

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 230

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

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO CHILDREN; CLARIFYING THE ROLE OF HOSPITAL AND BIRTHING CENTER STAFF, CONTRACTORS AND VOLUNTEERS IN REPORTING CHILD ABUSE AND NEGLECT BASED SOLELY ON A FINDING OF DRUG USE BY A PREGNANT WOMAN; REQUIRING REFERRAL OF A DRUG-EXPOSED INFANT AND THE INFANT'S RELATIVES, GUARDIANS OR CARETAKERS TO A PLAN OF CARE; REQUIRING SHARING OF CERTAIN DATA; REQUIRING THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT TO WORK WITH VARIOUS STAKEHOLDERS TO CREATE GUIDELINES AND TRAINING MATERIALS FOR THE CREATION OF PLANS OF CARE; SCORC → **REQUIRING NOTIFICATION OF NONCOMPLIANCE WITH A PLAN OF CARE;** ← SCORC REQUIRING MEDICAL

.213450.5

underscored material = new
[bracketed material] = delete
Amendments: new = → bold, blue, highlight ←
delete = → bold, red, highlight, strikethrough ←

ASSISTANCE PLANS TO ESTABLISH A PROCESS FOR CREATION AND
IMPLEMENTATION OF PLANS OF CARE.

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

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

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

- A. "adult" means a person who is eighteen years of age or older;
- B. "child" means a person who is less than eighteen years old;
- C. "council" means the substitute care advisory council established pursuant to Section 32A-8-4 NMSA 1978;
- D. "court", when used without further qualification, means the children's court division of the district court and includes the judge, special master or commissioner appointed pursuant to the provisions of the Children's Code or supreme court rule;
- E. "court-appointed special advocate" means a person appointed pursuant to the provisions of the Children's Court Rules to assist the court in determining the best interests of the child by investigating the case and submitting a report to the court;
- F. "custodian" means an adult with whom the child lives who is not a parent or guardian of the child;

.213450.5

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

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

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

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

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

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

L. "Indian child" means an unmarried person who is:
(1) less than eighteen years old;
(2) a member of an Indian tribe or is eligible for membership in an Indian tribe; and
(3) the biological child of a member of an Indian tribe;

M. "Indian child's tribe" means:
(1) the Indian tribe in which an Indian child is a member or eligible for membership; or

.213450.5

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

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

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

P. "legal custody" means a legal status created by order of the court or other court of competent jurisdiction or by operation of statute that vests in a person, department or agency the right to determine where and with whom a child shall live; the right and duty to protect, train and discipline the child and to provide the child with food, shelter, personal care, education and ordinary and emergency medical care; the right to consent to major medical, psychiatric, psychological and surgical treatment and to the administration of legally prescribed psychotropic medications pursuant to the Children's Mental Health and Developmental Disabilities Act; and the right to consent to the child's enlistment in the armed forces of the United States;

Q. "parent" or "parents" includes a biological or adoptive parent if the biological or adoptive parent has a constitutionally protected liberty interest in the care and

.213450.5

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

custody of the child;

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

(1) reunification;

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

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

(4) placement in the legal custody of the department with the child placed in the home of a fit and willing relative; or

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

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

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

[F.] U. "preadoptive parent" means a person with whom a child has been placed for adoption;

[H.] V. "protective supervision" means the right to visit the child in the home where the child is residing, inspect the home, transport the child to court-ordered

.213450.5

diagnostic examinations and evaluations and obtain information and records concerning the child;

[V.] W. "relative" means a person related to another person by blood within the fifth degree of consanguinity or through marriage by the fifth degree of affinity;

[W.] X. "reunification" means either a return of the child to the parent or to the home from which the child was removed or a return to the noncustodial parent;

[X.] Y. "tribal court" means:

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

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

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

[Z.] AA. "tribunal" means any judicial forum other than the court."

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

"32A-4-3. DUTY TO REPORT CHILD ABUSE AND CHILD NEGLECT-- RESPONSIBILITY TO INVESTIGATE CHILD ABUSE OR NEGLECT--PENALTY--

.213450.5

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

NOTIFICATION OF PLAN OF CARE.--

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

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

B. A law enforcement agency receiving the report shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to the department and shall transmit the same information in writing within forty-eight hours. The department shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to a local law enforcement agency and shall transmit the same information in writing within forty-eight hours. The written report shall contain the names and addresses of the child and the child's parents, guardian or custodian, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and other information that the

.213450.5

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person responsible for the injuries. The written report shall be submitted upon a standardized form agreed to by the law enforcement agency and the department.

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

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

E. A law enforcement agency or the department

.213450.5

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

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

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

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

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

(1) complete a written plan of care for a substance-exposed newborn SCORC→~~and the child's parents, relatives, guardians or caretakers~~←SCORC as provided for by department rule and the Children's Code; and

.213450.5

(2) provide notification to the department.

Notification by a health care provider pursuant to this paragraph shall not be construed as a report of child abuse or neglect.

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

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

"[NEW MATERIAL] PLAN OF CARE--GUIDELINES--CREATION--DATA SHARING--TRAINING.--"

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

B. Rules shall include guidelines to hospitals,

.213450.5

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

underscored material = new
[bracketed material] = delete
Amendments: new = → bold, blue, highlight ←
delete = → bold, red, highlight, strikethrough ←

birthing centers, medical providers, medicaid managed care organizations and private insurers regarding:

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

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

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

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

(3) collection and reporting of data to meet federal and state reporting requirements, including the following:

.213450.5

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

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

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

(4) identification of appropriate agencies to be included as supports and services in the plan of care, based on an assessment of the needs of the child and the child's relatives, parents, guardians or caretakers, performed by a discharge planner prior to the child's discharge from the hospital or birthing center, which may include:

- (a) public health agencies;
- (b) maternal and child health agencies;
- (c) home visitation programs;

.213450.5

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↔
delete = →bold, red, highlight, strikethrough↔

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

(d) substance use disorder prevention and treatment providers;

(e) mental health providers;

(f) public and private children and youth agencies;

(g) early intervention and developmental services;

(h) courts;

(i) local education agencies;

(j) managed care organizations; or

(k) hospitals and medical providers; and

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

C. Reports made pursuant to Paragraph (3) of Subsection B of this section shall be collected by the department as distinct and separate from any child abuse report as captured and held or investigated by the department, such that the reporting of a plan of care shall not constitute a report of suspected child abuse and neglect and shall not initiate investigation by the department or a report to law enforcement.

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

.213450.5

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

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

G. The department shall work in consultation with the department of health to create and distribute training materials to support and educate discharge planners or social workers on the following:

- (1) how to assess whether to make a referral to the department pursuant to the Abuse and Neglect Act;
- (2) how to assess whether to make a notification to the department pursuant to Subsection B of Section 32A-4-3 NMSA 1978 for a child who has been diagnosed as affected by substance abuse, withdrawal symptoms resulting from prenatal drug exposure or a fetal alcohol spectrum disorder;
- (3) how to assess whether to create a plan of care when a referral to the department is not required; and

.213450.5

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

underscored material = new
[bracketed material] = delete
Amendments: new = bold, blue, highlight
delete = bold, red, highlight, strikethrough

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

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

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

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

"[NEW MATERIAL] NOTIFICATION TO THE DEPARTMENT OF NONCOMPLIANCE WITH A PLAN OF CARE.--

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

.213450.5

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

(1) imminent danger to a child's well-being;

(2) the child becoming an abused child or neglected child; and

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

SECTION SCORC→4 5←SCORC. A new section of the Public Assistance Act, Section 27-2-12.24 NMSA 1978, is enacted to read:

"27-2-12.24. [NEW MATERIAL] MEDICAL ASSISTANCE--PLAN OF CARE--PARTICIPATION REQUIRED.--

A. By January 1, 2020, the secretary shall require medical assistance plans to establish, in consultation with the department, hospitals, birthing centers, the children, youth and families department and the department of health, a process for the creation and implementation of a plan of care for a substance-exposed newborn and the relatives, parents, guardians or caretakers of a substance-exposed newborn as provided for in

.213450.5

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

the Children's Code.

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