HOUSE BILL 230

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

INTRODUCED BY

Christine Trujillo

AN ACT

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

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

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

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

.211413.1
A. Every person, including a licensed physician; a resident or an intern examining, attending or treating a child; a law enforcement officer; a judge presiding during a proceeding; a registered nurse; a visiting nurse; a schoolteacher; a school official; a social worker acting in an official capacity; or a member of the clergy who has information that is not privileged as a matter of law, who knows or has a reasonable suspicion that a child is an abused or a neglected child shall report the matter immediately to:

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

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

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

[Brackets deleted] D. A law enforcement agency receiving the report shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to the department and shall transmit the same information in writing within forty-eight hours. The department shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to a local law enforcement agency and shall transmit the same information in writing within forty-eight hours. The written report shall contain the names and addresses of the child and the child's parents, guardian or custodian, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person responsible for the injuries. The written report shall be submitted upon a standardized form agreed to by the law enforcement agency and the department.

[Brackets deleted] E. The recipient of a report under Subsection .211413.1
A of this section shall take immediate steps to ensure prompt investigation of the report. The investigation shall ensure that immediate steps are taken to protect the health or welfare of the alleged abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect. A local law enforcement officer trained in the investigation of child abuse and neglect is responsible for investigating reports of alleged child abuse or neglect at schools, daycare facilities or child care facilities.

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

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

[F. H. A person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and
shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978."

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

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

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

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

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

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

(3) collection of data to meet federal and..."
state reporting requirements;

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

   (a) public health agencies;
   (b) maternal and child health agencies;
   (c) home visitation programs;
   (d) substance use disorder prevention and treatment providers;
   (e) mental health providers;
   (f) public and private children and youth agencies;
   (g) early intervention and developmental services;
   (h) courts;
   (i) local education agencies;
   (j) managed care organizations and private insurers; or
   (k) hospitals and medical providers; and

(5) engagement of the child's relatives, parents, guardians or caretakers in order to identify the need
for access to treatment for any substance use disorder or other physical or behavioral health condition that may impact the safety, early childhood development and well-being of the child."

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

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