

State of New Mexico
House of Representatives

FIFTY-SEVENTH LEGISLATURE
FIRST SESSION

March 21, 2025

HOUSE FLOOR AMENDMENT number _____ to SENATE JUDICIARY COMMITTEE
SUBSTITUTE FOR SENATE RULES
COMMITTEE SUBSTITUTE FOR
SENATE BILL 42, as amended

Amendment sponsored by Representative

1. Strike House Judiciary Committee Amendments 4 and 13.
2. On page 4, after line 25, insert:

"SECTION 2. A new section of the Children, Youth and Families
Department Act is enacted to read:

"[NEW MATERIAL] ELECTRONIC RECORDS--RETENTION.--

A. Employees of the department shall not erase data from
the electronic devices issued by the department to employees for
communication related to the performance of duties within the scope
of their employment by the department.

B. Electronic devices issued by the department to
employees shall only include software and applications that are
compliant with federal data retention and protection laws.

C. By January 1, 2026, the department shall implement a
system, approved by the department of information technology, that
will back up on a daily basis all electronic records generated or
received by employees of the department related to the performance
of their duties within the scope of their employment by the
department.

D. During the term of an employee's employment by the
department, and for a period of at least seven years after the
termination of an employee's employment by the department, the

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department shall retain all electronic records stored on electronic devices used by department employees and all electronic records that have been backed up from electronic devices used by department employees. The department shall back up the retained electronic records daily, monthly and annually.

E. As used in this section:

(1) "back up" means to electronically copy in a recoverable format to a searchable database maintained by the department all electronic records generated by or contained within an electronic device;

(2) "electronic device" means a telephone, tablet, computer, watch or similar device used to generate, store or transfer information; and

(3) "electronic records" means information generated by, transmitted by or stored on an electronic device, including electronic mail, voicemail, text and instant messages, documents and photographs, regardless of the platform being used, including interagency communications.".

3. On page 14, strike lines 20 through 25, strike pages 15 through 25 and on page 26, strike lines 1 through 21 and insert in lieu thereof:

"SECTION 5. Section 32A-3A-13 NMSA 1978 (being Laws 2019, Chapter 190, Section 3) is amended to read:

"32A-3A-13. PLAN OF SAFE CARE--GUIDELINES--CREATION--DATA SHARING--TRAINING.--

A. By [~~January 1, 2020~~] July 1, 2026, the [~~department~~] health care authority, in consultation with medicaid managed care organizations, private insurers, the office of superintendent of

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insurance, the ~~[human services]~~ children, youth and families 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, birthing centers, medical providers, medicaid managed care organizations and private insurers regarding:

(1) participation in the ~~[discharge planning]~~ plan of safe care development process, [including] which may occur at a prenatal or perinatal medical visit and shall occur prior to a substance-exposed child's discharge from a hospital. The plan of safe care development process shall allow for the creation of a written plan of safe 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]~~ or a care coordinator employed by or contracted with the health care authority;

(c) the child's parent, relative, guardian or caretaker who is present at discharge who shall receive a copy upon discharge. The plan of safe 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; and

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(d) if the child's parent, relative, guardian, custodian or caretaker resides on tribal land, the respective Indian tribe. The respective Indian tribe shall be sent a copy of the plan of safe care within twenty-four hours of the child's 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. The rules shall include a requirement that all hospitals, birthing centers and prenatal care providers use the screening, brief intervention and referral to treatment program at all prenatal or perinatal medical visits and live births;

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

(a) by hospitals and birthing centers to the department when: 1) a plan of safe care has been developed; and 2) a family has been referred for a plan of safe 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 safe 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, custodians or [caregivers] caretakers identified in a plan of safe care;

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(4) requirements for the health care authority to:

(a) ensure that there is at least one care coordinator available in each birthing hospital in the state;

(b) ensure that all substance-exposed children who have a plan of safe care receive care coordination to implement the plan of safe care;

(c) provide training to hospital staff, birthing center staff and prenatal care providers on the screening, brief intervention and referral to treatment program; and

(d) communicate, collaborate and consult with an Indian child's tribe to ensure that plans of safe care are developed in a culturally responsive manner for each child;

~~[(4)]~~ (5) identification of appropriate agencies to be included as supports and services in the plan of safe care, based on an assessment of the needs of the child and the child's relatives, parents, guardians, custodians 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;~~

~~(d) substance use disorder prevention and treatment providers;~~

~~(e) mental health providers;~~

~~(f) public and private children and youth~~

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agencies;

~~(g) early intervention and developmental services;~~

~~(h) courts;~~

~~(i) local education agencies;~~

~~(j) managed care organizations; or~~

~~(k) hospitals and medical providers; and]~~

(a) shall include: 1) home visitation programs or early intervention family infant toddler programs; and 2) substance use disorder prevention and treatment providers; and

(b) may include: 1) public health agencies; 2) maternal and child health agencies; 3) mental health providers; 4) infant mental health providers; 5) public and private children and youth agencies; 6) early intervention and developmental services; 7) courts; 8) local education agencies; 9) managed care organizations; or 10) hospitals and medical providers;

(6) information that shall be in a written plan of safe care, including:

(a) the child's name;

(b) an emergency contact for at least one of the child's parents, relatives, guardians, custodians or caretakers;

(c) the address for the parent, relative, guardian, custodian or caretaker who will be taking the child home from the birthing facility; and

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(d) the names of the parents, relatives, guardians, custodians or caretakers who will be living with the child;

~~[(5)]~~ (7) engagement of the child's relatives, parents, guardians, custodians 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; and

(8) implementation of plans of safe care that shall include requirements for care coordinators to:

(a) actively work with pregnant persons or a substance-exposed child's parents, relatives, guardians, family members or caretakers to refer and connect the pregnant person or substance-exposed child's parents, relatives, guardians, family members or caretakers to necessary services. Care coordinators shall use an evidence-based intensive care coordination model that is listed in the federal Title IV-E prevention services clearinghouse or another nationally recognized evidence-based clearinghouse for child welfare; and

(b) attempt to make contact with persons who are not following the plan of safe care using multiple methods, including in person, by mail, by phone call or by text message. If a pregnant person or a substance-exposed child's parents, relatives, guardians, family members or caretakers are not following the plan of safe care, care coordinators shall make attempts to contact and provide support services to persons who are not following the plan of safe care.

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

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safe 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.

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]~~ health care authority shall provide an annual report to the legislative finance committee, the interim legislative health and human services committee and the department of finance and administration on the status of the plan of safe care system. The report shall include the following aggregate statistical information related to the creation of plans of safe care:

(1) the primary substances that infants were exposed to;

(2) the services that infants and families were referred to;

(3) the availability and uptake rate of services;

(4) whether an infant or an infant's family was subsequently reported to the children, youth and families department; and

(5) disaggregated demographic and geographic data.

F. Reports made pursuant to the requirements in this section shall not be construed to relieve a person of the

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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~~] health care authority 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 safe care when a referral to the department is not required; and

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

H. [~~No~~] A person shall not 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."

SECTION 6. Section 32A-3A-14 NMSA 1978 (being Laws 2019, Chapter 190, Section 4) is amended to read:

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"32A-3A-14. NOTIFICATION TO THE DEPARTMENT OF NONCOMPLIANCE WITH A PLAN OF SAFE CARE.--

A. If the parents, relatives, guardians, custodians or caretakers of a child released from a hospital or freestanding birthing center pursuant to a plan of safe care fail to comply with that plan, the health care authority, a medicaid managed care organization insurance plan care coordinator or a care coordinator contracted with the health care authority shall notify the department [~~shall be notified~~] within twenty-four hours of the failure to comply and the department [~~may~~] shall 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, custodians 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, custodians or caretakers decline those services or programs, and the department [~~may~~] determines that those services or programs are necessary to address concerns of imminent harm to the child, the department shall proceed with an investigation.

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 safe care to determine the needs of a child and the child's parents, relatives, guardians, custodians 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

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

4. On page 43, line 17, strike "E" and insert in lieu thereof "G".

5. On page 44, lines 8 and 9, strike "Other than in the case of a fatality, redacted" and insert in lieu thereof "Except as provided in Subsections E, F and G of this section,".

6. On page 44, lines 16 through 21, remove the brackets and the line-through and strike the underscored language.

7. On page 44, between lines 21 and 22, insert:

"E. The department may release redacted information described in Subsection D of this section to a person who is conducting bona fide research or investigations, the results of which shall provide the department information on child abuse and neglect that would be useful to the department in developing policy and practice.

F. In the case of a fatality, the department shall release all information described in Subsection D of this section to a person who is conducting bona fide research or investigations, the results of which shall provide the department information on child abuse and neglect that would be useful to the department in developing policy and practice.".

8. Reletter the succeeding subsections accordingly.

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____