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SENATE BILL 424

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO HEALTH; ESTABLISHING MINIMUM STAFFING RATIOS IN NURSING FACILITIES; PROVIDING FOR ENFORCEMENT; ESTABLISHING CIVIL PENALTIES.

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. No health facility shall 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
4 inspections and investigations and to prescribe regulations it
5 deems necessary or desirable to promote the health, safety and
6 welfare of persons 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
11 compliance with all rules of the department. Applications for
12 hospital licenses shall include evidence that the bylaws or
13 rules of the hospital apply equally to osteopathic and medical
14 physicians. The department shall consolidate the applications
15 and inspections for a hospital that also operates as a
16 hospital-based primary care clinic.

17 D. Upon inspection of any health facility, if the
18 department finds any violation of its rules, the department
19 may deny the application for a license, whether initial or
20 renewal, or it may issue a temporary license. A temporary
21 license shall not be issued for a period exceeding one hundred
22 twenty days, nor shall more than two consecutive temporary
23 licenses be 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
2 one-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
9 licensed premises, except that child-care centers that receive
10 no state or federal funds may apply for and receive from the
11 department a waiver from the requirement that a license be
12 posted or kept on the licensed premises.

13 F. Any 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 facility upon forms prescribed by
25 the department. This subsection does not limit in any way the

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

5 G. The department may charge a reasonable fee not
6 to exceed three dollars (\$3.00) per bed for an inpatient
7 health facility or one hundred dollars (\$100) for any other
8 health facility for each license application, whether initial
9 or renewal, of an annual license or the second consecutive
10 issuance of a temporary license. Fees collected shall not be
11 refundable. All fees collected pursuant to licensure
12 applications shall be deposited with the state treasurer for
13 credit to the general fund.

14 H. The department may revoke or suspend the
15 license of a health facility or may impose on a health
16 facility an intermediate sanction and a civil monetary penalty
17 provided in Section 24-1-5.2 NMSA 1978 after notice and an
18 opportunity for a hearing before a hearing officer designated
19 by the department to hear the matter and, except for child-
20 care centers and facilities, may proceed pursuant to the
21 Health Facility Receivership Act upon a determination that the
22 health facility is not in compliance with any rule of the
23 department. If immediate action is required to protect human
24 health and safety, the secretary may suspend a license or
25 impose an intermediate sanction pending a hearing, provided

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1 the hearing is held within five working days of the suspension
2 or imposition of the sanction, unless waived by the licensee,
3 and, except for child-care centers and facilities, may proceed
4 ex parte pursuant to the Health Facility Receivership Act.

5 I. The department shall schedule a hearing
6 pursuant to Subsection H of this section if the department
7 receives a request for a hearing from a licensee:

8 (1) within ten working days after receipt by
9 the licensee of notice of suspension, revocation, imposition
10 of an intermediate sanction or civil monetary penalty or
11 denial of an initial or renewal application;

12 (2) within four working days after receipt by
13 the licensee of an emergency suspension order or emergency
14 intermediate sanction imposition and notice of hearing if the
15 licensee wishes to waive the early hearing scheduled and
16 request a hearing at a later date; or

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

19 The department shall also provide timely notice to the
20 licensee of the date, time and place of the hearing, identity
21 of the hearing officer, subject matter of the hearing and
22 alleged violations.

23 J. Any hearing held pursuant to provisions of this
24 section shall be conducted in accordance with adjudicatory
25 hearing rules and procedures adopted by regulation of the

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1 department. The licensee has the right to be represented by
2 counsel, to present all relevant evidence by means of
3 witnesses and books, papers, documents, records, files and
4 other evidence and to examine all opposing witnesses who
5 appear on any matter relevant to the issues. The hearing
6 officer has the power to administer oaths on request of any
7 party and issue subpoenas and subpoenas duces tecum prior to
8 or after the commencement of the hearing to compel discovery
9 and the attendance of witnesses and the production of relevant
10 books, papers, documents, records, files and other evidence.
11 Documents or records pertaining to abuse, neglect or
12 exploitation of a resident, client or patient of a health
13 facility or other documents, records or files in the custody
14 of the human services department or the office of the state
15 long-term care ombudsman at the state agency on aging that are
16 relevant to the alleged violations are discoverable and
17 admissible as evidence in any hearing.

18 K. Any party may appeal the final decision of the
19 department pursuant to the provisions of Section [~~12-8A-1~~
20 39-3-1.1 NMSA 1978.

21 L. Every complaint about a health facility
22 received by the department pursuant to this section shall be
23 promptly investigated to substantiate the allegation and to
24 take appropriate action if substantiated. The department
25 shall coordinate with the human services department, the

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1 office of the state long-term care ombudsman at the state
2 agency on aging and any other appropriate agency to develop a
3 joint protocol establishing responsibilities and procedures to
4 assure prompt investigation of complaints, including prompt
5 and appropriate referrals and necessary action regarding
6 allegations of abuse, neglect or exploitation of residents,
7 clients or patients in a health facility.

8 M. Complaints received by the department pursuant
9 to this section shall not be disclosed publicly in a manner as
10 to identify any individuals or health facilities if upon
11 investigation the complaint is unsubstantiated.

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

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1 facility, the secretary may suspend operation of the child-
2 care facility for a period not in excess of fifteen days.
3 Prior to the date of the hearing, the department shall make a
4 reasonable effort to notify the parents of children in the
5 child-care facility of the notice and opportunity for hearing
6 given to the owner or operator.

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

14 P. The department shall enforce the requirements
15 of Section 24-1-5.5 NMSA 1978 relating to staffing of nursing
16 and long-term care facilities through inspections,
17 investigation of complaints and examination of institutional
18 personnel shift assignments. "

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

21 "24-1-5.2. HEALTH FACILITIES--INTERMEDIATE SANCTIONS--
22 CIVIL PENALTY.--

23 A. Upon a determination that a health facility is
24 not in compliance with any licensing requirement of the
25 department, except for those set forth in Section 24-1-5.5

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1 NMSA 1978, the department, subject to the provisions of this
2 section and Section 24-1-5 NMSA 1978, may:

- 3 (1) impose any intermediate sanction
4 established by regulation, including but not limited to:
5 (a) a directed plan of correction;
6 (b) facility monitors;
7 (c) denial of payment for new medicaid
8 admissions to the facility;
9 (d) temporary management; and
10 (e) restricted admissions;

11 (2) assess a civil monetary penalty, with
12 interest, for each day the facility is or was out of
13 compliance. Civil monetary penalties shall not exceed a total
14 of five thousand dollars (\$5,000) per day. Penalties and
15 interest amounts assessed under this paragraph and recovered
16 on behalf of the state shall be remitted to the state
17 treasurer for deposit in the general fund, except as otherwise
18 provided by federal law for medicaid-certified nursing
19 facilities. The civil monetary penalties contained in this
20 paragraph are cumulative and may be imposed in addition to any
21 other fines or penalties provided by law; and

22 (3) with respect to health facilities other
23 than child-care centers or facilities, proceed pursuant to the
24 Health Facility Receivership Act.

25 B. The secretary shall adopt and promulgate

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1 regulations specifying the criteria for imposition of any
2 intermediate sanction and civil monetary penalty. The
3 criteria shall provide for more severe sanctions for a
4 violation that results in any abuse, neglect or exploitation
5 of residents, clients or patients as defined in the
6 regulations or that places one or more residents, clients or
7 patients of a health facility at substantial risk of serious
8 physical or mental harm.

9 C. The provisions of this section for intermediate
10 sanctions and civil monetary penalties shall not apply to
11 certified nursing facilities except upon a determination by
12 the federal health care financing administration that these
13 provisions comply with the provisions for nursing facility
14 remedies and civil monetary penalties pursuant to 42 U. S. C.
15 1395 and 1396, as amended, and upon a determination by the
16 department that no other state or federal agency is authorized
17 to impose the same remedies, sanctions or penalties.

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

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1 Section 3. A new Section 24-1-5.5 NMSA 1978 is enacted
2 to read:

3 "24-1-5.5. [NEW MATERIAL] NURSING FACILITIES--MINIMUM
4 STAFFING RATIOS.--

5 A. Nursing facilities licensed pursuant to the
6 provisions of Section 24-1-5 NMSA 1978 shall employ and assign
7 personnel, including an appropriate combination of licensed
8 nurses and certified nursing assistants, sufficient to provide
9 a minimum of two and eight-tenths hours of direct personal and
10 nursing care per patient per day and shall provide minimum
11 direct caregiver-to-resident ratios as follows:

12 (1) one direct caregiver per five residents
13 during the day;

14 (2) one direct caregiver per ten residents
15 during the evening; and

16 (3) one direct caregiver per fifteen
17 residents at night.

18 B. Nursing facilities licensed pursuant to the
19 provisions of Section 24-1-5 NMSA 1978 shall employ and assign
20 on each shift sufficient nursing personnel to meet the care
21 needs of each patient and shall provide minimum nursing staff-
22 to-resident ratios as follows:

23 (1) one licensed nurse per fifteen residents
24 during the day;

25 (2) one licensed nurse per twenty-five

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1 residents during the evening; and

2 (3) one licensed nurse per thirty-five
3 residents at night.

4 C. For purposes of this section:

5 (1) "direct caregiver" means a certified
6 nursing assistant or certified nursing aide, licensed by the
7 department of health, but does not include either of these
8 persons when working as a trainee or when assigned to laundry
9 or other support responsibilities; and

10 (2) "licensed nurse" means a person licensed
11 by the board of nursing and employed as a registered nurse,
12 licensed practical nurse, certified nurse practitioner,
13 clinical nurse specialist or certified registered nurse
14 anesthetist when working as a nurse or nursing supervisor, but
15 not when employed in an administrative capacity.

16 D. The number of direct caregivers and licensed
17 nurses on duty at any given time shall be increased as
18 necessary to meet the care needs of the patients and shall be
19 posted plainly near each visitor's entrance of a nursing
20 facility.

21 E. Any person convicted of a violation of the
22 provisions of this section shall be assessed a civil penalty
23 of one thousand dollars (\$1,000) per day for each day during
24 any portion of which a violation occurs and, upon conviction
25 for a second or subsequent violation, shall be fined two

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1 thousand five hundred dollars (\$2,500) per day for each day
2 during any portion of which a violation occurs. "

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1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 February 22, 1999
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8 Mr. President:
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10 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
11 whom has been referred
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13 SENATE BILL 424
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15 has had it under consideration and reports same with
16 recommendation that it DO NOT PASS, but that
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19 SENATE CORPORATIONS & TRANSPORTATION COMMITTEE
20 SUBSTITUTE FOR SENATE BILL 424
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22 DO PASS, and thence referred to the JUDICIARY COMMITTEE.
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25 Respectfully submitted,

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Roman M. Maes, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 3 Against

Yes: 5

No: Kysar, McKibben, Rawson

Excused: Macias, Maes

Absent: None

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1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE
2 FOR SENATE BILL 424

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11 **44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**

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AN ACT

RELATING TO HEALTH; PROVIDING FOR NURSE STAFF LEVELS AT
NURSING FACILITIES.

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

Section 1. NURSING FACILITIES--NURSE STAFF LEVELS. --

A. Nursing facilities licensed pursuant to the provisions of Section 24-1-5 NMSA 1978 shall employ nursing department staff sufficient to meet the care needs of the residents.

B. By December 31, 1999, the department of health shall adopt regulations to establish requirements for minimum nursing department staff in nursing facilities and for publicly posting the number of nursing department staff on duty. Prior to proposing those regulations, the department of health shall cooperate with and receive comments from the

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human services department, the state agency on aging,
consumers, providers and advocates regarding the fiscal and
service criteria applicable to the regulations. The effective
date of the regulations shall be July 1, 2000.

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SCORC/SB 424

**FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999**

March 18, 1999

Mr. Speaker:

**Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
been referred**

**SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE
SUBSTITUTE FOR SENATE BILL 424**

**has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:**

1. On page 1, line 11, after "FOR" insert "MINIMUM
STANDARDS OF CARE AND".

2. On page 1, line 21, strike "regulations" and insert
"rules".

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HBIC/SCORC/SB 424

Page 21

3. On page 1, line 21, after "for" insert "minimum standards of care and".

4. On page 1, line 24, strike "regulations" and insert "rules".

5. On page 2, line 3, strike "regulations" and insert "rules".

6. On page 2, between lines 4 and 5, insert the following:

"C. By December 31, 1999 the human services department shall adopt rules that require that medicaid reimbursements or payments for nursing facility services take into account the nursing facility's nurse staff levels and minimum standards of care, including the number of complaints and the manner in which the nursing facility resolves substantiated complaints by members of the joint protocol, established pursuant to Subsection L of Section 24-1-5 NMSA 1978, on these requirements. The effective date of the rules shall be July 1, 2000.

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

SCORC/SB 424

HBIC/SCORC/SB 424

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D. The human services department shall establish
by rule hearing procedures assuring that minimal procedural
due process safeguards be afforded. A person aggrieved by a
final decision of a department may appeal pursuant to
Section 39-3-1.1 NMSA 1978."

Respectfully submitted,

Fred Luna, Chairman

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HBIC/SCORC/SB 424

Page 23

4 The roll call vote was 11 For 0 Against

5 Yes: 11

6 Excused: Hobbs

7 Absent: None

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