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HOUSE BILL 556

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Deborah A. Armstrong

AN ACT

RELATING TO STATE GOVERNMENT; AMENDING A SECTION OF THE HUMAN SERVICES DEPARTMENT ACT TO REQUIRE CERTAIN BACKGROUND CHECKS AND PROCEDURES FOR HUMAN SERVICES DEPARTMENT PERSONNEL; PROVIDING A PENALTY; DECLARING AN EMERGENCY.

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

**SECTION 1.** Section 9-8-6 NMSA 1978 (being Laws 1977, Chapter 252, Section 7, as amended) is amended to read:

"9-8-6. SECRETARY--DUTIES AND GENERAL POWERS.--

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

B. To perform [~~his~~] duties of office, the secretary

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1 has every power expressly enumerated in the laws, whether  
2 granted to the secretary or the department or any division of  
3 the department, except where authority conferred upon any  
4 division is explicitly exempted from the secretary's authority  
5 by statute. In accordance with these provisions, the secretary  
6 shall:

7 (1) except as otherwise provided in the Human  
8 Services Department Act, exercise general supervisory and  
9 appointing authority over all department employees, subject to  
10 any applicable personnel laws and ~~[regulations]~~ rules;

11 (2) delegate authority to subordinates as ~~[he]~~  
12 the secretary deems necessary and appropriate, clearly  
13 delineating such delegated authority and the limitations  
14 thereto;

15 (3) organize the department into those  
16 organizational units ~~[he]~~ the secretary deems will enable it to  
17 function most efficiently, subject to any provisions of law  
18 requiring or establishing specific organizational units;

19 (4) within the limitations of available  
20 appropriations and applicable laws, employ and fix the  
21 compensation of those persons necessary to discharge ~~[his]~~ the  
22 secretary's duties;

23 (5) conduct background checks on department  
24 employees and prospective department employees that have or  
25 will have access to federal tax information; provided that:

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1                   (a) local law enforcement agency  
2 criminal history record checks shall be conducted on all  
3 employees, prospective employees, contractors, prospective  
4 contractors, subcontractors and prospective subcontractors with  
5 access to federal tax information;

6                   (b) record checks for any identified  
7 arrests shall be conducted through local law enforcement  
8 agencies in jurisdictions where the subject has lived, worked  
9 or attended school within the last five years preceding the  
10 record check;

11                   (c) federal bureau of investigation  
12 fingerprinting shall be conducted on all employees, prospective  
13 employees, contractors, prospective contractors, subcontractors  
14 and prospective subcontractors with access to federal tax  
15 information;

16                   (d) for the purpose of conducting a  
17 national agency background check, the department shall submit  
18 to the department of public safety and the federal bureau of  
19 investigation a fingerprint card for each of the following  
20 personnel who have or will have access to federal tax  
21 information: 1) employees; 2) prospective employees; 3)  
22 contractors; 4) prospective contractors; 5) subcontractors; and  
23 6) prospective subcontractors;

24                   (e) the department shall conduct a check  
25 for eligibility to legally work as a citizen or legal resident

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1 of the United States on all employees, prospective employees,  
2 contractors, prospective contractors, subcontractors and  
3 prospective subcontractors with access to federal tax  
4 information. The department shall complete a citizenship or  
5 residency check for each new employee and any employee with  
6 expiring employment eligibility and shall document and monitor  
7 the employee's citizenship or residency status for continued  
8 compliance;

9 (f) criminal history records obtained by  
10 the department pursuant to the provisions of this paragraph and  
11 the information contained in those records are confidential,  
12 shall not be used for any purpose other than conducting  
13 background checks for the purpose of determining eligibility  
14 for employment and shall not be released or disclosed to any  
15 other person or agency except pursuant to a court order or with  
16 the written consent of the person who is the subject of the  
17 records;

18 (g) a person who releases or discloses  
19 criminal history records or information contained in those  
20 records in violation of the provisions of this paragraph is  
21 guilty of a misdemeanor and shall be sentenced pursuant to the  
22 provisions of Section 31-19-1 NMSA 1978;

23 (h) the secretary shall adopt and  
24 promulgate rules to establish procedures to provide for  
25 background checks, and criteria according to which background

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1 checks are evaluated, for all present and prospective personnel  
2 identified in the provisions of this paragraph;

3 (i) contractors, prospective  
4 contractors, subcontractors and prospective subcontractors  
5 shall bear any costs associated with ordering or conducting  
6 background checks pursuant to this paragraph; and

7 (j) a department employee or prospective  
8 department employee who is denied employment or terminated  
9 employment based on information obtained in a background check  
10 shall be entitled to review the information obtained pursuant  
11 to this paragraph and to appeal the decision;

12 [~~5~~] (6) take administrative action by  
13 issuing orders and instructions, not inconsistent with the law,  
14 to assure implementation of and compliance with the provisions  
15 of law for whose administration or execution [~~he~~] the secretary  
16 is responsible and to enforce those orders and instructions by  
17 appropriate administrative action in the courts;

18 [~~6~~] (7) conduct research and studies that  
19 will improve the operations of the department and the provision  
20 of services to the citizens of the state;

21 [~~7~~] (8) provide courses of instruction and  
22 practical training for employees of the department and other  
23 persons involved in the administration of programs with the  
24 objective of improving the operations and efficiency of  
25 administration;

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1                    [~~8~~] (9) prepare an annual budget of the  
2 department;

3                    [~~9~~] (10) provide cooperation, at the request  
4 of heads of administratively attached agencies, in order to:

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

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

9                            (c) resolve by agreement the manner and  
10 extent to which the department shall provide budgeting,  
11 [~~record-keeping~~] recordkeeping and related clerical assistance  
12 to administratively attached agencies;

13                    [~~10~~] (11) appoint, with the governor's  
14 consent, a "director" for each division. These appointed  
15 positions are exempt from the provisions of the Personnel Act.  
16 Persons appointed to these positions shall serve at the  
17 pleasure of the secretary, except as provided in Section 9-8-9  
18 NMSA 1978;

19                    [~~11~~] (12) give bond in the penal sum of  
20 twenty-five thousand dollars (\$25,000) and require directors to  
21 each give bond in the penal sum of ten thousand dollars  
22 (\$10,000) conditioned upon the faithful performance of duties  
23 as provided in the Surety Bond Act. The department shall pay  
24 the costs of these bonds; and

25                    [~~12~~] (13) require performance bonds of such  
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1 department employees and officers as [~~he~~] the secretary deems  
2 necessary as provided in the Surety Bond Act. The department  
3 shall pay the costs of these bonds.

4 C. The secretary may apply for and receive, with  
5 the governor's approval, in the name of the department, any  
6 public or private funds, including United States government  
7 funds, available to the department to carry out its programs,  
8 duties or services.

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

14 E. The secretary may make and adopt such reasonable  
15 [~~and~~] procedural rules [~~and regulations~~] as may be necessary to  
16 carry out the duties of the department and its divisions. No  
17 rule [~~or regulation~~] promulgated by the director of any  
18 division in carrying out the functions and duties of the  
19 division shall be effective until approved by the secretary  
20 unless otherwise provided by statute. Unless otherwise  
21 provided by statute, no [~~regulation~~] rule affecting any person  
22 or agency outside the department shall be adopted, amended or  
23 repealed without a public hearing on the proposed action before  
24 the secretary or a hearing officer designated by [~~him~~] the  
25 secretary. The public hearing shall be held in Santa Fe unless

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1 otherwise permitted by statute. Notice of the subject matter  
2 of the [~~regulation~~] rule, the action proposed to be taken, the  
3 time and place of the hearing, the manner in which interested  
4 persons may present their views and the method by which copies  
5 of the proposed [~~regulation~~] rule or proposed amendment or  
6 repeal of an existing [~~regulation~~] rule may be obtained shall  
7 be published once at least thirty days prior to the hearing  
8 date in a newspaper of general circulation and mailed at least  
9 thirty days prior to the hearing date to all persons who have  
10 made a written request for advance notice of hearing.

11 F. In the event the secretary anticipates that  
12 adoption, amendment or repeal of a rule [~~or regulation~~] will be  
13 required by a cancellation, reduction or suspension of federal  
14 funds or order by a court of competent jurisdiction:

15 (1) if the secretary is notified by  
16 appropriate federal authorities at least sixty days prior to  
17 the effective date of such cancellation, reduction or  
18 termination of federal funds, the department is required to  
19 promulgate [~~regulations~~] rules through the public hearing  
20 process to be effective on the date mandated by the appropriate  
21 federal authority; or

22 (2) if the secretary is notified by  
23 appropriate federal authorities or court less than sixty days  
24 prior to the effective date of such cancellation, reduction or  
25 suspension of federal funds or court order, the department is

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1 authorized without a public hearing to promulgate interim rules  
2 [~~or regulations~~] effective for a period not to exceed ninety  
3 days. Interim [~~regulations~~] rules shall not be promulgated  
4 without first providing a written notice twenty days in advance  
5 to providers of medical or behavioral health services and  
6 beneficiaries of department programs. At the time of the  
7 promulgation of the interim rules [~~or regulations~~], the  
8 department shall give notice of the public hearing on the final  
9 rules [~~or regulations~~] in accordance with Subsection E of this  
10 section.

11 G. If the secretary certifies to the secretary of  
12 finance and administration and gives contemporaneous notice of  
13 such certification through the human services register that the  
14 department has insufficient state funds to operate any of the  
15 programs it administers and that reductions in services or  
16 benefit levels are necessary, the secretary may engage in  
17 interim rulemaking. Notwithstanding any provision to the  
18 contrary in the State Rules Act, interim rulemaking shall be  
19 conducted pursuant to Subsection E of this section, except:

20 (1) the period of notice of public hearing  
21 shall be fifteen days;

22 (2) the department shall also send individual  
23 notices of the interim rulemaking and of the public hearing to  
24 affected providers and beneficiaries;

25 (3) rules [~~and regulations~~] promulgated

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1 pursuant to the provisions of this subsection shall be in  
2 effect not less than five days after the public hearing;

3 (4) rules [~~and regulations~~] promulgated  
4 pursuant to the provisions of this subsection shall not be in  
5 effect for more than ninety days; and

6 (5) if final rules [~~and regulations~~] are  
7 necessary to replace the interim rules [~~and regulations~~], the  
8 department shall give notice of intent to promulgate final  
9 rules [~~and regulations~~] at the time of notice herein. The  
10 final rules [~~and regulations~~] shall be promulgated not more  
11 than forty-five days after the public hearing and filed in  
12 accordance with the State Rules Act.

13 H. At the time of the promulgation of the interim  
14 rules [~~or regulations~~], the department shall give notice of the  
15 public hearing on the final rules [~~or regulations~~] in  
16 accordance with Subsection E of this section.

17 I. The secretary shall ensure that any behavioral  
18 health services, including mental health and substance abuse  
19 services, provided, contracted for or approved are in  
20 compliance with the requirements of Section 9-7-6.4 NMSA 1978.

21 J. All rules [~~and regulations~~] shall be filed in  
22 accordance with the State Rules Act."

23 SECTION 2. EMERGENCY.--It is necessary for the public  
24 peace, health and safety that this act take effect immediately.