

N. M. S. A. 1978, § 24-1-1

§ 24-1-1. Short title

Chapter 24, Article 1 NMSA 1978 may be cited as the “Public Health Act”.

N. M. S. A. 1978, § 24-1-2

§ 24-1-2. Definitions

Effective: June 15, 2007

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;

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, 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 free-standing 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

**New Mexico Statutes Annotated \_Chapter 24. Health and Safety \_Article 1. Public Health Act (Refs & Annos)**

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.

**N. M. S. A. 1978, § 24-1-3**

**§ 24-1-3. Powers and authority of department**

**The department has authority to:**

A. receive such grants, subsidies, donations, allotments or bequests as may be offered to the state by the federal government or any department thereof or by any public or private foundation or individuals;

B. supervise the health and hygiene of the people of the state;

C. investigate, control and abate the causes of disease, especially epidemics, sources of mortality and other conditions of public health;

D. establish, maintain and enforce isolation and quarantine;

E. close any public place and forbid gatherings of people when necessary for the protection of the public health;

F. establish programs and adopt rules to prevent infant mortality, birth defects and morbidity;

G. prescribe the duties of public health nurses and school nurses;

H. provide educational programs and disseminate information on public health;

**I. maintain and enforce rules for the licensure of health facilities;**

J. bring action in court for the enforcement of health laws and rules and orders issued by the department;

K. enter into agreements with other states to carry out the powers and duties of the department;

L. cooperate and enter into contracts or agreements with the federal government or any other person to carry out the powers and duties of the department;

M. maintain and enforce rules for the control of communicable diseases deemed to be dangerous to public health;

N. maintain and enforce rules for immunization against diseases deemed to be dangerous to the public health;

O. maintain and enforce such rules as may be necessary to carry out the provisions of the Public Health Act and to publish the rules;

P. supervise state public health activities, operate a dental public health program and operate state laboratories for the investigation of public health matters;

Q. sue and, with the consent of the legislature, be sued;

R. regulate the practice of midwifery;

S. administer legislation enacted pursuant to Title VI of the Public Health Service Act, as amended and supplemented;

T. inspect such premises or vehicles as necessary to ascertain the existence or nonexistence of conditions dangerous to public health or safety;

U. request and inspect, while maintaining federal and state confidentiality requirements, copies of:

(1) medical and clinical records reasonably required for the department's quality assurance and quality improvement activities; and

New Mexico Statutes Annotated \_Chapter 24. Health and Safety \_Article 1. Public Health Act (Refs & Annos)

(2) all medical and clinical records pertaining to the individual whose death is the subject of inquiry by the department's mortality review activities; and

V. do all other things necessary to carry out its duties.

N. M. S. A. 1978, § 24-1-4

§ 24-1-4. Creation of health districts; appointment of health officers; powers and duties of health officers

- A. The director shall establish health districts and may modify and create new ones as he deems necessary.
- B. The director shall appoint one district health officer for each health district. The director may appoint assistants to the district health officer when he deems necessary.
- C. The director shall establish the powers and duties of the district health officers.
- D. All school health personnel, except physical education personnel, are under the direct supervision and control of the district health officer in their district. They shall make such reports relating to public health as the district health officer in their district requires.

N. M. S. A. 1978, § 24-1-5

§ 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.<sup>1</sup>

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

**New Mexico Statutes Annotated \_Chapter 24. Health and Safety \_Article 1. Public Health Act (Refs & Annos)**

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 and that has received certification for participation in federal reimbursement programs and that has been fully accredited by the joint commission on accreditation of health care organizations or the American osteopathic association shall be granted a license renewal based on that accreditation. Health facilities receiving less than full accreditation by the joint commission on the accreditation of health care organizations or by the American osteopathic association 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.

G. 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.

H. 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:

New Mexico Statutes Annotated \_Chapter 24. Health and Safety \_Article 1. Public Health Act (Refs & Annos)

(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;

New Mexico Statutes Annotated \_Chapter 24. Health and Safety \_Article 1. Public Health Act (Refs & Annos)

(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.