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AN ACT

RELATING TO PROTECTION OF VULNERABLE PERSONS; PROVIDING  
POWERS AND DUTIES TO REGISTER, 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. "board and care facility" means a residential  
establishment that:

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

(2) provides personal care services;

B. "crisis triage center" means a health facility  
that:

(1) is licensed by the department of health;

(2) is not physically part of an inpatient

1 hospital or included in a hospital's license; and

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

5 C. "department" or "division" means the children,  
6 youth and families department as to child care centers,  
7 residential treatment centers that serve persons up to  
8 twenty-one years of age, community mental health centers that  
9 serve only persons up to twenty-one years of age, day  
10 treatment centers that serve persons up to twenty-one years  
11 of age, shelter care homes and those outpatient facilities  
12 that are also community-based behavioral health facilities  
13 serving only persons up to twenty-one years of age and the  
14 department of health as to all other health facilities,  
15 unless otherwise designated;

16 D. "director" means the secretary;

17 E. "health facility" means a public hospital,  
18 profit or nonprofit private hospital, general or special  
19 hospital, outpatient facility, crisis triage center,  
20 maternity home or shelter, freestanding birth center, adult  
21 daycare facility, nursing home, intermediate care facility,  
22 assisted living, child care center, shelter care home,  
23 diagnostic and treatment center, rehabilitation center,  
24 infirmary, community mental health center that serves both  
25 children and adults or adults only, residential treatment

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

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

19 G. "personal care services" means prompting with  
20 personal hygiene and body care or assistance with self-  
21 administration of medication, travel to medical services,  
22 essential shopping, meal preparation, laundry or housework;  
23 and

24 H. "secretary" means the secretary of children,  
25 youth and families as to child care centers, residential

1 treatment centers that serve persons up to twenty-one years  
2 of age; community mental health centers that serve only  
3 persons up to twenty-one years of age; day treatment centers  
4 that serve persons up to twenty-one years of age; shelter  
5 care homes; and those outpatient facilities that are also  
6 community-based behavioral health facilities serving only  
7 persons up to twenty-one years of age and the secretary of  
8 health as to all other health facilities."

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

11 "BOARD AND CARE FACILITY--REGISTRATION--DEPARTMENT  
12 DUTIES--MODEL STANDARDS.

13 A. The department of health shall register any  
14 board and care facility that:

15 (1) provides the owner or operator's name,  
16 the number of residents, the address of the facility and an  
17 indication as to whether the facility provides assistance  
18 with self-administration of medication;

19 (2) provides proof that it holds a valid  
20 custodial drug permit from the board of pharmacy if the board  
21 and care facility provides assistance with self-  
22 administration of medication; and

23 (3) meets any other criterion for  
24 registration that the department of health establishes by  
25 rule.

1           B. A board and care facility shall not be operated  
2 unless it has registered with the department. If a board and  
3 care facility is found to be operating without having  
4 registered with the department, in order to protect human  
5 health or safety, the secretary may issue a cease-and-desist  
6 order and may impose an intermediate sanction and a civil  
7 monetary penalty as provided in Section 24-1-5.2 NMSA 1978.  
8 The board and care facility may request a hearing that shall  
9 be held in the same manner as provided in Section 24-1-5 NMSA  
10 1978.

11           C. By July 1, 2018, the department of health shall  
12 adopt and promulgate rules establishing board and care  
13 facility standards that local governments that opt to  
14 regulate board and care facilities shall adopt."

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

17           "BOARD AND CARE FACILITY--LOCAL PERMITTING--  
18 INSPECTIONS--REPORTING.--

19           A. A county or municipality may elect to regulate  
20 board and care facilities in its jurisdiction and, if it  
21 elects to regulate board and care facilities, it shall adopt  
22 the board and care facility standards that the department has  
23 established by rule pursuant to Section 2 of this 2017 act.

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

1 and 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  
5 to enforce board and care facility model standards adopted by  
6 the county or municipality.

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

11 D. 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 health and the secretary of aging and long-  
16 term services that includes:

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

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

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

24 (4) the address for each permitted board and  
25 care facility within the county's or municipality's

1 jurisdiction;

2 (5) the number of residents that each  
3 permitted board and care facility is allowed to house at any  
4 one time;

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

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

17 E. The provisions of this section do not apply to  
18 a:

19 (1) hotel;  
20 (2) continuing care retirement community;  
21 (3) domestic violence safe house or shelter;  
22 (4) residence owned or operated by a church  
23 or religious organization that qualifies for tax-exempt  
24 status under Section 501(c)(3) of the Internal Revenue Code  
25 of 1986;

1 or

2 (5) a health facility, other than a board  
3 and care facility, licensed by the department."

4 SECTION 4. CUSTODIAL DRUG PERMITS.--

5 A. A board and care facility shall not provide  
6 assistance with self-administration of medication without a  
7 valid custodial drug permit from the board of pharmacy.

8 B. The board of pharmacy shall require a board and  
9 care facility to have a custodial drug permit if it provides  
10 assistance with self-administration of medication.

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

17 D. For purposes of this section:

18 (1) "assistance with self-administration of  
19 medication" means:

20 (a) reminding a resident to take  
21 medication;

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



1 or

2 (c) reminding a resident when a  
3 prescription needs to be refilled; and

4 (2) "board and care facility" means a  
5 residential establishment that:

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

9 (b) provides personal care services.

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

12 "BOARD AND CARE FACILITIES--DUTIES OF THE DEPARTMENT--  
13 ANNUAL REPORTS.--

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

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

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

1 "28-17-3. DEFINITIONS.--As used in the Long-Term Care  
2 Ombudsman Act:

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

7 B. "department" means the aging and long-term  
8 services department;

9 C. "director" or "secretary" means the secretary  
10 of aging and long-term services;

11 D. "licensing and certification" means the  
12 licensing and certification division of the department of  
13 health;

14 E. "long-term care facility" means a residential  
15 facility that provides care to one or more persons unrelated  
16 to the owner or operator of the facility, including:

17 (1) a skilled nursing facility;

18 (2) an intermediate care nursing facility,  
19 including an intermediate care facility for the  
20 intellectually disabled;

21 (3) a nursing facility;

22 (4) an adult residential shelter care home;

23 (5) a board and care facility;

24 (6) any other adult care home or adult  
25 residential care facility;

1 (7) a continuing care retirement community;

2 (8) any swing bed in an acute care facility  
3 or extended care facility; and

4 (9) any adult daycare facility;

5 F. "office" means the office of the state  
6 long-term care ombudsman;

7 G. "Older Americans Act" means the federal Older  
8 Americans Act of 1965;

9 H. "ombudsman" means an individual trained and  
10 certified to act as a representative of the office of the  
11 state long-term care ombudsman;

12 I. "ombudsman coordinator" means the coordinator  
13 of a regional or local ombudsman program designated by the  
14 office of the state ombudsman;

15 J. "program" means the New Mexico long-term care  
16 ombudsman program;

17 K. "resident" means any patient, client or person  
18 residing in and receiving care in a long-term care facility;

19 L. "state ombudsman" means the state long-term  
20 care ombudsman; and

21 M. "surrogate decision maker" means a legally  
22 appointed agent, guardian or surrogate who is authorized to  
23 act on behalf of a resident."

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

1 "30-44-2. DEFINITIONS.--As used in the Medicaid Fraud  
2 Act:

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

5 B. "board and care facility" means a residential  
6 establishment that:

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

10 (2) provides personal care services;

11 C. "claim" means a communication, whether oral,  
12 written, electronic or magnetic, that identifies a treatment,  
13 good or service as reimbursable under the program;

14 D. "cost document" means a cost report or similar  
15 document that states income or expenses and is used to  
16 determine a cost reimbursement-based rate of payment for a  
17 provider under the program;

18 E. "covered person" means an individual who is  
19 entitled to receive health care benefits from a managed  
20 health care plan;

21 F. "department" means the human services  
22 department;

23 G. "entity" means a person other than an  
24 individual and includes corporations; partnerships;  
25 associations; joint-stock companies; unions; trusts; pension

1 funds; unincorporated organizations; governments and their  
2 political subdivisions; and nonprofit organizations;

3 H. "great physical harm" means physical harm of a  
4 type that causes physical loss of a bodily member or organ or  
5 functional loss of a bodily member or organ for a prolonged  
6 period of time;

7 I. "great psychological harm" means psychological  
8 harm that causes mental or emotional incapacitation for a  
9 prolonged period of time; that causes extreme behavioral  
10 change or severe physical symptoms; or that requires  
11 psychological or psychiatric care;

12 J. "health care official" means:

13 (1) an administrator, officer, trustee,  
14 fiduciary, custodian, counsel, agent or employee of a managed  
15 health care plan;

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

19 (3) an official, employee or agent of a  
20 state or federal agency with regulatory or administrative  
21 authority over a managed health care plan;

22 K. "managed health care plan" means a government-  
23 sponsored health benefit plan that requires a covered person  
24 to use, or creates incentives, including financial  
25 incentives, for a covered person to use, health care

1 providers managed, owned, under contract with or employed by  
2 a health care insurer or provider service network. A  
3 "managed health care plan" includes the health care services  
4 offered by a health maintenance organization, preferred  
5 provider organization, health care insurer, provider service  
6 network, entity or person that contracts to provide or  
7 provides goods or services that are reimbursed by or are a  
8 required benefit of a state or federally funded health  
9 benefit program, or a person or entity who contracts to  
10 provide goods or services to the program;

11 L. "person" includes individuals, corporations,  
12 partnerships and other associations;

13 M. "personal care services" means prompting with  
14 personal hygiene and body care or assistance with self-  
15 administration of medication, travel to medical services,  
16 essential shopping, meal preparation, laundry or housework;

17 N. "physical harm" means an injury to the body  
18 that causes pain or incapacitation;

19 O. "program" means the medical assistance program  
20 authorized under Title 19 of the federal Social Security Act,  
21 42 U.S.C. 1396, et seq. and implemented under Section 27-2-12  
22 NMSA 1978;

23 P. "provider" means a person who has applied to  
24 participate or who participates in the program as a supplier  
25 of treatment, services or goods;

1 Q. "psychological harm" means emotional or  
2 psychological damage of such a nature as to cause fear,  
3 humiliation or distress or to impair a person's ability to  
4 enjoy the normal process of life;

5 R. "recipient" means an individual who receives or  
6 requests benefits under the program;

7 S. "records" means medical or business  
8 documentation, however recorded, relating to the treatment or  
9 care of a recipient, to services or goods provided to a  
10 recipient or to reimbursement for treatment, services or  
11 goods, including documentation required to be retained by  
12 regulations of the program; and

13 T. "unit" means the medicaid fraud control unit or  
14 any other agency with power to investigate or prosecute fraud  
15 and abuse of the program."

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

18 "30-44-3. POWER TO INVESTIGATE AND ENFORCE CIVIL  
19 REMEDIES AND PROSECUTE CRIMINAL ACTIONS--DUTIES.--

20 A. The attorney general, the district attorneys,  
21 the unit and the department have the power and authority to  
22 investigate violations of the Medicaid Fraud Act and bring  
23 actions to enforce the civil remedies established in the  
24 Medicaid Fraud Act.

25 B. The attorney general, the district attorneys

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

11 C. The unit shall review complaints alleging:

12 (1) abuse or neglect of residents of board  
13 and care facilities, regardless of whether payment to such  
14 facilities is made under medicaid; and

15 (2) misappropriation of funds of residents  
16 of board and care facilities, regardless of whether payment  
17 to such facilities is made under medicaid."

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

20 "30-47-3. DEFINITIONS.--As used in the Resident Abuse  
21 and Neglect Act:

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

25 (1) physical contact that harms or is likely



1 to harm a resident of a care facility;

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

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

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

10 (5) medically inappropriate conduct that  
11 causes or is likely to cause great psychological harm to a  
12 resident; or

13 (6) an unlawful act, a threat or menacing  
14 conduct directed toward a resident that results and might  
15 reasonably be expected to result in fear or emotional or  
16 mental distress to a resident;

17 B. "activities of daily living" means dressing,  
18 bathing, eating, toileting, walking and transferring from a  
19 bed or chair;

20 C. "assistance with self-administration of  
21 medication" means, with respect to a resident of a board and  
22 care facility:

23 (1) reminding the resident to take  
24 medication;

25 (2) opening a container, removing medication

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

5 (3) reminding the resident when a  
6 prescription needs to be refilled;

7 D. "board and care facility" means a residential  
8 establishment that:

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

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

14 E. "care facility" means a hospital; skilled  
15 nursing facility; intermediate care facility; care facility  
16 for the intellectually disabled; psychiatric facility;  
17 rehabilitation facility; kidney disease treatment center;  
18 home health agency; ambulatory surgical or outpatient  
19 facility; home for the aged or disabled; group home; adult  
20 foster care home; private residence that provides personal  
21 care, sheltered care or nursing care for one or more persons;  
22 a resident's or care provider's home in which personal care,  
23 sheltered care or nursing care is provided; adult day care  
24 center; board and care facility; adult residential shelter  
25 care home; and any other health or resident care related

1 facility or home, but does not include a care facility  
2 located at or performing services for any correctional  
3 facility;

4 F. "department" means the human services  
5 department or its successor, contractor, employee or  
6 designee;

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

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

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

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

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

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

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

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

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

14 M. "resident" means any person who resides in a  
15 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  
22 plan shall be prepared within fourteen days of a client's  
23 admission to residential treatment or services.

24 B. Each client shall, to the maximum extent  
25 possible, be involved in the preparation of an individualized

1 treatment or habilitation plan.

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

4 (1) a statement of the nature of the  
5 specific 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  
11 attainment;

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

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

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

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

23 (1) mental status examination;

24 (2) intellectual function assessment;

25 (3) psychological assessment, which may

1 include the use of psychological testing;

2 (4) educational assessment;

3 (5) vocational assessment;

4 (6) social assessment;

5 (7) medication assessment; and

6 (8) physical assessment.

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

25 F. When discharge planning for a client includes

1 or suggests placement in or referral to a board and care  
2 facility, the residential treatment or habilitation program  
3 shall take reasonable steps to verify that such board and  
4 care facility:

5 (1) is registered and is in good standing  
6 with the department of health; and

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

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