

1 HOUSE BILL 230

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Christine Trujillo

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10 AN ACT

11 RELATING TO CHILDREN; CLARIFYING THE ROLE OF HOSPITAL AND
12 BIRTHING CENTER STAFF, CONTRACTORS AND VOLUNTEERS IN REPORTING
13 CHILD ABUSE AND NEGLECT BASED SOLELY ON A FINDING OF DRUG USE
14 BY A PREGNANT WOMAN; REQUIRING REFERRAL OF A DRUG-EXPOSED
15 INFANT AND THE INFANT'S RELATIVES, GUARDIANS OR CARETAKERS TO A
16 PLAN OF SAFE CARE; REQUIRING MANAGED CARE ORGANIZATIONS TO WORK
17 TOGETHER WITH HOSPITALS, MEDICAL PROVIDERS AND STATE AGENCIES
18 TO ESTABLISH A PROCESS FOR THE CREATION OF PLANS OF SAFE CARE.

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

21 SECTION 1. Section 32A-4-3 NMSA 1978 (being Laws 1993,
22 Chapter 77, Section 97, as amended) is amended to read:

23 "32A-4-3. DUTY TO REPORT CHILD ABUSE AND CHILD NEGLECT--
24 REFERRAL TO PLAN OF SAFE CARE--RESPONSIBILITY TO INVESTIGATE
25 CHILD ABUSE OR NEGLECT--PENALTY.--

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1 A. Every person, including a licensed physician; a
2 resident or an intern examining, attending or treating a child;
3 a law enforcement officer; a judge presiding during a
4 proceeding; a registered nurse; a visiting nurse; a
5 schoolteacher; a school official; a social worker acting in an
6 official capacity; or a member of the clergy who has
7 information that is not privileged as a matter of law, who
8 knows or has a reasonable suspicion that a child is an abused
9 or a neglected child shall report the matter immediately to:

- 10 (1) a local law enforcement agency;
11 (2) the department; or
12 (3) a tribal law enforcement or social
13 services agency for any Indian child residing in Indian
14 country.

15 B. A finding that a pregnant woman is using or
16 abusing drugs made pursuant to an interview, self-report,
17 clinical observation or routine toxicology screen shall not
18 alone form a sufficient basis to report child abuse or neglect
19 to the department pursuant to Subsection A of this section. A
20 volunteer, contractor or staff of a hospital or freestanding
21 birthing center shall not make a report based solely on that
22 finding. Nothing in this subsection shall be construed to
23 prevent a person from reporting to the department a reasonable
24 suspicion that a child is an abused or neglected child based on
25 other criteria pursuant to Section 32A-4-2 NMSA 1978, or a

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1 combination of criteria that includes a finding pursuant to
2 this subsection.

3 C. A drug-exposed infant and the infant's parents,
4 relatives, guardians or caretakers shall be referred to
5 services described in a written plan of safe care as provided
6 for by department rule and the Children's Code.

7 ~~[B-]~~ D. A law enforcement agency receiving the
8 report shall immediately transmit the facts of the report and
9 the name, address and phone number of the reporter by telephone
10 to the department and shall transmit the same information in
11 writing within forty-eight hours. The department shall
12 immediately transmit the facts of the report and the name,
13 address and phone number of the reporter by telephone to a
14 local law enforcement agency and shall transmit the same
15 information in writing within forty-eight hours. The written
16 report shall contain the names and addresses of the child and
17 the child's parents, guardian or custodian, the child's age,
18 the nature and extent of the child's injuries, including any
19 evidence of previous injuries, and other information that the
20 maker of the report believes might be helpful in establishing
21 the cause of the injuries and the identity of the person
22 responsible for the injuries. The written report shall be
23 submitted upon a standardized form agreed to by the law
24 enforcement agency and the department.

25 ~~[G-]~~ E. The recipient of a report under Subsection

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1 A of this section shall take immediate steps to ensure prompt
2 investigation of the report. The investigation shall ensure
3 that immediate steps are taken to protect the health or welfare
4 of the alleged abused or neglected child, as well as that of
5 any other child under the same care who may be in danger of
6 abuse or neglect. A local law enforcement officer trained in
7 the investigation of child abuse and neglect is responsible for
8 investigating reports of alleged child abuse or neglect at
9 schools, daycare facilities or child care facilities.

10 ~~[D.]~~ F. If the child alleged to be abused or
11 neglected is in the care or control of or in a facility
12 administratively connected to the department, the report shall
13 be investigated by a local law enforcement officer trained in
14 the investigation of child abuse and neglect. The
15 investigation shall ensure that immediate steps are taken to
16 protect the health or welfare of the alleged abused or
17 neglected child, as well as that of any other child under the
18 same care who may be in danger of abuse or neglect.

19 ~~[E.]~~ G. A law enforcement agency or the department
20 shall have access to any of the records pertaining to a child
21 abuse or neglect case maintained by any of the persons
22 enumerated in Subsection A of this section, except as otherwise
23 provided in the Abuse and Neglect Act.

24 ~~[F.]~~ H. A person who violates the provisions of
25 Subsection A of this section is guilty of a misdemeanor and

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1 shall be sentenced pursuant to the provisions of Section
2 31-19-1 NMSA 1978."

3 SECTION 2. A new section of the Children's Code is
4 enacted to read:

5 "[NEW MATERIAL] PLAN OF SAFE CARE--GUIDELINES--CREATION.--

6 A. By January 1, 2020, the department, in
7 consultation with medicaid managed care organizations, the
8 human services department and the department of health, shall
9 develop rules to guide hospitals, birthing centers, medical
10 providers and medicaid managed care organizations in the safe
11 care of newborns who exhibit physical, neurological or
12 behavioral symptoms consistent with prenatal drug exposure,
13 withdrawal symptoms from prenatal drug exposure or fetal
14 alcohol spectrum disorder.

15 B. Rules shall include guidelines to hospitals,
16 birthing centers, medical providers and medicaid managed care
17 organizations regarding:

18 (1) participation in the discharge planning
19 process, including the creation of a written plan of safe care;

20 (2) definitions and evidence-based screening
21 tools, based on standards of professional practice, to be used
22 by health care providers to identify a child born affected by
23 substance use or withdrawal symptoms resulting from prenatal
24 drug exposure or a fetal alcohol spectrum disorder;

25 (3) collection of data to meet federal and

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1 state reporting requirements;

2 (4) identification of the most appropriate
3 lead agency responsible for developing, implementing and
4 monitoring a plan of safe care, based on an assessment of the
5 needs of the child and the child's relatives, parents,
6 guardians or caretakers, performed by a discharge planner prior
7 to the child's discharge from the hospital or birthing center,
8 which may include:

- 9 (a) public health agencies;
10 (b) maternal and child health agencies;
11 (c) home visitation programs;
12 (d) substance use disorder prevention
13 and treatment providers;
14 (e) mental health providers;
15 (f) public and private children and
16 youth agencies;
17 (g) early intervention and developmental
18 services;
19 (h) courts;
20 (i) local education agencies;
21 (j) managed care organizations and
22 private insurers; or
23 (k) hospitals and medical providers; and

24 (5) engagement of the child's relatives,
25 parents, guardians or caretakers in order to identify the need

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1 for access to treatment for any substance use disorder or other
2 physical or behavioral health condition that may impact the
3 safety, early childhood development and well-being of the
4 child."

5 SECTION 3. A new section of the Public Assistance Act,
6 Section 27-2-12.24 NMSA 1978, is enacted to read:

7 "27-2-12.24. ~~[NEW MATERIAL]~~ MEDICAL ASSISTANCE--PLAN OF
8 SAFE CARE--PARTICIPATION REQUIRED.--By January 1, 2020, the
9 secretary shall require medical assistance plans to establish,
10 in consultation with the department, hospitals, birthing
11 centers, the children, youth and families department and the
12 department of health, a process for the creation and
13 implementation of a plan of safe care for a drug-exposed
14 newborn and the relatives, parents, guardians or caretakers of
15 a drug-exposed newborn as provided for in the Children's Code."