

SENATE BILL 260

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Linda M. Lopez and William E. Sharer

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO DISABILITIES; UPDATING STATUTORY REFERENCES PERTAINING TO DEVELOPMENTAL AND INTELLECTUAL DISABILITIES; REVISING THE DEFINITION OF "DEVELOPMENTAL DISABILITY" IN THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE; REPEALING SECTION 24-1-5.4 NMSA 1978 (BEING LAWS 1997, CHAPTER 217, SECTION 2).

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

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SECTION 1. Section 15-7-3 NMSA 1978 (being Laws 1978, Chapter 166, Section 8, as amended) is amended to read:

"15-7-3. ADDITIONAL POWERS AND DUTIES OF THE RISK MANAGEMENT DIVISION.--

A. The risk management division of the general services department may:

(1) enter into contracts;

(2) procure insurance, reinsurance or employee group benefits; provided that any proposal or contract for the procurement of any group health care benefits shall be subject to the provisions of the Health Care Purchasing Act; and provided further that reinsurance or excess coverage insurance may be placed by private negotiation, notwithstanding the provisions of the Procurement Code, if the insurance or reinsurance has a restricted number of interested carriers, the board determines that the coverage is in the interest of the state and cannot otherwise be procured for a reasonable cost and the director seeks the advice and review of the board in the placement and in designing private negotiation procedures;

(3) in the manner prescribed by Subsection E of Section 9-17-5 NMSA 1978, after a notice and a public hearing, prescribe by [~~regulation~~] rule reasonable and objective underwriting and safety standards for governmental entities and reasonable standards for municipal self-insurance pooling agreements covering liability under the Tort Claims Act and adopt such other regulations as may be deemed necessary;

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(4) compromise, adjust, settle and pay claims;  
(5) pay expenses and costs;  
(6) in the manner prescribed by Subsection E of Section 9-17-5 NMSA 1978, prescribe by rule [~~or regulation~~] the rating bases, assessments, penalties and risks to be covered by the public liability fund, the workers' compensation retention fund and the public property reserve fund and the extent such risks are to be covered;

(7) issue certificates of coverage in accordance with Paragraph (6) of this subsection:

(a) to any governmental entity for any tort liability risk covered by the public liability fund;

(b) to any governmental entity for any personal injury liability risk or for the defense of any errors or act or omission or neglect or breach of duty, including the risks set forth in Paragraph (2) of Subsection B and Paragraph (2) of Subsection D of Section 41-4-4 NMSA 1978; and

(c) to any governmental entity for any part of risk covered by the workers' compensation retention fund, the surety bond fund or the public property reserve fund;

(8) study the risks of all governmental entities;

(9) initiate the establishment of safety programs and adopt [~~regulations~~] rules to carry out such programs in the manner prescribed by Subsection E of Section

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9-17-5 NMSA 1978;

(10) hire a safety program director who shall coordinate all safety programs of all state agencies;

(11) consult with and advise local public bodies on their risk management problems; and

(12) employ full-time legal counsel who shall be under the exclusive control and supervision of the director and the secretary of general services.

B. The risk management division of the general services department shall provide liability coverage for the following risks:

(1) a claim made pursuant to the provisions of 42 USC Section 1983 against a nonprofit corporation, members of its board of directors or its employees when the claim is based upon action taken pursuant to the provisions of a contract between the corporation and the department of health under which the corporation provides developmental or intellectual disability services to clients of the department and the claim is made by or on behalf of a client; and

(2) a claim made pursuant to the provisions of 42 USC Section 1983 against a nonprofit corporation, members of its board of directors or its employees when the corporation operates a facility licensed by the department of health as an intermediate care facility for [~~the mentally retarded~~] individuals with developmental or intellectual disabilities and

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the claim is based upon action taken pursuant to the provisions of the license and is made by or on behalf of a resident of the licensed facility.

C. The director shall report [~~his~~] findings and recommendations, if any, for the consideration of each legislature. The report shall include the amount and name of any person receiving payment from the public liability fund of any claim paid during the previous fiscal year exceeding one thousand dollars (\$1,000). The report shall be made available to the legislature on or before December 15 preceding each regular legislative session."

SECTION 2. Section 24-26-2 NMSA 1978 (being Laws 2004, Chapter 53, Section 2) is amended to read:

"24-26-2. DEFINITIONS.--As used in the Patient Care Monitoring Act:

A. [~~"agency"~~] "department" means the [~~state agency or~~] aging and long-term services department;

B. "facility" means a long-term care facility licensed pursuant to the provisions of Section 24-1-5 NMSA 1978, other than an intermediate care facility for [~~the mentally retarded~~] individuals with developmental or intellectual disabilities, and may also include:

- (1) a skilled nursing facility;
- (2) an intermediate care nursing facility;
- (3) a nursing facility;

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- (4) an adult residential shelter care home;
- (5) a boarding home;
- (6) any adult care home or adult residential care facility; and
- (7) any swing bed in an acute care facility or extended care facility;

C. "monitoring device" means a surveillance instrument that broadcasts or records activity, but does not include a still camera;

D. "patient" means a person who is a resident of a facility;

E. "program" means the New Mexico long-term care ombudsman program; and

F. "surrogate" means a legal guardian or a legally appointed substitute decision-maker who is authorized to act on behalf of a patient."

**SECTION 3.** Section 27-2-6.1 NMSA 1978 (being Laws 1978, Chapter 30, Section 1) is amended to read:

"27-2-6.1. SUPPLEMENTAL POSTNATAL ASSISTANCE.--The ~~[health and social services]~~ department shall establish a program of supplemental postnatal assistance for those ~~[mentally retarded]~~ developmentally or intellectually disabled persons who during pregnancy received ~~[aid to families with dependent children]~~ temporary assistance for needy families but whose ~~[aid]~~ assistance was revoked upon relinquishment of the

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newly born child for adoption. The supplemental postnatal assistance provided for in this section shall be at the same rate as ~~[aid to families with dependent children]~~ temporary assistance for needy families, but ~~[such]~~ supplemental postnatal assistance shall not exceed a period of sixty days. The ~~[health and social services]~~ department shall promulgate rules ~~[and regulations in order]~~ to carry out the provisions of this section."

SECTION 4. Section 27-2-12.6 NMSA 1978 (being Laws 1994, Chapter 62, Section 22) is amended to read:

"27-2-12.6. MEDICAID PAYMENTS--MANAGED CARE.--

A. The department shall provide for a statewide, managed care system to provide cost-efficient, preventive, primary and acute care for medicaid recipients by July 1, 1995.

B. The managed care system shall ensure:

(1) access to medically necessary services, particularly for medicaid recipients with chronic health problems;

(2) to the extent practicable, maintenance of the rural primary care delivery infrastructure;

(3) that the department's approach is consistent with national and state health care reform principles; and

(4) to the maximum extent possible, that medicaid-eligible individuals are not identified as such except

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as necessary for billing purposes.

C. The department may exclude nursing homes, intermediate care facilities for ~~[the mentally retarded]~~ individuals with developmental or intellectual disabilities, medicaid in-home and community-based waiver services and residential and community-based mental health services for children with serious emotional disorders from the provisions of this section."

SECTION 5. Section 27-2A-4 NMSA 1978 (being Laws 1994, Chapter 87, Section 4, as amended) is amended to read:

"27-2A-4. DEPARTMENT TO SEEK RECOVERY OF MEDICAL ASSISTANCE PAYMENTS--RESTRICTION.--

A. The department shall seek recovery from the estate of an individual:

(1) for medical assistance paid on behalf of an individual who was an inpatient in a nursing facility, intermediate care facility for ~~[the mentally retarded]~~ individuals with developmental or intellectual disabilities or other medical institution if the individual was required, as a condition of receiving services in the facility or institution pursuant to the state plan, to spend for costs of services all but a minimal amount of the individual's income required for personal needs, and with respect to whom the department determined, after opportunity for a hearing in accordance with procedures established by the department, could not reasonably

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have been expected to have been discharged from the facility or institution to return home; and

(2) for medical assistance payments made for nursing facility services, home- and community-based services and related hospital and prescription drug services on behalf of an individual who was fifty-five years of age or older when the individual received medical assistance.

B. In the case of an individual who has participated in the state's qualified state long-term care insurance partnership program pursuant to Section [~~2 of this 2013 act~~] 27-2-12.17 NMSA 1978, the department shall seek recovery of medical assistance paid on behalf of the individual only of the value of the individual's estate that exceeds the amount that the department has disregarded from the individual's countable resources pursuant to Paragraph (2) of Subsection A of Section [~~2 of this 2013 act~~] 27-2-12.17 NMSA 1978 in making its eligibility determination for medical assistance for institutional care or a medical assistance home- and community-based long-term care program."

SECTION 6. Section 27-7A-2 NMSA 1978 (being Laws 2005, Chapter 256, Section 2) is amended to read:

"27-7A-2. DEFINITIONS.--As used in the Employee Abuse Registry Act:

A. "abuse" means:

(1) knowingly, intentionally or negligently

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and without justifiable cause inflicting physical pain, injury or mental anguish; or

(2) the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of a person;

B. "department" means the department of health;

C. "direct care" means face-to-face services provided or routine and unsupervised physical or financial access to a recipient of services;

D. "employee" means a person employed by or on contract with a provider, either directly or through a third party arrangement to provide direct care. "Employee" does not include a New Mexico licensed health care professional practicing within the scope of the profession's license or a certified nurse aide;

E. "exploitation" means an unjust or improper use of a person's money or property for another person's profit or advantage, pecuniary or otherwise;

F. "neglect" means, subject to a person's right to refuse treatment and subject to a provider's right to exercise sound medical discretion, the failure of an employee to provide basic needs such as clothing, food, shelter, supervision and care for the physical and mental health of a person or failure by a person that may cause physical or psychological harm;

G. "provider" means an intermediate care facility

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for ~~[the mentally retarded]~~ individuals with developmental or intellectual disabilities; a rehabilitation facility; a home health agency; a homemaker agency; a home for the aged or disabled; a group home; an adult foster care home; a case management entity that provides services to elderly people or people with developmental disabilities; a corporate guardian; a private residence that provides personal care, adult residential care or natural and surrogate family services provided to persons with developmental disabilities; an adult daycare center; a boarding home; an adult residential care home; a residential service or habilitation service authorized to be reimbursed by medicaid; any licensed or medicaid-certified entity or any program funded by the aging and long-term services department that provides respite, companion or personal care services; programs funded by the children, youth and families department that provide homemaker or adult daycare services; and any other individual, agency or organization that provides respite care or delivers home- and community-based services to adults or children with developmental disabilities or physical disabilities or to the elderly, but excluding a managed care organization unless the employees of the managed care organization provide respite care or deliver home- and community-based services to adults or children with developmental disabilities or physical disabilities or to the elderly;

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H. "registry" means an electronic database that provides information on substantiated employee abuse, neglect or exploitation; and

I. "secretary" means the secretary of health."

SECTION 7. Section 28-16-15.2 NMSA 1978 (being Laws 1993, Chapter 84, Section 2) is amended to read:

"28-16-15.2. DEVELOPMENTAL DISABILITIES [~~PLANNING~~]  
COUNCIL--ADDITIONAL DUTIES.--The developmental disabilities [~~planning~~] council shall cooperate with the department of health and the human services department to:

A. provide data to support an amendment to the developmental disabilities medicaid waiver program to increase the number of eligible persons served;

B. develop a contingency plan to describe the role and control the growth of intermediate care facilities for [~~the mentally retarded~~] individuals with developmental or intellectual disabilities; and

C. develop flexibility in the system of prioritization for admission to allow persons to move within the service system to an appropriate level of service, including movement of residents of intermediate care facilities for [~~the mentally retarded~~] individuals with developmental or intellectual disabilities to the developmental disabilities medicaid waiver program."

SECTION 8. Section 29-17-4 NMSA 1978 (being Laws 1998,

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Chapter 68, Section 3, as amended) is amended to read:

"29-17-4. DEFINITIONS.--As used in the Caregivers Criminal History Screening Act:

A. "applicant" means a person who seeks and is offered employment or contractual service as a caregiver or hospital caregiver with a care provider;

B. "caregiver" means a person, not otherwise required to undergo a nationwide criminal history screening by the New Mexico Children's and Juvenile Facility and Program Criminal Records Screening Act, whose employment or contractual service with a care provider includes direct care or routine and unsupervised physical or financial access to any care recipient served by that provider;

C. "care provider" or "provider" means a skilled nursing facility; an intermediate care facility; a care facility for ~~[the mentally retarded]~~ individuals with developmental or intellectual disabilities; a general acute care facility; a psychiatric facility; a rehabilitation facility; a home health agency; a homemaker agency; a home for the aged or disabled; a group home; an adult foster care home; a guardian service provider; a case management entity that provides services to people with developmental disabilities; a private residence that provides personal care, adult residential care or nursing care for two or more persons not related by blood or marriage to the facility's operator or

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owner; an adult daycare center; a boarding home; an adult residential care home; a residential service or habilitation service authorized to be reimbursed by medicaid; any licensed or medicaid-certified entity or any program funded by the aging and long-term services department that provides respite, companion or personal care services; or programs funded by the children, youth and families department that provide homemaker or adult daycare services. "Care provider" or "provider" does not include resident care facilities located at or performing services exclusively for any correctional facility, outpatient treatment facilities, diagnostic and treatment facilities, ambulatory surgical centers and facilities, end-stage renal dialysis and treatment facilities, rural health clinics, private physicians' offices or other clinics that operate in the same manner as private physicians' offices in group practice settings;

D. "care recipient" means any person under the care of a provider who has a physical or mental illness, injury or disability or who suffers from any cognitive impairment that restricts or limits the person's activities;

E. "conviction" means a plea, judgment or verdict of guilty, a plea of nolo contendere, an Alford plea or any plea or judgment entered in connection with a suspended sentence, in this state or any other state or jurisdiction;

F. "hospital caregiver" means a person who provides

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direct unsupervised patient care in an inpatient setting and is not a licensed New Mexico health care professional practicing within the scope of a profession's license;

G. "nationwide criminal history screening" means a criminal history background investigation of an applicant, caregiver or hospital caregiver through the use of fingerprints collected by the department of public safety and submitted to the federal bureau of investigation, resulting in generation of a nationwide criminal history record for that applicant, caregiver or hospital caregiver;

H. "nationwide criminal history record" means information concerning a person's arrests, indictments or other formal criminal charges and any dispositions arising therefrom, including convictions, dismissals, acquittals, sentencing and correctional supervision, and collected by criminal justice agencies; and

I. "statewide criminal history screening" means a criminal history background investigation of an applicant or caregiver through the comparison of identifying information with the department of public safety's criminal record repository."

**SECTION 9.** Section 30-47-3 NMSA 1978 (being Laws 1990, Chapter 55, Section 3, as amended) is amended to read:

"30-47-3. DEFINITIONS.--As used in the Resident Abuse and Neglect Act:

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A. "abuse" means any act or failure to act performed intentionally, knowingly or recklessly that causes or is likely to cause harm to a resident, including:

(1) physical contact that harms or is likely to harm a resident of a care facility;

(2) inappropriate use of a physical restraint, isolation or medication that harms or is likely to harm a resident;

(3) inappropriate use of a physical or chemical restraint, medication or isolation as punishment or in conflict with a physician's order;

(4) medically inappropriate conduct that causes or is likely to cause physical harm to a resident;

(5) medically inappropriate conduct that causes or is likely to cause great psychological harm to a resident; or

(6) an unlawful act, a threat or menacing conduct directed toward a resident that results and might reasonably be expected to result in fear or emotional or mental distress to a resident;

B. "care facility" means a hospital; skilled nursing facility; intermediate care facility; care facility for ~~[the mentally retarded]~~ individuals with developmental or intellectual disabilities; psychiatric facility; rehabilitation facility; kidney disease treatment center; home health agency;

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ambulatory surgical or outpatient facility; home for the aged or disabled; group home; adult foster care home; private residence that provides personal care, sheltered care or nursing care for one or more persons; a resident's or care provider's home in which personal care, sheltered care or nursing care is provided; adult [~~day care~~] daycare center; boarding home; adult residential shelter care home; and any other health or resident care related facility or home, but does not include a care facility located at or performing services for any correctional facility;

C. "department" means the human services department or its successor, contractor, employee or designee;

D. "great psychological harm" means psychological harm that causes mental or emotional incapacitation for a prolonged period of time or that causes extreme behavioral change or severe physical symptoms that require psychological or psychiatric care;

E. "great physical harm" means physical harm of a type that causes physical loss of a bodily member or organ or functional loss of a bodily member or organ for a prolonged period of time;

F. "neglect" means, subject to the resident's right to refuse treatment and subject to the caregiver's right to exercise sound medical discretion, the grossly negligent:

- (1) failure to provide any treatment, service,

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care, medication or item that is necessary to maintain the health or safety of a resident;

(2) failure to take any reasonable precaution that is necessary to prevent damage to the health or safety of a resident; or

(3) failure to carry out a duty to supervise properly or control the provision of any treatment, care, good, service or medication necessary to maintain the health or safety of a resident;

G. "person" means any individual, corporation, partnership, unincorporated association or other governmental or business entity;

H. "physical harm" means an injury to the body that causes substantial pain or incapacitation; and

I. "resident" means any person who resides in a care facility or who receives treatment from a care facility."

SECTION 10. Section 31-9-1.6 NMSA 1978 (being Laws 1997, Chapter 153, Section 1, as amended) is amended to read:

"31-9-1.6. HEARING TO DETERMINE [~~MENTAL RETARDATION~~]  
DEVELOPMENTAL OR INTELLECTUAL DISABILITY.--

A. Upon motion of the defense requesting a ruling, the court shall hold a hearing to determine whether the defendant has [~~mental retardation~~] a developmental or intellectual disability as defined in Subsection E of this section.

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B. If the court finds by a preponderance of the evidence that the defendant has [~~mental retardation~~] a developmental or intellectual disability and that there is not a substantial probability that the defendant will become competent to proceed in a criminal case within a reasonable period of time not to exceed nine months from the date of the original finding of incompetency, then, no later than sixty days from notification to the secretary of health or [~~his~~] the secretary's designee of the court's findings, the department of health shall perform an evaluation to determine whether the defendant presents a likelihood of serious harm to [~~himself~~] self or [~~a likelihood of serious harm to~~] others.

C. If the department of health evaluation results in a finding that the defendant presents a likelihood of serious harm to [~~himself~~] self or [~~a likelihood of serious harm to~~] others, within sixty days of the department's evaluation, the department shall commence proceedings pursuant to Chapter 43, Article 1 NMSA 1978 if the defendant was charged with murder in the first degree, first degree criminal sexual penetration, criminal sexual contact of a minor or arson in the initial proceedings, and the court presiding over the initial proceedings shall enter a finding that the respondent presents a likelihood of harm to others.

D. The criminal charges shall be dismissed without prejudice after the hearing pursuant to Chapter 43, Article 1

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NMSA 1978 or upon expiration of fourteen months from the court's initial determination that the defendant is incompetent to proceed in a criminal case.

E. As used in this section, [~~mental retardation~~] "developmental or intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior. An intelligence quotient of seventy or below on a reliably administered intelligence quotient test shall be presumptive evidence of [~~mental retardation~~] developmental or intellectual disability."

SECTION 11. Section 38-6-8 NMSA 1978 (being Laws 1993, Chapter 333, Section 1) is amended to read:

"38-6-8. WITNESSES WITH [~~MENTAL RETARDATION~~] DEVELOPMENTAL OR INTELLECTUAL DISABILITY--COMPETENCY EVALUATION.--

A. As used in this section:

(1) "witness with [~~mental retardation~~] a developmental or intellectual disability" means a witness in a proceeding whom the court has found after hearing, as provided in Subsection B of this section, to have [~~mental retardation~~] a developmental or intellectual disability; and

(2) "[~~mental retardation~~] developmental or intellectual disability" means a substantial [~~limitations~~] limitation in present functioning characterized by

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significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work.

B. In any judicial proceeding wherein a witness with [~~mental retardation~~] a developmental or intellectual disability may or will testify, the court on its own motion or on motion of the proponent of the witness with [~~mental retardation~~] a developmental or intellectual disability, and after hearing, may order the use of one of the alternative procedures for determining competency to testify or for taking the testimony of the witness with [~~mental retardation~~] a developmental or intellectual disability described below, provided that the court finds at the time of the order, by a preponderance of the evidence in the case, that the witness with [~~mental retardation~~] a developmental or intellectual disability is likely, as a result of submitting to usual procedures for determining competency or as a result of testifying in open court:

(1) to suffer unreasonable and unnecessary mental or emotional harm; or

(2) to suffer a temporary loss of or regression in cognitive or behavioral functioning or communicative abilities such that [~~his~~] the witness's ability

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to testify will be significantly impaired.

C. If the court orders the use of an alternative procedure pursuant to this section, the court shall make and enter specific findings on the record describing the reasons for such order.

D. A court that makes findings in accordance with Subsection B of this section may order any of the following suitable alternative procedures for determining the competency to testify or for taking the testimony of the witness with ~~[mental retardation]~~ a developmental or intellectual disability:

(1) taking the testimony of the witness with ~~[mental retardation]~~ a developmental or intellectual disability while permitting a person familiar to the witness such as a family member, clinician, counselor, social worker or friend to sit near or next to ~~[him]~~ the witness;

(2) taking the testimony of the witness with ~~[mental retardation]~~ a developmental or intellectual disability in court but off the witness stand;

(3) if the proceeding is a bench proceeding, taking the testimony of the witness with ~~[mental retardation]~~ a developmental or intellectual disability in a setting familiar to the witness;

(4) if the proceeding is a jury trial, videotaping of testimony, out of the presence of the jury or in

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a location chosen by the court or by agreement of the parties;  
or

(5) the procedure set forth in Paragraph (1)  
in combination with Paragraph (2), (3) or (4) of this  
subsection.

E. Testimony taken by a videotape pursuant to an  
order [~~under~~] issued as provided in Subsection B of this  
section shall be taken in the presence of the judge, counsel  
for all parties and such other persons as the court may allow.  
Counsel shall be given the opportunity to examine, confront or  
cross-examine the witness with [~~mental retardation~~] a  
developmental or intellectual disability to the same extent as  
would be permitted if ordinary procedures had been followed,  
subject to such protection of the [~~mentally retarded~~] witness  
as the judge deems necessary.

F. An order issued [~~under~~] pursuant to provisions  
of Subsection B of this section that the testimony of the  
witness with [~~mental retardation~~] a developmental or  
intellectual disability be videotaped out of the presence of  
the jury shall provide that the videotape be shown in court to  
the jury in the presence of the judge, the parties and the  
parties' counsel. At such courtroom showing, the audio portion  
of the video shall be entered into the record as would any oral  
testimony and shall be treated in all respects as oral  
testimony to the jury.

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G. The videotape or giving of testimony taken by an alternative procedure pursuant to an order issued [~~under~~] as provided in Subsection B of this section shall be admissible as substantive evidence to the same extent as and in lieu of live testimony by the witness in any proceeding for which the order is issued or in any related proceeding against the same party when consistent with the interests of justice; provided that such an order is entered or re-entered based on current findings at the time when, or within a reasonable time before, the videotape or testimony is offered into evidence, and provided, in the case of a related criminal proceeding, that the requirements of Subsection E of this section were satisfied when the videotape was recorded or the alternative procedure was used.

H. Whenever, pursuant to an order issued [~~under~~] as provided in Subsection B of this section, testimony is recorded on videotape, the court shall ensure that:

(1) the recording equipment is capable of making an accurate recording and is operated by a competent operator;

(2) the recording is in color and is taken in well-lit conditions;

(3) the presence of the presiding judge, the attorneys, the defendant or parties, if in the room, and all other persons present is stated on the recording;

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(4) the witness with ~~[mental retardation]~~ a developmental or intellectual disability is visible at all times and, to the extent reasonably possible, the recording shows all persons present in the room as a jury would perceive them in open court;

(5) every voice on the recording is audible and identifiable;

(6) the recording is accurate, undistorted in picture or sound quality and has not been altered except as ordered by the court; and

(7) each party is afforded the opportunity to view the recording before it is shown in the courtroom.

I. The fact that the witness with ~~[mental retardation]~~ a developmental or intellectual disability has been found in a court proceeding to be incompetent to make informed decisions of a personal, medical or financial nature or is under a guardianship or conservatorship shall not preclude the witness from testifying if found competent to testify and, further, shall not preclude a determination of competency to testify.

J. The use of alternative procedures shall not be denied because they may take significantly more time than conventional procedures.

K. Expert opinion shall be admissible at any hearing held pursuant to this section, including hearings to

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determine the competency of a witness with [~~mental retardation~~]  
a developmental or intellectual disability to testify.

L. Nothing in this section shall be deemed to prohibit the court from using other appropriate means, consistent with this section and other laws and with the defendant's rights, to protect a witness with [~~mental retardation~~] a developmental or intellectual disability from trauma during a court proceeding."

SECTION 12. Section 43-1-3 NMSA 1978 (being Laws 1977, Chapter 279, Section 2, as amended) is amended to read:

"43-1-3. DEFINITIONS.--As used in the Mental Health and Developmental Disabilities Code:

A. "aversive stimuli" means anything that, because it is believed to be unreasonably unpleasant, uncomfortable or distasteful to the client, is administered or done to the client for the purpose of reducing the frequency of a behavior, but does not include verbal therapies, physical restrictions to prevent imminent harm to self or others or psychotropic medications that are not used for purposes of punishment;

B. "client" means any patient who is requesting or receiving mental health services or any person requesting or receiving developmental disabilities services or who is present in a mental health or developmental disabilities facility for the purpose of receiving such services or who has been placed in a mental health or developmental disabilities facility by

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the person's parent or guardian or by any court order;

C. "code" means the Mental Health and Developmental Disabilities Code;

D. "consistent with the least drastic means principle" means that the habilitation or treatment and the conditions of habilitation or treatment for the client, separately and in combination:

(1) are no more harsh, hazardous or intrusive than necessary to achieve acceptable treatment objectives for the client;

(2) involve no restrictions on physical movement and no requirement for residential care except as reasonably necessary for the administration of treatment or for the protection of the client or others from physical injury; and

(3) are conducted at the suitable available facility closest to the client's place of residence;

E. "convulsive treatment" means any form of mental health treatment that depends upon creation of a convulsion by any means, including [~~but not limited to~~] electroconvulsive treatment and insulin coma treatment;

F. "court" means a district court of New Mexico;

G. "department" or "division" means the behavioral health services division of the human services department;

SHPAC → ~~H. "developmental or intellectual disability"~~

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~~means a [disability of a person that is attributable to mental retardation, cerebral palsy, autism or neurological dysfunction that requires treatment or habilitation similar to that provided to persons with mental retardation] severe chronic disability of an individual, which disability:~~

~~(1) is attributable to a mental or physical impairment, including the result from trauma to the brain, or combination of mental and physical impairments;~~

~~(2) is manifested before the person reaches the age of twenty-two years;~~

~~(3) is expected to continue indefinitely;~~

~~(4) results in substantial functional limitations in three or more of the following areas of major life activity:~~

~~(a) self-care;~~

~~(b) receptive and expressive language;~~

~~(c) learning;~~

~~(d) mobility;~~

~~(e) self-direction;~~

~~(f) capacity for independent living; and~~

~~(g) economic self-sufficiency; and~~

~~(5) reflects the person's need for a combination and sequence of special, interdisciplinary or generic care treatment or other support and services that are~~

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~~lifelong or of extended duration and are individually planned or coordinated;~~ ←SHPAC SHPAC→H. "developmental or intellectual disability" means a severe chronic disability attributable to significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, cerebral palsy, autism or neurological dysfunction that requires similar treatment or habilitation; ←SHPAC

I. "evaluation facility" means a community mental health or developmental disability program or a medical facility that has psychiatric or developmental or intellectual disability services available, including the New Mexico behavioral health institute at Las Vegas, the Los Lunas medical center or, if none of the foregoing is reasonably available or appropriate, the office of a physician or a certified psychologist, and that is capable of performing a mental status examination adequate to determine the need for involuntary treatment;

J. "experimental treatment" means any mental health or developmental disabilities treatment that presents significant risk of physical harm, but does not include accepted treatment used in competent practice of medicine and psychology and supported by scientifically acceptable studies;

K. "grave passive neglect" means failure to provide for basic personal or medical needs or for one's own safety to such an extent that it is more likely than not that serious

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bodily harm will result in the near future;

L. "habilitation" means the process by which professional persons and their staff assist a client with a developmental or an intellectual disability in acquiring and maintaining those skills and behaviors that enable the person to cope more effectively with the demands of the person's self and environment and to raise the level of the person's physical, mental and social efficiency. "Habilitation" includes but is not limited to programs of formal, structured education and treatment;

M. "likelihood of serious harm to oneself" means that it is more likely than not that in the near future the person will attempt to commit suicide or will cause serious bodily harm to the person's self by violent or other self-destructive means, including grave passive neglect;

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

O. "mental disorder" means substantial disorder of a person's emotional processes, thought or cognition that grossly impairs judgment, behavior or capacity to recognize

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reality, but does not mean developmental or intellectual disability;

P. "mental health or developmental or intellectual disabilities professional" means a physician or other professional who by training or experience is qualified to work with persons with a mental disorder or a developmental or intellectual disability;

Q. "physician" or "certified psychologist", when used for the purpose of hospital admittance or discharge, means a physician or certified psychologist who has been granted admitting privileges at a hospital licensed by the department of health, if such privileges are required;

R. "protected health information" means individually identifiable health information transmitted by or maintained in an electronic form or any other form or media that relates to the:

(1) past, present or future physical or mental health or condition of an individual;

(2) provision of health care to an individual;

or

(3) payment for the provision of health care to an individual;

S. "psychosurgery":

(1) means those operations currently referred to as lobotomy, psychiatric surgery and behavioral surgery and

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all other forms of brain surgery if the surgery is performed for the purpose of the following:

(a) modification or control of thoughts, feelings, actions or behavior rather than the treatment of a known and diagnosed physical disease of the brain;

(b) treatment of abnormal brain function or normal brain tissue in order to control thoughts, feelings, actions or behavior; or

(c) treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions or behavior when the abnormality is not an established cause for those thoughts, feelings, actions or behavior; and

(2) does not include prefrontal sonic treatment in which there is no destruction of brain tissue;

T. "qualified mental health professional licensed for independent practice" means an independent social worker, a licensed professional clinical mental health counselor, a marriage and family therapist, a certified nurse practitioner or a clinical nurse specialist with a specialty in mental health, all of whom by training and experience are qualified to work with persons with a mental disorder;

U. "residential treatment or habilitation program" means diagnosis, evaluation, care, treatment or habilitation rendered inside or on the premises of a mental health or developmental disabilities facility, hospital, clinic,

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institution or supervisory residence or nursing home when the client resides on the premises; and

V. "treatment" means any effort to accomplish a significant change in the mental or emotional condition or behavior of the client."

SECTION 13. REPEAL.--Section 24-1-5.4 NMSA 1978 (being Laws 1997, Chapter 217, Section 2) is repealed.

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