

PROPOSED
HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 223

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
PROHIBITING MASK MANDATES BY THE EXECUTIVE BRANCH; PROHIBITING
HEALTH CARE PROVIDERS AND FACILITIES FROM REFUSING TO PROVIDE
MONOCLONAL ANTIBODY TREATMENT OR OTHER FEDERAL FOOD AND DRUG
ADMINISTRATION AUTHORIZED TREATMENTS FOR CORONAVIRUS DISEASE
2019 IN CERTAIN CIRCUMSTANCES; REQUIRING THE DEPARTMENT OF
HEALTH TO PROMULGATE RULES; AMENDING THE MEDICAL PRACTICE ACT
TO PROVIDE GROUNDS FOR DISCIPLINE OF A HEALTH CARE PROVIDER WHO
DENIES MONOCLONAL ANTIBODY TREATMENT FOR CORONAVIRUS DISEASE
2019; PROHIBITING EXECUTIVE BRANCH RESTRICTIONS AGAINST
VISITATION FOR PATIENTS OF HOSPITALS OR HOSPICE CARE
FACILITIES; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

SECTION 1. A new section of the Public Health Emergency

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1 Response Act is enacted to read:

2 "[NEW MATERIAL] PROHIBITION AGAINST MASK MANDATES.--An
3 executive order issued pursuant to the Public Health Emergency
4 Response Act shall not require or otherwise prescribe the use
5 of medical-grade face masks or other face coverings in public
6 spaces."

7 SECTION 2. A new section of the Public Health Emergency
8 Response Act is enacted to read:

9 "[NEW MATERIAL] PROHIBITION AGAINST RESTRICTIONS ON
10 HOSPITAL OR HOSPICE PATIENT VISITORS.--An executive order
11 issued pursuant to the Public Health Emergency Response Act
12 shall not prohibit, restrict or otherwise interfere with the
13 ability of a patient admitted to a hospital or hospice care
14 facility from receiving visitors."

15 SECTION 3. Section 12-10A-8 NMSA 1978 (being Laws 2003,
16 Chapter 218, Section 8) is amended to read:

17 "12-10A-8. ISOLATION OR QUARANTINE AUTHORIZED--PROTECTION
18 OF A PERSON ISOLATED OR QUARANTINED.--

19 A. Except as otherwise provided in the Public
20 Health Emergency Response Act, the secretary of health may
21 isolate or quarantine a person as necessary during a public
22 health emergency, using the procedures set forth in the Public
23 Health Emergency Response Act.

24 B. The secretary of health, the secretary of public
25 safety, the director and anyone acting under the secretaries'

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1 or the director's authority, when isolating or quarantining a
2 person during a public health emergency, shall ensure that:

3 (1) isolation or quarantine shall be by the
4 least restrictive means necessary to protect against the spread
5 of a threatening communicable disease or a potentially
6 threatening communicable disease to others and may include
7 confinement to a private home or other private or public
8 premises;

9 (2) isolated persons are confined separately
10 from quarantined persons;

11 (3) the health status of an isolated or
12 quarantined person is monitored regularly to determine if [~~he~~]
13 the person requires continued isolation or quarantine. To
14 adequately address emergency health situations, an isolated or
15 quarantined person shall be given a reliable means to
16 communicate twenty-four hours a day with health officials and
17 to summon emergency health services;

18 (4) if a quarantined person subsequently
19 becomes infected or is reasonably believed to be infected with
20 a threatening communicable disease or a potentially threatening
21 communicable disease, [~~he~~] the person shall be isolated
22 pursuant to the provisions of the Public Health Act or the
23 Public Health Emergency Response Act;

24 (5) the needs of a person isolated or
25 quarantined be addressed in a systematic and orderly manner,

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1 including the provision of adequate food, clothing, shelter,
2 sanitation, and to the extent of available resources,
3 appropriate medication and treatment, medical care and mental
4 health care;

5 (6) there are methods of communication
6 available to a person placed in isolation or quarantine so that
7 ~~[he]~~ the person may communicate with others, including family
8 members, household members, legal representatives, advocates
9 and the media. Accommodations shall also be made for religious
10 worship or practice and updates on the status of the public
11 health emergency, as available;

12 (7) the premises used for isolation or
13 quarantine are maintained in a safe and hygienic manner and are
14 designed to minimize the likelihood of further transmission of
15 infection or other injury to other persons who are isolated or
16 quarantined; and

17 (8) to the extent feasible, forms are provided
18 to a person in isolation or quarantine that document the
19 person's consent or objection to the isolation or quarantine.

20 C. A person isolated or quarantined pursuant to the
21 provisions of the Public Health Emergency Response Act has the
22 right to refuse medical treatment, testing, physical or mental
23 examination, vaccination, specimen collections and preventive
24 treatment programs. A person who has been directed by the
25 secretary of health to submit to medical procedures and

1 protocols because the person is infected with, reasonably
2 believed to be infected with, or exposed to a threatening
3 communicable disease and who refuses to submit to the
4 procedures and protocols may be subject to continued isolation
5 or quarantine pursuant to the provisions of the Public Health
6 Emergency Response Act.

7 D. A person not authorized by the secretary of
8 public safety, the secretary of health or the director shall
9 not enter an isolation or quarantine area. If, by reason of an
10 unauthorized entry into an isolation or quarantine area, a
11 person poses a danger to public health, the person may be
12 subject to isolation or quarantine pursuant to the provisions
13 of the Public Health Emergency Response Act.

14 E. A household or family member of a person
15 isolated or quarantined has a right to choose to enter an
16 isolation or quarantine area. The secretary of public safety,
17 the secretary of health or the director shall permit the
18 household or family member entry into the isolation or
19 quarantine area if the household or family member signs a
20 consent form stating that the member has been informed of the
21 potential health risks, isolation and quarantine guidelines and
22 the consequences of entering the area. The household or family
23 member shall not hold the state of New Mexico responsible for
24 any consequences by reason of entry into the isolation or
25 quarantine area. A household or family member who enters the

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1 area, at the discretion of the public health official, may be
2 subject to isolation or quarantine pursuant to the provisions
3 of the Public Health Emergency Response Act."

4 SECTION 4. A new section of the Medical Practice Act is
5 enacted to read:

6 "[NEW MATERIAL] MONOCLONAL ANTIBODY TREATMENT AND OTHER
7 TREATMENTS FOR CORONAVIRUS DISEASE 2019--LICENSED PRIVATE
8 HEALTH CARE PROVIDERS.--

9 A. Unless otherwise provided by federal law, a
10 health care provider who prescribes or administers monoclonal
11 antibody treatment or other federal food and drug
12 administration authorized treatments for coronavirus disease
13 2019 in a private practice shall use the knowledge, skill and
14 care ordinarily required of a health care provider or as
15 conferred by a professional license held by a provider to
16 determine whether to recommend, offer, prescribe or administer
17 monoclonal antibody treatment or other federal food and drug
18 administration authorized treatments for coronavirus disease
19 2019 to a patient; provided that a health care provider shall
20 not base this determination solely on a patient's:

- 21 (1) vaccination status;
- 22 (2) race;
- 23 (3) gender;
- 24 (4) religious affiliation; or
- 25 (5) national origin.

1 B. A health care provider shall provide a patient
2 with the basis for prescribing or denying a monoclonal antibody
3 treatment or other federal food and drug administration
4 authorized treatments for coronavirus disease 2019 and an
5 outline of the attendant risks and prospective outcomes of such
6 treatment and shall receive written, informed consent prior to
7 administering monoclonal antibody treatment or other federal
8 food and drug administration authorized treatments for
9 coronavirus disease 2019, unless the health care provider
10 determines that such treatment is required to avoid an
11 immediate risk of harm to the patient.

12 C. As used in this section:

13 (1) "health care provider" means a person
14 licensed pursuant to the Medical Practice Act or the Pharmacy
15 Act;

16 (2) "monoclonal antibody treatment" means a
17 treatment derived from an antibody made by cloning a unique
18 white blood cell that is used in the treatment of specific
19 symptoms of coronavirus disease 2019 or its variants; and

20 (3) "vaccination status" means an indication
21 as to whether a person has received a coronavirus disease 2019
22 vaccine or booster and includes a person's declination to state
23 whether the person received a coronavirus disease 2019 vaccine
24 or booster."

25 **SECTION 5.** A new section of the Public Health Act is

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1 enacted to read:

2 "[NEW MATERIAL] MONOCLONAL ANTIBODY TREATMENT AND OTHER
3 TREATMENTS FOR CORONAVIRUS DISEASE 2019--HEALTH FACILITIES.--

4 A. Unless otherwise provided by federal law, a
5 health care provider employed by a health facility that
6 prescribes or administers monoclonal antibody treatment or
7 other federal food and drug administration authorized
8 treatments for coronavirus disease 2019 shall use the
9 knowledge, skill and care ordinarily required of a health care
10 provider or as conferred by a professional license held by a
11 provider to determine whether to recommend, offer, prescribe or
12 administer monoclonal antibody treatment or other federal food
13 and drug administration authorized treatments for coronavirus
14 disease 2019 to an eligible patient; provided that a health
15 care provider shall not base this determination solely on a
16 patient's:

- 17 (1) vaccination status;
- 18 (2) race;
- 19 (3) gender;
- 20 (4) religious affiliation; or
- 21 (5) national origin.

22 B. A health care provider employed by a health
23 facility who determines a patient's eligibility to receive
24 monoclonal antibody treatment or other federal food and drug
25 administration authorized treatments for coronavirus disease

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1 2019 shall explain the basis for prescribing or denying the
2 treatment and an outline of attendant risks and prospective
3 outcomes of such treatment and shall receive written and
4 informed consent prior to performing monoclonal antibody
5 treatment or other federal food and drug administration
6 authorized treatments for coronavirus disease 2019, unless the
7 health care provider determines that such treatment is required
8 to avoid an immediate risk of harm to the patient.

9 C. The department shall promulgate rules to
10 implement and monitor the administration of monoclonal antibody
11 treatments and other federal food and drug administration
12 authorized treatments for coronavirus disease 2019 by health
13 facilities, including processes for providing and receiving
14 written and informed consent.

15 D. As used in this section:

16 (1) "monoclonal antibody treatment" means a
17 treatment derived from an antibody made by cloning a unique
18 white blood cell that is used in the treatment of specific
19 symptoms of coronavirus disease 2019 or its variants; and

20 (2) "vaccination status" means an indication
21 as to whether a person has received a coronavirus disease 2019
22 vaccine or booster and includes a person's declination to state
23 whether the person received a coronavirus disease 2019 vaccine
24 or booster."

25 SECTION 6. A new section of the Public Health Act is

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1 enacted to read:

2 "[NEW MATERIAL] PROHIBITION AGAINST RESTRICTIONS ON
3 HOSPITAL OR HOSPICE PATIENT VISITORS.--The department shall
4 not, pursuant to the Public Health Act, take any action to
5 prohibit, restrict or otherwise interfere with the ability of a
6 patient admitted to a hospital or a hospice care facility from
7 receiving visitors."

8 SECTION 7. Section 24-1-3 NMSA 1978 (being Laws 1973,
9 Chapter 359, Section 3, as amended) is amended to read:

10 "24-1-3. POWERS AND AUTHORITY OF DEPARTMENT.--Except as
11 otherwise provided in the Public Health Act, the department has
12 authority to:

13 A. receive such grants, subsidies, donations,
14 allotments or bequests as may be offered to the state by the
15 federal government or any department thereof or by any public
16 or private foundation or individuals;

17 B. supervise the health and hygiene of the people
18 of the state and identify ways to evaluate and address
19 community health problems;

20 C. investigate, control and abate the causes of
21 disease, especially epidemics, sources of mortality and other
22 conditions of public health;

23 D. establish, maintain and enforce isolation and
24 quarantine;

25 E. close any public place and forbid gatherings of

1 people when necessary for the protection of the public health;

2 F. respond to public health emergencies and assist
3 communities in recovery;

4 G. establish programs and adopt rules to prevent
5 infant mortality, birth defects and morbidity;

6 H. prescribe the duties of public health nurses and
7 school nurses;

8 I. provide educational programs and disseminate
9 information on public health;

10 J. maintain and enforce rules for the licensure of
11 health facilities;

12 K. ensure the quality and accessibility of health
13 care services and the provision of health care when health care
14 is otherwise unavailable;

15 L. ensure a competent public health workforce;

16 M. bring action in court for the enforcement of
17 health laws and rules and orders issued by the department;

18 N. enter into agreements with other states to carry
19 out the powers and duties of the department;

20 O. cooperate and enter into contracts or agreements
21 with the federal government or any other person to carry out
22 the powers and duties of the department;

23 P. cooperate and enter into contracts or agreements
24 with Native American nations, tribes and pueblos and off-
25 reservation groups to coordinate the provision of essential

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1 public health services and functions;

2 Q. maintain and enforce rules for the control of
3 conditions of public health importance;

4 R. maintain and enforce rules for immunization
5 against conditions of public health importance;

6 S. maintain and enforce such rules as may be
7 necessary to carry out the provisions of the Public Health Act
8 and to publish the rules;

9 T. supervise state public health activities,
10 operate a dental public health program and operate state
11 laboratories for the investigation of public health matters;

12 U. sue and, with the consent of the legislature, be
13 sued;

14 V. regulate the practice of midwifery;

15 W. administer legislation enacted pursuant to Title
16 6 of the federal Public Health Service Act, as amended and
17 supplemented;

18 X. inspect such premises or vehicles as necessary
19 to ascertain the existence or nonexistence of conditions
20 dangerous to public health or safety;

21 Y. request and inspect, while maintaining federal
22 and state confidentiality requirements, copies of:

23 (1) medical and clinical records reasonably
24 required for the department's quality assurance and quality
25 improvement activities; and

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1 (2) all medical and clinical records
 2 pertaining to the individual whose death is the subject of
 3 inquiry by the department's mortality review activities; and
 4 Z. do all other things necessary to carry out its
 5 duties."

6 **SECTION 8.** Section 61-6-15 NMSA 1978 (being Laws 1969,
 7 Chapter 46, Section 6, as amended) is amended to read:

8 "61-6-15. LICENSE MAY BE REFUSED, REVOKED OR SUSPENDED--
 9 LICENSEE MAY BE FINED, CENSURED OR REPRIMANDED--PROCEDURE--
 10 PRACTICE AFTER SUSPENSION OR REVOCATION--PENALTY--
 11 UNPROFESSIONAL AND DISHONORABLE CONDUCT DEFINED--FEES AND
 12 EXPENSES.--

13 A. The board may refuse to license and may revoke
 14 or suspend a license that has been issued by the board or a
 15 previous board and may fine, censure or reprimand a licensee
 16 upon satisfactory proof being made to the board that the
 17 applicant for or holder of the license has been guilty of
 18 unprofessional or dishonorable conduct. The board may also
 19 refuse to license an applicant who is unable to practice as a
 20 physician, practice as a physician assistant, an
 21 anesthesiologist assistant, a genetic counselor, a naturopathic
 22 practitioner or naprapathic practitioner or practice
 23 polysomnography, pursuant to Section 61-7-3 NMSA 1978. All
 24 proceedings shall be as required by the Uniform Licensing Act
 25 or the Impaired Health Care Provider Act.

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1 B. The board may, in its discretion and for good
2 cause shown, place the licensee on probation on the terms and
3 conditions it deems proper for protection of the public, for
4 the purpose of rehabilitation of the probationer or both. Upon
5 expiration of the term of probation, if a term is set, further
6 proceedings may be abated by the board if the holder of the
7 license furnishes the board with evidence that the licensee is
8 competent to practice, is of good moral character and has
9 complied with the terms of probation.

10 C. If evidence fails to establish to the
11 satisfaction of the board that the licensee is competent and is
12 of good moral character or if evidence shows that the licensee
13 has not complied with the terms of probation, the board may
14 revoke or suspend the license. If a license to practice in
15 this state is suspended, the holder of the license may not
16 practice during the term of suspension. A person whose license
17 has been revoked or suspended by the board and who thereafter
18 practices or attempts or offers to practice in New Mexico,
19 unless the period of suspension has expired or been modified by
20 the board or the license reinstated, is guilty of a felony and
21 shall be punished as provided in Section 61-6-20 NMSA 1978.

22 D. "Unprofessional or dishonorable conduct", as
23 used in this section, means, but is not limited to because of
24 enumeration, conduct of a licensee that includes the following:

- 25 (1) procuring, aiding or abetting an illegal

1 procedure;

2 (2) employing a person to solicit patients for
3 the licensee;

4 (3) representing to a patient that a
5 manifestly incurable condition of sickness, disease or injury
6 can be cured;

7 (4) obtaining a fee by fraud or
8 misrepresentation;

9 (5) willfully or negligently divulging a
10 professional confidence;

11 (6) conviction of an offense punishable by
12 incarceration in a state penitentiary or federal prison or
13 conviction of a misdemeanor associated with the practice of the
14 licensee. A copy of the record of conviction, certified by the
15 clerk of the court entering the conviction, is conclusive
16 evidence;

17 (7) habitual or excessive use of intoxicants
18 or drugs;

19 (8) fraud or misrepresentation in applying for
20 or procuring a license to practice in this state or in
21 connection with applying for or procuring renewal, including
22 cheating on or attempting to subvert the licensing
23 examinations;

24 (9) making false or misleading statements
25 regarding the skill of the licensee or the efficacy or value of

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1 the medicine, treatment or remedy prescribed or administered by
2 the licensee or at the direction of the licensee in the
3 treatment of a disease or other condition of the human body or
4 mind;

5 (10) impersonating another licensee,
6 permitting or allowing a person to use the license of the
7 licensee or practicing as a licensee under a false or assumed
8 name;

9 (11) aiding or abetting the practice of a
10 person not licensed by the board;

11 (12) gross negligence in the practice of a
12 licensee;

13 (13) manifest incapacity or incompetence to
14 practice as a licensee;

15 (14) discipline imposed on a licensee by
16 another licensing jurisdiction, including denial, probation,
17 suspension or revocation, based upon acts by the licensee
18 similar to acts described in this section. A certified copy of
19 the record of disciplinary action or sanction taken by another
20 jurisdiction is conclusive evidence of the action;

21 (15) the use of a false, fraudulent or
22 deceptive statement in a document connected with the practice
23 of a licensee;

24 (16) fee splitting;

25 (17) the prescribing, administering or

1 dispensing of narcotic, stimulant or hypnotic drugs for other
2 than accepted therapeutic purposes;

3 (18) conduct likely to deceive, defraud or
4 harm the public;

5 (19) repeated similar negligent acts or a
6 pattern of conduct otherwise described in this section or in
7 violation of a board rule;

8 (20) employing abusive billing practices;

9 (21) failure to report to the board any
10 adverse action taken against the licensee by:

11 (a) another licensing jurisdiction;

12 (b) a peer review body;

13 (c) a health care entity;

14 (d) a professional or medical society or
15 association;

16 (e) a governmental agency;

17 (f) a law enforcement agency; or

18 (g) a court for acts or conduct similar
19 to acts or conduct that would constitute grounds for action as
20 defined in this section;

21 (22) failure to report to the board the denial
22 of licensure, surrender of a license or other authorization to
23 practice in another state or jurisdiction or surrender of
24 membership on any medical staff or in any medical or
25 professional association or society following, in lieu of and

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1 while under disciplinary investigation by any of those
2 authorities or bodies for acts or conduct similar to acts or
3 conduct that would constitute grounds for action as defined in
4 this section;

5 (23) failure to furnish the board, its
6 investigators or representatives with information requested by
7 the board;

8 (24) abandonment of patients;

9 (25) being found mentally incompetent or
10 insane by a court of competent jurisdiction;

11 (26) injudicious prescribing, administering or
12 dispensing of a drug or medicine;

13 (27) failure to adequately supervise, as
14 provided by board rule, a medical or surgical assistant or
15 technician or professional licensee who renders health care;

16 (28) sexual contact with a patient or person
17 who has authority to make medical decisions for a patient,
18 other than the spouse of the licensee;

19 (29) conduct unbecoming in a person licensed
20 to practice or detrimental to the best interests of the public;

21 (30) the surrender of a license or withdrawal
22 of an application for a license before another state licensing
23 board while an investigation or disciplinary action is pending
24 before that board for acts or conduct similar to acts or
25 conduct that would constitute grounds for action pursuant to

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1 this section;

2 (31) sexual contact with a former mental
3 health patient of the licensee, other than the spouse of the
4 licensee, within one year from the end of treatment;

5 (32) sexual contact with a patient when the
6 licensee uses or exploits treatment, knowledge, emotions or
7 influence derived from the current or previous professional
8 relationship;

9 (33) improper management of medical records,
10 including failure to maintain timely, accurate, legible and
11 complete medical records;

12 (34) failure to provide pertinent and
13 necessary medical records to a physician or patient of the
14 physician in a timely manner when legally requested to do so by
15 the patient or by a legally designated representative of the
16 patient;

17 (35) undertreatment of pain as provided by
18 board rule;

19 (36) interaction with physicians, hospital
20 personnel, patients, family members or others that interferes
21 with patient care or could reasonably be expected to adversely
22 impact the quality of care rendered to a patient;

23 (37) soliciting or receiving compensation by a
24 physician assistant or anesthesiologist assistant from a person
25 who is not an employer of the assistant;

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1 (38) willfully or negligently divulging
2 privileged information or a professional secret; ~~[or]~~

3 (39) refusing to administer monoclonal
4 antibody treatment and other federal food and drug
5 administration authorized treatments for coronavirus disease
6 2019 to an eligible patient on the basis of vaccination status,
7 race, gender, religious affiliation or national origin; or

8 ~~[(39)]~~ (40) the use of conversion therapy on a
9 minor.

10 E. As used in this section:

11 (1) "conversion therapy" means any practice or
12 treatment that seeks to change a person's sexual orientation or
13 gender identity, including any effort to change behaviors or
14 gender expressions or to eliminate or reduce sexual or romantic
15 attractions or feelings toward persons of the same sex.

16 "Conversion therapy" does not mean:

17 (a) counseling or mental health services
18 that provide acceptance, support and understanding of a person
19 without seeking to change gender identity or sexual
20 orientation; or

21 (b) mental health services that
22 facilitate a person's coping, social support, sexual
23 orientation or gender identity exploration and development,
24 including an intervention to prevent or address unlawful
25 conduct or unsafe sexual practices, without seeking to change

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1 gender identity or sexual orientation;

2 (2) "fee splitting" includes offering,
3 delivering, receiving or accepting any unearned rebate,
4 refunds, commission preference, patronage dividend, discount or
5 other unearned consideration, whether in the form of money or
6 otherwise, as compensation or inducement for referring
7 patients, clients or customers to a person, irrespective of any
8 membership, proprietary interest or co-ownership in or with a
9 person to whom the patients, clients or customers are referred;

10 (3) "gender identity" means a person's self-
11 perception, or perception of that person by another, of the
12 person's identity as a male or female based upon the person's
13 appearance, behavior or physical characteristics that are in
14 accord with or opposed to the person's physical anatomy,
15 chromosomal sex or sex at birth;

16 (4) "minor" means a person under eighteen
17 years of age; [~~and~~]

18 (5) "monoclonal antibody treatment" means
19 treatment derived from an antibody made by cloning a unique
20 white blood cell that is used in the treatment of specific
21 symptoms of coronavirus disease 2019 or its variants; and

22 [~~(5)~~] (6) "sexual orientation" means
23 heterosexuality, homosexuality or bisexuality, whether actual
24 or perceived.

25 F. Licensees whose licenses are in a probationary

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1 status shall pay reasonable expenses for maintaining
2 probationary status, including laboratory costs when laboratory
3 testing of biological fluids [~~are~~] is included as a condition
4 of probation."

5 SECTION 9. APPROPRIATION.--Ten million dollars
6 (\$10,000,000) is appropriated from the appropriation
7 contingency fund to the department of health for expenditure in
8 fiscal years 2022 and 2023 to purchase equipment for monoclonal
9 antibody treatment and other federal food and drug
10 administration authorized treatments for coronavirus disease
11 2019 for public health facilities. Any unexpended or
12 unencumbered balance remaining at the end of fiscal year 2023
13 shall revert to the appropriation contingency fund.

14 SECTION 10. EMERGENCY.--It is necessary for the public
15 peace, health and safety that this act take effect immediately.

underscored material = new
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