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HOUSE BILL 306

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Dennis J. Roch

AN ACT

RELATING TO HEALTH CARE; ENACTING THE DENTAL THERAPIST-HYGIENIST ACT; PROVIDING FOR LICENSURE AND A SCOPE OF PRACTICE FOR DENTAL THERAPIST-HYGIENISTS; PROVIDING FOR THE CREATION OF A JOINT COMMITTEE TO REGULATE, LICENSE AND DISCIPLINE DENTAL THERAPIST-HYGIENISTS; PROVIDING FOR FEES; PROVIDING FOR RULEMAKING; AMENDING SECTIONS OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT, THE NEW MEXICO DRUG, DEVICE AND COSMETIC ACT, THE PUBLIC ASSISTANCE ACT, CHAPTER 59A, ARTICLE 22 NMSA 1978, THE HEALTH MAINTENANCE ORGANIZATION LAW, THE NONPROFIT HEALTH CARE PLAN LAW AND THE DENTAL HEALTH CARE ACT; PROVIDING FOR DELAYED REPEAL AND TERMINATION OF AGENCY LIFE.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 9 of this act may be cited as the "Dental Therapist-.196277.2

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1 Hygienist Act".

2 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
3 Dental Therapist-Hygienist Act:

4 A. "board" means the New Mexico board of dental
5 health care;

6 B. "committee" means the New Mexico dental
7 hygienists committee;

8 C. "dental health professional shortage area" means
9 a geographic area of the state federally designated as having a
10 significantly limited number of dental health care providers;

11 D. "dental therapist-hygienist" means an individual
12 who holds both of the following:

13 (1) a license to practice dental therapy-
14 hygiene in the state; and

15 (2) a license to practice dental hygiene
16 pursuant to the Dental Health Care Act;

17 E. "dental therapist-hygienist advocate" means an
18 individual who publicly supports or recommends the practice of
19 dental therapy-hygiene in the state and who has been nominated
20 by a representative of New Mexico health resources, health
21 action New Mexico, a state or regional dental therapists'
22 association or a state institution of higher education that has
23 a dental therapist-hygienist education program;

24 F. "dental therapist-hygienist management
25 agreement" means a written general supervision agreement

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1 between a dentist and a dental therapist-hygienist;

2 G. "direct supervision" means the process under
3 which an act is performed when a dentist or dental therapist-
4 hygienist is physically present throughout the performance of
5 the act;

6 H. "general supervision" means a dentist's
7 authorization of the procedures that are executed by a dental
8 therapist-hygienist while the dentist is not physically present
9 in the facility where the procedures are taking place and in
10 accordance with the dental therapist-hygienist's diagnosis and
11 treatment plan;

12 I. "indirect supervision" means the process under
13 which an act is performed when a dentist or dental therapist-
14 hygienist is present in the treatment facility throughout the
15 performance of the act;

16 J. "joint committee" means the committee created
17 pursuant to Section 6 of the Dental Therapist-Hygienist Act to
18 regulate and license the practice of dental therapy-hygiene;

19 K. "person" means an individual, corporation,
20 business trust, estate, trust, partnership, limited liability
21 company, association, joint venture or any legal or commercial
22 entity;

23 L. "store-and-forward technology" means electronic
24 information, imaging and communication, including interactive
25 audio, video and data communications, that is transferred or

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1 recorded or otherwise stored for asynchronous use; and

2 M. "telehealth" means the use of electronic
3 information, imaging and communication technologies, including
4 interactive audio, video and data communications, as well as
5 store-and-forward technologies, to provide and support health
6 care delivery, diagnosis, consultation, treatment, transfer of
7 medical data and education.

8 SECTION 3. [NEW MATERIAL] DENTAL THERAPY-HYGIENE
9 PRACTICE--SCOPE OF PRACTICE.--

10 A. "Dental therapy-hygiene practice" means the
11 application of the science of the prevention and treatment of
12 oral disease through education, prevention, assessment,
13 diagnosis and clinical and other therapeutic services under the
14 general supervision of a dentist. "Dental therapy-hygiene
15 practice" includes the practice of dental hygiene, as provided
16 in Subsection B of Section 61-5A-4 NMSA 1978, and:

17 (1) behavioral management, oral health
18 instruction and disease prevention education, including
19 nutritional counseling and dietary analysis;

20 (2) diagnosis of dental disease and the
21 formulation of an individualized treatment plan, including
22 caries risk assessment;

23 (3) preliminary charting of the oral cavity;

24 (4) prescribing, exposing and interpreting
25 radiographs;

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- 1 (5) mechanical polishing of teeth and
- 2 restorations;
- 3 (6) application of topical preventive or
- 4 prophylactic agents, including fluoride varnishes and pit and
- 5 fissure sealants;
- 6 (7) pulp vitality testing;
- 7 (8) application of desensitizing medication or
- 8 resin;
- 9 (9) fabrication of athletic mouthguards;
- 10 (10) placement of temporary restoration;
- 11 (11) tissue conditioning and soft reline;
- 12 (12) a traumatic restorative therapy;
- 13 (13) dressing changes;
- 14 (14) tooth reimplantation and stabilization of
- 15 reimplanted teeth;
- 16 (15) administration of local anesthetic and
- 17 nitrous oxide;
- 18 (16) extractions of primary teeth;
- 19 (17) extractions of permanent teeth that have
- 20 no impactions and no need of sectioning for removal;
- 21 (18) emergency palliative treatment of dental
- 22 pain;
- 23 (19) placement and removal of space
- 24 maintainers;
- 25 (20) cavity preparation;

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- 1 (21) restoration of primary and permanent
2 teeth;
- 3 (22) placement of temporary crowns;
- 4 (23) preparation and placement of pre-formed
5 crowns;
- 6 (24) pulpotomy of primary teeth;
- 7 (25) indirect and direct pulp capping on
8 primary and permanent teeth;
- 9 (26) suture removal;
- 10 (27) brush biopsies;
- 11 (28) simple repairs and adjustments to
12 removable prosthetic appliances;
- 13 (29) re-cementing of permanent crowns;
- 14 (30) prevention of potential orthodontic
15 problems by early identification and appropriate referral;
- 16 (31) prevention, identification and management
17 of dental and medical emergencies and maintenance of current
18 basic life-support certification;
- 19 (32) prescribing, dispensing and
20 administration of analgesics, anti-inflammatory medications and
21 antibiotics only within the parameters of a dental therapist-
22 hygienist management agreement; and
- 23 (33) other related services as permitted by
24 board rules.

25 B. A dental therapist-hygienist shall practice

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1 under the general supervision of a dentist pursuant to a
2 written supervision agreement between the dentist and the
3 dental therapist-hygienist. The joint committee may establish
4 minimum requirements for dental therapist-hygienist management
5 agreements.

6 C. General supervision of a dental therapist-
7 hygienist by a dentist includes communication between the
8 dental therapist-hygienist and dentist by use of telehealth.

9 D. A dental therapist-hygienist may provide dental
10 therapy-hygiene services in the following locations within
11 dental health professional shortage areas:

- 12 (1) private and public dental and medical
13 offices;
- 14 (2) public and community medical facilities;
- 15 (3) schools;
- 16 (4) hospitals;
- 17 (5) long-term care facilities; and
- 18 (6) other settings within dental health
19 professional shortage areas, as determined by joint committee
20 rules.

21 E. To practice under the general supervision of a
22 dentist, a dental therapist-hygienist shall enter into a dental
23 therapist-hygienist management agreement with a dentist. The
24 dental therapist-hygienist management agreement shall set forth
25 the scope of practice and conditions under which the dentist

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1 will provide general supervision of the dental therapist-
2 hygienist. A dental therapist-hygienist management agreement
3 shall not be subject to board, committee or joint committee
4 approval. The dental therapist-hygienist management agreement
5 shall be:

6 (1) submitted annually to the joint committee;
7 and

8 (2) signed and maintained by the dentist and
9 dental therapist-hygienist.

10 F. A dentist and a dental therapist-hygienist shall
11 notify the board upon the dissolution of their dental
12 therapist-hygienist management agreement.

13 G. A dental therapist-hygienist may supervise under
14 direct or indirect supervision dental assistants and dental
15 hygienists. The dental therapist-hygienist management
16 agreement shall set forth the scope of practice and conditions
17 under which the dental therapist-hygienist may supervise dental
18 assistants and dental hygienists.

19 SECTION 4. [NEW MATERIAL] DENTAL THERAPISTS-HYGIENISTS--
20 LICENSURE--UNAUTHORIZED PRACTICE--IMPAIRED LICENSEES--
21 DISCIPLINE--PENALTIES.--

22 A. To be licensed as a dental therapist-hygienist,
23 an applicant shall have:

24 (1) passed a written examination covering the
25 laws and rules for practice in the state; and

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1 (2) submitted proof to the joint committee for
2 its approval and recommendation:

3 (a) of graduation and receipt of a
4 degree from one of the following education programs developed
5 in partnership with an accredited institution of higher
6 education: 1) a dental therapy-hygiene education program that
7 provides a competency-based curriculum; or 2) both a dental
8 hygiene education program that has met the requirements for a
9 dental hygiene education program pursuant to the Dental Health
10 Care Act and a dental therapy education program that provides a
11 competency-based dental therapy curriculum;

12 (b) that the applicant: 1) has received
13 a letter of recommendation from a person in the community or
14 from the sponsoring entity in which the applicant plans to
15 practice as part of the application process for the dental
16 therapy-hygiene education program; and 2) maintains an ongoing
17 relationship with the sponsoring entity, including one
18 community prevention project in the supporting community during
19 coursework;

20 (c) of passage of a competency-based
21 examination given by a nationally recognized regional testing
22 agency if available or, if not available, by an institution of
23 higher education with a dental therapy-hygiene education
24 program that the applicant has passed following the applicant's
25 completion of a dental therapy-hygiene educational program; and

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1 (d) after graduation from a dental
2 therapist-hygiene competency-based education program, has
3 completed a minimum of four hundred additional clinical hours
4 under the indirect supervision of a dentist.

5 B. Upon notification from the dental therapy-
6 hygiene education program that the dental therapist-hygienist
7 applicant has graduated from the education program and passed
8 the competency-based examination, the joint committee shall
9 issue a permit for the applicant to practice during the
10 applicant's requirement to complete four hundred additional
11 clinical hours pursuant to Subparagraph (d) of Paragraph (2) of
12 Subsection A of this section.

13 C. The joint committee shall issue a license to
14 practice as a dental therapist-hygienist without a practical or
15 clinical examination to an applicant who is a licensed dental
16 therapist-hygienist by examination under the laws of another
17 state or territory of the United States; provided that the
18 license is in good standing for the two previous years in that
19 jurisdiction and that the applicant meets the requirements of
20 the Dental Therapist-Hygienist Act, including payment of
21 appropriate fees and the passing of an examination covering the
22 laws and rules of dental therapy-hygiene practice in the state.

23 D. After an applicant has met the qualifications
24 set forth in Subsections A through C of this section, the joint
25 committee shall issue the applicant a license to practice as a

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1 dental therapist-hygienist.

2 E. A dental therapist-hygienist shall renew the
3 dental therapist-hygienist's license triennially in accordance
4 with joint committee rules.

5 F. A person who practices as a dental therapist-
6 hygienist or who attempts to practice as a dental therapist-
7 hygienist in violation of the provisions of the Dental
8 Therapist-Hygienist Act or without a license entitling the
9 person to practice as a dental therapist-hygienist in the state
10 is guilty of a misdemeanor and upon conviction shall be
11 sentenced to imprisonment for a definite period of less than
12 one year and, in the discretion of the sentencing court, to a
13 fine not to exceed one thousand dollars (\$1,000), or both.
14 Each occurrence of practicing as a dental therapist-hygienist
15 or attempting to practice as a dental therapist-hygienist
16 without complying with the Dental Therapist-Hygienist Act shall
17 be a separate violation.

18 G. In accordance with the Uniform Licensing Act and
19 rules of the joint committee, the joint committee may fine and
20 may deny, revoke, suspend, stipulate or otherwise limit any
21 license or certificate, including those of licensed non-dentist
22 owners, held or applied for under the Dental Therapist-
23 Hygienist Act, upon findings by the joint committee that the
24 licensee or applicant:

25 (1) is guilty of fraud or deceit in procuring

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1 or attempting to procure a license;

2 (2) has been convicted of a crime punishable
3 by incarceration in a federal prison or state penitentiary;
4 provided a copy of the record of conviction, certified to by
5 the clerk of the court entering the conviction, shall be
6 conclusive evidence of such conviction;

7 (3) is guilty of gross incompetence or gross
8 negligence, as defined by rules of the joint committee, in the
9 practice of dental therapy-hygiene;

10 (4) is habitually intemperate or is addicted
11 to the use of habit-forming drugs or is addicted to any vice to
12 such degree as to render the licensee unfit to practice dental
13 therapy-hygiene;

14 (5) is guilty of unprofessional conduct as
15 defined by rule of the joint committee;

16 (6) is guilty of any violation of the
17 Controlled Substances Act;

18 (7) has violated any provisions of the Dental
19 Therapy-Hygiene Act or rule or regulation of the board or the
20 joint committee;

21 (8) is guilty of willfully or negligently
22 practicing beyond the scope of licensure;

23 (9) is guilty of practicing dental therapy-
24 hygiene without a license or aiding or abetting the practice of
25 dental hygiene-therapy by a person not licensed under the

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1 Dental Therapy-Hygiene Act;

2 (10) is guilty of obtaining or attempting to
3 obtain any fee by fraud or misrepresentation or has otherwise
4 acted in a manner or by conduct likely to deceive, defraud or
5 harm the public;

6 (11) is guilty of patient abandonment;

7 (12) is guilty of failing to report to the
8 joint committee any adverse action taken against the licensee
9 by a licensing authority, peer review body, malpractice
10 insurance carrier or other entity as defined in rules of the
11 joint committee;

12 (13) has had a license to practice as a dental
13 therapist-hygienist revoked, suspended, denied, stipulated or
14 otherwise limited in any jurisdiction, territory or possession
15 of the United States or another country for actions of the
16 licensee similar to acts described in this subsection. A
17 certified copy of the decision of the jurisdiction taking such
18 disciplinary action will be conclusive evidence; or

19 (14) has failed to furnish the joint
20 committee, investigators or its representatives with
21 information requested by the joint committee in the course of
22 an official investigation.

23 H. Disciplinary proceedings may be instituted by
24 sworn complaint by any person, including a board or joint
25 committee member, and shall conform with the provisions of the

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1 Uniform Licensing Act.

2 I. A licensee shall bear the costs of disciplinary
3 proceedings unless exonerated.

4 J. Any person filing a sworn complaint shall be
5 immune from liability arising out of civil action if the
6 complaint is filed in good faith and without actual malice.

7 K. The joint committee may establish reasonable
8 fees related to the maintenance of a license in probationary
9 status, including laboratory costs when laboratory testing of
10 biological fluids or accounting costs when audits are included
11 as a condition of probation.

12 L. The joint committee shall reinstate the license
13 of a dental therapist-hygienist as follows:

14 (1) unless otherwise stated in the order of
15 revocation, the joint committee shall not accept a motion for
16 reinstatement of a revoked license until at least three years
17 from the effective date of the revocation;

18 (2) if the joint committee denies a motion for
19 reinstatement, it shall not consider any further motions for
20 reinstatement for a period of one year;

21 (3) at the expiration of the period specified
22 in the order of suspension, the joint committee shall
23 automatically reinstate a license that has been suspended for a
24 specific period of time. The automatic reinstatement shall
25 apply as of the day after the expiration of the period of

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1 suspension unless the administrative prosecutor has filed with
2 the joint committee written objections. If the administrative
3 prosecutor has filed objections in accordance with joint
4 committee procedures, the petition for reinstatement shall be
5 referred to the joint committee for hearing pursuant to
6 Paragraph (5) of this subsection;

7 (4) indefinite suspension of dental therapist-
8 hygienists shall occur as follows:

9 (a) a licensee who has been suspended
10 for an indefinite period of time may, at any time after
11 complying with the conditions of reinstatement, file a petition
12 for reinstatement with the joint committee;

13 (b) the petition shall be referred to
14 the joint committee for hearing under Paragraph (5) of this
15 subsection; and

16 (c) if the motion for reinstatement is
17 denied, no further motions for reinstatement will be considered
18 for a period of one year; and

19 (5) procedures for reinstatement hearings are
20 as follows:

21 (a) applications for reinstatement shall
22 be referred to the joint committee for hearing if the applicant
23 meets the criteria set forth in this subsection;

24 (b) the joint committee shall schedule a
25 hearing as soon as practical. At the hearing, the applicant

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1 for reinstatement shall have the burden of demonstrating that
2 the applicant has met the following criteria established by
3 joint committee rules: 1) the applicant meets the moral
4 qualifications for reinstatement; 2) the applicant is once
5 again fit to resume the practice of dental therapy-hygiene; and
6 3) the resumption of the applicant's practice of dental
7 therapy-hygiene will not be detrimental to the public interest;

8 (c) the joint committee shall file its
9 findings of fact, conclusions of law and decision within ninety
10 days of the hearing; and

11 (d) the joint committee's decision to
12 refuse to reinstate a license shall not be reviewable except
13 for an abuse of discretion.

14 SECTION 5. [NEW MATERIAL] TEMPORARY LICENSURE.--

15 A. The joint committee may issue a temporary
16 license to practice dental therapy-hygiene to an applicant who
17 is licensed to practice dental therapy-hygiene in another state
18 or territory of the United States and who is otherwise
19 qualified to practice dental therapy-hygiene in the state. The
20 following provisions shall apply to temporary licensure:

21 (1) the applicant shall hold a valid license
22 in good standing in another state or territory of the United
23 States;

24 (2) the applicant shall practice dental
25 therapy-hygiene under the sponsorship of or in association with

1 a licensed New Mexico dentist, dental therapist-hygienist or
2 dental hygienist;

3 (3) the temporary license may be issued for
4 those activities as stipulated by the joint committee in the
5 rules of the board. It may be issued upon written application
6 of the applicant when accompanied by such proof of
7 qualifications as the secretary-treasurer of the joint
8 committee, in the secretary-treasurer's discretion, may
9 require. Temporary licensees shall engage in only those
10 activities specified on the temporary license for the time
11 designated, and the temporary license shall identify the
12 licensed New Mexico dentist, dental therapist-hygienist or
13 dental hygienist who will sponsor or associate with the
14 applicant during the time the applicant practices dental
15 therapy-hygiene in New Mexico;

16 (4) the sponsoring or associating dentist,
17 dental therapist-hygienist or dental hygienist shall submit an
18 affidavit attesting to the qualifications of the applicant and
19 the activities the applicant will perform;

20 (5) the temporary license shall be issued for
21 a period not to exceed twelve months and may be renewed upon
22 application and payment of required fees;

23 (6) the application for a temporary license
24 under this section shall be accompanied by a license fee; and

25 (7) the temporary licensee shall be required

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1 to comply with the Dental Therapist-Hygienist Act and all rules
2 promulgated pursuant thereto.

3 B. The joint committee may grant to a dental
4 therapist-hygienist who meets the requirements of Subsection A
5 of this section and who is licensed to practice dental
6 therapy-hygiene in another state or territory of the United
7 States temporary licensure to practice and serve as faculty for
8 a dental therapy-hygiene education program in a state or
9 federal institution, a program approved or maintained by the
10 department of health or a program or clinic that the department
11 of health designates as serving a health care underserved area.

12 SECTION 6. [NEW MATERIAL] JOINT COMMITTEE--CREATION--
13 MEMBERSHIP.--

14 A. The joint committee shall regulate, license and
15 discipline dental therapist-hygienists.

16 B. The joint committee is made up of thirteen
17 members, including:

18 (1) five members of the board who are
19 dentists;

20 (2) five members who are members of the New
21 Mexico dental hygienists committee who are dental hygienists;

22 (3) one dental therapist-hygienist or dental
23 therapist-hygienist advocate; and

24 (4) two public members of the board.

25 C. Within thirty days of the effective date of the

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1 Dental Therapist-Hygienist Act, the governor shall appoint the
2 dental therapist-hygienist or dental therapist-hygienist
3 advocate member of the joint committee from a list of names
4 submitted by New Mexico health resources, health action New
5 Mexico, a state or regional dental therapists' association or a
6 state institution of higher education that has a dental
7 therapy-hygiene education program.

8 D. Appointment of the dental therapist-hygienist or
9 dental therapist-hygienist advocate member shall be for a term
10 of five years.

11 E. The dental therapist-hygienist or dental
12 therapist-hygienist advocate member of the joint committee
13 shall be chosen from those members of the board who are also
14 members of the committee.

15 F. To achieve a quorum at a meeting of the joint
16 committee, the dental therapist-hygienist or dental therapist-
17 hygienist advocate member of the joint committee shall be in
18 attendance.

19 G. In accordance with the Uniform Licensing Act,
20 for any cause stated in the Dental Therapist-Hygienist Act, the
21 joint committee may grant, deny, review, censure, reprimand,
22 fine and place on probation and stipulation, suspend and revoke
23 licenses to practice dental therapy-hygiene.

24 H. Within six months of the appointment of the
25 dental therapist-hygienist or dental therapist-hygienist

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1 advocate members, the joint committee shall adopt and
2 promulgate rules relating to the practice of dental therapy-
3 hygiene.

4 SECTION 7. [NEW MATERIAL] CONTENT OF LICENSES.--

5 A. A dental therapist-hygienist license shall bear:

- 6 (1) a serial number;
- 7 (2) the full name of the licensee;
- 8 (3) the date of issue;
- 9 (4) the seal of the board;
- 10 (5) the signatures of a majority of the

11 members of the joint committee; and

- 12 (6) the attestation of the board president and
- 13 secretary.

14 B. A dental therapist-hygienist license shall be
15 displayed in a conspicuous manner in the facility where the
16 holder practices. Upon request, the license shall be exhibited
17 to a member of the board, the joint committee or the authorized
18 agent of the board or joint committee.

19 SECTION 8. [NEW MATERIAL] FEES.--The joint committee
20 shall establish a schedule of reasonable fees for dental
21 therapist-hygienists, not to exceed the following:

- 22 A. licensure by examination \$1,000
- 23 B. licensure by credential \$1,500
- 24 C. temporary license:
 - 25 (1) forty-eight hours \$ 50

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1	(2) six months	\$ 200
2	(3) twelve months	\$ 300
3	D. triennial license renewal	\$ 450
4	E. late renewal	\$ 100
5	F. reinstatement of license	\$ 300
6	G. administrative fees	\$ 300
7	H. impaired dental therapist-hygienist	\$ 75
8	I. application for inactive status	\$ 50
9	J. triennial renewal of inactive license	\$ 90.

10 SECTION 9. [NEW MATERIAL] TERMINATION OF AGENCY LIFE--
11 DELAYED REPEAL.--The joint committee is terminated on January
12 1, 2023 pursuant to the provisions of the Sunset Act. The
13 joint committee shall continue to operate according to the
14 provisions of the Dental Therapist-Hygienist Act until January
15 1, 2024. Effective January 1, 2024, the Dental Therapist-
16 Hygienist Act is repealed.

17 SECTION 10. Section 7-9-93 NMSA 1978 (being Laws 2004,
18 Chapter 116, Section 6, as amended) is amended to read:

19 "7-9-93. DEDUCTION--GROSS RECEIPTS--CERTAIN RECEIPTS FOR
20 SERVICES PROVIDED BY HEALTH CARE PRACTITIONER.--

21 A. Receipts from payments by a managed health care
22 provider or health care insurer for commercial contract
23 services or medicare part C services provided by a health care
24 practitioner that are not otherwise deductible pursuant to
25 another provision of the Gross Receipts and Compensating Tax

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1 Act may be deducted from gross receipts, provided that the
2 services are within the scope of practice of the person
3 providing the service. Receipts from fee-for-service payments
4 by a health care insurer may not be deducted from gross
5 receipts. The deduction provided by this section shall be
6 separately stated by the taxpayer.

7 B. For the purposes of this section:

8 (1) "commercial contract services" means
9 health care services performed by a health care practitioner
10 pursuant to a contract with a managed health care provider or
11 health care insurer other than those health care services
12 provided for medicare patients pursuant to Title 18 of the
13 federal Social Security Act or for medicaid patients pursuant
14 to Title 19 or Title 21 of the federal Social Security Act;

15 (2) "health care insurer" means a person that:

16 (a) has a valid certificate of authority
17 in good standing pursuant to the New Mexico Insurance Code to
18 act as an insurer, health maintenance organization or nonprofit
19 health care plan or prepaid dental plan; and

20 (b) contracts to reimburse licensed
21 health care practitioners for providing basic health services
22 to enrollees at negotiated fee rates;

23 (3) "health care practitioner" means:

24 (a) a chiropractic physician licensed
25 pursuant to the provisions of the Chiropractic Physician

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1 Practice Act;

2 (b) a dentist or dental hygienist
3 licensed pursuant to the Dental Health Care Act;

4 (c) a doctor of oriental medicine
5 licensed pursuant to the provisions of the Acupuncture and
6 Oriental Medicine Practice Act;

7 (d) an optometrist licensed pursuant to
8 the provisions of the Optometry Act;

9 (e) an osteopathic physician licensed
10 pursuant to the provisions of Chapter 61, Article 10 NMSA 1978
11 or an osteopathic physician's assistant licensed pursuant to
12 the provisions of the Osteopathic Physicians' Assistants Act;

13 (f) a physical therapist licensed
14 pursuant to the provisions of the Physical Therapy Act;

15 (g) a physician or physician assistant
16 licensed pursuant to the provisions of Chapter 61, Article 6
17 NMSA 1978;

18 (h) a podiatrist licensed pursuant to
19 the provisions of the Podiatry Act;

20 (i) a psychologist licensed pursuant to
21 the provisions of the Professional Psychologist Act;

22 (j) a registered lay midwife registered
23 by the department of health;

24 (k) a registered nurse or licensed
25 practical nurse licensed pursuant to the provisions of the

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1 Nursing Practice Act;

2 (l) a registered occupational therapist
3 licensed pursuant to the provisions of the Occupational Therapy
4 Act;

5 (m) a respiratory care practitioner
6 licensed pursuant to the provisions of the Respiratory Care
7 Act;

8 (n) a speech-language pathologist or
9 audiologist licensed pursuant to the Speech-Language Pathology,
10 Audiology and Hearing Aid Dispensing Practices Act;

11 (o) a professional clinical mental
12 health counselor, marriage and family therapist or professional
13 art therapist licensed pursuant to the provisions of the
14 Counseling and Therapy Practice Act who has obtained a master's
15 degree or a doctorate;

16 (p) an independent social worker
17 licensed pursuant to the provisions of the Social Work Practice
18 Act; ~~and~~

19 (q) a clinical laboratory that is
20 accredited pursuant to 42 U.S.C. Section 263a but that is not a
21 laboratory in a physician's office or in a hospital defined
22 pursuant to 42 U.S.C. Section 1395x; and

23 (r) a dental therapist-hygienist
24 licensed pursuant to the Dental Therapist-Hygienist Act;

25 (4) "managed health care provider" means a

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1 person that provides for the delivery of comprehensive basic
2 health care services and medically necessary services to
3 individuals enrolled in a plan through its own employed health
4 care providers or by contracting with selected or participating
5 health care providers. "Managed health care provider" includes
6 only those persons that provide comprehensive basic health care
7 services to enrollees on a contract basis, including the
8 following:

9 (a) health maintenance organizations;

10 (b) preferred provider organizations;

11 (c) individual practice associations;

12 (d) competitive medical plans;

13 (e) exclusive provider organizations;

14 (f) integrated delivery systems;

15 (g) independent physician-provider

16 organizations;

17 (h) physician hospital-provider

18 organizations; and

19 (i) managed care services organizations;

20 and

21 (5) "medicare part C services" means services
22 performed pursuant to a contract with a managed health care
23 provider for medicare patients pursuant to Title 18 of the
24 federal Social Security Act."

25 SECTION 11. Section 26-1-2 NMSA 1978 (being Laws 1967,

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1 Chapter 23, Section 2, as amended) is amended to read:

2 "26-1-2. DEFINITIONS.--As used in the New Mexico Drug,
3 Device and Cosmetic Act:

4 A. "board" means the board of pharmacy or its duly
5 authorized agent;

6 B. "person" includes an individual, partnership,
7 corporation, association, institution or establishment;

8 C. "biological product" means a virus, therapeutic
9 serum, toxin, antitoxin or analogous product applicable to the
10 prevention, treatment or cure of diseases or injuries of humans
11 and domestic animals, and, as used within the meaning of this
12 definition:

13 (1) a "virus" is interpreted to be a product
14 containing the minute living cause of an infectious disease and
15 includes filterable viruses, bacteria, rickettsia, fungi and
16 protozoa;

17 (2) a "therapeutic serum" is a product
18 obtained from blood by removing the clot or clot components and
19 the blood cells;

20 (3) a "toxin" is a product containing a
21 soluble substance poisonous to laboratory animals or humans in
22 doses of one milliliter or less of the product and, following
23 the injection of nonfatal doses into an animal, having the
24 property of or causing to be produced therein another soluble
25 substance that specifically neutralizes the poisonous substance

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1 and that is demonstrable in the serum of the animal thus
2 immunized; and

3 (4) an "antitoxin" is a product containing the
4 soluble substance in serum or other body fluid of an immunized
5 animal that specifically neutralizes the toxin against which
6 the animal is immune;

7 D. "controlled substance" means a drug, substance
8 or immediate precursor enumerated in Schedules I through V of
9 the Controlled Substances Act;

10 E. "drug" means articles:

11 (1) recognized in an official compendium;

12 (2) intended for use in the diagnosis, cure,
13 mitigation, treatment or prevention of disease in humans or
14 other animals and includes the domestic animal biological
15 products regulated under the federal Virus-Serum-Toxin Act,
16 37 Stat 832-833, 21 U.S.C. 151-158, and the biological products
17 applicable to humans regulated under Federal 58 Stat 690, as
18 amended, 42 U.S.C. 216, Section 351, 58 Stat 702, as amended,
19 and 42 U.S.C. 262;

20 (3) other than food, that affect the structure
21 or any function of the human body or the bodies of other
22 animals; and

23 (4) intended for use as a component of
24 Paragraph (1), (2) or (3) of this subsection, but "drug" does
25 not include devices or their component parts or accessories;

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1 F. "dangerous drug" means a drug, other than a
2 controlled substance enumerated in Schedule I of the Controlled
3 Substances Act, that because of a potentiality for harmful
4 effect or the method of its use or the collateral measures
5 necessary to its use is not safe except under the supervision
6 of a practitioner licensed by law to direct the use of such
7 drug and hence for which adequate directions for use cannot be
8 prepared. "Adequate directions for use" means directions under
9 which the layperson can use a drug or device safely and for the
10 purposes for which it is intended. A drug shall be dispensed
11 only upon the prescription or drug order of a practitioner
12 licensed by law to administer or prescribe the drug if it:

13 (1) is a habit-forming drug and contains any
14 quantity of a narcotic or hypnotic substance or a chemical
15 derivative of such substance that has been found under the
16 federal act and the board to be habit forming;

17 (2) because of its toxicity or other potential
18 for harmful effect or the method of its use or the collateral
19 measures necessary to its use is not safe for use except under
20 the supervision of a practitioner licensed by law to administer
21 or prescribe the drug;

22 (3) is limited by an approved application by
23 Section 505 of the federal act to the use under the
24 professional supervision of a practitioner licensed by law to
25 administer or prescribe the drug;

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1 (4) bears the legend: "Caution: federal law
2 prohibits dispensing without prescription.";

3 (5) bears the legend: "Caution: federal law
4 restricts this drug to use by or on the order of a licensed
5 veterinarian."; or

6 (6) bears the legend "RX only";

7 G. "counterfeit drug" means a drug that is
8 deliberately and fraudulently mislabeled with respect to its
9 identity, ingredients or sources. Types of such pharmaceutical
10 counterfeits may include:

11 (1) "identical copies", which are counterfeits
12 made with the same ingredients, formulas and packaging as the
13 originals but not made by the original manufacturer;

14 (2) "look-alikes", which are products that
15 feature high-quality packaging and convincing appearances but
16 contain little or no active ingredients and may contain harmful
17 substances;

18 (3) "rejects", which are drugs that have been
19 rejected by the manufacturer for not meeting quality standards;
20 and

21 (4) "relabels", which are drugs that have
22 passed their expiration dates or have been distributed by
23 unauthorized foreign sources and may include placebos created
24 for late-phase clinical trials;

25 H. "device", except when used in Subsection P of

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1 this section and in Subsection G of Section 26-1-3, Subsection
2 L and Paragraph (4) of Subsection A of Section 26-1-11 and
3 Subsection C of Section 26-1-24 NMSA 1978, means an instrument,
4 apparatus, implement, machine, contrivance, implant, in vitro
5 reagent or other similar or related article, including any
6 component, part or accessory, that is:

7 (1) recognized in an official compendium;

8 (2) intended for use in the diagnosis of
9 disease or other conditions or in the cure, mitigation,
10 treatment or prevention of disease in humans or other animals;
11 or

12 (3) intended to affect the structure or a
13 function of the human body or the bodies of other animals and
14 that does not achieve any of its principal intended purposes
15 through chemical action within or on the human body or the
16 bodies of other animals and that is not dependent on being
17 metabolized for achievement of any of its principal intended
18 purposes;

19 I. "prescription" means an order given individually
20 for the person for whom prescribed, either directly from a
21 licensed practitioner or the practitioner's agent to the
22 pharmacist, including by means of electronic transmission, or
23 indirectly by means of a written order signed by the
24 prescriber, and bearing the name and address of the prescriber,
25 the prescriber's license classification, the name and address

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1 of the patient, the name and quantity of the drug prescribed,
2 directions for use and the date of issue;

3 J. "practitioner" means a certified advanced
4 practice chiropractic physician, physician, doctor of oriental
5 medicine, dentist, veterinarian, euthanasia technician,
6 certified nurse practitioner, clinical nurse specialist,
7 pharmacist, pharmacist clinician, certified nurse-midwife,
8 physician assistant, prescribing psychologist, dental
9 therapist-hygienist, dental hygienist or other person licensed
10 or certified to prescribe and administer drugs that are subject
11 to the New Mexico Drug, Device and Cosmetic Act;

12 K. "cosmetic" means:

13 (1) articles intended to be rubbed, poured,
14 sprinkled or sprayed on, introduced into or otherwise applied
15 to the human body or any part thereof for cleansing,
16 beautifying, promoting attractiveness or altering the
17 appearance; and

18 (2) articles intended for use as a component
19 of any articles enumerated in Paragraph (1) of this subsection,
20 except that the term shall not include soap;

21 L. "official compendium" means the official United
22 States pharmacopoeia national formulary or the official
23 homeopathic pharmacopoeia of the United States or any
24 supplement to either of them;

25 M. "label" means a display of written, printed or

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1 graphic matter upon the immediate container of an article. A
2 requirement made by or under the authority of the New Mexico
3 Drug, Device and Cosmetic Act that any word, statement or other
4 information appear on the label shall not be considered to be
5 complied with unless the word, statement or other information
6 also appears on the outside container or wrapper, if any, of
7 the retail package of the article or is easily legible through
8 the outside container or wrapper;

9 N. "immediate container" does not include package
10 liners;

11 O. "labeling" means all labels and other written,
12 printed or graphic matter:

13 (1) on an article or its containers or
14 wrappers; or

15 (2) accompanying an article;

16 P. "misbranded" means a label to an article that is
17 misleading. In determining whether the label is misleading,
18 there shall be taken into account, among other things, not only
19 representations made or suggested by statement, word, design,
20 device or any combination of the foregoing, but also the extent
21 to which the label fails to reveal facts material in the light
22 of such representations or material with respect to
23 consequences that may result from the use of the article to
24 which the label relates under the conditions of use prescribed
25 in the label or under such conditions of use as are customary

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1 or usual;

2 Q. "advertisement" means all representations
3 disseminated in any manner or by any means, other than by
4 labeling, for the purpose of inducing, or that are likely to
5 induce, directly or indirectly, the purchase of drugs, devices
6 or cosmetics;

7 R. "antiseptic", when used in the labeling or
8 advertisement of an antiseptic, shall be considered to be a
9 representation that it is a germicide, except in the case of a
10 drug purporting to be or represented as an antiseptic for
11 inhibitory use as a wet dressing, ointment, dusting powder or
12 such other use as involves prolonged contact with the body;

13 S. "new drug" means a drug:

14 (1) the composition of which is such that the
15 drug is not generally recognized, among experts qualified by
16 scientific training and experience to evaluate the safety and
17 efficacy of drugs, as safe and effective for use under the
18 conditions prescribed, recommended or suggested in the labeling
19 thereof; or

20 (2) the composition of which is such that the
21 drug, as a result of investigation to determine its safety and
22 efficacy for use under such conditions, has become so
23 recognized, but that has not, otherwise than in such
24 investigations, been used to a material extent or for a
25 material time under such conditions;

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1 T. "contaminated with filth" applies to a drug,
2 device or cosmetic not securely protected from dirt, dust and,
3 as far as may be necessary by all reasonable means, from all
4 foreign or injurious contaminations, or a drug, device or
5 cosmetic found to contain dirt, dust, foreign or injurious
6 contamination or infestation;

7 U. "selling of drugs, devices or cosmetics" shall
8 be considered to include the manufacture, production,
9 processing, packing, exposure, offer, possession and holding of
10 any such article for sale and the sale and the supplying or
11 applying of any such article in the conduct of a drug or
12 cosmetic establishment;

13 V. "color additive" means a material that:

14 (1) is a dye, pigment or other substance made
15 by a process of synthesis or similar artifice or extracted,
16 isolated or otherwise derived, with or without intermediate or
17 final change of identity, from a vegetable, mineral, animal or
18 other source; or

19 (2) when added or applied to a drug or
20 cosmetic or to the human body or a part thereof, is capable,
21 alone or through reaction with other substances, of imparting
22 color thereto; except that such term does not include any
23 material that has been or hereafter is exempted under the
24 federal act;

25 W. "federal act" means the Federal Food, Drug and

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1 Cosmetic Act;

2 X. "restricted device" means a device for which the
3 sale, distribution or use is lawful only upon the written or
4 oral authorization of a practitioner licensed by law to
5 administer, prescribe or use the device and for which the
6 federal food and drug administration requires special training
7 or skills of the practitioner to use or prescribe. This
8 definition does not include custom devices defined in the
9 federal act and exempt from performance standards or premarket
10 approval requirements under Section 520(b) of the federal act;

11 Y. "prescription device" means a device that,
12 because of its potential for harm, the method of its use or the
13 collateral measures necessary to its use, is not safe except
14 under the supervision of a practitioner licensed in this state
15 to direct the use of such device and for which "adequate
16 directions for use" cannot be prepared, but that bears the
17 label: "Caution: federal law restricts this device to sale by
18 or on the order of a _____", the blank to be filled with
19 the word "physician", "physician assistant", "certified
20 advanced practice chiropractic physician", "doctor of oriental
21 medicine", "dentist", "veterinarian", "euthanasia technician",
22 "certified nurse practitioner", "clinical nurse specialist",
23 "pharmacist", "pharmacist clinician", "certified nurse-
24 midwife", "dental therapist-hygienist" or "dental hygienist" or
25 with the descriptive designation of any other practitioner

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1 licensed in this state to use or order the use of the device;

2 Z. "valid practitioner-patient relationship" means
3 a professional relationship, as defined by the practitioner's
4 licensing board, between the practitioner and the patient;

5 AA. "pedigree" means the recorded history of a
6 drug; and

7 BB. "drug order" means an order either directly
8 from a licensed practitioner or the practitioner's agent to the
9 pharmacist, including by means of electronic transmission or
10 indirectly by means of a written order signed by the licensed
11 practitioner or the practitioner's agent, and bearing the name
12 and address of the practitioner and the practitioner's license
13 classification and the name and quantity of the drug or device
14 ordered for use at an inpatient or outpatient facility."

15 SECTION 12. Section 27-2-12 NMSA 1978 (being Laws 1973,
16 Chapter 376, Section 16, as amended) is amended to read:

17 "27-2-12. MEDICAL ASSISTANCE PROGRAMS.--

18 A. Consistent with the federal act and subject to
19 the appropriation and availability of federal and state funds,
20 the medical assistance division of the department may by rule
21 provide medical assistance, including the services of licensed
22 doctors of oriental medicine, licensed chiropractic physicians,
23 licensed dental therapist-hygienists and licensed dental
24 hygienists in collaborating practice, to persons eligible for
25 public assistance programs under the federal act.

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1 B. Subject to appropriation and availability of
2 federal, state or other funds received by the state from public
3 or private grants or donations, the medical assistance division
4 of the department may by rule provide medical assistance,
5 including assistance in the payment of premiums for medical or
6 long-term care insurance, to children up to the age of twelve
7 if not part of a sibling group; children up to the age of
8 eighteen if part of a sibling group that includes a child up to
9 the age of twelve; and pregnant women who are residents of the
10 state of New Mexico and who are ineligible for public
11 assistance under the federal act. The department, in
12 implementing the provisions of this subsection, shall:

13 (1) establish rules that encourage pregnant
14 women to participate in prenatal care; and

15 (2) not provide a benefit package that exceeds
16 the benefit package provided to state employees."

17 **SECTION 13.** Section 59A-22-32 NMSA 1978 (being Laws 1984,
18 Chapter 127, Section 454, as amended) is amended to read:

19 "59A-22-32. FREEDOM OF CHOICE OF HOSPITAL AND
20 PRACTITIONER.--

21 A. Within the area and limits of coverage offered
22 an insured and selected by the insured in the application for
23 insurance, the right of a person to exercise full freedom of
24 choice in the selection of a hospital for hospital care or of a
25 practitioner of the healing arts or optometrist, psychologist,

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1 podiatrist, physician assistant, certified nurse-midwife,
2 registered lay midwife, dental therapist-hygienist or
3 registered nurse in expanded practice, as defined in Subsection
4 B of this section, for treatment of an illness or injury within
5 that person's scope of practice shall not be restricted under
6 any new policy of health insurance, contract or health care
7 plan issued after June 30, 1967 in this state or in the
8 processing of a claim thereunder. A person insured or claiming
9 benefits under any such health insurance policy, contract or
10 health care plan providing within its coverage for payment of
11 service benefits or indemnity for hospital care or treatment of
12 persons for the cure or correction of any physical or mental
13 condition shall be deemed to have complied with the
14 requirements of the policy, contract or health care plan as to
15 submission of proof of loss upon submitting written proof
16 supported by the certificate of any hospital currently licensed
17 by the department of health or any practitioner of the healing
18 arts or optometrist, psychologist, podiatrist, physician
19 assistant, certified nurse-midwife, registered lay midwife,
20 dental therapist-hygienist or registered nurse in expanded
21 practice.

22 B. As used in this section:

23 (1) "hospital care" means hospital service
24 provided through a hospital that is maintained by the state or
25 a political subdivision of the state or a place that is

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1 currently licensed as a hospital by the department of health
2 and has accommodations for resident bed patients, a licensed
3 professional registered nurse always on duty or call, a
4 laboratory and an operating room where surgical operations are
5 performed, but "hospital care" does not include a convalescent
6 or nursing or rest home;

7 (2) "practitioner of the healing arts" means a
8 person holding a license or certificate authorizing the
9 licensee to offer or undertake to diagnose, treat, operate on
10 or prescribe for any human pain, injury, disease, deformity or
11 physical or mental condition pursuant to:

12 (a) the Chiropractic Physician Practice
13 Act;

14 (b) the Dental Health Care Act;

15 (c) the Medical Practice Act;

16 (d) Chapter 61, Article 10 NMSA 1978;

17 and

18 (e) the Acupuncture and Oriental
19 Medicine Practice Act;

20 (3) "optometrist" means a person holding a
21 license provided for in the Optometry Act;

22 (4) "podiatrist" means a person holding a
23 license provided for in the Podiatry Act;

24 (5) "psychologist" means a person who is duly
25 licensed or certified in the state where the service is

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1 rendered and has a doctoral degree in psychology and has had at
2 least two years of clinical experience in a recognized health
3 setting or has met the standards of the national register of
4 health service providers in psychology;

5 (6) "physician assistant" means a person who
6 is licensed by the New Mexico medical board to practice as a
7 physician assistant and who provides services to patients under
8 the supervision and direction of a licensed physician;

9 (7) "certified nurse-midwife" means a person
10 licensed by the board of nursing as a registered nurse and who
11 is registered with the public health division of the department
12 of health as a certified nurse-midwife;

13 (8) "registered lay midwife" means a person
14 who practices lay midwifery and is registered as a registered
15 lay midwife by the public health division of the department of
16 health; ~~and~~

17 (9) "registered nurse in expanded practice"
18 means a person licensed by the board of nursing as a registered
19 nurse approved for expanded practice pursuant to the Nursing
20 Practice Act as a certified nurse practitioner, certified
21 registered nurse anesthetist, certified clinical nurse
22 specialist in psychiatric mental health nursing or clinical
23 nurse specialist in private practice and who has a master's
24 degree or doctorate in a defined clinical nursing [~~speciality~~]
25 specialty and is certified by a national nursing organization;

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1 and

2 (10) "dental therapist-hygienist" means an
3 individual licensed to practice dental therapy-hygiene pursuant
4 to the Dental Therapist-Hygienist Act.

5 C. This section shall apply to any such policy that
6 is delivered or issued for delivery in this state on or after
7 July 1, 1979 and to any existing group policy or plan on its
8 anniversary or renewal date after June 30, 1979 or at
9 expiration of the applicable collective bargaining contract, if
10 any, whichever is later."

11 SECTION 14. Section 59A-46-35 NMSA 1978 (being Laws 1987,
12 Chapter 335, Section 1, as amended) is amended to read:

13 "59A-46-35. PROVIDER DISCRIMINATION PROHIBITED.--No class
14 of licensed individual providers willing to meet the terms and
15 conditions offered by a health maintenance organization shall
16 be excluded from a health maintenance organization. For
17 purposes of this section, "providers" means those persons
18 licensed pursuant to:

- 19 A. the Optometry Act;
- 20 B. Section 61-3-23.2 NMSA 1978;
- 21 C. the Chiropractic Physician Practice Act;
- 22 D. the Dental Health Care Act;
- 23 E. the Medical Practice Act;
- 24 F. the Podiatry Act;
- 25 G. the Professional Psychologist Act;

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1 H. Chapter 61, Article 10 NMSA 1978; [~~or~~]

2 I. the Pharmacy Act; or

3 J. the Dental Therapist-Hygienist Act."

4 SECTION 15. Section 59A-47-28.4 NMSA 1978 (being Laws
5 2003, Chapter 343, Section 4) is amended to read:

6 "59A-47-28.4. COVERAGE FOR DENTAL THERAPIST-HYGIENISTS
7 AND COLLABORATIVE PRACTICE DENTAL HYGIENISTS.--An individual or
8 group subscriber contract delivered or issued for delivery in
9 New Mexico that, on a prepaid, service or indemnity basis,
10 provides for treatment of persons for the prevention, cure or
11 correction of any illness or physical or mental condition shall
12 include coverage for the services of a dental therapist-
13 hygienist and of a dental hygienist in a collaborative practice
14 pursuant to the Dental Health Care Act."

15 SECTION 16. Section 61-5B-10 NMSA 1978 (being Laws 1994,
16 Chapter 55, Section 39) is amended to read:

17 "61-5B-10. IMPAIRED DENTISTS, DENTAL THERAPIST-HYGIENISTS
18 AND DENTAL HYGIENISTS TREATMENT PROGRAM.--

19 A. The board has the authority to enter into an
20 agreement with a nonprofit corporation to implement an impaired
21 dentists, dental therapist-hygienists and dental hygienists
22 treatment program.

23 B. For the purposes of this section:

24 (1) "dental therapist-hygienist" means an
25 individual licensed to perform dental therapy-hygiene pursuant

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1 to the provisions of the Dental Therapist-Hygienist Act; and

2 (2) "impaired dentists, dental therapist-
3 hygienists and dental hygienists treatment program" means a
4 program of care and rehabilitation services provided by those
5 organizations authorized by the board to provide for the
6 detention, intervention and monitoring of an impaired [~~dentist~~
7 ~~or dental hygienist~~] licensee."

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