

1 AN ACT

2 RELATING TO HEALTH CARE; UPDATING CERTAIN SECTIONS OF LAW TO
3 INCLUDE AN ADVANCED PRACTICE REGISTERED NURSE, A CERTIFIED
4 NURSE-MIDWIFE OR A PHYSICIAN ASSISTANT WORKING WITHIN THAT
5 PERSON'S SCOPE OF PRACTICE; EXPANDING CERTAIN PROVISIONS OF
6 THE UNIFORM HEALTH-CARE DECISIONS ACT TO INCLUDE
7 NON-PHYSICIAN PRIMARY CARE PRACTITIONERS; REQUIRING STATE
8 AGENCIES AND POLITICAL SUBDIVISIONS TO UPDATE THEIR RULES TO
9 INCLUDE THESE HEALTH CARE PRACTITIONERS WHERE APPROPRIATE.

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

12 SECTION 1. Section 7-2-18.1 NMSA 1978 (being Laws 1981,
13 Chapter 170, Section 1, as amended) is amended to read:

14 "7-2-18.1. CREDIT FOR EXPENSES FOR DEPENDENT CHILD DAY
15 CARE NECESSARY TO ENABLE GAINFUL EMPLOYMENT TO PREVENT
16 INDIGENCY.--

17 A. As used in this section:

18 (1) "caregiver" means a corporation or an
19 individual eighteen years of age or over who receives
20 compensation from a resident for providing direct care,
21 supervision and guidance to a qualifying dependent of the
22 resident for less than twenty-four hours daily and includes
23 related individuals of the resident but does not include a
24 dependent of the resident;

25 (2) "cost of maintaining a household" means

1 the expenses incurred for the mutual benefit of the occupants
2 thereof by reason of its operation as the principal place of
3 abode of such occupants, including property taxes, mortgage
4 interest, rent, utility charges, upkeep and repairs, property
5 insurance and food consumed on the premises. "Cost of
6 maintaining a household" shall not include expenses otherwise
7 incurred, including cost of clothing, education, medical
8 treatment, vacations, life insurance, transportation and
9 mortgages;

10 (3) "dependent" means "dependent" as defined
11 by Section 152 of the Internal Revenue Code, as that section
12 may be amended or renumbered, but also includes any minor
13 child or stepchild of the resident who would be a dependent
14 for federal income tax purposes if the public assistance
15 contributing to the support of the child or stepchild was
16 considered to have been contributed by the resident;

17 (4) "disabled person" means a person who has
18 a medically determinable physical or mental impairment, as
19 certified by a licensed physician or an advanced practice
20 registered nurse, certified nurse-midwife or physician
21 assistant working within that person's scope of practice,
22 that renders such person unable to engage in gainful
23 employment;

24 (5) "gainfully employed" means working for
25 remuneration for others, either full time or part time, or

1 self-employment in a business or partnership; and

2 (6) "qualifying dependent" means a dependent
3 under the age of fifteen at the end of the taxable year who
4 receives the services of a caregiver.

5 B. Any resident who files an individual New Mexico
6 income tax return and who is not a dependent of another
7 taxpayer may claim a credit for child day care expenses
8 incurred and paid to a caregiver in New Mexico during the
9 taxable year by such resident if the resident:

10 (1) singly or together with a spouse
11 furnishes over half the cost of maintaining the household for
12 one or more qualifying dependents for any period in the
13 taxable year for which the credit is claimed;

14 (2) is gainfully employed for any period for
15 which the credit is claimed or, if a joint return is filed,
16 both spouses are gainfully employed or one is disabled for
17 any period for which the credit is claimed;

18 (3) compensates a caregiver for child
19 day care for a qualifying dependent to enable such resident
20 together with the resident's spouse, if any and if not
21 disabled, to be gainfully employed;

22 (4) is not a recipient of public assistance
23 under a program of aid to families with dependent children, a
24 program under the New Mexico Works Act or any successor
25 program during any period for which the credit provided by

1 this section is claimed; and

2 (5) has a modified gross income, including
3 child support payments, if any, of not more than the annual
4 income that would be derived from earnings at double the
5 federal minimum wage.

6 C. The credit provided for in this section shall
7 be forty percent of the actual compensation paid to a
8 caregiver by the resident for a qualifying dependent not to
9 exceed four hundred eighty dollars (\$480) for each qualifying
10 dependent or a total of one thousand two hundred dollars
11 (\$1,200) for all qualifying dependents for a taxable year.
12 For the purposes of computing the credit, actual compensation
13 shall not exceed eight dollars (\$8.00) per day for each
14 qualifying dependent.

15 D. The caregiver shall furnish the resident with a
16 signed statement of compensation paid by the resident to the
17 caregiver for day care services. Such statements shall
18 specify the dates and the total number of days for which
19 payment has been made.

20 E. If the resident taxpayer has a federal tax
21 liability, the taxpayer shall claim from the state not more
22 than the difference between the amount of the state child
23 care credit for which the taxpayer is eligible and the
24 federal credit for child and dependent care expenses the
25 taxpayer is able to deduct from federal tax liability for the

1 same taxable year; provided, for first year residents only,
2 the amount of the federal credit for child and dependent care
3 expenses may be reduced to an amount equal to the amount of
4 federal credit for child and dependent care expenses the
5 resident is able to deduct from federal tax liability
6 multiplied by the ratio of the number of days of residence in
7 New Mexico during the resident's taxable year to the total
8 number of days in the resident's taxable year.

9 F. The credit provided for in this section may be
10 deducted from the taxpayer's New Mexico income tax liability
11 for the taxable year. If the credit exceeds the taxpayer's
12 income tax liability, the excess shall be refunded to the
13 taxpayer.

14 G. A husband and wife maintaining a household for
15 one or more qualifying dependents and filing separate returns
16 for a taxable year for which they could have filed a joint
17 return:

18 (1) may each claim only one-half of the
19 credit that would have been claimed on a joint return; and

20 (2) are eligible for the credit provided in
21 this section only if their joint modified gross income,
22 including child support payments, if any, is not more than
23 the annual income that would be derived from earnings at
24 double the federal minimum wage."

25 SECTION 2. Section 12-10A-13 NMSA 1978 (being Laws

1 2003, Chapter 218, Section 13) is amended to read:

2 "12-10A-13. VACCINATION AND TREATMENT.--

3 A. During a state of public health emergency, a
4 qualified person authorized by the secretary of health may
5 vaccinate persons to prevent infection by a threatening
6 communicable disease and to protect against the spread of
7 that disease.

8 B. To protect against the spread of a threatening
9 communicable disease, the secretary of health may isolate or
10 quarantine a person who is unable or unwilling for reasons of
11 health, religion or conscience to undergo vaccination
12 pursuant to the standards and procedures set forth in the
13 Public Health Emergency Response Act.

14 C. A qualified person authorized by the secretary
15 of health may vaccinate a minor less than eighteen years of
16 age, unless the minor or the minor's duly authorized
17 representative presents a certificate issued by a duly
18 licensed physician or an advanced practice registered nurse,
19 certified nurse-midwife or physician assistant working within
20 that person's scope of practice that states that the minor's
21 physical condition is such that the vaccination would
22 seriously endanger the minor's life or health.

23 D. During a state of public health emergency, in
24 order to provide treatment to a person who is exposed to or
25 infected with a threatening communicable disease:

1 (1) treatment may be administered by a
2 public health official;

3 (2) treatment shall be approved pursuant to
4 appropriate regulations promulgated by the federal food and
5 drug administration; and

6 (3) the secretary of health may isolate or
7 quarantine a person who is unable or unwilling, for reasons
8 of health, religion or conscience, to undergo treatment
9 pursuant to the standards and procedures set forth in the
10 Public Health Emergency Response Act."

11 SECTION 3. Section 22-10A-34 NMSA 1978 (being Laws
12 1967, Chapter 16, Section 112, as amended) is amended to
13 read:

14 "22-10A-34. COMMUNICABLE DISEASES--PROHIBITED
15 EMPLOYMENT--PENALTY.--

16 A. No person afflicted with a communicable disease
17 in a transmissible stage dangerous to the health of students
18 shall be employed in a public or private school in this
19 state.

20 B. The department of health after consultation
21 with the public education department shall adopt and issue
22 regulations designating those communicable diseases in a
23 transmissible stage that are dangerous to the health of
24 students.

25 C. Each person employed in a public or private

1 school, including bus drivers, shall present to the governing
2 authority of the school where employed, upon initial
3 employment, a certificate from a licensed physician or an
4 advanced practice registered nurse, certified nurse-midwife
5 or physician assistant working within that person's scope of
6 practice stating that the person is free from all
7 communicable diseases in a transmissible stage dangerous to
8 the health of students.

9 D. The certificate from a licensed physician or an
10 advanced practice registered nurse, certified nurse-midwife
11 or physician assistant working within that person's scope of
12 practice shall be according to a form prescribed by the
13 department of health and approved by the public education
14 department. The certificate shall be obtained from a
15 licensed physician or an advanced practice registered nurse,
16 certified nurse-midwife or physician assistant working within
17 that person's scope of practice not more than ninety days
18 prior to the date of employment.

19 E. Any person violating the provisions of this
20 section by not obtaining a certificate from a licensed
21 physician or an advanced practice registered nurse, certified
22 nurse-midwife or physician assistant working within that
23 person's scope of practice as required is guilty of a petty
24 misdemeanor."

25 SECTION 4. Section 24-7A-1 NMSA 1978 (being Laws 1995,

1 Chapter 182, Section 1, as amended) is amended to read:

2 "24-7A-1. DEFINITIONS.--As used in the Uniform
3 Health-Care Decisions Act:

4 A. "advance health-care directive" means an
5 individual instruction or a power of attorney for health care
6 made, in either case, while the individual has capacity;

7 B. "agent" means an individual designated in a
8 power of attorney for health care to make a health-care
9 decision for the individual granting the power;

10 C. "capacity" means an individual's ability to
11 understand and appreciate the nature and consequences of
12 proposed health care, including its significant benefits,
13 risks and alternatives to proposed health care and to make
14 and communicate an informed health-care decision. A
15 determination of lack of capacity shall be made only
16 according to the provisions of Section 24-7A-11 NMSA 1978;

17 D. "emancipated minor" means an individual between
18 the ages of sixteen and eighteen who has been married, who is
19 on active duty in the armed forces or who has been declared
20 by court order to be emancipated;

21 E. "guardian" means a judicially appointed
22 guardian or conservator having authority to make a
23 health-care decision for an individual;

24 F. "health care" means any care, treatment,
25 service or procedure to maintain, diagnose or otherwise

1 affect an individual's physical or mental condition;

2 G. "health-care decision" means a decision made by
3 an individual or the individual's agent, guardian or
4 surrogate, regarding the individual's health care, including:

5 (1) selection and discharge of health-care
6 practitioners and institutions;

7 (2) approval or disapproval of diagnostic
8 tests, surgical procedures, programs of medication and orders
9 not to resuscitate;

10 (3) directions relating to life-sustaining
11 treatment, including withholding or withdrawing
12 life-sustaining treatment and the termination of life
13 support; and

14 (4) directions to provide, withhold or
15 withdraw artificial nutrition and hydration and all other
16 forms of health care;

17 H. "health-care institution" means an institution,
18 facility or agency licensed, certified or otherwise
19 authorized or permitted by law to provide health care in the
20 ordinary course of business;

21 I. "health-care practitioner" means an individual
22 licensed, certified or otherwise authorized or permitted by
23 law to provide health care in the ordinary course of business
24 or practice of a profession;

25 J. "individual instruction" means an individual's

1 direction concerning a health-care decision for the
2 individual made while the individual has capacity;

3 K. "life-sustaining treatment" means any medical
4 treatment or procedure without which the individual is likely
5 to die within a relatively short time, as determined to a
6 reasonable degree of medical certainty by the primary care
7 practitioner;

8 L. "person" means an individual, corporation,
9 business trust, estate, trust, partnership, association,
10 joint venture, government, governmental subdivision, agency
11 or instrumentality or any other legal or commercial entity;

12 M. "physician" means an individual authorized to
13 practice medicine or osteopathy;

14 N. "power of attorney for health care" means the
15 designation of an agent to make health-care decisions for the
16 individual granting the power, made while the individual has
17 capacity;

18 O. "primary care practitioner" means a health-care
19 practitioner designated by an individual or the individual's
20 agent, guardian or surrogate to have primary responsibility
21 for the individual's health care;

22 P. "principal" means an adult or emancipated minor
23 who, while having capacity, has made a power of attorney for
24 health care by which the adult or emancipated minor delegates
25 the right to make health-care decisions for the adult or

1 emancipated minor to an agent;

2 Q. "protected person" means an adult or
3 emancipated minor for whom a guardian has been appointed;

4 R. "qualified health-care professional" means a
5 health-care practitioner who is a physician, physician
6 assistant, nurse practitioner, nurse, psychologist or social
7 worker;

8 S. "reasonably available" means readily able to be
9 contacted without undue effort and willing and able to act in
10 a timely manner considering the urgency of the patient's
11 health-care needs;

12 T. "state" means a state of the United States, the
13 District of Columbia, the commonwealth of Puerto Rico or a
14 territory or insular possession subject to the jurisdiction
15 of the United States;

16 U. "supervising health-care practitioner" means
17 the primary care practitioner, or if there is no primary care
18 practitioner or if the primary care practitioner is not
19 reasonably available, the health-care practitioner who has
20 undertaken primary responsibility for an individual's health
21 care; and

22 V. "surrogate" means an individual, other than a
23 patient's agent or guardian, authorized under the Uniform
24 Health-Care Decisions Act to make a health-care decision for
25 the patient."

1 SECTION 5. Section 24-7A-4 NMSA 1978 (being Laws 1995,
2 Chapter 182, Section 4, as amended) is amended to read:

3 "24-7A-4. OPTIONAL FORM.--The following form may, but
4 need not, be used to create an advance health-care directive.
5 The other sections of the Uniform Health-Care Decisions Act
6 govern the effect of this or any other writing used to create
7 an advance health-care directive. An individual may complete
8 or modify all or any part of the following form:

9 "OPTIONAL ADVANCE HEALTH-CARE DIRECTIVE

10 Explanation

11 You have the right to give instructions about your own
12 health care. You also have the right to name someone else to
13 make health-care decisions for you. This form lets you do
14 either or both of these things. It also lets you express
15 your wishes regarding the designation of your primary care
16 practitioner.

17 THIS FORM IS OPTIONAL. Each paragraph and word of this
18 form is also optional. If you use this form, you may cross
19 out, complete or modify all or any part of it. You are free
20 to use a different form. If you use this form, be sure to
21 sign it and date it.

22 PART 1 of this form is a power of attorney for health
23 care. PART 1 lets you name another individual as agent to
24 make health-care decisions for you if you become incapable of
25 making your own decisions or if you want someone else to make

1 those decisions for you now even though you are still
2 capable. You may also name an alternate agent to act for you
3 if your first choice is not willing, able or reasonably
4 available to make decisions for you. Unless related to you,
5 your agent may not be an owner, operator or employee of a
6 health-care institution at which you are receiving care.

7 Unless the form you sign limits the authority of your
8 agent, your agent may make all health-care decisions for you.
9 This form has a place for you to limit the authority of your
10 agent. You need not limit the authority of your agent if you
11 wish to rely on your agent for all health-care decisions that
12 may have to be made. If you choose not to limit the
13 authority of your agent, your agent will have the right to:

- 14 (a) consent or refuse consent to any care,
15 treatment, service or procedure to maintain,
16 diagnose or otherwise affect a physical or
17 mental condition;
- 18 (b) select or discharge health-care practitioners
19 and institutions;
- 20 (c) approve or disapprove diagnostic tests,
21 surgical procedures, programs of medication
22 and orders not to resuscitate; and
- 23 (d) direct the provision, withholding or
24 withdrawal of artificial nutrition and
25 hydration and all other forms of health care.

1 PART 2 of this form lets you give specific instructions
2 about any aspect of your health care. Choices are provided
3 for you to express your wishes regarding life-sustaining
4 treatment, including the provision of artificial nutrition
5 and hydration, as well as the provision of pain relief. In
6 addition, you may express your wishes regarding whether you
7 want to make an anatomical gift of some or all of your organs
8 and tissue. Space is also provided for you to add to the
9 choices you have made or for you to write out any additional
10 wishes.

11 PART 3 of this form lets you designate a primary care
12 practitioner to have primary responsibility for your health
13 care.

14 After completing this form, sign and date the form at
15 the end. It is recommended but not required that you request
16 two other individuals to sign as witnesses. Give a copy of
17 the signed and completed form to your physician, to any other
18 health-care practitioners you may have, to any health-care
19 institution at which you are receiving care and to any
20 health-care agents you have named. You should talk to the
21 person you have named as agent to make sure that he or she
22 understands your wishes and is willing to take the
23 responsibility.

24 You have the right to revoke this advance health-care
25 directive or replace this form at any time.

1 * * * * *

2 PART 1

3 POWER OF ATTORNEY FOR HEALTH CARE

4 (1) DESIGNATION OF AGENT: I designate the
5 following individual as my agent to make health-care
6 decisions for me:

7 _____
8 (name of individual you choose as agent)

9 _____
10 (address) (city) (state) (zip code)

11 _____
12 (home phone) (work phone)

13 If I revoke my agent's authority or if my agent is not
14 willing, able or reasonably available to make a health-care
15 decision for me, I designate as my first alternate agent:

16 _____
17 (name of individual you choose as first alternate agent)

18 _____
19 (address) (city) (state) (zip code)

20 _____
21 (home phone) (work phone)

22 If I revoke the authority of my agent and first
23 alternate agent or if neither is willing, able or reasonably
24 available to make a health-care decision for me, I designate
25 as my second alternate agent:

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(name of individual you choose as second alternate agent)

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(home phone) (work phone)

(2) AGENT'S AUTHORITY: My agent is authorized to obtain and review medical records, reports and information about me and to make all health-care decisions for me, including decisions to provide, withhold or withdraw artificial nutrition, hydration and all other forms of health care to keep me alive, except as I state here:

(Add additional sheets if needed.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary care practitioner and one other qualified health-care professional determine that I am unable to make my own health-care decisions. If I initial this box [], my agent's authority to make health-care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION: My agent shall make health-care decisions for me in accordance with this power of attorney for health care, any instructions I give in PART 2

1 of this form and my other wishes to the extent known to my
2 agent. To the extent my wishes are unknown, my agent shall
3 make health-care decisions for me in accordance with what my
4 agent determines to be in my best interest. In determining
5 my best interest, my agent shall consider my personal values
6 to the extent known to my agent.

7 (5) NOMINATION OF GUARDIAN: If a guardian of my
8 person needs to be appointed for me by a court, I nominate
9 the agent designated in this form. If that agent is not
10 willing, able or reasonably available to act as guardian, I
11 nominate the alternate agents whom I have named, in the order
12 designated.

13 PART 2

14 INSTRUCTIONS FOR HEALTH CARE

15 If you are satisfied to allow your agent to determine
16 what is best for you in making end-of-life decisions, you
17 need not fill out this part of the form. If you do fill out
18 this part of the form, you may cross out any wording you do
19 not want.

20 (6) END-OF-LIFE DECISIONS: If I am unable to make
21 or communicate decisions regarding my health care, and IF
22 (i) I have an incurable or irreversible condition that will
23 result in my death within a relatively short time, OR (ii) I
24 become unconscious and, to a reasonable degree of medical
25 certainty, I will not regain consciousness, OR (iii) the

1 space, I direct that the best medical care possible to keep
2 me clean, comfortable and free of pain or discomfort be
3 provided at all times so that my dignity is maintained, even
4 if this care hastens my death:

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7 (9) ANATOMICAL GIFT DESIGNATION: Upon my death I
8 specify as marked below whether I choose to make an
9 anatomical gift of all or some of my organs or tissue:

10 [] I CHOOSE to make an anatomical gift of all of
11 my organs or tissue to be determined by medical suitability
12 at the time of death, and artificial support may be
13 maintained long enough for organs to be removed.

14 [] I CHOOSE to make a partial anatomical gift of
15 some of my organs and tissue as specified below, and
16 artificial support may be maintained long enough for organs
17 to be removed.

18 _____
19 _____

20 [] I REFUSE to make an anatomical gift of any of
21 my organs or tissue.

22 [] I CHOOSE to let my agent decide.

23 (10) OTHER WISHES: (If you wish to write your own
24 instructions, or if you wish to add to the instructions you
25 have given above, you may do so here.) I direct that:

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(Add additional sheets if needed.)

PART 3

PRIMARY CARE PRACTITIONER

(11) I designate the following as my primary care practitioner:

(name of primary care practitioner)

(address) (city) (state) (zip code)

(phone)

If the primary care practitioner I have designated above is not willing, able or reasonably available to act as my primary care practitioner, I designate the following as my primary care practitioner:

(name of primary care practitioner)

(address) (city) (state) (zip code)

(phone)

* * * * *

(12) EFFECT OF COPY: A copy of this form has the

1 same effect as the original.

2 (13) REVOCATION: I understand that I may revoke
3 this OPTIONAL ADVANCE HEALTH-CARE DIRECTIVE at any time, and
4 that if I revoke it, I should promptly notify my supervising
5 health-care practitioner and any health-care institution
6 where I am receiving care and any others to whom I have given
7 copies of this power of attorney. I understand that I may
8 revoke the designation of an agent either by a signed writing
9 or by personally informing the supervising health-care
10 practitioner.

11 (14) SIGNATURES: Sign and date the form here:

12 _____
13 (date) (sign your name)

14 _____
15 (address) (print your name)

16 _____
17 (city) (state) (your social security number)

18 (Optional) SIGNATURES OF WITNESSES:

19 First witness Second witness
20 _____

21 (print name) (print name)

22 _____
23 (address) (address)

24 _____
25 (city) (state) (city) (state)

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(signature of witness)	(signature of witness)
(date)	(date)"."

SECTION 6. Section 24-7A-6.1 NMSA 1978 (being Laws 1997, Chapter 168, Section 13, as amended) is amended to read:

"24-7A-6.1. LIFE-SUSTAINING TREATMENT FOR UNEMANCIPATED MINORS.--

A. Except as otherwise provided by law, a parent or guardian of an unemancipated minor may make that minor's health-care decisions.

B. A parent or guardian of an unemancipated minor shall have the authority to withhold or withdraw life-sustaining treatment for the unemancipated minor, subject to the provisions of this section and the standards for surrogate decision-making for adults provided for in the Uniform Health-Care Decisions Act.

C. Subject to the provisions of Subsection B of this section, if an unemancipated minor has capacity sufficient to understand the nature of that unemancipated minor's medical condition, the risks and benefits of treatment and the contemplated decision to withhold or withdraw life-sustaining treatment, that unemancipated minor shall have the authority to withhold or withdraw

1 life-sustaining treatment.

2 D. For purposes of Subsection C of this section, a
3 determination of the mental and emotional capacity of an
4 unemancipated minor shall be determined by two qualified
5 health-care professionals, one of whom shall be the
6 unemancipated minor's primary care practitioner and the other
7 of whom shall be a health-care practitioner that works with
8 unemancipated minors of the minor's age in the ordinary
9 course of that health-care practitioner's practice. If the
10 unemancipated minor lacks capacity due to mental illness or
11 developmental disability, one of the qualified health-care
12 professionals shall be a person whose training and expertise
13 aid in the assessment of functional impairment.

14 E. If the unemancipated minor's primary care
15 practitioner has reason to believe that a parent or guardian
16 of an unemancipated minor, including a non-custodial parent,
17 has not been informed of a decision to withhold or withdraw
18 life-sustaining treatment, the primary care practitioner
19 shall make reasonable efforts to determine if the uninformed
20 parent or guardian has maintained substantial and continuous
21 contact with the unemancipated minor and, if so, shall make
22 reasonable efforts to notify that parent or guardian before
23 implementing a decision.

24 F. If there is disagreement regarding the decision
25 to withhold or withdraw life-sustaining treatment for an

1 unemancipated minor, the provisions of Section 24-7A-11 NMSA
2 1978 shall apply."

3 SECTION 7. Section 24-7A-7 NMSA 1978 (being Laws 1995,
4 Chapter 182, Section 7, as amended) is amended to read:

5 "24-7A-7. OBLIGATIONS OF HEALTH-CARE PRACTITIONER.--

6 A. Before implementing a health-care decision made
7 for a patient, a supervising health-care practitioner shall
8 promptly communicate to the patient the decision made and the
9 identity of the person making the decision.

10 B. A supervising health-care practitioner who
11 knows of the existence of an advance health-care directive, a
12 revocation of an advance health-care directive, a challenge
13 to a determination of lack of capacity or a designation or
14 disqualification of a surrogate shall promptly record its
15 existence in the patient's health-care record and, if it is
16 in writing, shall request a copy and, if one is furnished,
17 shall arrange for its maintenance in the health-care record.

18 C. A supervising health-care practitioner who
19 makes or is informed of a determination that a patient lacks
20 or has recovered capacity or that another condition exists
21 that affects an individual instruction or the authority of an
22 agent, guardian or surrogate shall promptly record the
23 determination in the patient's health-care record and
24 communicate the determination to the patient and to any
25 person then authorized to make health-care decisions for the

1 patient.

2 D. Except as provided in Subsections E and F of
3 this section, a health-care practitioner or health-care
4 institution providing care to a patient shall comply:

5 (1) before and after the patient is
6 determined to lack capacity, with an individual instruction
7 of the patient made while the patient had capacity;

8 (2) with a reasonable interpretation of the
9 individual instruction made by a person then authorized to
10 make health-care decisions for the patient; and

11 (3) with a health-care decision for the
12 patient that is not contrary to an individual instruction of
13 the patient and is made by a person then authorized to make
14 health-care decisions for the patient, to the same extent as
15 if the decision had been made by the patient while having
16 capacity.

17 E. A health-care practitioner may decline to
18 comply with an individual instruction or health-care decision
19 for reasons of conscience. A health-care institution may
20 decline to comply with an individual instruction or
21 health-care decision if the instruction or decision is
22 contrary to a policy of the health-care institution that is
23 expressly based on reasons of conscience and if the policy
24 was timely communicated to the patient or to a person then
25 authorized to make health-care decisions for the patient.

1 F. A health-care practitioner or health-care
2 institution may decline to comply with an individual
3 instruction or health-care decision that requires medically
4 ineffective health care or health care contrary to generally
5 accepted health-care standards applicable to the health-care
6 practitioner or health-care institution. "Medically
7 ineffective health care" means treatment that would not offer
8 the patient any significant benefit, as determined by a
9 health-care practitioner.

10 G. A health-care practitioner or health-care
11 institution that declines to comply with an individual
12 instruction or health-care decision shall:

13 (1) promptly so inform the patient, if
14 possible, and any person then authorized to make health-care
15 decisions for the patient;

16 (2) provide continuing care to the patient
17 until a transfer can be effected; and

18 (3) unless the patient or person then
19 authorized to make health-care decisions for the patient
20 refuses assistance, immediately make all reasonable efforts
21 to assist in the transfer of the patient to another
22 health-care practitioner or health-care institution that is
23 willing to comply with the individual instruction or
24 decision.

25 H. A health-care practitioner or health-care

1 institution may not require or prohibit the execution or
2 revocation of an advance health-care directive as a condition
3 for providing health care.

4 I. The Uniform Health-Care Decisions Act does not
5 require or permit a health-care institution or health-care
6 practitioner to provide any type of health care for which the
7 health-care institution or health-care practitioner is not
8 licensed, certified or otherwise authorized or permitted by
9 law to provide."

10 SECTION 8. Section 24-7A-11 NMSA 1978 (being Laws 1995,
11 Chapter 182, Section 11, as amended) is amended to read:

12 "24-7A-11. CAPACITY.--

13 A. The Uniform Health-Care Decisions Act does not
14 affect the right of an individual to make health-care
15 decisions while having capacity to do so.

16 B. An individual is presumed to have capacity to
17 make a health-care decision, to give or revoke an advance
18 health-care directive and to designate a surrogate.

19 C. Unless otherwise specified in a written advance
20 health-care directive, a determination that an individual
21 lacks or has recovered capacity or that another condition
22 exists that affects an individual instruction or the
23 authority of an agent shall be made by two qualified
24 health-care professionals, one of whom shall be the primary
25 care practitioner. If the lack of capacity is determined to

1 exist because of mental illness or developmental disability,
2 one of the qualified health-care professionals shall be a
3 person whose training and expertise aid in the assessment of
4 functional impairment.

5 D. An individual shall not be determined to lack
6 capacity solely on the basis that the individual chooses not
7 to accept the treatment recommended by a health-care
8 practitioner.

9 E. An individual, at any time, may challenge a
10 determination that the individual lacks capacity by a signed
11 writing or by personally informing a health-care practitioner
12 of the challenge. A health-care practitioner who is informed
13 by the individual of a challenge shall promptly communicate
14 the fact of the challenge to the supervising health-care
15 practitioner and to any health-care institution at which the
16 individual is receiving care. Such a challenge shall prevail
17 unless otherwise ordered by the court in a proceeding brought
18 pursuant to the provisions of Section 24-7A-14 NMSA 1978.

19 F. A determination of lack of capacity under the
20 Uniform Health-Care Decisions Act shall not be evidence of
21 incapacity under the provisions of Article 5 of the Uniform
22 Probate Code."

23 SECTION 9. Section 24-8-4 NMSA 1978 (being Laws 1973,
24 Chapter 107, Section 4) is amended to read:

25 "24-8-4. PROHIBITION AGAINST INTERFERENCE WITH MEDICAL

1 JUDGMENT OF CERTAIN HEALTH CARE PROFESSIONALS.--The Family
2 Planning Act does not prohibit or inhibit any person from
3 refusing to provide any family planning service on the
4 grounds that there are valid medical reasons for the refusal
5 and that those reasons are based upon the judgment of a
6 physician or a physician assistant, advanced practice
7 registered nurse or certified nurse-midwife working within
8 that person's scope of practice given in the specific case of
9 the person for whom services are refused."

10 SECTION 10. Section 24-8-5 NMSA 1978 (being Laws 1973,
11 Chapter 107, Section 5) is amended to read:

12 "24-8-5. PROHIBITION AGAINST IMPOSITION OF STANDARDS
13 AND REQUIREMENTS AS PREREQUISITES FOR RECEIPT OF REQUESTED
14 FAMILY PLANNING SERVICES.--Neither the state, its local
15 governmental units nor any health facility furnishing family
16 planning services shall subject any person to any standard or
17 requirement as a prerequisite to the receipt of any requested
18 family planning service except for:

19 A. a requirement of referral to a physician or a
20 physician assistant, advanced practice registered nurse or
21 certified nurse-midwife working within that person's scope of
22 practice when the requested family planning service is
23 something other than information about family planning or
24 nonprescription items;

25 B. any requirement imposed by law or regulation as

1 a prerequisite to the receipt of a family planning service;
2 or

3 C. payment for the service when payment is
4 required in the ordinary course of providing the particular
5 service to the person involved."

6 SECTION 11. Section 24-10C-6 NMSA 1978 (being Laws
7 1999, Chapter 94, Section 6, as amended) is amended to read:

8 "24-10C-6. EXEMPTION.--Nothing in the Cardiac Arrest
9 Response Act precludes a physician or a physician assistant,
10 advanced practice registered nurse or certified nurse-midwife
11 working within that person's scope of practice from
12 prescribing an automated external defibrillator to a patient
13 for use by the patient's caregiver on an individual patient,
14 and the use does not require the individual to function in an
15 approved program."

16 SECTION 12. Section 32A-6A-12 NMSA 1978 (being Laws
17 2007, Chapter 162, Section 12) is amended to read:

18 "32A-6A-12. PERSONAL RIGHTS OF A CHILD IN AN
19 OUT-OF-HOME TREATMENT OR HABILITATION PROGRAM--SCOPE.--

20 A. A child in an out-of-home treatment or
21 habilitation program shall have, in addition to other rights
22 set forth in the Children's Mental Health and Developmental
23 Disabilities Act, the right to:

24 (1) be placed in a manner consistent with
25 the least restrictive means principle;

1 (2) have access to the state's designated
2 protection and advocacy system and access to an attorney of
3 the child's choice, provided that the child is not entitled
4 to appointment of an attorney at public expense, except as
5 otherwise provided in Subsection C of Section 32A-6A-13
6 NMSA 1978;

7 (3) receive visitors of the child's own
8 choosing on a daily basis, subject to restrictions imposed in
9 the best interests of the child by the child's clinician for
10 good cause. Hours during which visitors may be received
11 shall be limited only in the interest of effective treatment
12 and the reasonable efficiency of the program and shall be
13 sufficiently flexible to accommodate the individual needs of
14 the child and the child's visitors. Notwithstanding the
15 provisions of this subsection, each child has the right to
16 receive visits from the child's attorney; physician;
17 physician assistant, advanced practice registered nurse or
18 certified nurse-midwife working within that person's scope of
19 practice; psychologist; clergy; guardian ad litem; or
20 representatives from the state's protection and advocacy
21 system or children, youth and families department in private
22 at any reasonable time, irrespective of visiting hours,
23 provided the visitor shows reasonable cause for visiting at
24 times other than normal visiting hours;

25 (4) have writing materials and postage

1 stamps reasonably available for the child's use in writing
2 letters and other communications. Reasonable assistance
3 shall be provided for writing, addressing and posting letters
4 and other documents upon request. The child has the right to
5 send and receive sealed and uncensored mail. The child has
6 the right to reasonable private access to telephones, and, in
7 cases of personal emergencies when other means of
8 communication are not satisfactory, the child shall be
9 afforded reasonable use of long distance calls; provided that
10 for other than mail or telephone calls to a court; an
11 attorney; a physician; a physician assistant, advanced
12 practice registered nurse or certified nurse-midwife working
13 within that person's scope of practice; a psychologist;
14 clergy; a guardian ad litem; a representative from the
15 state's protection and advocacy system; or a social worker,
16 mailing or telephone privileges may be restricted by the
17 child's clinician for good cause shown. A child who is
18 indigent shall be furnished writing, postage and telephone
19 facilities without charge;

20 (5) reasonable access to a legal custodian
21 and a family member through visitation, videoconferencing,
22 telephone access and opportunity to send and receive mail.
23 In-person visitation is preferred, and reasonable efforts
24 shall be made to facilitate such visitation unless the child
25 and family choose otherwise. Access by legal custodians and

1 family members to the child shall be limited only in the
2 interest of effective treatment and the reasonable efficiency
3 of the program and shall be sufficiently flexible to
4 accommodate the individual needs of legal custodians and
5 family members. Treatment needs that justify limitation on
6 the access rights of a legal custodian or family member must
7 be specifically documented by the clinician in the child's
8 record, and any such limitation automatically expires in
9 seven days;

10 (6) follow or abstain from the practice of
11 religion. The program shall provide appropriate assistance
12 in this connection, including reasonable accommodations for
13 religious worship and transportation to nearby religious
14 services. A child who does not wish to participate in
15 religious practice shall be free from pressure to do so or to
16 accept religious beliefs;

17 (7) a humane psychological and physical
18 environment. The child shall be provided a comfortable bed
19 and adequate changes of linen and reasonable secure storage
20 space for personal possessions. Except when curtailed for
21 reasons of safety or therapy as documented in the child's
22 record by the child's physician, the child shall be afforded
23 reasonable privacy in sleeping and personal hygiene
24 practices;

25 (8) reasonable daily opportunities for

1 physical exercise and outdoor exercise and reasonable access
2 to recreational areas and equipment, including equipment
3 adapted to the child's developmental and physical needs;

4 (9) a nourishing, well-balanced, varied and
5 appetizing diet;

6 (10) prompt and adequate medical attention
7 for a physical ailment. Each child shall receive a complete
8 physical examination upon admission, except when
9 documentation is provided that the child has had such
10 examination within the six months immediately prior to the
11 current admission. Each child shall receive a complete
12 physical examination every twelve months thereafter;

13 (11) a clean, safe and comfortable
14 environment in a structure that complies with applicable fire
15 and safety requirements;

16 (12) appropriate medication and freedom from
17 unnecessary or excessive medication. Medication shall not be
18 used as discipline, as a substitute for programs, for the
19 convenience of staff or in quantities that interfere with the
20 child's treatment or habilitation program. No medication
21 shall be administered unless by written order of a clinician
22 licensed to prescribe medication or by an oral order noted
23 immediately in the patient's medical record and signed by
24 that clinician within twenty-four hours. All prescriptions
25 for psychotropic medications must be reviewed at least every

1 thirty days. Notation of each child's medication shall be
2 kept in the child's medical records and shall include a
3 notation by the clinician licensed to prescribe medication of
4 the behavioral or symptomatic baseline data upon which the
5 medication order was made; and

6 (13) a free public education. The child
7 shall be educated in regular classes with nondisabled
8 children whenever appropriate. In no event shall a child be
9 allowed to remain in an out-of-home treatment or habilitation
10 program for more than ten days without receiving educational
11 services. If the child's placement in an out-of-home
12 treatment or habilitation program is required by an
13 individualized education plan that conforms to the
14 requirements of state and federal law, the sending school is
15 responsible for the provision of education to the child. In
16 all other situations, the local school district in which the
17 out-of-home treatment or habilitation program is located is
18 responsible for the provision of educational services to the
19 child. Nothing in this subsection shall limit a child's
20 right to public education under state, tribal or federal law.

21 B. A child receiving services in an out-of-home
22 treatment or habilitation program, including but not limited
23 to residential treatment or habilitation programs, shall be
24 provided notice of rights immediately upon admission to such
25 program."

1 SECTION 13. Section 33-2-13 NMSA 1978 (being Laws 1889,
2 Chapter 76, Section 44, as amended) is amended to read:

3 "33-2-13. PHYSICIAN, PHYSICIAN ASSISTANT, ADVANCED
4 PRACTICE REGISTERED NURSE OR CERTIFIED NURSE-MIDWIFE WORKING
5 WITHIN THAT PERSON'S SCOPE OF PRACTICE--RULES--PRISONER'S
6 DISABILITY--RECORDS.--A physician or a physician assistant,
7 advanced practice registered nurse or certified nurse-midwife
8 working within that person's scope of practice, when visiting
9 the penitentiary of New Mexico, shall conform to its rules
10 and regulations. The physician or the physician assistant,
11 advanced practice registered nurse or certified nurse-midwife
12 working within that person's scope of practice shall express
13 no opinion as to the disability of any prisoner except in
14 records kept in the penitentiary."

15 SECTION 14. Section 52-1-55 NMSA 1978 (being Laws 1929,
16 Chapter 113, Section 23, as amended) is amended to read:

17 "52-1-55. PHYSICAL EXAMINATIONS--STATEMENTS REGARDING
18 DEPENDENTS--PRE-EMPLOYMENT PHYSICAL CONDITION STATEMENTS.--

19 A. It is the duty of the worker at the time of the
20 worker's employment or thereafter at the request of the
21 employer to submit to examination by a physician or surgeon
22 duly authorized to practice medicine in the state, or by a
23 physician assistant, advanced practice registered nurse or
24 certified nurse-midwife working within that person's scope of
25 practice, who shall be paid by the employer, for the purpose

1 of determining the worker's physical condition.

2 B. It is also the duty of the worker, if required,
3 to give the names, addresses, relationship and degree of
4 dependency of the worker's dependents, if any, or any
5 subsequent change thereof to the employer, and when the
6 employer or the employer's insurance carrier requires, the
7 worker shall make a detailed verified statement relating to
8 such dependents, matters of employment and other information
9 incident thereto.

10 C. It is also the duty of the worker, if requested
11 by the employer or the employer's insurance carrier, to make
12 a detailed verified statement as part of an application for
13 employment disclosing specifically any preexisting permanent
14 physical impairment."

15 SECTION 15. Section 66-3-16 NMSA 1978 (being Laws 1978,
16 Chapter 35, Section 36, as amended) is amended to read:

17 "66-3-16. DISTINCTIVE REGISTRATION PLATES--PERSONS WITH
18 SIGNIFICANT MOBILITY LIMITATION--PARKING PLACARD.--

19 A. The division shall issue distinctive
20 registration plates for use on motor vehicles and motorcycles
21 owned by a person with a significant mobility limitation who
22 requests a distinctive registration plate and who proves
23 satisfactorily to the division that the person meets the
24 standard provided in Subsection J of this section. No fee in
25 addition to the regular registration fee, if any, applicable

1 to the motor vehicle or motorcycle shall be collected for
2 issuance of distinctive registration plates pursuant to this
3 section.

4 B. No person shall falsely claim to have a
5 significant mobility limitation so as to be eligible to be
6 issued a distinctive registration plate or a parking placard
7 pursuant to this section when the person does not in fact
8 have a significant mobility limitation. Upon notice and
9 opportunity to be heard, the division may revoke and demand
10 return of any placard when:

11 (1) it was issued in error or with false
12 information;

13 (2) the person receiving the placard is no
14 longer eligible; or

15 (3) the placard is being used by ineligible
16 persons.

17 C. Upon written application to the division
18 accompanied by a medical statement by a licensed physician or
19 a physician assistant, advanced practice registered nurse or
20 certified nurse-midwife working within that person's scope of
21 practice attesting to the permanent significant mobility
22 limitation, a resident of the state who has a significant
23 mobility limitation, as provided in this section, may apply
24 for and be issued no more than two parking placards for
25 display upon a motor vehicle registered to the person or

1 motor vehicle owned by another person who is transporting the
2 person with a significant mobility limitation. The physician
3 or the physician assistant, advanced practice registered
4 nurse or certified nurse-midwife working within that person's
5 scope of practice shall provide the division all information
6 and records necessary to issue a permanent parking placard.
7 Once approved for use of a permanent parking placard, a
8 person with a significant mobility limitation shall not be
9 required to furnish further medical information.

10 D. A parking placard issued pursuant to this
11 section shall expire four years from the date it was issued.

12 E. The division shall issue two-sided hanger-style
13 parking placards with the following characteristics:

14 (1) a picture of the international symbol of
15 access;

16 (2) a hologram to make duplication
17 difficult;

18 (3) an imprinted expiration date; and

19 (4) a full-face photograph of the holder on
20 the inside of the placard covered by a flap.

21 F. The division shall consult with the governor's
22 commission on disability for continued issuance and format of
23 the placard.

24 G. The division may issue an identification card
25 containing a full-face photograph of the holder of the

1 registration plate or parking placard and the number of the
2 registration plate or parking placard issued to that person.

3 H. Upon written application to the division
4 accompanied by a medical statement from a licensed physician
5 or a physician assistant, advanced practice registered nurse
6 or certified nurse-midwife working within that person's scope
7 of practice attesting to a temporary significant mobility
8 limitation, a person may be issued a temporary placard for no
9 more than one year. The physician or the physician
10 assistant, advanced practice registered nurse or certified
11 nurse-midwife working within that person's scope of practice
12 shall provide the division all information and records
13 necessary to issue a temporary placard.

14 I. Registration plates or parking placards issued
15 to a person with a significant mobility limitation by another
16 state or foreign jurisdiction shall be honored until the
17 motor vehicle or motorcycle is registered or the parking
18 placard holder establishes residency in this state.

19 J. A "person with a significant mobility
20 limitation" means a person who:

21 (1) cannot walk one hundred feet without
22 stopping to rest;

23 (2) cannot walk without the use of a brace,
24 cane or crutch or without assistance from another person, a
25 prosthetic device, a wheelchair or other assistive device;

1 (3) is restricted by lung disease to such an
2 extent that the person's forced respiratory volume, when
3 exhaling for one second, when measured by spirometry, is less
4 than one liter or the arterial oxygen tension is less than
5 sixty millimeters on room air at rest;

6 (4) uses portable oxygen;

7 (5) has a severe cardiac condition; or

8 (6) is so severely limited in the ability to
9 walk due to an arthritic, neurologic or orthopedic condition
10 that the person cannot ascend or descend more than ten stair
11 steps."

12 SECTION 16. TEMPORARY PROVISION--DIRECTING STATE
13 AGENCIES AND POLITICAL SUBDIVISIONS TO UPDATE RULES REQUIRING
14 AN EXAMINATION BY, OR CERTIFICATE OR STATEMENT OF, A LICENSED
15 PHYSICIAN TO INCLUDE ADVANCED PRACTICE REGISTERED NURSE,
16 CERTIFIED NURSE-MIDWIFE OR PHYSICIAN ASSISTANT WORKING WITHIN
17 THAT PERSON'S SCOPE OF PRACTICE.--

18 By January 1, 2016, every cabinet secretary, agency head and
19 head of a political subdivision of the state shall update
20 rules requiring an examination by, a certificate from or a
21 statement of a licensed physician to also accept such
22 examination, certificate or statement from an advanced
23 practice registered nurse, certified nurse-midwife or
24 physician assistant working within that person's scope of
25 practice. _____