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AN ACT
RELATING TO HEALTH AND SAFETY; LIMITING RECEIVERSHIP
LIABILITY; AMENDING THE HEALTH FACILITY RECEIVERSHIP ACT.

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

Section 1. Section 24-1E-5 NMSA 1978 (being Laws 1996,
Chapter 35, Section 8) is amended to read:

"24-1E-5. RECEIVER'S POWERS AND DUTIES.--

A. In addition to the receiver's powers and duties
under the Receivership Act, the secretary as receiver and any
deputy receiver under the Health Facility Receivership Act
shall, except as the district court may otherwise order:

(1) perform all acts that are necessary to:

(a) correct or remedy each condition on
which the receiver's appointment was based;

(b) ensure adequate care and necessary
services for each resident or other person in the health
facility;

(c) bring the facility into compliance
with all applicable state and federal laws, rules and
regulations; and

(d) manage and operate the health
facility, including closing down, expanding or initiating new
operations, hiring and firing officers and employees,
contracting for necessary services, personnel, supplies,

1 equipment, facilities and all other appropriate things,
2 purchasing, selling, marshaling and otherwise managing its
3 property and assets, paying the facility's obligations that
4 are directly related to the health facility's operations or
5 for providing adequate care and necessary services to
6 residents or for other persons in the health facility,
7 borrowing money and property and giving security for these
8 and expending funds of the facility;

9 (2) give notice of establishment of the
10 receivership to interested persons and publish notice in a
11 newspaper of general circulation in each county in which the
12 health care facility and any of its satellite facilities is
13 located;

14 (3) if a resident or other person in the
15 health facility is to be discharged or transferred, discuss
16 the options for alternative placement with the resident,
17 other person in the health facility or the guardian of that
18 resident or other person in the health facility, as
19 applicable, and arrange to transfer the records and personal
20 property of the resident or other person in the health
21 facility to the alternative placement facility; and

22 (4) with the court's approval, void any
23 lease, mortgage, secured transaction, contract or other
24 agreement made prior to the appointment of the receiver or
25 any transfer of money or property made within one year prior

1 to the filing of the petition if such lease, mortgage,
2 secured transaction, contract, agreement or other transfer of
3 money or property was made without fair consideration,
4 including excessive interest rate, was made with actual
5 intent to hinder, delay or defraud either future or existing
6 creditors, was made with shareholders or owners of the health
7 facility or persons otherwise having an interest in the
8 health facility or was unrelated to the normal and expected
9 maintenance and operation of the health facility.

10 B. If, in the exercise of the receiver's powers
11 pursuant to this section, the receiver is in possession of
12 real estate, real or personal property or other goods or
13 services subject to a lease, mortgage, secured transaction,
14 contract or other agreement subject to being voided by the
15 receiver pursuant to Paragraph (4) of Subsection A of this
16 section, and such real estate, real or personal property or
17 other goods or services are necessary for the continued
18 operation of the health facility during the receivership, the
19 receiver may, in lieu or seeking to void such lease,
20 mortgage, secured transaction, contract or other agreement,
21 apply to the court to set a reasonable price, rate or rate of
22 interest to be paid by the receiver under such lease,
23 mortgage, secured transaction, contract or other agreement
24 during the duration of the receivership. The receiver shall
25 send notice of such an application to any known parties of

1 the property, services or goods involved and shall publish
2 the notice once at least thirty days prior to the hearing
3 date in a newspaper of general circulation, and the court
4 shall hold a hearing on the receiver's application within
5 thirty days after the filing of the application by the
6 receiver. Payment by the receiver of the amount determined
7 by the court to be reasonable is a defense to any action
8 against the receiver for payment or possession of the real
9 estate, real or personal property or other goods or services,
10 or to revocation of such services subject to the lease,
11 mortgage, secured transaction, contract or other agreement.
12 Payment by the receiver of the amount determined by the court
13 to be reasonable shall not relieve the health facility from
14 any liability upon termination of the receivership for the
15 difference between the amount paid by the receiver and the
16 amount due under the original lease, mortgage, secured
17 transaction, contract or other agreement.

18 C. Nonpayment by the receiver of any debt of the
19 health facility under a lease, mortgage, secured transaction,
20 contract or other agreement reasonably deemed by the receiver
21 not to be directly related to the health facility's
22 operations or for providing adequate care and necessary
23 services to residents or other persons in the health facility
24 shall not subject the receiver to liability for payment.

25 Nonpayment of any lease, mortgage, secured transaction,

1 contract or other agreement reasonably deemed by the receiver
2 not to be directly related to the health facility's
3 operations or for providing adequate care and necessary
4 services to residents or other persons in the health facility
5 shall not relieve the health facility from any liability upon
6 termination of the receivership for payment of the full
7 amount due under the lease, mortgage, secured transaction,
8 contract or other agreement.

9 D. A deputy receiver shall have the same powers
10 and duties as the receiver, unless the court orders
11 otherwise."

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