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AN ACT
RELATING TO DISABILITIES; UPDATING STATUTORY REFERENCES
PERTAINING TO DEVELOPMENTAL AND INTELLECTUAL DISABILITIES;
REVISING THE DEFINITION OF "DEVELOPMENTAL DISABILITY" IN THE
MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE; REPEALING
SECTION 24-1-5.4 NMSA 1978 (BEING LAWS 1997, CHAPTER 217,
SECTION 2).

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

SECTION 1. Section 15-7-3 NMSA 1978 (being Laws 1978,
Chapter 166, Section 8, as amended) is amended to read:

"15-7-3. ADDITIONAL POWERS AND DUTIES OF THE RISK
MANAGEMENT DIVISION.--

A. The risk management division of the general
services department may:

- (1) enter into contracts;
- (2) procure insurance, reinsurance or
employee group benefits; provided that any proposal or
contract for the procurement of any group health care
benefits shall be subject to the provisions of the Health
Care Purchasing Act; and provided further that reinsurance or
excess coverage insurance may be placed by private
negotiation, notwithstanding the provisions of the
Procurement Code, if the insurance or reinsurance has a
restricted number of interested carriers, the board

1 determines that the coverage is in the interest of the state
2 and cannot otherwise be procured for a reasonable cost and
3 the director seeks the advice and review of the board in the
4 placement and in designing private negotiation procedures;

5 (3) in the manner prescribed by Subsection E
6 of Section 9-17-5 NMSA 1978, after a notice and a public
7 hearing, prescribe by rule reasonable and objective
8 underwriting and safety standards for governmental entities
9 and reasonable standards for municipal self-insurance pooling
10 agreements covering liability under the Tort Claims Act and
11 adopt such other regulations as may be deemed necessary;

12 (4) compromise, adjust, settle and pay
13 claims;

14 (5) pay expenses and costs;

15 (6) in the manner prescribed by Subsection E
16 of Section 9-17-5 NMSA 1978, prescribe by rule the rating
17 bases, assessments, penalties and risks to be covered by the
18 public liability fund, the workers' compensation retention
19 fund and the public property reserve fund and the extent such
20 risks are to be covered;

21 (7) issue certificates of coverage in
22 accordance with Paragraph (6) of this subsection:

23 (a) to any governmental entity for any
24 tort liability risk covered by the public liability fund;

25 (b) to any governmental entity for any

1 personal injury liability risk or for the defense of any
2 errors or act or omission or neglect or breach of duty,
3 including the risks set forth in Paragraph (2) of Subsection
4 B and Paragraph (2) of Subsection D of Section 41-4-4 NMSA
5 1978; and

6 (c) to any governmental entity for any
7 part of risk covered by the workers' compensation retention
8 fund, the surety bond fund or the public property reserve
9 fund;

10 (8) study the risks of all governmental
11 entities;

12 (9) initiate the establishment of safety
13 programs and adopt rules to carry out such programs in the
14 manner prescribed by Subsection E of Section 9-17-5 NMSA
15 1978;

16 (10) hire a safety program director who
17 shall coordinate all safety programs of all state agencies;

18 (11) consult with and advise local public
19 bodies on their risk management problems; and

20 (12) employ full-time legal counsel who
21 shall be under the exclusive control and supervision of the
22 director and the secretary of general services.

23 B. The risk management division of the general
24 services department shall provide liability coverage for the
25 following risks:

1 (1) a claim made pursuant to the provisions
2 of 42 USC Section 1983 against a nonprofit corporation,
3 members of its board of directors or its employees when the
4 claim is based upon action taken pursuant to the provisions
5 of a contract between the corporation and the department of
6 health under which the corporation provides developmental or
7 intellectual disability services to clients of the department
8 and the claim is made by or on behalf of a client; and

9 (2) a claim made pursuant to the provisions
10 of 42 USC Section 1983 against a nonprofit corporation,
11 members of its board of directors or its employees when the
12 corporation operates a facility licensed by the department of
13 health as an intermediate care facility for individuals with
14 developmental or intellectual disabilities and the claim is
15 based upon action taken pursuant to the provisions of the
16 license and is made by or on behalf of a resident of the
17 licensed facility.

18 C. The director shall report findings and
19 recommendations, if any, for the consideration of each
20 legislature. The report shall include the amount and name of
21 any person receiving payment from the public liability fund
22 of any claim paid during the previous fiscal year exceeding
23 one thousand dollars (\$1,000). The report shall be made
24 available to the legislature on or before December 15
25 preceding each regular legislative session."

1 SECTION 2. Section 24-26-2 NMSA 1978 (being Laws 2004,
2 Chapter 53, Section 2) is amended to read:

3 "24-26-2. DEFINITIONS.--As used in the Patient Care
4 Monitoring Act:

5 A. "department" means the aging and long-term
6 services department;

7 B. "facility" means a long-term care facility
8 licensed pursuant to the provisions of Section 24-1-5 NMSA
9 1978, other than an intermediate care facility for
10 individuals with developmental or intellectual disabilities,
11 and may also include:

12 (1) a skilled nursing facility;

13 (2) an intermediate care nursing facility;

14 (3) a nursing facility;

15 (4) an adult residential shelter care home;

16 (5) a boarding home;

17 (6) any adult care home or adult residential
18 care facility; and

19 (7) any swing bed in an acute care facility
20 or extended care facility;

21 C. "monitoring device" means a surveillance
22 instrument that broadcasts or records activity, but does not
23 include a still camera;

24 D. "patient" means a person who is a resident of a
25 facility;

1 E. "program" means the New Mexico long-term care
2 ombudsman program; and

3 F. "surrogate" means a legal guardian or a legally
4 appointed substitute decision-maker who is authorized to act
5 on behalf of a patient."

6 SECTION 3. Section 27-2-6.1 NMSA 1978 (being Laws 1978,
7 Chapter 30, Section 1) is amended to read:

8 "27-2-6.1. SUPPLEMENTAL POSTNATAL ASSISTANCE.--The
9 department shall establish a program of supplemental
10 postnatal assistance for those developmentally or
11 intellectually disabled persons who during pregnancy received
12 temporary assistance for needy families but whose assistance
13 was revoked upon relinquishment of the newly born child for
14 adoption. The supplemental postnatal assistance provided for
15 in this section shall be at the same rate as temporary
16 assistance for needy families, but supplemental postnatal
17 assistance shall not exceed a period of sixty days. The
18 department shall promulgate rules to carry out the provisions
19 of this section."

20 SECTION 4. Section 27-2-12.6 NMSA 1978 (being Laws
21 1994, Chapter 62, Section 22) is amended to read:

22 "27-2-12.6. MEDICAID PAYMENTS--MANAGED CARE.--

23 A. The department shall provide for a statewide,
24 managed care system to provide cost-efficient, preventive,
25 primary and acute care for medicaid recipients by July 1,

1 1995.

2 B. The managed care system shall ensure:

3 (1) access to medically necessary services,
4 particularly for medicaid recipients with chronic health
5 problems;

6 (2) to the extent practicable, maintenance
7 of the rural primary care delivery infrastructure;

8 (3) that the department's approach is
9 consistent with national and state health care reform
10 principles; and

11 (4) to the maximum extent possible, that
12 medicaid-eligible individuals are not identified as such
13 except as necessary for billing purposes.

14 C. The department may exclude nursing homes,
15 intermediate care facilities for individuals with
16 developmental or intellectual disabilities, medicaid in-home
17 and community-based waiver services and residential and
18 community-based mental health services for children with
19 serious emotional disorders from the provisions of this
20 section."

21 SECTION 5. Section 27-2A-4 NMSA 1978 (being Laws 1994,
22 Chapter 87, Section 4, as amended) is amended to read:

23 "27-2A-4. DEPARTMENT TO SEEK RECOVERY OF MEDICAL
24 ASSISTANCE PAYMENTS--RESTRICTION.--

25 A. The department shall seek recovery from the

1 estate of an individual:

2 (1) for medical assistance paid on behalf of
3 an individual who was an inpatient in a nursing facility,
4 intermediate care facility for individuals with developmental
5 or intellectual disabilities or other medical institution if
6 the individual was required, as a condition of receiving
7 services in the facility or institution pursuant to the state
8 plan, to spend for costs of services all but a minimal amount
9 of the individual's income required for personal needs, and
10 with respect to whom the department determined, after
11 opportunity for a hearing in accordance with procedures
12 established by the department, could not reasonably have been
13 expected to have been discharged from the facility or
14 institution to return home; and

15 (2) for medical assistance payments made for
16 nursing facility services, home- and community-based services
17 and related hospital and prescription drug services on behalf
18 of an individual who was fifty-five years of age or older
19 when the individual received medical assistance.

20 B. In the case of an individual who has
21 participated in the state's qualified state long-term care
22 insurance partnership program pursuant to Section 27-2-12.17
23 NMSA 1978, the department shall seek recovery of medical
24 assistance paid on behalf of the individual only of the value
25 of the individual's estate that exceeds the amount that the

1 department has disregarded from the individual's countable
2 resources pursuant to Paragraph (2) of Subsection A of
3 Section 27-2-12.17 NMSA 1978 in making its eligibility
4 determination for medical assistance for institutional care
5 or a medical assistance home- and community-based long-term
6 care program."

7 SECTION 6. Section 27-7A-2 NMSA 1978 (being Laws 2005,
8 Chapter 256, Section 2) is amended to read:

9 "27-7A-2. DEFINITIONS.--As used in the Employee Abuse
10 Registry Act:

11 A. "abuse" means:

12 (1) knowingly, intentionally or negligently
13 and without justifiable cause inflicting physical pain,
14 injury or mental anguish; or

15 (2) the intentional deprivation by a
16 caretaker or other person of services necessary to maintain
17 the mental and physical health of a person;

18 B. "department" means the department of health;

19 C. "direct care" means face-to-face services
20 provided or routine and unsupervised physical or financial
21 access to a recipient of services;

22 D. "employee" means a person employed by or on
23 contract with a provider, either directly or through a third
24 party arrangement to provide direct care. "Employee" does
25 not include a New Mexico licensed health care professional

1 practicing within the scope of the profession's license or a
2 certified nurse aide;

3 E. "exploitation" means an unjust or improper use
4 of a person's money or property for another person's profit
5 or advantage, pecuniary or otherwise;

6 F. "neglect" means, subject to a person's right to
7 refuse treatment and subject to a provider's right to
8 exercise sound medical discretion, the failure of an employee
9 to provide basic needs such as clothing, food, shelter,
10 supervision and care for the physical and mental health of a
11 person or failure by a person that may cause physical or
12 psychological harm;

13 G. "provider" means an intermediate care facility
14 for individuals with developmental or intellectual
15 disabilities; a rehabilitation facility; a home health
16 agency; a homemaker agency; a home for the aged or disabled;
17 a group home; an adult foster care home; a case management
18 entity that provides services to elderly people or people
19 with developmental disabilities; a corporate guardian; a
20 private residence that provides personal care, adult
21 residential care or natural and surrogate family services
22 provided to persons with developmental disabilities; an adult
23 daycare center; a boarding home; an adult residential care
24 home; a residential service or habilitation service
25 authorized to be reimbursed by medicaid; any licensed or

1 medicaid-certified entity or any program funded by the aging
2 and long-term services department that provides respite,
3 companion or personal care services; programs funded by the
4 children, youth and families department that provide
5 homemaker or adult daycare services; and any other
6 individual, agency or organization that provides respite care
7 or delivers home- and community-based services to adults or
8 children with developmental disabilities or physical
9 disabilities or to the elderly, but excluding a managed care
10 organization unless the employees of the managed care
11 organization provide respite care or deliver home- and
12 community-based services to adults or children with
13 developmental disabilities or physical disabilities or to the
14 elderly;

15 H. "registry" means an electronic database that
16 provides information on substantiated employee abuse, neglect
17 or exploitation; and

18 I. "secretary" means the secretary of health."

19 SECTION 7. Section 28-16-15.2 NMSA 1978 (being Laws
20 1993, Chapter 84, Section 2) is amended to read:

21 "28-16-15.2. DEVELOPMENTAL DISABILITIES

22 COUNCIL--ADDITIONAL DUTIES.--The developmental disabilities
23 council shall cooperate with the department of health and the
24 human services department to:

25 A. provide data to support an amendment to the

1 developmental disabilities medicaid waiver program to
2 increase the number of eligible persons served;

3 B. develop a contingency plan to describe the role
4 and control the growth of intermediate care facilities for
5 individuals with developmental or intellectual disabilities;
6 and

7 C. develop flexibility in the system of
8 prioritization for admission to allow persons to move within
9 the service system to an appropriate level of service,
10 including movement of residents of intermediate care
11 facilities for individuals with developmental or intellectual
12 disabilities to the developmental disabilities medicaid
13 waiver program."

14 SECTION 8. Section 29-17-4 NMSA 1978 (being Laws 1998,
15 Chapter 68, Section 3, as amended) is amended to read:

16 "29-17-4. DEFINITIONS.--As used in the Caregivers
17 Criminal History Screening Act:

18 A. "applicant" means a person who seeks and is
19 offered employment or contractual service as a caregiver or
20 hospital caregiver with a care provider;

21 B. "caregiver" means a person, not otherwise
22 required to undergo a nationwide criminal history screening
23 by the New Mexico Children's and Juvenile Facility and
24 Program Criminal Records Screening Act, whose employment or
25 contractual service with a care provider includes direct care

1 or routine and unsupervised physical or financial access to
2 any care recipient served by that provider;

3 C. "care provider" or "provider" means a skilled
4 nursing facility; an intermediate care facility; a care
5 facility for individuals with developmental or intellectual
6 disabilities; a general acute care facility; a psychiatric
7 facility; a rehabilitation facility; a home health agency; a
8 homemaker agency; a home for the aged or disabled; a group
9 home; an adult foster care home; a guardian service provider;
10 a case management entity that provides services to people
11 with developmental disabilities; a private residence that
12 provides personal care, adult residential care or nursing
13 care for two or more persons not related by blood or marriage
14 to the facility's operator or owner; an adult daycare center;
15 a boarding home; an adult residential care home; a
16 residential service or habilitation service authorized to be
17 reimbursed by medicaid; any licensed or medicaid-certified
18 entity or any program funded by the aging and long-term
19 services department that provides respite, companion or
20 personal care services; or programs funded by the children,
21 youth and families department that provide homemaker or adult
22 daycare services. "Care provider" or "provider" does not
23 include resident care facilities located at or performing
24 services exclusively for any correctional facility,
25 outpatient treatment facilities, diagnostic and treatment

1 facilities, ambulatory surgical centers and facilities,
2 end-stage renal dialysis and treatment facilities, rural
3 health clinics, private physicians' offices or other clinics
4 that operate in the same manner as private physicians'
5 offices in group practice settings;

6 D. "care recipient" means any person under the
7 care of a provider who has a physical or mental illness,
8 injury or disability or who suffers from any cognitive
9 impairment that restricts or limits the person's activities;

10 E. "conviction" means a plea, judgment or verdict
11 of guilty, a plea of nolo contendere, an Alford plea or any
12 plea or judgment entered in connection with a suspended
13 sentence, in this state or any other state or jurisdiction;

14 F. "hospital caregiver" means a person who
15 provides direct unsupervised patient care in an inpatient
16 setting and is not a licensed New Mexico health care
17 professional practicing within the scope of a profession's
18 license;

19 G. "nationwide criminal history screening" means a
20 criminal history background investigation of an applicant,
21 caregiver or hospital caregiver through the use of
22 fingerprints collected by the department of public safety and
23 submitted to the federal bureau of investigation, resulting
24 in generation of a nationwide criminal history record for
25 that applicant, caregiver or hospital caregiver;

1 H. "nationwide criminal history record" means
2 information concerning a person's arrests, indictments or
3 other formal criminal charges and any dispositions arising
4 therefrom, including convictions, dismissals, acquittals,
5 sentencing and correctional supervision, and collected by
6 criminal justice agencies; and

7 I. "statewide criminal history screening" means a
8 criminal history background investigation of an applicant or
9 caregiver through the comparison of identifying information
10 with the department of public safety's criminal record
11 repository."

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

14 "30-47-3. DEFINITIONS.--As used in the Resident Abuse
15 and Neglect Act:

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

19 (1) physical contact that harms or is likely
20 to harm a resident of a care facility;

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

24 (3) inappropriate use of a physical or
25 chemical restraint, medication or isolation as punishment or

1 in conflict with a physician's order;

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

4 (5) medically inappropriate conduct that
5 causes or is likely to cause great psychological harm to a
6 resident; or

7 (6) an unlawful act, a threat or menacing
8 conduct directed toward a resident that results and might
9 reasonably be expected to result in fear or emotional or
10 mental distress to a resident;

11 B. "care facility" means a hospital; skilled
12 nursing facility; intermediate care facility; care facility
13 for individuals with developmental or intellectual
14 disabilities; psychiatric facility; rehabilitation facility;
15 kidney disease treatment center; home health agency;
16 ambulatory surgical or outpatient facility; home for the aged
17 or disabled; group home; adult foster care home; private
18 residence that provides personal care, sheltered care or
19 nursing care for one or more persons; a resident's or care
20 provider's home in which personal care, sheltered care or
21 nursing care is provided; adult daycare center; boarding
22 home; adult residential shelter care home; and any other
23 health or resident care related facility or home, but does
24 not include a care facility located at or performing services
25 for any correctional facility;

1 C. "department" means the human services
2 department or its successor, contractor, employee or
3 designee;

4 D. "great psychological harm" means psychological
5 harm that causes mental or emotional incapacitation for a
6 prolonged period of time or that causes extreme behavioral
7 change or severe physical symptoms that require psychological
8 or psychiatric care;

9 E. "great physical harm" means physical harm of a
10 type that causes physical loss of a bodily member or organ or
11 functional loss of a bodily member or organ for a prolonged
12 period of time;

13 F. "neglect" means, subject to the resident's
14 right to refuse treatment and subject to the caregiver's
15 right to exercise sound medical discretion, the grossly
16 negligent:

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

20 (2) failure to take any reasonable
21 precaution that is necessary to prevent damage to the health
22 or safety of a resident; or

23 (3) failure to carry out a duty to supervise
24 properly or control the provision of any treatment, care,
25 good, service or medication necessary to maintain the health

1 or safety of a resident;

2 G. "person" means any individual, corporation,
3 partnership, unincorporated association or other governmental
4 or business entity;

5 H. "physical harm" means an injury to the body
6 that causes substantial pain or incapacitation; and

7 I. "resident" means any person who resides in a
8 care facility or who receives treatment from a care
9 facility."

10 SECTION 10. Section 31-9-1.6 NMSA 1978 (being Laws
11 1997, Chapter 153, Section 1, as amended) is amended to read:

12 "31-9-1.6. HEARING TO DETERMINE DEVELOPMENTAL OR
13 INTELLECTUAL DISABILITY.--

14 A. Upon motion of the defense requesting a ruling,
15 the court shall hold a hearing to determine whether the
16 defendant has a developmental or intellectual disability as
17 defined in Subsection E of this section.

18 B. If the court finds by a preponderance of the
19 evidence that the defendant has a developmental or
20 intellectual disability and that there is not a substantial
21 probability that the defendant will become competent to
22 proceed in a criminal case within a reasonable period of time
23 not to exceed nine months from the date of the original
24 finding of incompetency, then, no later than sixty days from
25 notification to the secretary of health or the secretary's

1 designee of the court's findings, the department of health
2 shall perform an evaluation to determine whether the
3 defendant presents a likelihood of serious harm to self or
4 others.

5 C. If the department of health evaluation results
6 in a finding that the defendant presents a likelihood of
7 serious harm to self or others, within sixty days of the
8 department's evaluation, the department shall commence
9 proceedings pursuant to Chapter 43, Article 1 NMSA 1978 if
10 the defendant was charged with murder in the first degree,
11 first degree criminal sexual penetration, criminal sexual
12 contact of a minor or arson in the initial proceedings, and
13 the court presiding over the initial proceedings shall enter
14 a finding that the respondent presents a likelihood of harm
15 to others.

16 D. The criminal charges shall be dismissed without
17 prejudice after the hearing pursuant to Chapter 43, Article 1
18 NMSA 1978 or upon expiration of fourteen months from the
19 court's initial determination that the defendant is
20 incompetent to proceed in a criminal case.

21 E. As used in this section, "developmental or
22 intellectual disability" means significantly subaverage
23 general intellectual functioning existing concurrently with
24 deficits in adaptive behavior. An intelligence quotient of
25 seventy or below on a reliably administered intelligence

1 quotient test shall be presumptive evidence of developmental
2 or intellectual disability."

3 SECTION 11. Section 38-6-8 NMSA 1978 (being Laws 1993,
4 Chapter 333, Section 1) is amended to read:

5 "38-6-8. WITNESSES WITH DEVELOPMENTAL OR INTELLECTUAL
6 DISABILITY--COMPETENCY EVALUATION.--

7 A. As used in this section:

8 (1) "witness with a developmental or
9 intellectual disability" means a witness in a proceeding whom
10 the court has found after hearing, as provided in Subsection
11 B of this section, to have a developmental or intellectual
12 disability; and

13 (2) "developmental or intellectual
14 disability" means a substantial limitation in present
15 functioning characterized by significantly subaverage
16 intellectual functioning, existing concurrently with related
17 limitations in two or more of the following applicable skill
18 areas: communication, self-care, home living, social skills,
19 community use, self-direction, health and safety, functional
20 academics, leisure and work.

21 B. In any judicial proceeding wherein a witness
22 with a developmental or intellectual disability may or will
23 testify, the court on its own motion or on motion of the
24 proponent of the witness with a developmental or intellectual
25 disability, and after hearing, may order the use of one of

1 the alternative procedures for determining competency to
2 testify or for taking the testimony of the witness with a
3 developmental or intellectual disability described below,
4 provided that the court finds at the time of the order, by a
5 preponderance of the evidence in the case, that the witness
6 with a developmental or intellectual disability is likely, as
7 a result of submitting to usual procedures for determining
8 competency or as a result of testifying in open court:

9 (1) to suffer unreasonable and unnecessary
10 mental or emotional harm; or

11 (2) to suffer a temporary loss of or
12 regression in cognitive or behavioral functioning or
13 communicative abilities such that the witness's ability to
14 testify will be significantly impaired.

15 C. If the court orders the use of an alternative
16 procedure pursuant to this section, the court shall make and
17 enter specific findings on the record describing the reasons
18 for such order.

19 D. A court that makes findings in accordance with
20 Subsection B of this section may order any of the following
21 suitable alternative procedures for determining the
22 competency to testify or for taking the testimony of the
23 witness with a developmental or intellectual disability:

24 (1) taking the testimony of the witness with
25 a developmental or intellectual disability while permitting a

1 person familiar to the witness such as a family member,
2 clinician, counselor, social worker or friend to sit near or
3 next to the witness;

4 (2) taking the testimony of the witness with
5 a developmental or intellectual disability in court but off
6 the witness stand;

7 (3) if the proceeding is a bench proceeding,
8 taking the testimony of the witness with a developmental or
9 intellectual disability in a setting familiar to the witness;

10 (4) if the proceeding is a jury trial,
11 videotaping of testimony, out of the presence of the jury or
12 in a location chosen by the court or by agreement of the
13 parties; or

14 (5) the procedure set forth in Paragraph (1)
15 in combination with Paragraph (2), (3) or (4) of this
16 subsection.

17 E. Testimony taken by a videotape pursuant to an
18 order issued as provided in Subsection B of this section
19 shall be taken in the presence of the judge, counsel for all
20 parties and such other persons as the court may allow.

21 Counsel shall be given the opportunity to examine, confront
22 or cross-examine the witness with a developmental or
23 intellectual disability to the same extent as would be
24 permitted if ordinary procedures had been followed, subject
25 to such protection of the witness as the judge deems

1 necessary.

2 F. An order issued pursuant to provisions of
3 Subsection B of this section that the testimony of the
4 witness with a developmental or intellectual disability be
5 videotaped out of the presence of the jury shall provide that
6 the videotape be shown in court to the jury in the presence
7 of the judge, the parties and the parties' counsel. At such
8 courtroom showing, the audio portion of the video shall be
9 entered into the record as would any oral testimony and shall
10 be treated in all respects as oral testimony to the jury.

11 G. The videotape or giving of testimony taken by
12 an alternative procedure pursuant to an order issued as
13 provided in Subsection B of this section shall be admissible
14 as substantive evidence to the same extent as and in lieu of
15 live testimony by the witness in any proceeding for which the
16 order is issued or in any related proceeding against the same
17 party when consistent with the interests of justice; provided
18 that such an order is entered or re-entered based on current
19 findings at the time when, or within a reasonable time
20 before, the videotape or testimony is offered into evidence,
21 and provided, in the case of a related criminal proceeding,
22 that the requirements of Subsection E of this section were
23 satisfied when the videotape was recorded or the alternative
24 procedure was used.

25 H. Whenever, pursuant to an order issued as

1 provided in Subsection B of this section, testimony is
2 recorded on videotape, the court shall ensure that:

3 (1) the recording equipment is capable of
4 making an accurate recording and is operated by a competent
5 operator;

6 (2) the recording is in color and is taken
7 in well-lit conditions;

8 (3) the presence of the presiding judge, the
9 attorneys, the defendant or parties, if in the room, and all
10 other persons present is stated on the recording;

11 (4) the witness with a developmental or
12 intellectual disability is visible at all times and, to the
13 extent reasonably possible, the recording shows all persons
14 present in the room as a jury would perceive them in open
15 court;

16 (5) every voice on the recording is audible
17 and identifiable;

18 (6) the recording is accurate, undistorted
19 in picture or sound quality and has not been altered except
20 as ordered by the court; and

21 (7) each party is afforded the opportunity
22 to view the recording before it is shown in the courtroom.

23 I. The fact that the witness with a developmental
24 or intellectual disability has been found in a court
25 proceeding to be incompetent to make informed decisions of a

1 personal, medical or financial nature or is under a
2 guardianship or conservatorship shall not preclude the
3 witness from testifying if found competent to testify and,
4 further, shall not preclude a determination of competency to
5 testify.

6 J. The use of alternative procedures shall not be
7 denied because they may take significantly more time than
8 conventional procedures.

9 K. Expert opinion shall be admissible at any
10 hearing held pursuant to this section, including hearings to
11 determine the competency of a witness with a developmental or
12 intellectual disability to testify.

13 L. Nothing in this section shall be deemed to
14 prohibit the court from using other appropriate means,
15 consistent with this section and other laws and with the
16 defendant's rights, to protect a witness with a developmental
17 or intellectual disability from trauma during a court
18 proceeding."

19 SECTION 12. Section 43-1-3 NMSA 1978 (being Laws 1977,
20 Chapter 279, Section 2, as amended) is amended to read:

21 "43-1-3. DEFINITIONS.--As used in the Mental Health and
22 Developmental Disabilities Code:

23 A. "aversive stimuli" means anything that, because
24 it is believed to be unreasonably unpleasant, uncomfortable
25 or distasteful to the client, is administered or done to the

1 client for the purpose of reducing the frequency of a
2 behavior, but does not include verbal therapies, physical
3 restrictions to prevent imminent harm to self or others or
4 psychotropic medications that are not used for purposes of
5 punishment;

6 B. "client" means any patient who is requesting or
7 receiving mental health services or any person requesting or
8 receiving developmental disabilities services or who is
9 present in a mental health or developmental disabilities
10 facility for the purpose of receiving such services or who
11 has been placed in a mental health or developmental
12 disabilities facility by the person's parent or guardian or
13 by any court order;

14 C. "code" means the Mental Health and
15 Developmental Disabilities Code;

16 D. "consistent with the least drastic means
17 principle" means that the habilitation or treatment and the
18 conditions of habilitation or treatment for the client,
19 separately and in combination:

20 (1) are no more harsh, hazardous or
21 intrusive than necessary to achieve acceptable treatment
22 objectives for the client;

23 (2) involve no restrictions on physical
24 movement and no requirement for residential care except as
25 reasonably necessary for the administration of treatment or

1 for the protection of the client or others from physical
2 injury; and

3 (3) are conducted at the suitable available
4 facility closest to the client's place of residence;

5 E. "convulsive treatment" means any form of mental
6 health treatment that depends upon creation of a convulsion
7 by any means, including electroconvulsive treatment and
8 insulin coma treatment;

9 F. "court" means a district court of New Mexico;

10 G. "department" or "division" means the behavioral
11 health services division of the human services department;

12 H. "developmental or intellectual disability"
13 means a severe chronic disability attributable to
14 significantly subaverage general intellectual functioning
15 existing concurrently with deficits in adaptive behavior,
16 cerebral palsy, autism or neurological dysfunction that
17 requires similar treatment or habilitation;

18 I. "evaluation facility" means a community mental
19 health or developmental disability program or a medical
20 facility that has psychiatric or developmental or
21 intellectual disability services available, including the
22 New Mexico behavioral health institute at Las Vegas, the
23 Los Lunas medical center or, if none of the foregoing is
24 reasonably available or appropriate, the office of a
25 physician or a certified psychologist, and that is capable of

1 performing a mental status examination adequate to determine
2 the need for involuntary treatment;

3 J. "experimental treatment" means any mental
4 health or developmental disabilities treatment that presents
5 significant risk of physical harm, but does not include
6 accepted treatment used in competent practice of medicine and
7 psychology and supported by scientifically acceptable
8 studies;

9 K. "grave passive neglect" means failure to
10 provide for basic personal or medical needs or for one's own
11 safety to such an extent that it is more likely than not that
12 serious bodily harm will result in the near future;

13 L. "habilitation" means the process by which
14 professional persons and their staff assist a client with a
15 developmental or an intellectual disability in acquiring and
16 maintaining those skills and behaviors that enable the person
17 to cope more effectively with the demands of the person's
18 self and environment and to raise the level of the person's
19 physical, mental and social efficiency. "Habilitation"
20 includes but is not limited to programs of formal, structured
21 education and treatment;

22 M. "likelihood of serious harm to oneself" means
23 that it is more likely than not that in the near future the
24 person will attempt to commit suicide or will cause serious
25 bodily harm to the person's self by violent or other

1 self-destructive means, including grave passive neglect;

2 N. "likelihood of serious harm to others" means
3 that it is more likely than not that in the near future a
4 person will inflict serious, unjustified bodily harm on
5 another person or commit a criminal sexual offense, as
6 evidenced by behavior causing, attempting or threatening such
7 harm, which behavior gives rise to a reasonable fear of such
8 harm from the person;

9 O. "mental disorder" means substantial disorder of
10 a person's emotional processes, thought or cognition that
11 grossly impairs judgment, behavior or capacity to recognize
12 reality, but does not mean developmental or intellectual
13 disability;

14 P. "mental health or developmental or intellectual
15 disabilities professional" means a physician or other
16 professional who by training or experience is qualified to
17 work with persons with a mental disorder or a developmental
18 or intellectual disability;

19 Q. "physician" or "certified psychologist", when
20 used for the purpose of hospital admittance or discharge,
21 means a physician or certified psychologist who has been
22 granted admitting privileges at a hospital licensed by the
23 department of health, if such privileges are required;

24 R. "protected health information" means
25 individually identifiable health information transmitted by

1 or maintained in an electronic form or any other form or
2 media that relates to the:

3 (1) past, present or future physical or
4 mental health or condition of an individual;

5 (2) provision of health care to an
6 individual; or

7 (3) payment for the provision of health care
8 to an individual;

9 S. "psychosurgery":

10 (1) means those operations currently
11 referred to as lobotomy, psychiatric surgery and behavioral
12 surgery and all other forms of brain surgery if the surgery
13 is performed for the purpose of the following:

14 (a) modification or control of
15 thoughts, feelings, actions or behavior rather than the
16 treatment of a known and diagnosed physical disease of the
17 brain;

18 (b) treatment of abnormal brain
19 function or normal brain tissue in order to control thoughts,
20 feelings, actions or behavior; or

21 (c) treatment of abnormal brain
22 function or abnormal brain tissue in order to modify
23 thoughts, feelings, actions or behavior when the abnormality
24 is not an established cause for those thoughts, feelings,
25 actions or behavior; and

1 (2) does not include prefrontal sonic
2 treatment in which there is no destruction of brain tissue;

3 T. "qualified mental health professional licensed
4 for independent practice" means an independent social worker,
5 a licensed professional clinical mental health counselor, a
6 marriage and family therapist, a certified nurse practitioner
7 or a clinical nurse specialist with a specialty in mental
8 health, all of whom by training and experience are qualified
9 to work with persons with a mental disorder;

10 U. "residential treatment or habilitation program"
11 means diagnosis, evaluation, care, treatment or habilitation
12 rendered inside or on the premises of a mental health or
13 developmental disabilities facility, hospital, clinic,
14 institution or supervisory residence or nursing home when the
15 client resides on the premises; and

16 V. "treatment" means any effort to accomplish a
17 significant change in the mental or emotional condition or
18 behavior of the client."

19 SECTION 13. REPEAL.--Section 24-1-5.4 NMSA 1978 (being
20 Laws 1997, Chapter 217, Section 2) is repealed. _____

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