

1 AN ACT

2 RELATING TO EXECUTIVE REORGANIZATION; RENAMING THE HUMAN
3 SERVICES DEPARTMENT AS THE HEALTH CARE AUTHORITY DEPARTMENT;
4 CHANGING ITS POWERS AND DUTIES; PROVIDING FOR TRANSITION;
5 TRANSFERRING FUNCTIONS, PERSONNEL, MONEY, APPROPRIATIONS,
6 RECORDS, EQUIPMENT, SUPPLIES, OTHER PROPERTY, CONTRACTUAL
7 OBLIGATIONS AND STATUTORY REFERENCES; AMENDING AND REPEALING
8 SECTIONS OF THE NMSA 1978; RECONCILING CONFLICTING SECTIONS
9 OF LAW IN LAWS 2019 BY REPEALING LAWS 2019, CHAPTER 211,
10 SECTION 11.

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

15 "9-8-1. SHORT TITLE.--Chapter 9, Article 8 NMSA 1978
16 may be cited as the "Health Care Authority Department Act".

17 SECTION 2. Section 9-8-2 NMSA 1978 (being Laws 1977,
18 Chapter 252, Section 2) is amended to read:

19 "9-8-2. DEFINITIONS.--As used in the Health Care
20 Authority Department Act:

21 A. "department" means the health care authority
22 department; and

23 B. "secretary" means the secretary of health care
24 authority."

25 SECTION 3. Section 9-8-3 NMSA 1978 (being Laws 1977,

1 Chapter 252, Section 3, as amended) is amended to read:

2 "9-8-3. PURPOSE.--The purpose of the Health Care
3 Authority Department Act is to establish a single, unified
4 department to administer laws and exercise functions relating
5 to health care purchasing and regulation."

6 SECTION 4. Section 9-8-4 NMSA 1978 (being Laws 1977,
7 Chapter 252, Section 4, as amended) is amended to read:

8 "9-8-4. DEPARTMENT ESTABLISHED.--

9 A. The "health care authority department" is
10 created in the executive branch. The department is a cabinet
11 department and consists of:

- 12 (1) the office of the secretary of health
13 care authority;
- 14 (2) the administrative services division;
- 15 (3) the information technology division;
- 16 (4) the behavioral health services division;
- 17 (5) the developmental disabilities division;
- 18 (6) the health improvement division;
- 19 (7) the medical assistance division;
- 20 (8) the state health benefits division;
- 21 (9) the child support enforcement division;

22 and

- 23 (10) the income support division.

24 B. All references in the law to the behavioral
25 health services division of the department of health or to

1 the mental health division of the department of health in
2 Sections 29-11-1 through 29-11-7 NMSA 1978 or to the
3 department of health in Sections 43-2-1.1 through 43-2-23
4 NMSA 1978 shall be construed as referring to the health care
5 authority department."

6 SECTION 5. Section 9-8-5 NMSA 1978 (being Laws 1977,
7 Chapter 252, Section 6) is amended to read:

8 "9-8-5. SECRETARY OF HEALTH CARE AUTHORITY--
9 APPOINTMENT.--

10 A. The administrative head of the health care
11 authority department is the "secretary of health care
12 authority", who shall be appointed by the governor with the
13 consent of the senate and who shall serve in the executive
14 cabinet.

15 B. An appointed secretary shall serve and have all
16 of the duties, responsibilities and authority of that office
17 during the period of time prior to final action by the senate
18 confirming or rejecting the appointed secretary's
19 appointment."

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

22 "9-8-6. SECRETARY--DUTIES AND GENERAL POWERS.--

23 A. The secretary is responsible to the governor
24 for the operation of the department. It is the secretary's
25 duty to manage all operations of the department and to

1 administer and enforce the laws with which the secretary or
2 the department is charged.

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

10 (1) except as otherwise provided in the
11 Health Care Authority Department Act, exercise general
12 supervisory and appointing authority over all department
13 employees, subject to any applicable personnel laws and
14 rules;

15 (2) delegate authority to subordinates as
16 the secretary deems necessary and appropriate, clearly
17 delineating such delegated authority and the limitations
18 thereto;

19 (3) organize the department into those
20 organizational units the secretary deems will enable it to
21 function most efficiently, subject to any provisions of law
22 requiring or establishing specific organizational units;

23 (4) within the limitations of available
24 appropriations and applicable laws, employ and fix the
25 compensation of those persons necessary to discharge the

1 secretary's duties;

2 (5) conduct background checks on department
3 employees and prospective department employees that have or
4 will have access to federal tax information; provided that:

5 (a) local law enforcement agency
6 criminal history record checks shall be conducted on all
7 employees, prospective employees, contractors, prospective
8 contractors, subcontractors and prospective subcontractors
9 with access to federal tax information;

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

15 (c) federal bureau of investigation
16 fingerprinting shall be conducted on all employees,
17 prospective employees, contractors, prospective contractors,
18 subcontractors and prospective subcontractors with access to
19 federal tax information;

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

1 contractors; 4) prospective contractors; 5) subcontractors;
2 and 6) prospective subcontractors;

3 (e) the department shall conduct a
4 check for eligibility to legally work as a citizen or legal
5 resident of the United States on all employees, prospective
6 employees, contractors, prospective contractors,
7 subcontractors and prospective subcontractors with access to
8 federal tax information. The department shall complete a
9 citizenship or residency check for each new employee and any
10 employee with expiring employment eligibility and shall
11 document and monitor the employee's citizenship or residency
12 status for continued compliance;

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

22 (g) a person who releases or discloses
23 criminal history records or information contained in those
24 records in violation of the provisions of this paragraph is
25 guilty of a misdemeanor and shall be sentenced pursuant to

1 the provisions of Section 31-19-1 NMSA 1978;

2 (h) the secretary shall adopt and
3 promulgate rules to establish procedures to provide for
4 background checks; provided that background checks shall not
5 be evaluated for any purpose other than a person's
6 department-related activities, and criteria according to
7 which background checks are evaluated, for all present and
8 prospective personnel identified in the provisions of this
9 paragraph;

10 (i) contractors, prospective
11 contractors, subcontractors and prospective subcontractors
12 shall bear any costs associated with ordering or conducting
13 background checks pursuant to this paragraph; and

14 (j) a department employee or
15 prospective department employee who is denied employment or
16 whose employment is terminated based on information obtained
17 in a background check shall be entitled to review the
18 information obtained pursuant to this paragraph and to appeal
19 the decision;

20 (6) take administrative action by issuing
21 orders and instructions, not inconsistent with the law, to
22 assure implementation of and compliance with the provisions
23 of law for whose administration or execution the secretary is
24 responsible and to enforce those orders and instructions by
25 appropriate administrative action in the courts;

1 (7) conduct research and studies that will
2 improve the operations of the department and the provision of
3 services to the citizens of the state;

4 (8) provide courses of instruction and
5 practical training for employees of the department and other
6 persons involved in the administration of programs with the
7 objective of improving the operations and efficiency of
8 administration;

9 (9) prepare an annual budget of the
10 department;

11 (10) provide cooperation, at the request of
12 heads of administratively attached agencies, in order to:

13 (a) minimize or eliminate duplication
14 of services and jurisdictional conflicts;

15 (b) coordinate activities and resolve
16 problems of mutual concern; and

17 (c) resolve by agreement the manner and
18 extent to which the department shall provide budgeting,
19 recordkeeping and related clerical assistance to
20 administratively attached agencies; and

21 (11) appoint, with the governor's consent, a
22 "director" for each division. These appointed positions are
23 exempt from the provisions of the Personnel Act. Persons
24 appointed to these positions shall serve at the pleasure of
25 the secretary, except as provided in Section 9-8-9 NMSA 1978.

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

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

11 E. The secretary may make and adopt such
12 reasonable procedural rules as may be necessary to carry out
13 the duties of the department and its divisions. No rule
14 promulgated by the director of any division in carrying out
15 the functions and duties of the division shall be effective
16 until approved by the secretary unless otherwise provided by
17 statute. Unless otherwise provided by statute, no rule
18 affecting any person or agency outside the department shall
19 be adopted, amended or repealed without a public hearing on
20 the proposed action before the secretary or a hearing officer
21 designated by the secretary. The public hearing shall be
22 held in Santa Fe unless otherwise permitted by statute.
23 Notice of the subject matter of the rule, the action proposed
24 to be taken, the time and place of the hearing, the manner in
25 which interested persons may present their views and the

1 method by which copies of the proposed rule or proposed
2 amendment or repeal of an existing rule may be obtained shall
3 be published once at least thirty days prior to the hearing
4 date in a newspaper of general circulation and mailed at
5 least thirty days prior to the hearing date to all persons
6 who have made a written request for advance notice of
7 hearing.

8 F. In the event the secretary anticipates that
9 adoption, amendment or repeal of a rule will be required by a
10 cancellation, reduction or suspension of federal funds or
11 order by a court of competent jurisdiction:

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

19 (2) if the secretary is notified by
20 appropriate federal authorities or court less than sixty days
21 prior to the effective date of such cancellation, reduction
22 or suspension of federal funds or court order, the department
23 is authorized without a public hearing to promulgate interim
24 rules effective for a period not to exceed ninety days.

25 Interim rules shall not be promulgated without first

1 providing a written notice twenty days in advance to
2 providers of medical or behavioral health services and
3 beneficiaries of department programs. At the time of the
4 promulgation of the interim rules, the department shall give
5 notice of the public hearing on the final rules in accordance
6 with Subsection E of this section.

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

17 (1) the period of notice of public hearing
18 shall be fifteen days;

19 (2) the department shall also send
20 individual notices of the interim rulemaking and of the
21 public hearing to affected providers and beneficiaries;

22 (3) rules promulgated pursuant to the
23 provisions of this subsection shall be in effect not less
24 than five days after the public hearing;

25 (4) rules promulgated pursuant to the

1 provisions of this subsection shall not be in effect for more
2 than ninety days; and

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

9 H. At the time of the promulgation of the interim
10 rules, the department shall give notice of the public hearing
11 on the final rules in accordance with Subsection E of this
12 section.

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

18 J. All rules shall be filed in accordance with the
19 State Rules Act."

20 SECTION 7. Section 9-8-7 NMSA 1978 (being Laws 1977,
21 Chapter 252, Section 8) is amended to read:

22 "9-8-7. ORGANIZATIONAL UNITS OF DEPARTMENT--POWERS AND
23 DUTIES SPECIFIED BY LAW--ACCESS TO INFORMATION.--Those
24 organizational units of the department and the officers of
25 those units specified by law shall have all of the powers and

1 duties enumerated in the specific laws involved. However,
2 the carrying out of those powers and duties shall be subject
3 to the direction and supervision of the secretary, and the
4 secretary shall retain the final decision-making authority
5 and responsibility for the administration of any such laws as
6 provided in Subsection B of Section 9-8-6 NMSA 1978. The
7 department shall have access to all records, data and
8 information of other state departments, agencies and
9 institutions, including its own organizational units, not
10 specifically held confidential by law."

11 SECTION 8. Section 9-8-7.1 NMSA 1978 (being Laws 2007,
12 Chapter 325, Section 4, as amended by Laws 2019, Chapter 211,
13 Section 1 and by Laws 2019, Chapter 222, Section 1) is
14 amended to read:

15 "9-8-7.1. BEHAVIORAL HEALTH SERVICES DIVISION--POWERS
16 AND DUTIES OF THE DEPARTMENT.--Subject to appropriation, the
17 department shall:

18 A. contract for behavioral health treatment and
19 support services, including mental health, alcoholism and
20 other substance abuse services;

21 B. establish standards for the delivery of
22 behavioral health services, including quality management and
23 improvement, performance measures, accessibility and
24 availability of services, utilization management,
25 credentialing and recredentialing, rights and

1 responsibilities of providers, preventive behavioral health
2 services, clinical treatment and evaluation and the
3 documentation and confidentiality of client records;

4 C. ensure that all behavioral health services,
5 including mental health and substance abuse services, that
6 are provided, contracted for or approved are in compliance
7 with the requirements of Section 9-7-6.4 NMSA 1978;

8 D. assume responsibility for and implement adult
9 mental health and substance abuse services in the state in
10 coordination with the children, youth and families
11 department;

12 E. create, implement and continually evaluate the
13 effectiveness of a framework for targeted, individualized
14 interventions for persons who are incarcerated in a county or
15 municipal correctional facility and adult and juvenile
16 offenders who have behavioral health diagnoses, which
17 framework shall address those persons' behavioral health
18 needs while they are incarcerated and connect them to
19 resources and services immediately upon release;

20 F. establish criteria for determining individual
21 eligibility for behavioral health services; and

22 G. maintain a management information system in
23 accordance with standards for reporting clinical and fiscal
24 information."

25 SECTION 9. Section 9-8-7.2 NMSA 1978 (being Laws 2013,

1 Chapter 54, Section 9) is amended to read:

2 "9-8-7.2. COOPERATION WITH THE NEW MEXICO HEALTH
3 INSURANCE EXCHANGE.--The medical assistance division of the
4 department shall cooperate with the New Mexico health
5 insurance exchange to share information and facilitate
6 transitions in enrollment between the exchange and medicaid."

7 SECTION 10. Section 9-8-7.3 NMSA 1978 (being Laws 2019,
8 Chapter 222, Section 2) is amended to read:

9 "9-8-7.3. INCARCERATED PERSONS--BEHAVIORAL HEALTH
10 SERVICES--COUNTY FUNDING PROGRAM.--To carry out the
11 provisions of Subsection E of Section 9-8-7.1 NMSA 1978 and
12 to provide behavioral health services to persons who are
13 incarcerated in a county correctional facility:

14 A. the secretary shall adopt and promulgate rules:

15 (1) pursuant to which a county may apply for
16 and be awarded funding through the department; and

17 (2) to establish priorities and guidelines
18 for the award of funding to counties; and

19 B. the department shall distribute funds, as
20 funding permits, to the county health care assistance funds
21 of those counties:

22 (1) that apply for behavioral health
23 services funding in accordance with department rules; and

24 (2) whose proposed utilization of funding
25 pursuant to this section meets the priorities and guidelines

1 for the awarding of behavioral health services funding
2 established in department rules."

3 SECTION 11. Section 9-8-7.4 NMSA 1978 (being Laws 2019,
4 Chapter 211, Section 2) is amended to read:

5 "9-8-7.4. INCARCERATED PERSONS--BEHAVIORAL HEALTH
6 SERVICES--COUNTY FUNDING PROGRAM.--To carry out the
7 provisions of Subsection E of Section 9-8-7.1 NMSA 1978 and
8 to provide behavioral health services to persons who are
9 incarcerated in a county correctional facility:

10 A. the secretary shall adopt and promulgate rules:

11 (1) pursuant to which a county may apply for
12 and be awarded funding through the department; and

13 (2) to establish priorities and guidelines
14 for the award of funding to counties; and

15 B. the department shall distribute funds, as
16 funding permits, to the county health care assistance funds
17 of those counties:

18 (1) that apply for behavioral health
19 services funding in accordance with department rules; and

20 (2) that have proposed utilization of
21 funding pursuant to this section that meets the priorities
22 and guidelines for the awarding of behavioral health services
23 funding established in department rules."

24 SECTION 12. Section 9-8-8 NMSA 1978 (being Laws 1977,
25 Chapter 252, Section 9, as amended by Laws 2004, Chapter 18,

1 Section 16 and by Laws 2004, Chapter 23, Section 12 and also
2 by Laws 2004, Chapter 24, Section 16) is amended to read:

3 "9-8-8. ADMINISTRATIVELY ATTACHED AGENCIES.--The
4 following agencies are administratively attached to the
5 department:

- 6 A. the commission on the status of women;
- 7 B. the group benefits committee; and
- 8 C. the New Mexico health policy commission."

9 SECTION 13. Section 9-8-10 NMSA 1978 (being Laws 1977,
10 Chapter 252, Section 11, as amended) is amended to read:

11 "9-8-10. BUREAUS--CHIEFS.--The secretary shall
12 establish within each division such bureaus as the secretary
13 deems necessary to carry out the provisions of the Health
14 Care Authority Department Act. The secretary shall employ a
15 chief to be administrative head of any such bureau. The
16 chief and all subsidiary employees of the department shall be
17 covered by the Personnel Act unless otherwise provided by
18 law."

19 SECTION 14. Section 9-8-11 NMSA 1978 (being Laws 1977,
20 Chapter 252, Section 12, as amended) is amended to read:

21 "9-8-11. ADVISORY COMMITTEES.--

22 A. The governor shall appoint advisory committees
23 to the department's income support division. Creation of the
24 advisory committees shall be in accordance with the
25 provisions of the Executive Reorganization Act. If the

1 existence of a committee, representational membership
2 requirements or other matters are required or specified under
3 any federal law, regulation, rule or order as a condition of
4 receiving federal funding for a particular program
5 administered by the department, the governor shall comply
6 with those requirements in the creation of the advisory
7 committee.

8 B. All members of the advisory committees
9 appointed under the authority of this section shall receive
10 as their sole remuneration for service as a member those
11 amounts authorized under the Per Diem and Mileage Act."

12 SECTION 15. Section 9-8-12 NMSA 1978 (being Laws 1977,
13 Chapter 252, Section 13) is amended to read:

14 "9-8-12. COOPERATION WITH THE FEDERAL GOVERNMENT--
15 AUTHORITY OF SECRETARY--SINGLE STATE AGENCY STATUS.--

16 A. The department is authorized to cooperate with
17 the federal government in the administration of health care
18 and human services programs in which financial or other
19 participation by the federal government is authorized or
20 mandated under federal laws, regulations, rules or orders.
21 The secretary may enter into agreements with agencies of the
22 federal government to implement these health care or human
23 services programs subject to availability of appropriated
24 state funds and any provisions of state laws applicable to
25 such agreements or participation by the state.

1 B. The governor or the secretary may by
2 appropriate order designate the department or any
3 organizational unit of the department as the single state
4 agency for the administration of any health care or human
5 services program when such designation is a condition of
6 federal financial or other participation in the program under
7 applicable federal law, regulation, rule or order. Whether
8 or not a federal condition exists, the governor may designate
9 the department or any organizational unit of the department
10 as the single state agency for the administration of any
11 health care or human services program. No designation of a
12 single state agency under the authority granted in this
13 section shall be made in contravention of state law."

14 SECTION 16. TEMPORARY PROVISION--TRANSFERS AND
15 TRANSITION.--

16 A. The governor may issue an executive order that
17 further delineates the organizational structure, power and
18 duties of the health care authority department and moves
19 divisions and programs to or from other departments to
20 accomplish the reorganizational goals of this act. The
21 governor shall report the reorganizational changes and
22 recommend statutory changes to the legislative health and
23 human services committee and the legislative finance
24 committee by November 1, 2023 and provide a final
25 reorganization report to the legislature by January 1, 2024.

1 B. On July 1, 2023, statutory references to the
2 human services department shall be deemed to be references to
3 the health care authority department, and contractual
4 obligations of the human services department shall be binding
5 on the health care authority department. Rules of the
6 human services department shall be the rules of the
7 health care authority department until amended or repealed.
8 As functions of government are transferred to the health care
9 authority department as specified in Section 9-8-4 NMSA 1978,
10 statutory references shall be deemed to be references to the
11 health care authority department, contractual obligations
12 shall be binding on the department and existing pertinent
13 rules shall be the rules of the department until amended or
14 repealed.

15 C. The department of finance and administration,
16 the secretary of health care authority, the secretary of
17 health, the secretary of general services, members of the
18 governor's staff and other persons assigned by the governor
19 shall develop a transition plan that includes:

20 (1) what units of the executive department
21 shall be transferred to or from the health care authority
22 department and working and final organizational charts for
23 all affected units of the executive departments;

24 (2) how and when functions, personnel,
25 money, appropriations, equipment, supplies and other property

1 of the human services department, the department of health,
2 the general services department and other units of the
3 executive department shall be transferred to or from the
4 health care authority department; and

5 (3) proposed statutory changes, including
6 changes in Chapters 9, 10 and 24 NMSA 1978 and the creation
7 of a new chapter of the NMSA 1978 to include sections of
8 Chapters 9 and 24 NMSA 1978 and other provisions of law
9 pertaining to health care purchasing and regulation.

10 SECTION 17. REPEAL.--

11 A. Sections 9-8-13 and 9-8-14 NMSA 1978 (being
12 Laws 1977, Chapter 252, Section 15 and Laws 1987, Chapter 31,
13 Section 4, as amended) are repealed.

14 B. Laws 2019, Chapter 211, Section 1 is
15 repealed. _____

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