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AN ACT

RELATING TO CITIZEN SUBSTITUTE CARE REVIEW; PROVIDING FOR
SUBMISSION, REVIEW AND RESOLUTION OF GRIEVANCES AGAINST THE
CHILDREN, YOUTH AND FAMILIES DEPARTMENT PERTAINING TO
SUBSTITUTE CARE; DEFINING TERMS IN THE CITIZEN SUBSTITUTE
CARE REVIEW ACT; PROVIDING FOR STAFFING OF THE SUBSTITUTE
CARE ADVISORY COUNCIL; PROVIDING FOR RULES PERTAINING TO
VOLUNTEER MEMBERS; PROVIDING ACCESS TO AND REQUIREMENTS FOR
CONFIDENTIALITY OF CERTAIN RECORDS AND INFORMATION; CHANGING
REPORTING REQUIREMENTS; AMENDING, REPEALING AND ENACTING
SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 32A-4-33 NMSA 1978 (being Laws 1993,
Chapter 77, Section 127, as amended) is amended to read:

"32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

A. All records or information concerning a party
to a neglect or abuse proceeding, including social records,
diagnostic evaluations, psychiatric or psychological reports,
videotapes, transcripts and audio recordings of a child's
statement of abuse or medical reports incident to or obtained
as a result of a neglect or abuse proceeding or that were
produced or obtained during an investigation in anticipation
of or incident to a neglect or abuse proceeding shall be
confidential and closed to the public.

1 B. The records described in Subsection A of this
2 section shall be disclosed only to the parties and:

3 (1) court personnel and persons or entities
4 authorized by contract with the court to review, inspect or
5 otherwise have access to records or information in the
6 court's possession;

7 (2) court-appointed special advocates
8 appointed to the neglect or abuse proceeding;

9 (3) the child's guardian ad litem;

10 (4) the attorney representing the child in
11 an abuse or neglect action, a delinquency action or any other
12 action under the Children's Code;

13 (5) department personnel and persons or
14 entities authorized by contract with the department to
15 review, inspect or otherwise have access to records or
16 information in the department's possession;

17 (6) a member of the substitute care advisory
18 council, a member of its staff or a member of a board
19 pursuant to the requirements of the Citizen Substitute Care
20 Review Act, if the records are requested for the purpose of
21 carrying out the provisions of the Citizen Substitute Care
22 Review Act;

23 (7) law enforcement officials, except when
24 use immunity is granted pursuant to Section 32A-4-11 NMSA
25 1978;

1 (8) district attorneys, except when use
2 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;

3 (9) any state government social services
4 agency in any state or when, in the opinion of the department
5 it is in the best interest of the child, a governmental
6 social services agency of another country;

7 (10) those persons or entities of an Indian
8 tribe specifically authorized to inspect the records pursuant
9 to the federal Indian Child Welfare Act of 1978 or any
10 regulations promulgated thereunder;

11 (11) a foster parent, if the records are
12 those of a child currently placed with that foster parent or
13 of a child being considered for placement with that foster
14 parent and the records concern the social, medical,
15 psychological or educational needs of the child;

16 (12) school personnel involved with the
17 child if the records concern the child's social or
18 educational needs;

19 (13) a grandparent, parent of a sibling,
20 relative or fictive kin, if the records or information
21 pertain to a child being considered for placement with that
22 grandparent, parent of a sibling, relative or fictive kin and
23 the records or information concern the social, medical,
24 psychological or educational needs of the child;

25 (14) health care or mental health

1 professionals involved in the evaluation or treatment of the
2 child or of the child's parents, guardian, custodian or other
3 family members;

4 (15) protection and advocacy representatives
5 pursuant to the federal Developmental Disabilities Assistance
6 and Bill of Rights Act and the federal Protection and
7 Advocacy for Mentally Ill Individuals Amendments Act of 1991;

8 (16) children's safehouse organizations
9 conducting investigatory interviews of children on behalf of
10 a law enforcement agency or the department;

11 (17) representatives of the federal
12 government or their contractors authorized by federal statute
13 or regulation to review, inspect, audit or otherwise have
14 access to records and information pertaining to neglect or
15 abuse proceedings;

16 (18) any person or entity attending a
17 meeting arranged by the department to discuss the safety,
18 well-being and permanency of a child, when the parent or
19 child, or parent or legal custodian on behalf of a child
20 younger than fourteen years of age, has consented to the
21 disclosure; and

22 (19) any other person or entity, by order of
23 the court, having a legitimate interest in the case or the
24 work of the court.

25 C. A parent, guardian or legal custodian whose

1 child has been the subject of an investigation of abuse or
2 neglect where no petition has been filed shall have the right
3 to inspect any medical report, psychological evaluation, law
4 enforcement reports or other investigative or diagnostic
5 evaluation; provided that any identifying information related
6 to the reporting party or any other party providing
7 information shall be deleted. The parent, guardian or legal
8 custodian shall also have the right to the results of the
9 investigation and the right to petition the court for full
10 access to all department records and information except those
11 records and information the department finds would be likely
12 to endanger the life or safety of any person providing
13 information to the department.

14 D. Whoever intentionally and unlawfully releases
15 any information or records closed to the public pursuant to
16 the Abuse and Neglect Act or releases or makes other unlawful
17 use of records in violation of that act is guilty of a petty
18 misdemeanor and shall be sentenced pursuant to the provisions
19 of Section 31-19-1 NMSA 1978.

20 E. The department shall promulgate rules for
21 implementing disclosure of records pursuant to this section
22 and in compliance with state and federal law and the
23 Children's Court Rules."

24 SECTION 2. Section 32A-8-2 NMSA 1978 (being Laws 1993,
25 Chapter 77, Section 204, as amended) is amended to read:

1 "32A-8-2. PURPOSE OF ACT.--The purpose of the Citizen
2 Substitute Care Review Act is to provide a permanent system
3 for independent and objective monitoring of the department by
4 examining the policies, procedures and practices of the
5 department to evaluate its effectiveness in discharging its
6 child protection responsibilities and to meet federal
7 requirements for citizen review panels under the federal
8 Child Abuse Prevention and Treatment Act."

9 SECTION 3. A new section of the Citizen Substitute Care
10 Review Act is enacted to read:

11 "DEFINITIONS.--As used in the Citizen Substitute Care
12 Review Act:

13 A. "board" means a substitute care review board
14 of volunteer members facilitated by council staff convened
15 for the purpose of reviews of designated cases or other
16 related activities deemed appropriate by the council;

17 B. "case" means an abuse or neglect case referred
18 to the department;

19 C. "council" means the substitute care advisory
20 council;

21 D. "department" means the children, youth and
22 families department or its agent or contractor;

23 E. "grievance" means a complaint received by
24 council staff:

25 (1) of any action or inaction that may or

1 has adversely affected the health, safety, welfare or rights
2 of an identified child or identified adult; or

3 (2) of the failure of the department to
4 comply with the law or department policies;

5 F. "identified adult" means an adult participating
6 in the fostering connections program or that program's
7 successor;

8 G. "identified child" means a child who is:

9 (1) the subject of a referral of abuse and
10 neglect made to the department;

11 (2) receiving services from the department;
12 or

13 (3) in the custody of the department due to
14 abuse and neglect proceedings;

15 H. "public member" means an individual who has
16 been appointed by the governor;

17 I. "substitute care" means custodial or
18 residential care for an identified child that is ordered or
19 otherwise sanctioned by the court and in which the child does
20 not live with either of the child's birth parents.

21 "Substitute care" includes foster care, kinship care or care
22 within a group home, residential treatment center, juvenile
23 justice facility, semi-independent living program or
24 emergency shelter; and

25 J. "volunteer member" means an individual who has

1 met eligibility requirements to perform volunteer services
2 for the council."

3 SECTION 4. Section 32A-8-4 NMSA 1978 (being Laws 1993,
4 Chapter 77, Section 206, as amended) is amended to read:

5 "32A-8-4. SUBSTITUTE CARE ADVISORY COUNCIL--MEMBERS--
6 COMPENSATION--RESPONSIBILITIES--ADVISORY COMMITTEE.--

7 A. The "substitute care advisory council" is
8 created and, in accordance with the provisions of Section
9 9-1-7 NMSA 1978, is administratively attached to the
10 regulation and licensing department. The council shall
11 exercise its functions independently and not under the
12 control of the department or the regulation and licensing
13 department. The council shall be composed of ten voting
14 members, including:

15 (1) the secretary of public education or the
16 secretary's designee;

17 (2) the secretary of human services or the
18 secretary's designee;

19 (3) the secretary of finance and
20 administration or the secretary's designee;

21 (4) the secretary of health or the
22 secretary's designee;

23 (5) the secretary of early childhood
24 education and care or the secretary's designee;

25 (6) one children's court judge, appointed by

1 the governor; and

2 (7) four public members, two of whom have
3 expertise in the area of child welfare and two of whom have
4 had experience in abuse and neglect proceedings, including
5 former foster youth, biological parents, foster parents and
6 adoptive parents.

7 B. The secretary of children, youth and families
8 or the secretary's designee shall serve as a nonvoting
9 member.

10 C. Except as provided pursuant to Paragraph (6) of
11 Subsection A and Subsection B of this section, a person or a
12 relative of a person employed by the department or a district
13 court shall not serve on the council.

14 D. Terms of office of public members of the
15 council shall be three years. Public members shall be
16 eligible for reappointment. In the event that a vacancy
17 occurs among the members of the council, the governor shall
18 appoint another person to serve the unexpired portion of the
19 term.

20 E. A member of the council shall receive per diem
21 and mileage as provided for nonsalaried public officers
22 pursuant to the Per Diem and Mileage Act; provided that, if a
23 different provision of that act applies to a member, that
24 member shall be paid pursuant to that provision. A member of
25 the council shall receive no other compensation, perquisite

1 or allowance.

2 F. The council shall select a chairperson, a vice
3 chairperson and other officers as it deems necessary.

4 G. The council shall meet no less than quarterly
5 and more frequently upon the call of the chairperson.

6 H. The council may establish work groups and enter
7 into contracts, memoranda of understanding and joint powers
8 agreements to carry out the provisions of the Citizen
9 Substitute Care Review Act.

10 I. The council shall adopt reasonable rules
11 relating to the functions and procedures of the council.

12 These rules shall establish:

13 (1) procedures to ensure compliance with the
14 Open Meetings Act;

15 (2) initial and annual training requirements
16 for council staff;

17 (3) requirements for public participation,
18 including participation on work groups and boards;

19 (4) criteria for establishment of the
20 council's designation of cases;

21 (5) procedures for the council's review of
22 designated cases;

23 (6) procedures for receipt and processing of
24 grievances;

25 (7) procedures to provide for public

1 outreach and public comment to assess the impact of current
2 child protection procedures and practices on children and
3 families in the community; and

4 (8) other procedures to provide for
5 compliance with the Citizen Substitute Care Review Act and
6 the federal Child Abuse Prevention and Treatment Act as it
7 relates to citizen review panels.

8 J. The council shall provide periodic reports on
9 the work of the council, including an annual written report
10 to the governor, the legislature, the department and the
11 administrative office of the courts and other persons,
12 organizations or agencies deemed appropriate. The annual
13 report shall be distributed electronically on or before
14 November 1 of each year. This report shall include a summary
15 of the activities of the council and recommendations to
16 improve child protective services at the state and local
17 levels. Other reports regarding trends or topics deemed
18 necessary by the council may be provided to the governor, the
19 legislature, the department and the administrative office of
20 the courts."

21 SECTION 5. A new section of the Citizen Substitute Care
22 Review Act is enacted to read:

23 "COUNCIL ADMINISTRATION--STAFFING.--

24 A. The council shall hire a director who:

25 (1) shall oversee, manage and direct

1 processing of cases and grievances filed or reviewed pursuant
2 to the Citizen Substitute Care Review Act, provide
3 administrative support to the council and conduct any other
4 activities as deemed necessary by the council to support its
5 functions;

6 (2) shall act impartially in a nonpartisan
7 manner;

8 (3) shall promote public awareness of the
9 purpose and services of the council and the methods for
10 submitting grievances or requests for case review;

11 (4) shall employ staff for the council and
12 fix compensation of the staff;

13 (5) shall prepare a budgetary request to be
14 submitted through the regulation and licensing department in
15 accordance with the provisions of Section 9-1-7 NMSA 1978;
16 and

17 (6) may apply for and accept grants, gifts
18 and bequests from other states, federal and interstate
19 agencies, independent authorities, private firms, individuals
20 and foundations for the purpose of carrying out the
21 responsibilities of the council.

22 B. The director shall possess the following
23 qualifications:

24 (1) a master's degree in social work and
25 possession of a license issued pursuant to the Social Work

1 Practice Act; or

2 (2) an active license to practice law issued
3 pursuant to rules promulgated by the supreme court; and

4 (3) at least five years' experience in child
5 welfare administration, with an emphasis on child abuse and
6 neglect prevention or abatement.

7 C. The director shall hire staff to carry out the
8 purposes of the Citizen Substitute Care Review Act, including
9 review of cases and processing of grievances. Council staff
10 providing professional services shall possess:

11 (1) a bachelor's degree in social work,
12 psychology, guidance and counseling, education, sociology,
13 criminal justice, criminology or family studies and at least
14 two years of experience in child welfare administration with
15 an emphasis on child abuse and neglect prevention or
16 abatement; or

17 (2) at least four years of experience
18 combined from:

19 (a) study at an accredited college or
20 university in a field related to child welfare; or

21 (b) professional experience working in
22 the field in child welfare.

23 D. Council staff shall be required to complete
24 annual training directly relating to enhancing staff
25 proficiency, meeting job requirements, conducting case

1 reviews and processing grievances required pursuant to the
2 Citizen Substitute Care Review Act."

3 SECTION 6. A new section of the Citizen Substitute Care
4 Review Act is enacted to read:

5 "ATTORNEY GENERAL REPRESENTATION AND CONSULTATION.--The
6 attorney general shall advise and consult with the council,
7 acting pursuant to the Citizen Substitute Care Review Act,
8 and render legal services upon request of the council."

9 SECTION 7. A new section of the Citizen Substitute Care
10 Review Act is enacted to read:

11 "GRIEVANCES.--

12 A. Council staff shall review each grievance
13 submitted to council staff.

14 B. The council shall promulgate rules regarding
15 council staff's acceptance and processing of grievances to
16 establish:

17 (1) criteria for grievances that are
18 accepted by council staff;

19 (2) procedures for the referral of
20 grievances involving allegations of abuse and neglect
21 pursuant to the requirements provided in Sections 27-7-30 and
22 32A-4-3 NMSA 1978;

23 (3) procedures for the referral of
24 grievances that do not meet the criteria established by the
25 council to an appropriate entity; and

1 (4) investigation and assessment procedures
2 and time frames to respond to grievances.

3 C. Following the review of a grievance, council
4 staff shall submit a report to the department regarding the
5 strengths, concerns and recommendations relating to the
6 grievance.

7 D. The secretary of children, youth and families
8 or the secretary's designee shall acknowledge receipt of the
9 report within ten business days and indicate the department's
10 position as to each recommendation.

11 E. Council staff and the department shall meet
12 quarterly or as needed to develop mutually agreed-upon
13 solutions.

14 F. An individual who requests a remedy pursuant to
15 this section shall not be precluded from pursuing other legal
16 or equitable remedies.

17 G. The department, its agent or contractor shall
18 not discharge, discriminate against in any manner or
19 retaliate against an employee, volunteer or contractor who,
20 in good faith, submits a grievance with the council."

21 SECTION 8. A new section of the Citizen Substitute Care
22 Review Act is enacted to read:

23 "VOLUNTEER MEMBER PARTICIPATION--RULES.--

24 A. The council shall promulgate rules relating to
25 volunteer member participation, which shall include

1 provisions for:

2 (1) efforts to recruit and retain volunteer
3 members who are broadly representative of the communities in
4 which they serve and to include volunteer members with
5 expertise in the prevention and treatment of child abuse and
6 neglect and adult former victims of child abuse or neglect;

7 (2) a membership process that includes
8 background checks and orientation training;

9 (3) ongoing training requirements;

10 (4) procedures to address conflicts of
11 actual, perceived or possible conflicts of interest;

12 (5) a code of conduct; and

13 (6) procedures to maintain confidentiality
14 of information required to be kept confidential as required
15 by law.

16 B. Each volunteer member that meets the
17 requirements established by council rules shall participate
18 at least once quarterly in case reviews and other activities
19 deemed appropriate by council staff.

20 C. Volunteer members may receive per diem and
21 mileage as provided for nonsalaried public officers in the
22 Per Diem and Mileage Act; provided that if a different
23 provision of that act applies to a specific member, that
24 member shall be paid pursuant to that applicable provision.

25 Members shall receive no other compensation, perquisite or

1 allowance."

2 SECTION 9. A new section of the Citizen Substitute Care
3 Review Act is enacted to read:

4 "SUBSTITUTE CARE REVIEW BOARD ESTABLISHMENT--CASE
5 REVIEW.--

6 A. The council shall establish boards comprised
7 entirely of volunteer members to review cases designated in
8 accordance with council rules.

9 B. When a case has been designated for review
10 pursuant to council rules, the staff of the council shall
11 convene a board to review the case.

12 C. If a case reviewed by a board is a children's
13 court case, the staff of the council shall give the parties
14 to the case notice of the review and afford the parties to
15 the case an opportunity to provide input relevant to the
16 review. If the case involves an Indian child, notice shall
17 additionally be provided to persons afforded notice pursuant
18 to the federal Indian Child Welfare Act of 1978.

19 D. After a board's review of a children's court
20 case, council staff shall submit a report of the board's
21 findings and recommendations to the children's court, the
22 department and the parties to the case. If the case involves
23 an Indian child, the report shall additionally be provided to
24 persons afforded notice pursuant to the federal Indian Child
25 Welfare Act of 1978.

1 E. The department shall acknowledge receipt of the
2 report within ten business days and indicate the department's
3 position with each recommendation.

4 F. Council staff and the department shall meet
5 quarterly, or as needed to develop mutually agreed-upon
6 solutions."

7 SECTION 10. A new section of the Citizen Substitute
8 Care Review Act is enacted to read:

9 "ACCESS TO RECORDS.--

10 A. Subject to state or federal law to the
11 contrary, council staff shall have access to, including the
12 right to inspect and copy, any records necessary to carry out
13 council responsibilities, including access to the following:

14 (1) social records, diagnostic evaluations,
15 psychiatric or psychologic reports, video footage,
16 transcripts and audio records of a child's statement of abuse
17 or medical reports incident to an abuse or neglect
18 proceeding;

19 (2) a record of an agency, hospital,
20 organization, school, person or office, including the clerk
21 of the court, the department, a court-appointed special
22 advocate program, a public or private health care facility, a
23 medical or mental health care professional, a law enforcement
24 agency or other agency that provides services to children and
25 families;

1 (3) a record of an administrative hearing
2 conducted by the department and any findings or conclusions
3 resulting from such hearing; and

4 (4) a record of a private meeting with a
5 child in protective custody or with an individual with
6 knowledge of the case or grievance.

7 B. The department shall establish procedures to
8 provide the requested records in a timely manner.

9 C. The department shall:

10 (1) establish procedures to provide the
11 requested records in a timely manner and to ensure staff
12 availability to provide input for case reviews and processing
13 of grievances; and

14 (2) ensure that its agents and contractors
15 provide requested records in a timely manner and ensure staff
16 availability to provide input for case reviews and processing
17 of grievances.

18 D. The department, its agent or contractor shall
19 not discharge, discriminate against in any manner or
20 retaliate against an employee, volunteer or contractor who,
21 in good faith, communicates with the council about a
22 grievance, case review or provision of records pursuant to
23 this section."

24 SECTION 11. A new section of the Citizen Substitute
25 Care Review Act is enacted to read:

1 "CONFIDENTIALITY OF INFORMATION.--

2 A. Information obtained or generated by a member
3 of the council, a staff member of the council or a member of
4 a board for the purpose of performing duties in compliance
5 with the Citizen Substitute Care Review Act is not subject to
6 the provisions of the Inspection of Public Records Act.

7 B. The name, address or other personally
8 identifiable information of a person whose records are
9 released to council staff or who files a grievance shall be
10 confidential.

11 C. A member of the council, a staff member of the
12 council or a member of a board with knowledge of a case or
13 grievance that was obtained pursuant to the Citizen
14 Substitute Care Review Act shall maintain that information as
15 confidential unless:

16 (1) the person filing the grievance or the
17 identified child or identified adult who is the subject of
18 the case consents in writing to disclosure of that
19 information to another person;

20 (2) the person filing the grievance or the
21 identified child or identified adult who is the subject of
22 the case provides oral consent for disclosure to another
23 person that is immediately documented in writing by council
24 staff; or

25 (3) disclosure is ordered by a court."

1 SECTION 12. REPEAL.--Sections 32A-8-5 and 32A-8-6 NMSA
2 1978 (being Laws 1993, Chapter 77, Sections 207 and 208, as
3 amended) are repealed. _____

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