

1 HOUSE BILL 343
2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**
3 INTRODUCED BY
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10 AN ACT

11 RELATING TO CHILDREN; AMENDING AND UPDATING SECTIONS OF THE
12 CHILDREN'S CODE TO PROVIDE FOR PLANS OF SAFE CARE FOR
13 SUBSTANCE-EXPOSED NEWBORN CHILDREN; PROVIDING FOR REPORTS TO
14 THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT CENTRAL INTAKE
15 SYSTEM REGARDING CERTAIN NEWBORNS WHO MAY BE AT RISK.
16

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

18 SECTION 1. Section 32A-3A-2 NMSA 1978 (being Laws 1993,
19 Chapter 77, Section 64, as amended) is amended to read:

20 "32A-3A-2. DEFINITIONS.--As used in the Voluntary
21 Placement and Family Services Act:

22 A. "child or family in need of family services"
23 means a family:

24 (1) whose child's behavior endangers the
25 child's health, safety, education or well-being;

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1 (2) whose child is excessively absent from
2 public school as defined in the Attendance for Success Act;

3 (3) whose child is absent from the child's
4 place of residence for twenty-four hours or more without the
5 consent of the parent, guardian or custodian;

6 (4) in which the parent, guardian or custodian
7 of a child refuses to permit the child to live with the parent,
8 guardian or custodian; or

9 (5) in which the child refuses to live with
10 the child's parent, guardian or custodian;

11 B. "family services" means services that address
12 specific needs of the child or family;

13 C. "guardian" means a person appointed as a
14 guardian by a court or Indian tribal authority;

15 D. "guardianship assistance agreement" means a
16 written agreement entered into by the prospective guardian and
17 the department or Indian tribe prior to the establishment of
18 the guardianship by a court;

19 E. "guardianship assistance payments" means
20 payments made by the department to a kinship guardian or
21 successor guardian on behalf of a child pursuant to the terms
22 of a guardianship assistance agreement;

23 F. "guardianship assistance program" means the
24 financial subsidy program provided for in the Voluntary
25 Placement and Family Services Act;

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1 G. "kinship" means the relationship that exists
2 between a child and a relative of the child, a godparent, a
3 member of the child's tribe or clan or an adult with whom the
4 child has a significant bond;

5 H. "subsidized guardianship" means a guardianship
6 that meets subsidy eligibility criteria pursuant to the
7 Voluntary Placement and Family Services Act; ~~[and]~~

8 I. "substance-exposed newborn" means a newborn
9 child who is affected by prenatal exposure to a controlled
10 substance, including a prescribed or non-prescribed drug or
11 alcohol ingested by the newborn's mother in utero; and

12 ~~[F.]~~ J. "voluntary placement agreement" means a
13 written agreement between the department and the parent or
14 guardian of a child."

15 SECTION 2. Section 32A-3A-13 NMSA 1978 (being Laws 2019,
16 Chapter 190, Section 3) is amended to read:

17 "32A-3A-13. PLAN OF SAFE CARE--SUBSTANCE-EXPOSED NEWBORN
18 CHILDREN--GUIDELINES--CREATION--DATA SHARING--TRAINING.--

19 A. ~~[By January 1, 2020]~~ The department, in
20 consultation with medicaid managed care organizations, private
21 insurers, the office of superintendent of insurance, the ~~[human~~
22 ~~services department]~~ health care authority and the department
23 of health, shall develop rules to guide hospitals, birthing
24 centers, medical providers, medicaid managed care organizations
25 and private insurers in the care of newborns who exhibit

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1 physical, neurological or behavioral symptoms consistent with
2 prenatal drug exposure, withdrawal symptoms from prenatal drug
3 exposure or fetal alcohol spectrum disorder.

4 B. Rules shall include requirements and guidelines
5 [~~to~~] for hospitals, birthing centers, medical providers,
6 medicaid managed care organizations and private insurers
7 regarding:

8 (1) participation in the discharge planning
9 process of a substance-exposed newborn, including the creation
10 of a written plan of safe care that shall be sent to:

11 (a) the child's primary care physician;

12 (b) a medicaid managed care organization
13 insurance plan care coordinator who will monitor the
14 implementation of the plan of safe care after discharge, if the
15 child is insured, or to a care coordinator in the children's
16 medical services of the family health bureau of the public
17 health division of the department of health who will monitor
18 the implementation of the plan of safe care after discharge, if
19 the child is uninsured; and

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

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

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

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

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

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

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1 caregivers identified in a plan of safe care;

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

- 8 (a) public health agencies;
- 9 (b) maternal and child health agencies;
- 10 (c) home visitation programs;
- 11 (d) substance use disorder prevention
12 and treatment providers;
- 13 (e) mental health providers;
- 14 (f) public and private children and
15 youth agencies;
- 16 (g) early intervention and developmental
17 services;
- 18 (h) courts;
- 19 (i) local education agencies;
- 20 (j) managed care organizations; or
- 21 (k) hospitals and medical providers; and

22 (5) engagement of the child's relatives,
23 parents, guardians or caretakers in order to identify the need
24 for access to treatment for any substance use disorder or other
25 physical or behavioral health condition that may impact the

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1 safety, early childhood development and well-being of the
2 child.

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

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

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

20 F. Reports made pursuant to the requirements in
21 this section shall not be construed to relieve a person of the
22 requirement to report to the department knowledge of or a
23 reasonable suspicion that a child is an abused or neglected
24 child based on criteria as defined by Section 32A-4-2 NMSA
25 1978.

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1 G. When a health care provider or other individual
2 who is involved in creating a substance-exposed newborn's plan
3 of safe care has concerns about the continued safety of the
4 newborn prior to or after the newborn's discharge from a
5 hospital or birthing facility, the health care provider or
6 individual shall make a report regarding the concerns to the
7 department's statewide central intake. Upon receiving the
8 report the department shall review the plan of safe care for
9 the newborn who is the subject of the report and shall:

10 (1) perform an assessment to determine whether
11 the newborn's plan of safe care:

12 (a) is complete and has been provided to
13 the individuals or entities required pursuant to Paragraph (1)
14 of Subsection B of this section;

15 (b) can adequately address the newborn's
16 health, safety and well-being; and

17 (c) adequately addresses any substance
18 use disorder treatment needs of the newborn's family and care
19 givers; and

20 (2) review the report received by the
21 department's central intake system and the department's
22 assessment of the newborn's plan of safe care, and if the
23 department determines that the newborn's needs are not being
24 met, the department shall:

25 (a) initiate an investigation; and

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1 (b) update the newborn's plan of safe
2 care based on the findings in the investigation and include any
3 reports regarding the newborn that are received by the
4 department's statewide central intake.

5 [~~G.~~] H. The department shall work in consultation
6 with the department of health to create and distribute training
7 materials to support and educate discharge planners or social
8 workers on the following:

9 (1) how to assess whether to make a referral
10 to the department pursuant to the Abuse and Neglect Act;

11 (2) how to assess whether to make a
12 notification to the department pursuant to Subsection B of
13 Section 32A-4-3 NMSA 1978 for a child who has been diagnosed as
14 affected by substance abuse, withdrawal symptoms resulting from
15 prenatal drug exposure or a fetal alcohol spectrum disorder;

16 (3) how to assess whether to create a plan of
17 safe care when a referral to the department is not required;
18 and

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

21 [~~H. No~~] I. A person shall not have a cause of
22 action for any loss or damage caused by any act or omission
23 resulting from the implementation of the provisions of
24 Subsection [~~G~~] H of this section or resulting from any
25 training, or lack thereof, required by Subsection [~~G~~] H of this
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1 section.

2 [F.] J. The training, or lack thereof, required by
3 the provisions of Subsection [G] H of this section shall not be
4 construed to impose any specific duty of care."

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

7 "32A-3A-14. NOTIFICATION TO THE DEPARTMENT OF
8 NONCOMPLIANCE WITH A PLAN OF SAFE CARE.--

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

23 B. As used in this section, "family assessment"
24 means a comprehensive assessment prepared by the department at
25 the time the department receives notification of failure to

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1 comply with the plan of safe care to determine the needs of a
2 child and the child's parents, relatives, guardians or
3 caretakers, including an assessment of the likelihood of:

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

5 (2) the child becoming an abused child or
6 neglected child; [~~and~~]

7 (3) the strengths and needs of the child's
8 family members, including parents, relatives, guardians or
9 caretakers, with respect to providing for the health and safety
10 of the child; and

11 (4) any relevant involvement with the
12 protective services division of the department."

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

15 "32A-4-3. DUTY TO REPORT CHILD ABUSE AND CHILD NEGLECT--
16 RESPONSIBILITY TO INVESTIGATE CHILD ABUSE OR NEGLECT--PENALTY--
17 NOTIFICATION OF PLAN OF SAFE CARE--DEPARTMENT ASSESSMENTS OF
18 CERTAIN PLANS OF SAFE CARE.--

19 A. Every person, including a licensed physician; a
20 resident or an intern examining, attending or treating a child;
21 a law enforcement officer; a judge presiding during a
22 proceeding; a registered nurse; a visiting nurse; a school
23 employee; a social worker acting in an official capacity; or a
24 member of the clergy who has information that is not privileged
25 as a matter of law, who knows or has a reasonable suspicion

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1 that a child is an abused or a neglected child shall report the
2 matter immediately to:

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

8 B. A law enforcement agency receiving the report
9 shall immediately transmit the facts of the report and the
10 name, address and phone number of the reporter by telephone to
11 the department and shall transmit the same information in
12 writing within forty-eight hours. The department shall
13 immediately transmit the facts of the report and the name,
14 address and phone number of the reporter by telephone to a
15 local law enforcement agency and shall transmit the same
16 information in writing within forty-eight hours. The written
17 report shall contain the names and addresses of the child and
18 the child's parents, guardian or custodian, the child's age,
19 the nature and extent of the child's injuries, including any
20 evidence of previous injuries, and other information that the
21 maker of the report believes might be helpful in establishing
22 the cause of the injuries and the identity of the person
23 responsible for the injuries. The written report shall be
24 submitted upon a standardized form agreed to by the law
25 enforcement agency and the department.

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

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

20 E. A law enforcement agency or the department shall
21 have access to any of the records pertaining to a child abuse
22 or neglect case maintained by any of the persons enumerated in
23 Subsection A of this section, except as otherwise provided in
24 the Abuse and Neglect Act.

25 F. A person who violates the provisions of

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1 Subsection A of this section is guilty of a misdemeanor and
2 shall be sentenced pursuant to the provisions of Section
3 31-19-1 NMSA 1978.

4 G. [A] Unless a newborn child has a positive
5 toxicology screen for methamphetamine, fentanyl, cocaine or
6 heroin, a finding that a [pregnant woman is using or abusing
7 drugs made pursuant to an interview, self-report, clinical
8 observation or routine toxicology screen] newborn is identified
9 with substance abuse or is being affected by substance abuse
10 shall not alone form a sufficient basis to report child abuse
11 or neglect to the department pursuant to Subsection A of this
12 section. ~~[A volunteer, contractor or staff of a hospital or~~
13 ~~freestanding birthing center shall not make a report based~~
14 ~~solely on that finding and shall make a notification pursuant~~
15 ~~to Subsection H of this section.]~~ Nothing in this subsection
16 shall be construed to prevent a person from reporting to the
17 department a reasonable suspicion that a child is an abused or
18 neglected child based on other criteria as defined by Section
19 32A-4-2 NMSA 1978, or a combination of criteria that includes a
20 finding pursuant to this subsection.

21 H. A ~~[volunteer, contractor]~~ health care provider
22 or staff of a hospital or freestanding birthing center shall:

23 (1) complete a written plan of safe care for a
24 substance-exposed newborn prior to the newborn's discharge from
25 the hospital, freestanding birthing center or other birthing

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1 facility as provided for by department rule and the Children's
2 Code; and

3 (2) provide notification to the department.
4 Notification by a health care provider pursuant to this
5 paragraph shall not be construed as a report of child abuse or
6 neglect.

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

13 J. As used in this section, "substance-exposed
14 newborn" means a newborn child who is affected by prenatal
15 exposure to a controlled substance, including a prescribed or
16 non-prescribed drug or alcohol ingested by the newborn's mother
17 in utero.

18 [~~J.~~] K. As used in this section, "school employee"
19 includes employees of a school district or a public school."

20 SECTION 5. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2025.

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