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HOUSE BILL 85

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

Deborah A. Armstrong

AN ACT

RELATING TO PROTECTION OF VULNERABLE PERSONS; PROVIDING POWERS AND DUTIES TO LICENSE, PERMIT AND REPORT ON BOARD AND CARE FACILITIES; AUTHORIZING THE MEDICAID FRAUD CONTROL UNIT IN THE OFFICE OF THE ATTORNEY GENERAL TO INVESTIGATE AND PROSECUTE ABUSE, NEGLECT AND MISAPPROPRIATION OF FUNDS IN BOARD AND CARE FACILITIES.

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

SECTION 1. Section 24-1-2 NMSA 1978 (being Laws 1973, Chapter 359, Section 2, as amended by Laws 2015, Chapter 61, Section 1 and by Laws 2015, Chapter 153, Section 1) is amended to read:

"24-1-2. DEFINITIONS.--As used in the Public Health Act:

A. "activities of daily living" means dressing, bathing, eating, toileting, walking and transferring from a bed

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1 or chair;

2 B. "assistance with self-medication" means, with  
3 respect to a resident of a board and care facility:

4 (1) reminding the resident to take medication;

5 (2) opening a container, removing medication  
6 from the container and placing the medication in the resident's  
7 hand, on a clean surface or in a pill cup or medication  
8 reminder box for the resident's self-administration; or

9 (3) reminding the resident when a prescription  
10 needs to be refilled;

11 C. "board and care facility" means a residential  
12 establishment that:

13 (1) receives payment from or on behalf of two  
14 or more adults who reside in such facility and who are  
15 unrelated to the owner or operator of such facility; and

16 (2) provides personal care services and may  
17 assist residents with one or more activities of daily living;

18 ~~[A.]~~ D. "crisis triage center" means a health  
19 facility that:

20 (1) is licensed by the department of health;

21 (2) is not physically part of an inpatient  
22 hospital or included in a hospital's license; and

23 (3) provides stabilization of behavioral  
24 health crises, including short-term residential stabilization;

25 ~~[B.]~~ E. "department" or "division" means the

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1 children, youth and families department as to child care  
2 centers, residential treatment centers that serve persons up to  
3 twenty-one years of age, community mental health centers that  
4 serve only persons up to twenty-one years of age, day treatment  
5 centers that serve persons up to twenty-one years of age,  
6 shelter care homes and those outpatient facilities that are  
7 also community-based behavioral health facilities serving only  
8 persons up to twenty-one years of age and the department of  
9 health as to all other health facilities, unless otherwise  
10 designated;

11 [G-] F. "director" means the secretary;

12 [D-] G. "health facility" means a public hospital,  
13 profit or nonprofit private hospital, general or special  
14 hospital, outpatient facility, crisis triage center, maternity  
15 home or shelter, freestanding birth center, adult daycare  
16 facility, nursing home, intermediate care facility, [~~boarding~~  
17 ~~home not under the control of an institution of higher~~  
18 ~~learning~~] board and care facility, child care center, shelter  
19 care home, diagnostic and treatment center, rehabilitation  
20 center, infirmary, community mental health center that serves  
21 both children and adults or adults only, residential treatment  
22 center that serves persons up to twenty-one years of age,  
23 community mental health center that serves only persons up to  
24 twenty-one years of age and day treatment center that serves  
25 persons up to twenty-one years of age or a health service

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1 organization operating as a freestanding hospice or a home  
2 health agency. The designation of these entities as health  
3 facilities is only for the purposes of definition in the Public  
4 Health Act and does not imply that a freestanding hospice or a  
5 home health agency is considered a health facility for the  
6 purposes of other provisions of state or federal laws. "Health  
7 facility" also includes those facilities that, by federal  
8 regulation, must be licensed by the state to obtain or maintain  
9 full or partial, permanent or temporary federal funding. It  
10 does not include the offices and treatment rooms of licensed  
11 private practitioners;

12 ~~[E-]~~ H. "person", when used without further  
13 qualification, means an individual or any other form of entity  
14 recognized by law; ~~[and]~~

15 I. "personal care services" means assistance with  
16 personal hygiene and body care, self-medication, travel to  
17 medical services, essential shopping, meal preparation, laundry  
18 and housework; and

19 ~~[F-]~~ J. "secretary" means the secretary of  
20 children, youth and families as to child care centers,  
21 residential treatment centers that serve persons up to twenty-  
22 one years of age; community mental health centers that serve  
23 only persons up to twenty-one years of age; day treatment  
24 centers that serve persons up to twenty-one years of age;  
25 shelter care homes; and those outpatient facilities that are

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1 also community-based behavioral health facilities serving only  
2 persons up to twenty-one years of age and the secretary of  
3 health as to all other health facilities."

4 SECTION 2. A new section of the Public Health Act is  
5 enacted to read:

6 "[NEW MATERIAL] BOARD AND CARE FACILITY--LICENSURE--  
7 DEPARTMENT DUTIES--MODEL STANDARDS.--By July 1, 2018, the  
8 department shall:

9 A. promulgate rules requiring a board and care  
10 facility to:

11 (1) be licensed by the department pursuant to  
12 criteria established by the department; and

13 (2) hold a valid custodial drug permit from  
14 the board of pharmacy if the board and care facility provides  
15 assistance with self-medication;

16 B. promulgate model standards for the operation of  
17 a board and care facility that ensure the health, safety and  
18 comfort of residents and that address:

19 (1) the construction or remodeling, plumbing,  
20 heating, lighting, ventilation and other housing conditions of  
21 a board and care facility to ensure residents' health, safety  
22 and comfort and provide protection from fire hazard;

23 (2) the sanitation of the board and care  
24 facility and its surroundings, including insect and rodent  
25 control, water supply standards, sewage disposal, food handling

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1 and general hygiene;

2 (3) the investigation and reporting of  
3 injuries, incidents and accidents;

4 (4) assistance with self-medication;

5 (5) criminal history record checks for board  
6 and care facility owners, operators and employees;

7 (6) the prevention of financial exploitation  
8 of residents, misappropriation of residents' funds and  
9 conflicts of interest on the part of a board and care  
10 facility's owners, operators or employees;

11 (7) the assessment and periodic monitoring to  
12 ensure that a resident:

13 (a) does not require nursing, personal  
14 care of other services that are not being provided; and

15 (b) is capable of self-administering  
16 medication with assistance; and

17 (8) the requirements for in-service education  
18 of board and care facilities' staff; and

19 C. inform counties and municipalities about the  
20 board and care facility model standards promulgated by the  
21 department pursuant to Subsection B of this section."

22 **SECTION 3.** A new section of the Public Health Act is  
23 enacted to read:

24 "[NEW MATERIAL] BOARD AND CARE FACILITY--LOCAL  
25 PERMITTING--INSPECTIONS--REPORTING.--

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A. A county or municipality may:

(1) require a board and care facility to obtain a permit from the county or municipality to operate within the county's or municipality's jurisdiction;

(2) adopt by ordinance the board and care facility model standards promulgated by the department pursuant to Section 2 of this 2017 act and require a board and care facility to comply with such standards to receive or retain a permit for the operation of such facility;

(3) set reasonable fees for the issuance and renewal of a permit for the operation of a board and care facility and inspection of the facility; and

(4) impose fines for noncompliance with county or municipal ordinances applicable to a board and care facility.

B. Fees for a board and care facility permit shall be paid to the county or municipality issuing the permit. Fees collected by a county or municipality pursuant to Subsection A of this section shall be used to administer the county's or municipality's permitting program for board and care facilities or for other purposes directly related to providing board and care facilities or other assisted living services to elderly persons and persons with disabilities.

C. A county or municipality may inspect, survey or investigate a board and care facility as it deems necessary and

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1 may enter the premises of a board and care facility at  
2 reasonable times. A county or municipality shall have access  
3 to the books, records and other documents maintained by or on  
4 behalf of a board and care facility to the extent necessary to  
5 enforce board and care facility model standards adopted by the  
6 county or municipality.

7 D. Two or more counties or municipalities that have  
8 adopted board and care facility model standards by ordinance  
9 may enter into a joint powers agreement to permit and inspect  
10 board and care facilities.

11 E. No later than August 30 of each year following  
12 the establishment of a county or municipal permitting  
13 requirement for board and care facilities pursuant to this  
14 section, each county or municipality shall submit a report to  
15 the secretary of aging and long-term services that includes:

16 (1) the number of board and care facility  
17 permits approved and the number of permits denied, in the  
18 preceding fiscal year;

19 (2) the reason for denial of each permit;

20 (3) the number of board and care facilities  
21 with active permits as of the end of the preceding fiscal year;

22 (4) the address for each permitted board and  
23 care facility within the county's or municipality's  
24 jurisdiction;

25 (5) the number of residents that each

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1 permitted board and care facility is allowed to house at any  
2 one time;

3 (6) the number of inspections conducted at  
4 each permitted board and care facility; and

5 (7) a list of each board and care facility  
6 that had its permit suspended or revoked in the preceding  
7 fiscal year and a summary that explains the outcome for  
8 residents displaced by such suspension or revocation; provided  
9 that the summary shall not disclose personal identifying  
10 information of a displaced resident; and provided further that  
11 for purposes of this paragraph, "personal identifying  
12 information" means the name, current address, telephone number,  
13 social security number or other similar identifying information  
14 about a displaced resident.

15 F. The provisions of this section do not apply to  
16 a:

- 17 (1) hotel;
- 18 (2) continuing care retirement community;
- 19 (3) domestic violence safe house or shelter;
- 20 (4) residence owned or operated by a church or  
21 religious organization that qualifies for tax-exempt status  
22 under Section 501(c)(3) of the Internal Revenue Code of 1986;  
23 or
- 24 (5) a health facility, other than a board and  
25 care facility, licensed by the department."

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1           SECTION 4.   ~~[NEW MATERIAL]~~ CUSTODIAL DRUG PERMITS.--

2           A.   A board and care facility shall not provide  
3 assistance with self-medication without a valid custodial drug  
4 permit from the board of pharmacy.

5           B.   The board of pharmacy shall require a board and  
6 care facility to have a custodial drug permit if it provides  
7 assistance with self-medication.

8           C.   By September 1 of each year, the board of  
9 pharmacy shall provide a list with the names and addresses of  
10 every board and care facility with an active custodial drug  
11 permit as of June 30 of the preceding fiscal year to the  
12 department of the health, the aging and long-term services  
13 department and the legislative council service library.

14          D.   For purposes of this section:

15               (1) "assistance with self-medication" means:

16                       (a) reminding a resident to take  
17 medication;

18                       (b) opening a container, removing  
19 medication from the container and placing the medication in the  
20 resident's hand, on a clean surface or in a pill cup or  
21 medication reminder box for a resident's self-administration;  
22 or

23                       (c) reminding a resident when a  
24 prescription needs to be refilled; and

25               (2) "board and care facility" means a

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1 residential establishment that:

2 (a) receives payment from or on behalf  
3 of two or more adults who reside in such facility and who are  
4 unrelated to the owner or operator of such facility; and

5 (b) provides personal care services and  
6 may assist residents with one or more activities of daily  
7 living.

8 SECTION 5. A new section of the Adult Protective Services  
9 Act is enacted to read:

10 "[NEW MATERIAL] BOARD AND CARE FACILITIES--DUTIES OF THE  
11 DEPARTMENT--ANNUAL REPORTS.--

12 A. By July 1, 2018, the department shall provide a  
13 mechanism for counties and municipalities that adopt the board  
14 and care facility model standards to submit annual reports to  
15 the department as required by this 2017 act.

16 B. Beginning in 2018, by October 30 of each year,  
17 the department shall submit a written report to the legislative  
18 finance committee and the legislative health and human services  
19 committee compiled from the annual board and care facility  
20 reports the department has received from counties and  
21 municipalities."

22 SECTION 6. Section 28-17-3 NMSA 1978 (being Laws 1989,  
23 Chapter 208, Section 3, as amended) is amended to read:

24 "28-17-3. DEFINITIONS.--As used in the Long-Term Care  
25 Ombudsman Act:

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1                   ~~[A. "adult protective services" means the children,~~  
2 ~~youth and families department pursuant to the Adult Protective~~  
3 ~~Services Act;~~

4                   ~~B. "agency" means the state agency on aging;~~

5                   ~~G.]~~ A. "care" means assistance with the activities  
6 of daily living, including eating, dressing, oral hygiene,  
7 bathing, mobility, toileting, grooming, taking medications,  
8 transferring from a bed or chair and walking;

9                   B. "department" means the aging and long-term  
10 services department;

11                   ~~[D.]~~ C. "director" or "secretary" means the  
12 ~~[director of the state agency on]~~ secretary of aging and long-  
13 term services;

14                   ~~[E.]~~ D. "licensing and certification" means the  
15 licensing and certification bureau of the public health  
16 division of the department of health;

17                   ~~[F.]~~ E. "long-term care facility" means ~~[any]~~ a  
18 residential facility that provides care to one or more persons  
19 unrelated to the owner or operator of the facility, including:

- 20                               (1) a skilled nursing facility;
- 21                               (2) an intermediate care nursing facility,  
22 including an intermediate care facility for the ~~[mentally~~  
23 ~~retarded]~~ intellectually disabled;
- 24                               (3) a nursing facility;
- 25                               (4) an adult residential shelter care home;

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1 (5) a [~~boarding home~~] board and care facility;

2 (6) any other adult care home or adult  
3 residential care facility;

4 (7) a continuing care retirement community;

5 (8) any swing bed in an acute care facility or  
6 extended care facility; and

7 (9) any adult [~~day care~~] daycare facility;

8 [~~G.~~] F. "office" means the office of the state  
9 long-term care ombudsman;

10 [~~H.~~] G. "Older Americans Act" means the federal  
11 Older Americans Act of 1965;

12 [~~I.~~] H. "ombudsman" means an individual trained and  
13 certified to act as a representative of the office of the state  
14 long-term care ombudsman;

15 [~~J.~~] I. "ombudsman coordinator" means the  
16 coordinator of a regional or local ombudsman program designated  
17 by the office of the state ombudsman;

18 [~~K.~~] J. "program" means the New Mexico long-term  
19 care ombudsman program;

20 [~~L.~~] K. "resident" means any patient, client or  
21 person residing in and receiving care in a long-term care  
22 facility;

23 [~~M.~~] L. "state ombudsman" means the state long-term  
24 care ombudsman; and

25 [~~N.~~] M. "surrogate decision maker" means a legally

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1 appointed agent, guardian or surrogate who is authorized to act  
2 on behalf of a resident."

3 SECTION 7. Section 30-44-2 NMSA 1978 (being Laws 1989,  
4 Chapter 286, Section 2, as amended) is amended to read:

5 "30-44-2. DEFINITIONS.--As used in the Medicaid Fraud  
6 Act:

7 A. "benefit" means money, treatment, services,  
8 goods or anything of value authorized under the program;

9 B. "board and care facility" means a residential  
10 establishment that:

11 (1) receives payment from or on behalf of two  
12 or more adults who reside in such facility and who are  
13 unrelated to the owner or operator of such facility; and

14 (2) provides personal care services and may  
15 assist residents with one or more activities of daily living;

16 [~~B-~~] C. "claim" means [~~any~~] a communication,  
17 whether oral, written, electronic or magnetic, that identifies  
18 a treatment, good or service as reimbursable under the program;

19 [~~G-~~] D. "cost document" means [~~any~~] a cost report  
20 or similar document that states income or expenses and is used  
21 to determine a cost reimbursement-based rate of payment for a  
22 provider under the program;

23 [~~D-~~] E. "covered person" means an individual who is  
24 entitled to receive health care benefits from a managed health  
25 care plan;

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1           ~~[E-]~~ F. "department" means the human services  
2 department;

3           ~~[F-]~~ G. "entity" means a person other than an  
4 individual and includes corporations; partnerships;  
5 associations; joint-stock companies; unions; trusts; pension  
6 funds; unincorporated organizations; governments and their  
7 political subdivisions [~~thereof~~]; and nonprofit organizations;

8           ~~[G-]~~ H. "great physical harm" means physical harm  
9 of a type that causes physical loss of a bodily member or organ  
10 or functional loss of a bodily member or organ for a prolonged  
11 period of time;

12           ~~[H-]~~ I. "great psychological harm" means  
13 psychological harm that causes mental or emotional  
14 incapacitation for a prolonged period of time [~~or~~]; that causes  
15 extreme behavioral change or severe physical symptoms; or that  
16 requires psychological or psychiatric care;

17           ~~[I-]~~ J. "health care official" means:

18                   (1) an administrator, officer, trustee,  
19 fiduciary, custodian, counsel, agent or employee of a managed  
20 [~~care~~] health care plan;

21                   (2) an officer, counsel, agent or employee of  
22 an organization that provides or proposes to or contracts to  
23 provide services to a managed health care plan; or

24                   (3) an official, employee or agent of a state  
25 or federal agency with regulatory or administrative authority

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1 over a managed health care plan;

2 [J-] K. "managed health care plan" means a  
3 government-sponsored health benefit plan that requires a  
4 covered person to use, or creates incentives, including  
5 financial incentives, for a covered person to use, health care  
6 providers managed, owned, under contract with or employed by a  
7 health care insurer or provider service network. A "managed  
8 health care plan" includes the health care services offered by  
9 a health maintenance organization, preferred provider  
10 organization, health care insurer, provider service network,  
11 entity or person that contracts to provide or provides goods or  
12 services that are reimbursed by or are a required benefit of a  
13 state or federally funded health benefit program, or [~~any~~] a  
14 person or entity who contracts to provide goods or services to  
15 the program;

16 [K-] L. "person" includes individuals,  
17 corporations, partnerships and other associations;

18 M. "personal care services" means assistance with  
19 personal hygiene and body care, self-medication, travel to  
20 medical services, essential shopping, meal preparation, laundry  
21 and housework;

22 [L-] N. "physical harm" means an injury to the body  
23 that causes pain or incapacitation;

24 [M-] O. "program" means the medical assistance  
25 program authorized under Title [~~XIX~~] 19 of the federal Social

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1 Security Act, 42 U.S.C. 1396, et seq. and implemented under  
2 Section 27-2-12 NMSA 1978;

3 [N-] P. "provider" means [~~any~~] a person who has  
4 applied to participate or who participates in the program as a  
5 supplier of treatment, services or goods;

6 [O-] Q. "psychological harm" means emotional or  
7 psychological damage of such a nature as to cause fear,  
8 humiliation or distress or to impair a person's ability to  
9 enjoy the normal process of [~~his~~] life;

10 [P-] R. "recipient" means [~~any~~] an individual who  
11 receives or requests benefits under the program;

12 [Q-] S. "records" means [~~any~~] medical or business  
13 documentation, however recorded, relating to the treatment or  
14 care of [~~any~~] a recipient, to services or goods provided to  
15 [~~any~~] a recipient or to reimbursement for treatment, services  
16 or goods, including [~~any~~] documentation required to be retained  
17 by regulations of the program; and

18 [R-] T. "unit" means the medicaid fraud control  
19 unit or any other agency with power to investigate or prosecute  
20 fraud and abuse of the program."

21 **SECTION 8.** Section 30-44-3 NMSA 1978 (being Laws 1989,  
22 Chapter 286, Section 3, as amended) is amended to read:

23 "30-44-3. POWER TO INVESTIGATE AND ENFORCE CIVIL REMEDIES  
24 AND PROSECUTE CRIMINAL ACTIONS--DUTIES.--

25 A. The attorney general, the district attorneys,

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1 the unit and the department have the power and authority to  
2 investigate violations of the Medicaid Fraud Act and bring  
3 actions to enforce the civil remedies established in the  
4 Medicaid Fraud Act.

5 B. The attorney general, the district attorneys and  
6 those attorneys who are employees of the unit to whom the  
7 attorney general or a district attorney has, by appointment  
8 made through a joint powers agreement or other agreement for  
9 that purpose, delegated criminal prosecutorial responsibility  
10 shall have the power and authority to prosecute persons for the  
11 violation of criminal provisions of the Medicaid Fraud Act and  
12 for criminal offenses that are not defined in the Medicaid  
13 Fraud Act, but that involve or are directly related to the use  
14 of medicaid program funds or services provided through medicaid  
15 programs.

16 C. The unit shall review complaints alleging:

17 (1) abuse or neglect of residents of board and  
18 care facilities, regardless of whether payment to such  
19 facilities is made under medicaid; and

20 (2) misappropriation of funds of residents of  
21 board and care facilities, regardless of whether payment to  
22 such facilities is made under medicaid."

23 SECTION 9. Section 30-47-3 NMSA 1978 (being Laws 1990,  
24 Chapter 55, Section 3, as amended) is amended to read:

25 "30-47-3. DEFINITIONS.--As used in the Resident Abuse and  
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1 Neglect Act:

2 A. "abuse" means any act or failure to act  
3 performed intentionally, knowingly or recklessly that causes or  
4 is likely to cause harm to a resident, including:

5 (1) physical contact that harms or is likely  
6 to harm a resident of a care facility;

7 (2) inappropriate use of a physical restraint,  
8 isolation or medication that harms or is likely to harm a  
9 resident;

10 (3) inappropriate use of a physical or  
11 chemical restraint, medication or isolation as punishment or in  
12 conflict with a physician's order;

13 (4) medically inappropriate conduct that  
14 causes or is likely to cause physical harm to a resident;

15 (5) medically inappropriate conduct that  
16 causes or is likely to cause great psychological harm to a  
17 resident; or

18 (6) an unlawful act, a threat or menacing  
19 conduct directed toward a resident that results and might  
20 reasonably be expected to result in fear or emotional or mental  
21 distress to a resident;

22 B. "activities of daily living" means dressing,  
23 bathing, eating, toileting, walking and transferring from a bed  
24 or chair;

25 C. "assistance with self-medication" means, with

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1 respect to a resident of a board and care facility:

2 (1) reminding the resident to take medication;

3 (2) opening a container, removing medication  
4 from the container and placing the medication in the resident's  
5 hand, on a clean surface or in a pill cup or medication  
6 reminder box for the resident's self-administration; or

7 (3) reminding the resident when a prescription  
8 needs to be refilled;

9 D. "board and care facility" means a residential  
10 establishment that:

11 (1) receives payment from or on behalf of two  
12 or more adults who reside in such facility and who are  
13 unrelated to the owner or operator of such facility; and

14 (2) provides personal care services and may  
15 assist residents with one or more activities of daily living;

16 ~~[B-]~~ E. "care facility" means a hospital; skilled  
17 nursing facility; intermediate care facility; care facility for  
18 the ~~[mentally retarded]~~ intellectually disabled; psychiatric  
19 facility; rehabilitation facility; kidney disease treatment  
20 center; home health agency; ambulatory surgical or outpatient  
21 facility; home for the aged or disabled; group home; adult  
22 foster care home; private residence that provides personal  
23 care, sheltered care or nursing care for one or more persons; a  
24 resident's or care provider's home in which personal care,  
25 sheltered care or nursing care is provided; adult day care

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1 center; ~~[boarding home]~~ board and care facility; adult  
2 residential shelter care home; and any other health or resident  
3 care related facility or home, but does not include a care  
4 facility located at or performing services for any correctional  
5 facility;

6 ~~[G.]~~ F. "department" means the human services  
7 department or its successor, contractor, employee or designee;

8 ~~[D.]~~ G. "great psychological harm" means  
9 psychological harm that causes mental or emotional  
10 incapacitation for a prolonged period of time or that causes  
11 extreme behavioral change or severe physical symptoms that  
12 require psychological or psychiatric care;

13 ~~[E.]~~ H. "great physical harm" means physical harm  
14 of a type that causes physical loss of a bodily member or organ  
15 or functional loss of a bodily member or organ for a prolonged  
16 period of time;

17 ~~[F.]~~ I. "neglect" means, subject to the resident's  
18 right to refuse treatment and subject to the caregiver's right  
19 to exercise sound medical discretion, the grossly negligent:

20 (1) failure to provide any treatment, service,  
21 care, medication or item that is necessary to maintain the  
22 health or safety of a resident;

23 (2) failure to take any reasonable precaution  
24 that is necessary to prevent damage to the health or safety of  
25 a resident; or

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1 (3) failure to carry out a duty to supervise  
2 properly or control the provision of any treatment, care, good,  
3 service or medication necessary to maintain the health or  
4 safety of a resident;

5 [~~G.~~] J. "person" means any individual, corporation,  
6 partnership, unincorporated association or other governmental  
7 or business entity;

8 K. "personal care services" means assistance with  
9 personal hygiene and body care, self-medication, travel to  
10 medical services, essential shopping, meal preparation, laundry  
11 and housework;

12 [~~H.~~] L. "physical harm" means an injury to the body  
13 that causes substantial pain or incapacitation; and

14 [~~F.~~] M. "resident" means any person who resides in  
15 a care facility or who receives treatment from a care  
16 facility."

17 SECTION 10. Section 43-1-9 NMSA 1978 (being Laws 1977,  
18 Chapter 279, Section 8, as amended) is amended to read:

19 "43-1-9. INDIVIDUALIZED TREATMENT OR HABILITATION  
20 PLANS--DISCHARGE PLANNING.--

21 A. An individualized treatment or habilitation plan  
22 shall be prepared within fourteen days of a client's admission  
23 to residential treatment or services.

24 B. Each client shall, to the maximum extent  
25 possible, be involved in the preparation of [~~his own~~] an

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1 individualized treatment or habilitation plan.

2 C. Each individualized treatment or habilitation  
3 plan shall include:

4 (1) a statement of the nature of the specific  
5 problem and the specific needs of the client;

6 (2) a statement of the least restrictive  
7 conditions necessary to achieve the purposes of treatment or  
8 habilitation;

9 (3) a description of intermediate and long-  
10 range goals, with the projected timetable for their attainment;

11 (4) a statement and rationale for the plan of  
12 treatment or habilitation for achieving these intermediate and  
13 long-range goals;

14 (5) specification of staff responsibility and  
15 a description of the proposed staff involvement with the client  
16 in order to attain these goals; and

17 (6) criteria for release to less restrictive  
18 settings for treatment or habilitation, criteria for discharge  
19 and a projected date for discharge.

20 D. A treatment or habilitation plan for resident  
21 clients shall include:

22 (1) mental status examination;

23 (2) intellectual function assessment;

24 (3) psychological assessment, which may  
25 include the use of psychological testing;

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- 1 (4) educational assessment;
- 2 (5) vocational assessment;
- 3 (6) social assessment;
- 4 (7) medication assessment; and
- 5 (8) physical assessment.

6 E. The individualized treatment or habilitation  
7 plan shall be available upon request to the following persons:  
8 the client; the client's attorney; ~~any~~ a mental health or  
9 developmental disabilities professional designated by the  
10 client; and the client's guardian or treatment guardian if one  
11 has been appointed. The client's progress in attaining the  
12 goals and objectives set forth in ~~his~~ the individualized  
13 treatment or habilitation plan shall be monitored and noted in  
14 ~~his~~ the client's records, and revisions in the plan may be  
15 made as circumstances require; provided that the persons  
16 authorized by this subsection to have access to the  
17 individualized plan shall be informed of major changes and  
18 shall have the opportunity to participate in such decision.  
19 Nothing in this subsection shall require disclosure of  
20 information to a client or to ~~his~~ the client's parent when  
21 the attending physician or certified psychologist believes that  
22 disclosure of that particular information would be damaging to  
23 the client and so records in the client's medical record.

24 F. When discharge planning for a client includes or  
25 suggests placement in or referral to a board and care facility,

underscoring material = new  
~~[bracketed material] = delete~~

1 the residential treatment or habilitation program shall take  
2 reasonable steps to verify that such board and care facility  
3 holds:

4 (1) a valid license from, and is in good  
5 standing with, the department of health; and

6 (2) a valid permit from, and is in good  
7 standing with, the county or municipality where the board and  
8 care facility is located, if the county or municipality has  
9 adopted the board and care facility model standards promulgated  
10 by the department of health."

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