

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 202

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

AN ACT

RELATING TO CHILDREN; AMENDING THE DEPARTMENT OF HEALTH ACT,  
ABUSE AND NEGLECT ACT AND CHILDREN'S MENTAL HEALTH AND  
DEVELOPMENTAL DISABILITIES ACT; PROVIDING ADDITIONAL  
REQUIREMENTS FOR CHILDREN IN CUSTODY.

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

SECTION 1. Section 9-7-6.4 NMSA 1978 (being Laws 2004,  
Chapter 46, Section 8, as amended) is amended to read:

"9-7-6.4. INTERAGENCY BEHAVIORAL HEALTH PURCHASING  
COLLABORATIVE.--

A. There is created the "interagency behavioral  
health purchasing collaborative", consisting of the secretaries  
of aging and long-term services; Indian affairs; human  
services; health; corrections; children, youth and families;  
finance and administration; workforce solutions; public

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1 education; and transportation; the directors of the  
2 administrative office of the courts; the New Mexico mortgage  
3 finance authority; the governor's commission on disability; the  
4 developmental disabilities planning council; the [~~instructional~~  
5 ~~support and~~] vocational rehabilitation division of the public  
6 education department; and the New Mexico health policy  
7 commission; and the governor's health policy coordinator, or  
8 their designees. The collaborative shall be chaired by the  
9 secretary of human services with the respective secretaries of  
10 health and children, youth and families alternating annually as  
11 co-chairs.

12 B. The collaborative shall meet regularly and at  
13 the call of either co-chair and shall:

14 (1) identify behavioral health needs  
15 statewide, with an emphasis on that hiatus between needs and  
16 services set forth in the department of health's gap analysis  
17 and in ongoing needs assessments, and develop a master plan for  
18 statewide delivery of services;

19 (2) give special attention to regional  
20 differences, including cultural, rural, frontier, urban and  
21 border issues;

22 (3) inventory all expenditures for behavioral  
23 health, including mental health and substance abuse;

24 (4) plan, design and direct a statewide  
25 behavioral health system, ensuring both availability of

1 services and efficient use of all behavioral health funding,  
2 taking into consideration funding appropriated to specific  
3 affected departments; and

4 (5) contract for operation of one or more  
5 behavioral health entities to ensure availability of services  
6 throughout the state.

7 C. The plan for delivery of behavioral health  
8 services shall include specific individualized service plans to  
9 address the needs of infants, children, adolescents, including  
10 those in the legal custody of the children, youth and families  
11 department, adults and seniors, as well as to address workforce  
12 development and retention and quality improvement issues. The  
13 plan shall be revised every two years and shall be adopted by  
14 the department of health as part of the statewide health plan.

15 D. The plan shall take the following principles  
16 into consideration, to the extent practicable and within  
17 available resources:

18 (1) services should be individually centered  
19 and family focused based on principles of individual capacity  
20 for recovery and resiliency;

21 (2) services should be delivered in a  
22 culturally responsive manner in a home- or community-based  
23 setting, where possible;

24 (3) services should be delivered in the least  
25 restrictive and most appropriate manner;

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1 (4) individualized service planning and case  
2 management should take into consideration individual and family  
3 circumstances, abilities and strengths and be accomplished in  
4 consultation with appropriate family members, caregivers and  
5 other persons critical to the individual's life and well-being;

6 (5) services should be coordinated,  
7 accessible, accountable and of high quality;

8 (6) services should be directed by the  
9 individual or family served to the extent possible;

10 (7) services may be consumer- or family-  
11 provided, as defined by the collaborative;

12 (8) services should include behavioral health  
13 promotion, prevention, early intervention, treatment and  
14 community support; and

15 (9) services should consider regional  
16 differences, including cultural, rural, frontier, urban and  
17 border issues.

18 E. The plan shall include a process for the  
19 delivery of appropriate trauma-responsive services and  
20 supports, including screening, assessing, referring, treating  
21 and providing transition services to children in the legal  
22 custody of the children, youth and families department.

23 [~~E.~~] F. The collaborative shall seek and consider  
24 suggestions of Native American representatives from Indian  
25 nations, tribes and pueblos and the urban Indian population,

1 located wholly or partially within New Mexico, in the  
2 development of the plan for delivery of behavioral health  
3 services.

4 ~~[F.]~~ G. Pursuant to the State Rules Act, the  
5 collaborative shall adopt rules through the human services  
6 department for:

7 (1) standards of delivery for behavioral  
8 health services provided through contracted behavioral health  
9 entities, including:

10 (a) quality management and improvement;

11 (b) performance measures;

12 (c) accessibility and availability of  
13 services;

14 (d) utilization management;

15 (e) credentialing of providers;

16 (f) rights and responsibilities of  
17 consumers and providers;

18 (g) clinical evaluation and treatment  
19 and supporting documentation; and

20 (h) confidentiality of consumer records;

21 and

22 (2) approval of contracts and contract  
23 amendments by the collaborative, including public notice of the  
24 proposed final contract.

25 ~~[G.]~~ H. The collaborative shall, through the human

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1 services department, submit a separately identifiable  
2 consolidated behavioral health budget request. The  
3 consolidated behavioral health budget request shall account for  
4 requested funding for the behavioral health services program at  
5 the human services department and any other requested funding  
6 for behavioral health services from agencies identified in  
7 Subsection A of this section that will be used pursuant to  
8 Paragraph (5) of Subsection B of this section. Any contract  
9 proposed, negotiated or entered into by the collaborative is  
10 subject to the provisions of the Procurement Code.

11 ~~[H.]~~ I. The collaborative shall, with the consent  
12 of the governor, appoint a "director of the collaborative".  
13 The director is responsible for the coordination of day-to-day  
14 activities of the collaborative, including the coordination of  
15 staff from the collaborative member agencies.

16 ~~[F.]~~ J. The collaborative shall provide a quarterly  
17 report to the legislative finance committee on performance  
18 outcome measures. The collaborative shall submit an annual  
19 report to the legislative finance committee and the interim  
20 legislative health and human services committee that provides  
21 information on:

22 (1) the collaborative's progress toward  
23 achieving its strategic plans and goals;

24 (2) the collaborative's performance  
25 information, including contractors and providers; and

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1 (3) the number of people receiving services,  
2 the most frequently treated diagnoses, expenditures by type of  
3 service and other aggregate claims data relating to services  
4 rendered and program operations."

5 SECTION 2. Section 32A-4-14 NMSA 1978 (being Laws 1993,  
6 Chapter 77, Section 108, as amended) is amended to read:

7 "32A-4-14. CHANGE IN PLACEMENT.--

8 A. When the child's placement is changed, including  
9 a return to the child's home, written notice of the factual  
10 grounds supporting the change in placement shall be sent to the  
11 child's guardian ad litem or attorney, all parties, the child's  
12 CASA, the child's foster parents and the court ten days prior  
13 to the placement change, unless an emergency situation requires  
14 moving the child prior to sending notice.

15 B. When the child, by and through the child's  
16 guardian ad litem or attorney, files a motion and requests a  
17 court hearing to contest the proposed change, the department  
18 shall not change the child's placement pending the results of  
19 the court hearing, unless an emergency requires changing the  
20 child's placement prior to the hearing.

21 C. When a child's placement is changed without  
22 prior notice as provided for in Subsection A of this section,  
23 written notice shall be sent to the child's guardian ad litem  
24 or attorney, all parties, the child's CASA, the child's foster  
25 parents and the court within three days after the placement

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1 change.

2 D. Written notice is not required for removal of a  
3 child from temporary emergency care, emergency foster care or  
4 respite care. The department shall provide oral notification  
5 of the removal to the child's guardian ad litem or attorney.

6 E. Notice need not be given to the parties, other  
7 than the child, or to the court when placement is changed at  
8 the request of the child's foster parents or substitute care  
9 provider. Notice shall be given to the child's guardian ad  
10 litem or attorney.

11 F. The department shall have a procedure in place  
12 for a change in placement specific to emergency circumstances  
13 that includes appropriate placement locations, approval by the  
14 secretary of children, youth and families or the director of  
15 the protective services division of the department when  
16 extraordinary circumstances necessitate alternative placement  
17 and appropriate notice to the child's guardian ad litem or  
18 attorney. A child shall not be placed in a hotel or motel or  
19 with an out-of-state provider, office of a contractor or state  
20 agency office except in extraordinary circumstances necessary  
21 to protect the safety and security of the child as documented  
22 in the child's record and approved by the secretary of  
23 children, youth and families or the director of the protective  
24 services division. In any such extraordinary circumstance, the  
25 department shall immediately provide notice to the child's

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1 guardian ad litem or attorney when possible, but in no case  
2 more than twenty-four hours after the placement of the child.  
3 Notification to the court specifying the type of placement and  
4 articulating the extraordinary circumstance shall occur within  
5 three business days of the placement. When a child is placed  
6 with an out-of-state provider, notice to the child's guardian  
7 ad litem or attorney and the court to which the child's case is  
8 assigned shall be given prior to the placement, and in the case  
9 of a child fourteen years of age or older, consent shall be  
10 obtained consistent with the Children's Mental Health and  
11 Developmental Disabilities Act.

12 G. The department shall have a procedure in place  
13 for out-of-home care that includes a reasonable rate of move  
14 from placement settings while ensuring continuity in the  
15 child's education. For a child in out-of-home care, the rate  
16 of moves from a placement setting shall not exceed three moves  
17 per one thousand calendar days in custody unless extraordinary  
18 circumstances warrant, in which case notice within twenty-four  
19 hours of a move is required to the child's guardian ad litem or  
20 attorney and the court. When the department initiates the  
21 third change of placement within one thousand calendar days in  
22 custody, the department shall provide notice ten days prior to  
23 the placement change to the child's guardian ad litem or  
24 attorney and the court specifying that this will be the third  
25 placement change within the last one thousand calendar days of

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1 time spent in custody. The notice shall also specify what  
2 interventions, behavioral supports and services are in place to  
3 support the child. In addition, the department shall initiate  
4 a written education plan to ensure continuity in the child's  
5 education, including a plan for transportation and educational  
6 supports to minimize the transition. The education plan shall  
7 be provided to the child's guardian ad litem or attorney."

8 SECTION 3. Section 32A-6A-4 NMSA 1978 (being Laws 2007,  
9 Chapter 162, Section 4, as amended) is amended to read:

10 "32A-6A-4. DEFINITIONS.--As used in the Children's Mental  
11 Health and Developmental Disabilities Act:

12 A. "aversive intervention" means any device or  
13 intervention, consequences or procedure intended to cause pain  
14 or unpleasant sensations, including interventions causing  
15 physical pain, tissue damage, physical illness or injury;  
16 electric shock; isolation; forced exercise; withholding of  
17 food, water or sleep; humiliation; water mist; noxious taste,  
18 smell or skin agents; and over-correction;

19 B. "behavioral health services" means a  
20 comprehensive array of professional and ancillary services for  
21 the treatment, habilitation, prevention and identification of  
22 mental illnesses, behavioral symptoms associated with  
23 developmental disabilities, substance abuse disorders and  
24 trauma spectrum disorders;

25 C. "capacity" means a child's ability to:

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1 (1) understand and appreciate the nature and  
2 consequences of proposed health care, including its significant  
3 benefits, risks and alternatives to proposed health care; and

4 (2) make and communicate an informed health  
5 care decision;

6 D. "chemical restraint" means a medication that is  
7 not standard treatment for the patient's medical or psychiatric  
8 condition that is used to control behavior or to restrict a  
9 patient's freedom of movement;

10 E. "child" means a person who is a minor;

11 F. "clinician" means a person whose licensure  
12 allows the person to make independent clinical decisions,  
13 including a physician, licensed psychologist, psychiatric nurse  
14 practitioner, licensed independent social worker, licensed  
15 marriage and family therapist and licensed professional  
16 clinical counselor;

17 G. "continuum of services" means a comprehensive  
18 array of emergency, outpatient, intermediate and inpatient  
19 services and care, including screening, early identification,  
20 diagnostic evaluation, medical, psychiatric, psychological and  
21 social service care, habilitation, education, training,  
22 vocational rehabilitation and career counseling;

23 H. "developmental disability" means a severe  
24 chronic disability that:

25 (1) is attributable to a mental or physical

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1 impairment or a combination of mental or physical impairments;

2 (2) is manifested before a person reaches  
3 twenty-two years of age;

4 (3) is expected to continue indefinitely;

5 (4) results in substantial functional  
6 limitations in three or more of the following areas of major  
7 life activities:

8 (a) self-care;

9 (b) receptive and expressive language;

10 (c) learning;

11 (d) mobility;

12 (e) self-direction;

13 (f) capacity for independent living; or

14 (g) economic self-sufficiency; and

15 (5) reflects a person's need for a combination  
16 and sequence of special, interdisciplinary or other supports  
17 and services that are of lifelong or extended duration that are  
18 individually planned or coordinated;

19 I. "evaluation facility" means a community mental  
20 health or developmental disability program, a medical facility  
21 having psychiatric or developmental disability services  
22 available or, if none of the foregoing is reasonably available  
23 or appropriate, the office of a licensed physician or a  
24 licensed psychologist, any of which shall be capable of  
25 performing a mental status examination adequate to determine

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1 the need for appropriate treatment, including possible  
2 involuntary treatment;

3 J. "family" means persons with a kinship  
4 relationship to a child, including the relationship that exists  
5 between a child and a biological or adoptive parent, relative  
6 of the child, a step-parent, a godparent, a member of the  
7 child's tribe or clan or an adult with whom the child has a  
8 significant bond;

9 K. "habilitation" means services, including  
10 behavioral health services based on evaluation of the child,  
11 that are aimed at assisting the child to prevent, correct or  
12 ameliorate a developmental disability. The purpose of  
13 habilitation is to enable the child to attain, maintain or  
14 regain maximum functioning or independence. "Habilitation"  
15 includes programs of formal, structured education and treatment  
16 and rehabilitation services;

17 L. "individual instruction" means a child's  
18 direction concerning a mental health treatment decision for the  
19 child, made while the child has capacity and is fourteen years  
20 of age or older, which is to be implemented when the child has  
21 been determined to lack capacity;

22 M. "least restrictive means principle" means the  
23 conditions of habilitation or treatment for the child,  
24 separately and in combination that:

25 (1) are no more harsh, hazardous or intrusive

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1 than necessary to achieve acceptable treatment objectives for  
2 the child;

3 (2) involve no restrictions on physical  
4 movement and no requirement for residential care, except as  
5 reasonably necessary for the administration of treatment or for  
6 the protection of the child or others from physical injury;  
7 [~~and~~]

8 (3) are conducted at the suitable available  
9 facility closest to the child's place of residence; and

10 (4) take into consideration the goal of  
11 keeping the child at home, in a family setting or in the most  
12 home-like setting appropriate to the child's needs and  
13 circumstances;

14 N. "legal custodian" means a biological or adoptive  
15 parent of a child unless legal custody has been vested in a  
16 person, department or agency and also includes a person  
17 appointed by an unexpired power of attorney;

18 O. "licensed psychologist" means a person who holds  
19 a current license as a psychologist issued by the New Mexico  
20 state board of psychologist examiners;

21 P. "likelihood of serious harm to self" means that  
22 it is more likely than not that in the near future a child will  
23 attempt to commit suicide or will cause serious bodily harm to  
24 the child by violent or other self-destructive means, as  
25 evidenced by behavior causing, attempting or threatening such

1 harm, which behavior gives rise to a reasonable fear of such  
2 harm from the child;

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

9 R. "mechanical restraint" means any device or  
10 material attached or adjacent to the child's body that  
11 restricts freedom of movement or normal access to any portion  
12 of the child's body and that the child cannot easily remove but  
13 does not include mechanical supports or protective devices;

14 S. "mechanical support" means a device used to  
15 achieve proper body position, designed by a physical therapist  
16 and approved by a physician or designed by an occupational  
17 therapist, such as braces, standers or gait belts, but not  
18 including protective devices;

19 T. "medically necessary services" means clinical  
20 and rehabilitative physical, mental or behavioral health  
21 services that are:

22 (1) essential to prevent, diagnose or treat  
23 medical conditions or are essential to enable the child to  
24 attain, maintain or regain functional capacity;

25 (2) delivered in the amount, duration, scope

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1 and setting that is clinically appropriate to the specific  
2 physical, mental and behavioral health care needs of the child;

3 (3) provided within professionally accepted  
4 standards of practice and national guidelines; and

5 (4) required to meet the physical, mental and  
6 behavioral health needs of the child and are not primarily for  
7 the convenience of the child, provider or payer;

8 U. "mental disorder" means a substantial disorder  
9 of the child's emotional processes, thought or cognition, not  
10 including a developmental disability, that impairs the child's:

11 (1) functional ability to act in  
12 developmentally and age-appropriate ways in any life domain;

13 (2) judgment;

14 (3) behavior; and

15 (4) capacity to recognize reality;

16 V. "mental health or developmental disabilities  
17 professional" means a person who by training or experience is  
18 qualified to work with persons with mental disorders or  
19 developmental disabilities;

20 W. "out-of-home treatment or habilitation program"  
21 means an out-of-home residential program that provides twenty-  
22 four-hour care and supervision to children with the primary  
23 purpose of providing treatment or habilitation to children.

24 "Out-of-home treatment or habilitation program" includes, but  
25 is not limited to, treatment foster care, group homes,

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1 psychiatric hospitals, psychiatric residential treatment  
2 facilities and non-medical and community-based residential  
3 treatment centers;

4 X. "parent" means a biological or adoptive parent  
5 of a child whose parental rights have not been terminated;

6 Y. "physical restraint" means the use of physical  
7 force without the use of any device or material that restricts  
8 the free movement of all or a portion of a child's body;

9 Z. "protective devices" means helmets, safety  
10 goggles or glasses, guards, mitts, gloves, pads and other  
11 common safety devices that are normally used or recommended for  
12 use by persons without disabilities while engaged in a sport or  
13 occupation or during transportation;

14 AA. "residential treatment or habilitation program"  
15 means diagnosis, evaluation, care, treatment or habilitation  
16 rendered inside or on the premises of a mental health or  
17 developmental disabilities facility, hospital, clinic,  
18 institution, supervisory residence or nursing home when the  
19 child resides on the premises and where one or more of the  
20 following measures is available for use:

21 (1) a mechanical device to restrain or  
22 restrict the child's movement;

23 (2) a secure seclusion area from which the  
24 child is unable to exit voluntarily;

25 (3) a facility or program designed for the

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1 purpose of restricting the child's ability to exit voluntarily;  
2 and

3 (4) the involuntary emergency administration  
4 of psychotropic medication;

5 BB. "restraint" means the use of a physical,  
6 chemical or mechanical restraint;

7 CC. "seclusion" means the confinement of a child  
8 alone in a room from which the child is physically prevented  
9 from leaving;

10 DD. "trauma-responsive" means an approach to  
11 providing care that recognizes and addresses the behavioral,  
12 social, medical and neurodevelopmental impacts of trauma,  
13 promotes resiliency and recovery and is specifically designed  
14 to avoid re-traumatizing those receiving services;

15 [~~DD-~~] EE. "treatment" means provision of behavioral  
16 health services based on evaluation of the child, aimed at  
17 assisting the child to prevent, correct or ameliorate a mental  
18 disorder. The purpose of treatment is to enable the child to  
19 attain, maintain or regain maximum functioning;

20 [~~EE-~~] FF. "treatment team" means a team consisting  
21 of the child, the child's parents unless parental rights have  
22 specifically been limited pursuant to an order of a court,  
23 legal custodian, guardian ad litem, treatment guardian,  
24 clinician and any other professionals involved in treatment of  
25 the child, other members of the child's family, if requested by

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1 the child, and the child's attorney if requested by the child,  
2 unless in the professional judgment of the treating clinician  
3 for reasons of safety or therapy one or more members should be  
4 excluded from participation in the treatment team; and

5 ~~[FF-]~~ GG. "treatment plan" means an individualized  
6 plan developed by a treatment team based on assessed strengths  
7 and needs of the child and family."

8 **SECTION 4.** Section 32A-6A-7 NMSA 1978 (being Laws 2007,  
9 Chapter 162, Section 7) is amended to read:

10 "32A-6A-7. RIGHT TO INDIVIDUALIZED TREATMENT OR  
11 HABILITATION SERVICES AND PLAN.--

12 A. A child receiving mental health or habilitation  
13 services shall have the right to prompt treatment and  
14 habilitation based on the professional judgment of a qualified  
15 clinician pursuant to an individualized treatment plan that is  
16 culturally and linguistically competent and consistent with the  
17 least restrictive means principle.

18 B. A preliminary treatment plan shall be prepared  
19 within seven days of initial provision of mental health or  
20 habilitation services.

21 C. An individualized treatment or habilitation plan  
22 shall be prepared within twenty-one days of the provision of  
23 mental health or habilitation services.

24 D. The individualized treatment or habilitation  
25 plan shall be developed by the child's treatment team. The

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1 child, ~~and~~ the child's legal custodian and parent shall, to  
2 the maximum extent possible, be involved in the preparation of  
3 the child's individualized treatment or habilitation plan.

4 E. An individualized treatment or habilitation plan  
5 shall include:

6 (1) a statement of the nature of the specific  
7 problem and the specific needs of the child;

8 (2) a statement of the least restrictive  
9 conditions necessary to achieve the purposes of treatment or  
10 habilitation;

11 (3) a description of intermediate and long-  
12 range goals, with the projected timetable for their attainment;

13 (4) a statement and rationale for the plan of  
14 treatment or habilitation for achieving these intermediate and  
15 long-range goals;

16 (5) specification of staff responsibility and  
17 a description of the proposed staff involvement with the child  
18 in order to attain these goals;

19 (6) criteria for release to less restrictive  
20 settings for treatment or habilitation, criteria for discharge  
21 and a projected date for discharge; and

22 (7) provision for access to cultural practices  
23 and traditional treatments in accordance with the child's  
24 assessed needs, and for an Indian child, culturally competent  
25 placement, treatment and practices and, after appropriate

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1 consent, tribal consultation.

2 F. A treatment or habilitation plan for a child in  
3 an out-of-home treatment or habilitation program shall be based  
4 on documented assessments that may include assessments of  
5 mental status; intellectual function; psychological status,  
6 including the use of psychological testing; psychiatric  
7 evaluation and medication; education, vocation, psychosocial  
8 assessment, physical status and the child's cultural needs.

9 G. A treatment or habilitation plan for children in  
10 the legal custody of the department shall provide for trauma-  
11 responsive services, including screenings, assessments,  
12 referrals, treatment and transition services.

13 [~~G.~~] H. The child's progress in attaining the goals  
14 and objectives set forth in the individualized treatment or  
15 habilitation plan shall be monitored and noted in the child's  
16 records, and revisions in the plan may be made as circumstances  
17 require. The members of the child's treatment team shall be  
18 informed of major changes and shall have the opportunity to  
19 participate in decisions."

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