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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 CARE; REQUIRING SHARING OF CERTAIN DATA; REQUIRING THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT TO WORK WITH VARIOUS STAKEHOLDERS TO CREATE GUIDELINES AND TRAINING MATERIALS FOR THE CREATION OF PLANS OF CARE; REQUIRING NOTIFICATION OF NONCOMPLIANCE WITH A PLAN OF CARE; REQUIRING MEDICAL ASSISTANCE PLANS TO ESTABLISH A PROCESS FOR CREATION AND IMPLEMENTATION OF PLANS OF CARE.

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

SECTION 1. Section 32A-1-4 NMSA 1978 (being Laws 1993, Chapter 77, Section 13, as amended) is amended to read:

"32A-1-4. DEFINITIONS.--As used in the Children's Code:

A. "adult" means a person who is eighteen years of age or older;

B. "child" means a person who is less than eighteen years old;

C. "council" means the substitute care advisory council established pursuant to Section 32A-8-4 NMSA 1978;

D. "court", when used without further

1 qualification, means the children's court division of the  
2 district court and includes the judge, special master or  
3 commissioner appointed pursuant to the provisions of the  
4 Children's Code or supreme court rule;

5 E. "court-appointed special advocate" means a  
6 person appointed pursuant to the provisions of the Children's  
7 Court Rules to assist the court in determining the best  
8 interests of the child by investigating the case and  
9 submitting a report to the court;

10 F. "custodian" means an adult with whom the child  
11 lives who is not a parent or guardian of the child;

12 G. "department" means the children, youth and  
13 families department, unless otherwise specified;

14 H. "disproportionate minority contact" means the  
15 involvement of a racial or ethnic group with the criminal or  
16 juvenile justice system at a proportion either higher or  
17 lower than that group's proportion in the general population;

18 I. "foster parent" means a person, including a  
19 relative of the child, licensed or certified by the  
20 department or a child placement agency to provide care for  
21 children in the custody of the department or agency;

22 J. "guardian" means a person appointed as a  
23 guardian by a court or Indian tribal authority or a person  
24 authorized to care for the child by a parental power of  
25 attorney as permitted by law;

1           K. "guardian ad litem" means an attorney appointed  
2 by the children's court to represent and protect the best  
3 interests of the child in a case; provided that no party or  
4 employee or representative of a party to the case shall be  
5 appointed to serve as a guardian ad litem;

6           L. "Indian child" means an unmarried person who  
7 is:

8                   (1) less than eighteen years old;

9                   (2) a member of an Indian tribe or is  
10 eligible for membership in an Indian tribe; and

11                   (3) the biological child of a member of an  
12 Indian tribe;

13           M. "Indian child's tribe" means:

14                   (1) the Indian tribe in which an Indian  
15 child is a member or eligible for membership; or

16                   (2) in the case of an Indian child who is a  
17 member or eligible for membership in more than one tribe, the  
18 Indian tribe with which the Indian child has more significant  
19 contacts;

20           N. "Indian tribe" means a federally recognized  
21 Indian tribe, community or group pursuant to 25 U.S.C.  
22 Section 1903(1);

23           O. "judge", when used without further  
24 qualification, means the judge of the court;

25           P. "legal custody" means a legal status created by

1 order of the court or other court of competent jurisdiction  
2 or by operation of statute that vests in a person, department  
3 or agency the right to determine where and with whom a child  
4 shall live; the right and duty to protect, train and  
5 discipline the child and to provide the child with food,  
6 shelter, personal care, education and ordinary and emergency  
7 medical care; the right to consent to major medical,  
8 psychiatric, psychological and surgical treatment and to the  
9 administration of legally prescribed psychotropic medications  
10 pursuant to the Children's Mental Health and Developmental  
11 Disabilities Act; and the right to consent to the child's  
12 enlistment in the armed forces of the United States;

13 Q. "parent" or "parents" includes a biological or  
14 adoptive parent if the biological or adoptive parent has a  
15 constitutionally protected liberty interest in the care and  
16 custody of the child;

17 R. "permanency plan" means a determination by the  
18 court that the child's interest will be served best by:

19 (1) reunification;

20 (2) placement for adoption after the  
21 parents' rights have been relinquished or terminated or after  
22 a motion has been filed to terminate parental rights;

23 (3) placement with a person who will be the  
24 child's permanent guardian;

25 (4) placement in the legal custody of the

1 department with the child placed in the home of a fit and  
2 willing relative; or

3 (5) placement in the legal custody of the  
4 department under a planned permanent living arrangement;

5 S. "person" means an individual or any other form  
6 of entity recognized by law;

7 T. "plan of care" means a plan created by a health  
8 care professional intended to ensure the safety and well-  
9 being of a substance-exposed newborn by addressing the  
10 treatment needs of the child and any of the child's parents,  
11 relatives, guardians, family members or caregivers to the  
12 extent those treatment needs are relevant to the safety of  
13 the child;

14 U. "preadoptive parent" means a person with whom a  
15 child has been placed for adoption;

16 V. "protective supervision" means the right to  
17 visit the child in the home where the child is residing,  
18 inspect the home, transport the child to court-ordered  
19 diagnostic examinations and evaluations and obtain  
20 information and records concerning the child;

21 W. "relative" means a person related to another  
22 person by blood within the fifth degree of consanguinity or  
23 through marriage by the fifth degree of affinity;

24 X. "reunification" means either a return of the  
25 child to the parent or to the home from which the child was

1 removed or a return to the noncustodial parent;

2 Y. "tribal court" means:

3 (1) a court established and operated  
4 pursuant to a code or custom of an Indian tribe; or

5 (2) any administrative body of an Indian  
6 tribe that is vested with judicial authority;

7 Z. "tribal court order" means a document issued by  
8 a tribal court that is signed by an appropriate authority,  
9 including a judge, governor or tribal council member, and  
10 that orders an action that is within the tribal court's  
11 jurisdiction; and

12 AA. "tribunal" means any judicial forum other than  
13 the court."

14 SECTION 2. Section 32A-4-3 NMSA 1978 (being Laws 1993,  
15 Chapter 77, Section 97, as amended) is amended to read:

16 "32A-4-3. DUTY TO REPORT CHILD ABUSE AND CHILD  
17 NEGLECT--RESPONSIBILITY TO INVESTIGATE CHILD ABUSE OR  
18 NEGLECT--PENALTY--NOTIFICATION OF PLAN OF CARE.--

19 A. Every person, including a licensed physician; a  
20 resident or an intern examining, attending or treating a  
21 child; a law enforcement officer; a judge presiding during a  
22 proceeding; a registered nurse; a visiting nurse; a  
23 schoolteacher; a school official; a social worker acting in  
24 an official capacity; or a member of the clergy who has  
25 information that is not privileged as a matter of law, who

1 knows or has a reasonable suspicion that a child is an abused  
2 or a neglected child shall report the matter immediately to:

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

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

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

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

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

1 F. A person who violates the provisions of  
2 Subsection A of this section is guilty of a misdemeanor and  
3 shall be sentenced pursuant to the provisions of Section  
4 31-19-1 NMSA 1978.

5 G. A finding that a pregnant woman is using or  
6 abusing drugs made pursuant to an interview, self-report,  
7 clinical observation or routine toxicology screen shall not  
8 alone form a sufficient basis to report child abuse or  
9 neglect to the department pursuant to Subsection A of this  
10 section. A volunteer, contractor or staff of a hospital or  
11 freestanding birthing center shall not make a report based  
12 solely on that finding and shall make a notification pursuant  
13 to Subsection H of this section. Nothing in this subsection  
14 shall be construed to prevent a person from reporting to the  
15 department a reasonable suspicion that a child is an abused  
16 or neglected child based on other criteria as defined by  
17 Section 32A-4-2 NMSA 1978, or a combination of criteria that  
18 includes a finding pursuant to this subsection.

19 H. A volunteer, contractor or staff of a hospital  
20 or freestanding birthing center shall:

21 (1) complete a written plan of care for a  
22 substance-exposed newborn as provided for by department rule  
23 and the Children's Code; and

24 (2) provide notification to the department.  
25 Notification by a health care provider pursuant to this

1 paragraph shall not be construed as a report of child abuse  
2 or neglect.

3 I. As used in this section, "notification" means  
4 informing the department that a substance-exposed newborn was  
5 born and providing a copy of the plan of care that was  
6 created for the child; provided that notification shall  
7 comply with federal guidelines and shall not constitute a  
8 report of child abuse or neglect."

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

11 "PLAN OF CARE--GUIDELINES--CREATION--DATA SHARING--  
12 TRAINING.--

13 A. By January 1, 2020, the department, in  
14 consultation with medicaid managed care organizations,  
15 private insurers, the office of superintendent of insurance,  
16 the human services department and the department of health,  
17 shall develop rules to guide hospitals, birthing centers,  
18 medical providers, medicaid managed care organizations and  
19 private insurers in the care of newborns who exhibit  
20 physical, neurological or behavioral symptoms consistent with  
21 prenatal drug exposure, withdrawal symptoms from prenatal  
22 drug exposure or fetal alcohol spectrum disorder.

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

1 (1) participation in the discharge planning  
2 process, including the creation of a written plan of care  
3 that shall be sent to:

4 (a) the child's primary care physician;

5 (b) a medicaid managed care  
6 organization insurance plan care coordinator who will monitor  
7 the implementation of the plan of care after discharge, if  
8 the child is insured, or to a care coordinator in the  
9 children's medical services of the family health bureau of  
10 the public health division of the department of health who  
11 will monitor the implementation of the plan of care after  
12 discharge, if the child is uninsured; and

13 (c) the child's parent, relative,  
14 guardian or caretaker who is present at discharge who shall  
15 receive a copy upon discharge. The plan of care shall be  
16 signed by an appropriate representative of the discharging  
17 hospital and the child's parent, relative, guardian or  
18 caretaker who is present at discharge;

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

25 (3) collection and reporting of data to meet

1 federal and state reporting requirements, including the  
2 following:

3 (a) by hospitals and birthing centers  
4 to the department when: 1) a plan of care has been  
5 developed; and 2) a family has been referred for a plan of  
6 care;

7 (b) information pertaining to a child  
8 born and diagnosed by a health care professional as affected  
9 by substance abuse, withdrawal symptoms resulting from  
10 prenatal drug exposure or a fetal alcohol spectrum disorder;  
11 and

12 (c) data collected by hospitals and  
13 birthing centers for use by the children's medical services  
14 of the family health bureau of the public health division of  
15 the department of health in epidemiological reports and to  
16 support and monitor a plan of care. Information reported  
17 pursuant to this subparagraph shall be coordinated with  
18 communication to insurance carrier care coordinators to  
19 facilitate access to services for children and parents,  
20 relatives, guardians or caregivers identified in a plan of  
21 care;

22 (4) identification of appropriate agencies  
23 to be included as supports and services in the plan of care,  
24 based on an assessment of the needs of the child and the  
25 child's relatives, parents, guardians or caretakers,

1 performed by a discharge planner prior to the child's  
2 discharge from the hospital or birthing center, which may  
3 include:

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

18 and

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

25 C. Reports made pursuant to Paragraph (3) of

1 Subsection B of this section shall be collected by the  
2 department as distinct and separate from any child abuse  
3 report as captured and held or investigated by the  
4 department, such that the reporting of a plan of care shall  
5 not constitute a report of suspected child abuse and neglect  
6 and shall not initiate investigation by the department or a  
7 report to law enforcement.

8 D. The department shall summarize and report data  
9 received pursuant to Paragraph (3) of Subsection B of this  
10 section at intervals as needed to meet federal regulations.

11 E. The children's medical services of the family  
12 health bureau of the public health division of the department  
13 of health shall collect and record data reported pursuant to  
14 Subparagraph (c) of Paragraph (3) of Subsection B of this  
15 section to support and monitor care coordination of plans of  
16 care for children born without insurance.

17 F. Reports made pursuant to the requirements in  
18 this section shall not be construed to relieve a person of  
19 the requirement to report to the department knowledge of or a  
20 reasonable suspicion that a child is an abused or neglected  
21 child based on criteria as defined by Section 32A-4-2 NMSA  
22 1978.

23 G. The department shall work in consultation with  
24 the department of health to create and distribute training  
25 materials to support and educate discharge planners or social

1 workers on the following:

2 (1) how to assess whether to make a referral  
3 to the department pursuant to the Abuse and Neglect Act;

4 (2) how to assess whether to make a  
5 notification to the department pursuant to Subsection B of  
6 Section 32A-4-3 NMSA 1978 for a child who has been diagnosed  
7 as affected by substance abuse, withdrawal symptoms resulting  
8 from prenatal drug exposure or a fetal alcohol spectrum  
9 disorder;

10 (3) how to assess whether to create a plan  
11 of care when a referral to the department is not required;  
12 and

13 (4) the creation and deployment of a plan of  
14 care.

15 H. No person shall have a cause of action for any  
16 loss or damage caused by any act or omission resulting from  
17 the implementation of the provisions of Subsection G of this  
18 section or resulting from any training, or lack thereof,  
19 required by Subsection G of this section.

20 I. The training, or lack thereof, required by the  
21 provisions of Subsection G of this section shall not be  
22 construed to impose any specific duty of care."

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

25 "NOTIFICATION TO THE DEPARTMENT OF NONCOMPLIANCE WITH A

1 PLAN OF CARE.--

2 A. If the parents, relatives, guardians or  
3 caretakers of a child released from a hospital or  
4 freestanding birthing center pursuant to a plan of care fail  
5 to comply with that plan, the department shall be notified  
6 and the department may conduct a family assessment. Based on  
7 the results of the family assessment, the department may  
8 offer or provide referrals for counseling, training, or other  
9 services aimed at addressing the underlying causative factors  
10 that may jeopardize the safety or well-being of the child.  
11 The child's parents, relatives, guardians or caretakers may  
12 choose to accept or decline any service or program offered  
13 subsequent to the family assessment; provided that if the  
14 child's parents, relatives, guardians or caretakers decline  
15 those services or programs, the department may proceed with  
16 an investigation.

17 B. As used in this section, "family assessment"  
18 means a comprehensive assessment prepared by the department  
19 at the time the department receives notification of failure  
20 to comply with the plan of care to determine the needs of a  
21 child and the child's parents, relatives, guardians or  
22 caretakers, including an assessment of the likelihood of:

- 23 (1) imminent danger to a child's well-being;  
24 (2) the child becoming an abused child or  
25 neglected child; and

1 (3) the strengths and needs of the child's  
2 family members, including parents, relatives, guardians or  
3 caretakers, with respect to providing for the health and  
4 safety of the child."

5 SECTION 5. 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. MEDICAL ASSISTANCE--PLAN OF  
8 CARE--PARTICIPATION REQUIRED.--

9 A. By January 1, 2020, the secretary shall require  
10 medical assistance plans to establish, in consultation with  
11 the department, hospitals, birthing centers, the children,  
12 youth and families department and the department of health, a  
13 process for the creation and implementation of a plan of care  
14 for a substance-exposed newborn and the relatives, parents,  
15 guardians or caretakers of a substance-exposed newborn as  
16 provided for in the Children's Code.

17 B. As used in this section, "plan of care" means a  
18 plan created by a health care professional pursuant to the  
19 Children's Code that is intended to ensure the safety and  
20 well-being of a substance-exposed newly born child by  
21 addressing the treatment needs of the child and any of the  
22 child's parents, relatives, guardians, family members or  
23 caregivers to the extent those treatment needs are relevant to  
24 the safety of the child." \_\_\_\_\_