The Legislature
of the
State of New Mexico

52nd Legislature, 1st Session

LAWS 2015

CHAPTER 152

HOUSE BILL 84, as amended

Introduced by

REPRESENTATIVE CHRISTINE TRUJILLO

REPRESENTATIVE JASON C. HARPER
CHAPTER 153

AN ACT

RELATING TO HEALTH; AMENDING THE PUBLIC HEALTH ACT TO PROVIDE
FOR THE LICENSURE BY THE DEPARTMENT OF HEALTH OF FREESTANDING
BIRTH CENTERS.

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 2007, Chapter 325,
Section 6 and by Laws 2007, Chapter 326, Section 1) is amended
to read:

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

A. "department" or "division" means the children,
youth and families department as to child care centers,
residential treatment centers that serve persons up to
twenty-one years of age, community mental health centers that
serve only persons up to twenty-one years of age, day
treatment centers that serve persons up to twenty-one years of
age, shelter care homes and those outpatient facilities that
are also community-based behavioral health facilities serving
only persons up to twenty-one years of age and the department
of health as to all other health facilities, unless otherwise
designated;

B. "director" means the secretary;

C. "person", when used without further
qualification, means an individual or any other form of entity recognized by law;

D. "health facility" means a public hospital, profit or nonprofit private hospital, general or special hospital, outpatient facility, maternity home or shelter, freestanding birth center, adult daycare facility, nursing home, intermediate care facility, boarding home not under the control of an institution of higher learning, child care center, shelter care home, diagnostic and treatment center, rehabilitation center, infirmary, community mental health center that serves both children and adults or adults only, residential treatment center that serves persons up to twenty-one years of age, community mental health center that serves only persons up to twenty-one years of age and day treatment center that serves persons up to twenty-one years of age or a health service organization operating as a freestanding hospice or a home health agency. The designation of these entities as health facilities is only for the purposes of definition in the Public Health Act and does not imply that a freestanding hospice or a home health agency is considered a health facility for the purposes of other provisions of state or federal laws. "Health facility" also includes those facilities that, by federal regulation, must be licensed by the state to obtain or maintain full or partial, permanent or temporary federal funding. It does not include the offices
and treatment rooms of licensed private practitioners; and

E. "secretary" means the secretary of children, youth and families as to child care centers, residential treatment centers that serve persons up to twenty-one years of age, community mental health centers that serve only persons up to twenty-one years of age, day treatment centers that serve persons up to twenty-one years of age, shelter care homes and those outpatient facilities that are also community-based behavioral health facilities serving only persons up to twenty-one years of age and the secretary of health as to all other health facilities."

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

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

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

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

E. A one-year nontransferable license shall be
issued to any health facility complying with all rules of the
department. The license shall be renewable for successive
one-year periods, upon filing of a renewal application, if the
department is satisfied that the health facility is in
compliance with all rules of the department or, if not in
compliance with a rule, has been granted a waiver or variance of that rule by the department pursuant to procedures, conditions and guidelines adopted by rule of the department. Licenses shall be posted in a conspicuous place on the licensed premises, except that child care centers that receive no state or federal funds may apply for and receive from the department a waiver from the requirement that a license be posted or kept on the licensed premises.

F. A health facility that has been inspected and licensed by the department, that has received certification for participation in federal reimbursement programs and that has been fully accredited by a national accrediting organization approved by the federal centers for medicare and medicaid services or the department shall be granted a license renewal based on that accreditation. A freestanding birth center that has been inspected and licensed by the department and is accredited by the commission for accreditation of birth centers or its successor accreditation body shall be granted a license renewal based on that accreditation. Health facilities receiving less than full accreditation by an approved accrediting body may be granted a license renewal based on that accreditation. License renewals shall be issued upon application submitted by the health facility upon forms prescribed by the department. This subsection does not limit in any way the department's various duties and
responsibilities under other provisions of the Public Health Act or under any other subsection of this section, including any of the department's responsibilities for the health and safety of the public.

   C. The department may charge a reasonable fee not to exceed twelve dollars ($12.00) per bed for an inpatient health facility or three hundred dollars ($300) for any other health facility for each license application, whether initial or renewal, of an annual license or the second consecutive issuance of a temporary license. Fees collected shall not be refundable. All fees collected pursuant to licensure applications shall be deposited with the state treasurer for credit in a designated department recurring account for use in health facility licensure and certification operations.

   E. The department may revoke or suspend the license of a health facility or may impose on a health facility an intermediate sanction and a civil monetary penalty provided in Section 24-1-5.2 NMSA 1978 after notice and an opportunity for a hearing before a hearing officer designated by the department to hear the matter and, except for child care centers and facilities, may proceed pursuant to the Health Facility Receivership Act upon a determination that the health facility is not in compliance with any rule of the department. If immediate action is required to protect human health and safety, the secretary may suspend a license or...
impose an intermediate sanction pending a hearing, provided
the hearing is held within five working days of the suspension
or imposition of the sanction, unless waived by the licensee,
and, except for child care centers and facilities, may proceed
ex parte pursuant to the Health Facility Receivership Act.

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

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

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

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

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

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

K. Any party may appeal the final decision of the department pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

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

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

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

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

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

M. A complaint received by the department pursuant
to this section shall not be disclosed publicly in a manner as
to identify any individuals or health facilities if upon
investigation the complaint is unsubstantiated.
N. Notwithstanding any other provision of this section, when there are reasonable grounds to believe that a child is in imminent danger of abuse or neglect while in the care of a child care facility, whether or not licensed, or upon the receipt of a report pursuant to Section 32A-4-3 NMSA 1978, the department shall consult with the owner or operator of the child care facility. Upon a finding of probable cause, the department shall give the owner or operator notice of its intent to suspend operation of the child care facility and provide an opportunity for a hearing to be held within three working days, unless waived by the owner or operator. Within seven working days from the day of notice, the secretary shall make a decision, and, if it is determined that any child is in imminent danger of abuse or neglect in the child care facility, the secretary may suspend operation of the child care facility for a period not in excess of fifteen days. Prior to the date of the hearing, the department shall make a reasonable effort to notify the parents of children in the child care facility of the notice and opportunity for hearing given to the owner or operator.

O. Nothing contained in this section or in the Public Health Act shall authorize either the secretary or the department to make any inspection or investigation or to prescribe any rules concerning group homes as defined in Section 9-8-13 NMSA 1978 except as are reasonably necessary or
desirable to promote the health and safety of persons using
group homes.
DON TRIPP, SPEAKER
HOUSE OF REPRESENTATIVES

DENISE RAMONAS, CHIEF CLERK
HOUSE OF REPRESENTATIVES

JOHN A. SANCHEZ, PRESIDENT
SENATE

LENORE M. NARANJO, CHIEF CLERK
SENATE

Approved by me this 10th day of April, 2015

SUSANA MARTINEZ, GOVERNOR
STATE OF NEW MEXICO