary penalties shall not apply to~~
4 ~~certified nursing facilities except upon a determination by the~~
5 ~~federal health care financing administration that these~~
6 ~~provisions comply with the provisions for nursing facility~~
7 ~~remedies and civil monetary penalties pursuant to 42 U.S.C.~~
8 ~~1395 and 1396, as amended, and upon a determination by the~~
9 ~~department that no other state or federal agency is authorized~~
10 ~~to impose the same remedies, sanctions or penalties.]~~

11 C. The provisions of this section for intermediate
12 sanctions and civil monetary penalties shall apply to certified
13 nursing facilities except when a federal agency has imposed the
14 same remedies, sanctions or penalties for the same violations.

15 D. Rules adopted by the department shall permit
16 sanctions pursuant to Paragraphs (1) and (2) of Subsection A of
17 this section for a specific violation in a certified nursing
18 facility if:

19 (1) the state statute or rule is not
20 duplicated by a federal certification rule; or

21 (2) the department determines intermediate
22 sanctions are necessary if sanctions permitted pursuant to
23 Paragraphs (1) and (2) of Subsection A of this section do not
24 duplicate a sanction imposed under the authority of 42 U.S.C.
25 1395 or 1396 for a particular deficiency.

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[D-] E. A health facility is liable for the reasonable costs of a directed plan of correction, facility monitors, temporary management or receivership imposed pursuant to this section and Section 24-1-5 NMSA 1978. The department may take all necessary and appropriate legal action to recover these costs from a health facility. All money recovered from a health facility pursuant to this subsection shall be paid into the general fund."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.