

SENATE RULES COMMITTEE SUBSTITUTE FOR
SENATE BILL 42

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

AN ACT

RELATING TO CHILD WELFARE; ENHANCING THE STATE PROGRAM
ADMINISTERED PURSUANT TO THE FEDERAL COMPREHENSIVE ADDICTION
AND RECOVERY ACT OF 2016; MOVING THE PROGRAM FROM THE CHILDREN,
YOUTH AND FAMILIES DEPARTMENT TO THE DEPARTMENT OF HEALTH;
AMENDING REQUIREMENTS FOR PLANS OF SAFE CARE; PROVIDING FOR
RULEMAKING.

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

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

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

A. "active efforts" means efforts that are
affirmative, active, thorough and timely and that represent a
higher standard of conduct than reasonable efforts;

B. "adult" means a person who is eighteen years of

1 age or older;

2 C. "child" means a person who is less than eighteen
3 years old;

4 D. "council" means the substitute care advisory
5 council established pursuant to Section 32A-8-4 NMSA 1978;

6 E. "court", when used without further
7 qualification, means the children's court division of the
8 district court and includes the judge, special master or
9 commissioner appointed pursuant to the provisions of the
10 Children's Code or supreme court rule;

11 F. "court-appointed special advocate" means a
12 person appointed pursuant to the provisions of the Children's
13 Court Rules to assist the court in determining the best
14 interests of the child by investigating the case and submitting
15 a report to the court;

16 G. "custodian" means an adult with whom the child
17 lives who is not a parent or guardian of the child;

18 H. "department" means the children, youth and
19 families department, unless otherwise specified;

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

24 J. "federal Indian Child Welfare Act of 1978" means
25 the federal Indian Child Welfare Act of 1978, as that act may

1 be amended or its sections renumbered;

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

6 L. "guardian" means a person appointed as a
 7 guardian by a court or Indian tribal authority;

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

13 N. "Indian" means, whether an adult or child, a
 14 person who is:

15 (1) a member of an Indian tribe; or

16 (2) eligible for membership in an Indian
 17 tribe;

18 O. "Indian child" means an Indian person, or a
 19 person whom there is reason to know is an Indian person, under
 20 eighteen years of age, who is neither:

21 (1) married; or

22 (2) emancipated;

23 P. "Indian child's tribe" means:

24 (1) the Indian tribe in which an Indian child
 25 is a member or eligible for membership; or

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

5 Q. "Indian custodian" means an Indian who, pursuant
6 to tribal law or custom or pursuant to state law:

7 (1) is an adult with legal custody of an
8 Indian child; or

9 (2) has been transferred temporary physical
10 care, custody and control by the parent of the Indian child;

11 R. "Indian tribe" means an Indian nation, tribe,
12 pueblo or other band, organized group or community of Indians
13 recognized as eligible for the services provided to Indians by
14 the secretary because of their status as Indians, including an
15 Alaska native village as defined in 43 U.S.C. Section 1602(c)
16 or a regional corporation as defined in 43 U.S.C. Section 1606.
17 For the purposes of notification to and communication with a
18 tribe as required in the Indian Family Protection Act, "Indian
19 tribe" also includes those tribal officials and staff who are
20 responsible for child welfare and social services matters;

21 S. "judge", when used without further
22 qualification, means the judge of the court;

23 T. "legal custody" means a legal status created by
24 order of the court or other court of competent jurisdiction or
25 by operation of statute that vests in a person, department or

1 agency the right to determine where and with whom a child shall
2 live; the right and duty to protect, train and discipline the
3 child and to provide the child with food, shelter, personal
4 care, education and ordinary and emergency medical care; the
5 right to consent to major medical, psychiatric, psychological
6 and surgical treatment and to the administration of legally
7 prescribed psychotropic medications pursuant to the Children's
8 Mental Health and Developmental Disabilities Act; and the right
9 to consent to the child's enlistment in the armed forces of the
10 United States;

11 U. "member" or "membership" means a determination
12 made by an Indian tribe that a person is a member of or
13 eligible for membership in that Indian tribe;

14 V. "parent" or "parents" means a biological or
15 adoptive parent if the biological or adoptive parent has a
16 constitutionally protected liberty interest in the care and
17 custody of the child or a person who has lawfully adopted an
18 Indian child pursuant to state law or tribal law or tribal
19 custom;

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

22 (1) reunification;

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

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

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

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

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

10 Y. "plan of safe care" means a plan created by a
11 health care professional intended to ensure the safety and
12 well-being of a substance-exposed newborn, or to provide
13 prenatal or perinatal support to a pregnant person dealing with
14 substance use disorder, by addressing the treatment needs of
15 the child and any of the child's parents, relatives, guardians,
16 family members or caregivers to the extent those treatment
17 needs are relevant to the safety of the child;

18 Z. "preadoptive parent" means a person with whom a
19 child has been placed for adoption;

20 AA. "protective supervision" means the right to
21 visit the child in the home where the child is residing,
22 inspect the home, transport the child to court-ordered
23 diagnostic examinations and evaluations and obtain information
24 and records concerning the child;

25 BB. "relative" means a person related to another

1 person:

2 (1) by blood within the fifth degree of
3 consanguinity or through marriage by the fifth degree of
4 affinity; or

5 (2) with respect to an Indian child, as
6 established or defined by the Indian child's tribe's custom or
7 law;

8 CC. "reservation" means:

9 (1) "Indian country" as defined in 18 U.S.C.
10 Section 1151;

11 (2) any lands to which the title is held by
12 the United States in trust for the benefit of an Indian tribe
13 or individual; or

14 (3) any lands held by an Indian tribe or
15 individual subject to a restriction by the United States
16 against alienation;

17 DD. "reunification" means either a return of the
18 child to the parent or to the home from which the child was
19 removed or a return to the noncustodial parent;

20 EE. "secretary" means the United States secretary
21 of the interior;

22 FF. "tribal court" means a court with jurisdiction
23 over child custody proceedings that is either a court of Indian
24 offenses, a court established and operated under the law or
25 custom of an Indian tribe or any other administrative body that

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1 is vested by an Indian tribe with authority over child custody
2 proceedings;

3 GG. "tribal court order" means a document issued by
4 a tribal court that is signed by an appropriate authority,
5 including a judge, governor or tribal council member, and that
6 orders an action that is within the tribal court's
7 jurisdiction; and

8 HH. "tribunal" means any judicial forum other than
9 the court."

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

12 "32A-3A-13. PLAN OF SAFE CARE--GUIDELINES--CREATION--DATA
13 SHARING--TRAINING.--

14 A. By [~~January 1, 2020~~] July 1, 2026, the
15 department of health, in consultation with medicaid managed
16 care organizations, private insurers, the office of
17 superintendent of insurance [~~the human services department~~] and
18 the [~~department of~~] health care authority, shall develop rules
19 to guide hospitals, birthing centers, medical providers,
20 medicaid managed care organizations and private insurers in the
21 care of newborns who exhibit physical, neurological or
22 behavioral symptoms consistent with prenatal drug exposure,
23 withdrawal symptoms from prenatal drug exposure or fetal
24 alcohol spectrum disorder.

25 B. Rules shall include guidelines to hospitals,

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

3 (1) participation in the ~~[discharge planning]~~
 4 plan of safe care development process, ~~[including]~~ which may
 5 occur at a prenatal or perinatal medical visit and shall be
 6 completed prior to a substance-exposed child's discharge from a
 7 hospital or birthing center. The plan of safe care development
 8 process shall allow for the creation of a written plan of safe
 9 care that shall be sent to:

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

11 (b) a medicaid managed care organization
 12 insurance plan care coordinator ~~[who will monitor the~~
 13 ~~implementation of the plan of care after discharge, if the~~
 14 ~~child is insured, or to a care coordinator in the children's~~
 15 ~~medical services of the family health bureau of the public~~
 16 ~~health division of the department of health who will monitor~~
 17 ~~the implementation of the plan of care after discharge, if the~~
 18 ~~child is uninsured]~~ or a care coordinator employed by or
 19 contracted with the department of health; 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 child born affected by
4 substance use or withdrawal symptoms resulting from prenatal
5 drug exposure or a fetal alcohol spectrum disorder. The rules
6 shall include a requirement that all hospitals, birthing
7 centers and prenatal care providers use the screening, brief
8 intervention and referral to treatment program at all prenatal
9 or perinatal medical visits and live births;

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

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

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

21 (c) data collected by hospitals and
22 birthing centers for use by the children's medical services of
23 the family health bureau of the public health division of the
24 department of health in epidemiological reports and to support
25 and monitor a plan of safe care. Information reported pursuant

1 to this subparagraph shall be coordinated with communication to
 2 insurance carrier care coordinators to facilitate access to
 3 services for children and parents, relatives, guardians or
 4 caregivers identified in a plan of safe care;

5 (4) requirements for the department of health
 6 to:

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

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

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

17 ~~[(4)]~~ (5) identification of appropriate
 18 agencies to be included as supports and services in the plan of
 19 safe care, based on an assessment of the needs of the child and
 20 the child's relatives, parents, guardians or caretakers,
 21 performed by a discharge planner prior to the child's discharge
 22 from the hospital or birthing center, which: ~~[may include~~

23 ~~(a) public health agencies;~~

24 ~~(b) maternal and child health agencies;~~

25 ~~(c) home visitation programs;~~

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1 physical or behavioral health condition that may impact the
2 safety, early childhood development and well-being of the
3 child; and

4 (7) implementation of plans of safe care that
5 shall include requirements for care coordinators to:

6 (a) actively work with pregnant persons
7 or a substance-exposed child's parents, relatives, guardians,
8 family members or caregivers to refer and connect the pregnant
9 person or substance-exposed child's parents, relatives,
10 guardians, family members or caregivers to necessary services.

11 Care coordinators shall use an evidence-based intensive care
12 coordination model that is listed in the federal Title IV-E
13 prevention services clearinghouse or another nationally
14 recognized evidence-based clearinghouse for child welfare; and

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

23 C. Reports made pursuant to Paragraph (3) of
24 Subsection B of this section shall be collected by the
25 department as distinct and separate from any child abuse report

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1 as captured and held or investigated by the department, such
2 that the reporting of a plan of safe care shall not constitute
3 a report of suspected child abuse and neglect and shall not
4 initiate investigation by the department or a report to law
5 enforcement.

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

9 E. The ~~[children's medical services of the family~~
10 ~~health bureau of the public health division of the department~~
11 ~~of health shall collect and record data reported pursuant to~~
12 ~~Subparagraph (c) of Paragraph (3) of Subsection B of this~~
13 ~~section to support and monitor care coordination of plans of~~
14 ~~care for children born without insurance]~~ department of health
15 shall provide an annual report to the legislative finance
16 committee, the interim legislative health and human services
17 committee and the department of finance and administration on
18 the status of the plan of safe care system. The report shall
19 include recommendations indentifying gaps and needed
20 improvements and the following aggregate statistical
21 information related to the creation of plans of safe care:

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

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

1 (3) the availability and uptake rate of
 2 services;

3 (4) whether an infant or an infant's family
 4 was subsequently reported to the department; and

5 (5) disaggregated demographic and geographic
 6 data.

7 F. Reports made pursuant to the requirements in
 8 this section shall not be construed to relieve a person of the
 9 requirement to report to the department knowledge of or a
 10 reasonable suspicion that a child is an abused or neglected
 11 child based on criteria as defined by Section 32A-4-2 NMSA
 12 1978.

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

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

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

24 (3) how to assess whether to create a plan of
 25 safe care when a referral to the department is not required;

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1 and

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

4 H. ~~[No]~~ A person shall not have a cause of action
5 for any loss or damage caused by any act or omission resulting
6 from the implementation of the provisions of Subsection G of
7 this section or resulting from any training, or lack thereof,
8 required by Subsection G of this section.

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

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

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

16 A. If the parents, relatives, guardians or
17 caretakers of a child released from a hospital or freestanding
18 birthing center pursuant to a plan of safe care fail to comply
19 with that plan, the department of health, a medicaid managed
20 care organization insurance plan care coordinator or a care
21 coordinator contracted with the department of health shall
22 notify the department [~~shall be notified~~] and the department
23 [~~may~~] shall conduct a family assessment. Based on the results
24 of the family assessment, the department may offer or provide
25 referrals for counseling, training, or other services aimed at

1 addressing the underlying causative factors that may jeopardize
2 the safety or well-being of the child. The child's parents,
3 relatives, guardians or caretakers may choose to accept or
4 decline any service or program offered subsequent to the family
5 assessment; provided that if the child's parents, relatives,
6 guardians or caretakers decline those services or programs, and
7 the department ~~may~~ determines that those services or programs
8 are necessary to address concerns of imminent harm to the
9 child, the department shall proceed with an investigation.

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

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

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

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

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

25 "32A-4-3. DUTY TO REPORT CHILD ABUSE AND CHILD NEGLECT--
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1 RESPONSIBILITY TO INVESTIGATE CHILD ABUSE OR NEGLECT--PENALTY--
2 NOTIFICATION OF PLAN OF SAFE CARE--

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

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

17 B. A law enforcement agency receiving the report
18 shall immediately transmit the facts of the report and the
19 name, address and phone number of the reporter by telephone to
20 the department and shall transmit the same information in
21 writing within forty-eight hours. The department shall
22 immediately transmit the facts of the report and the name,
23 address and phone number of the reporter by telephone to a
24 local law enforcement agency and shall transmit the same
25 information in writing within forty-eight hours. The written

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1 report shall contain the names and addresses of the child and
2 the child's parents, guardian or custodian, the child's age,
3 the nature and extent of the child's injuries, including any
4 evidence of previous injuries, and other information that the
5 maker of the report believes might be helpful in establishing
6 the cause of the injuries and the identity of the person
7 responsible for the injuries. The written report shall be
8 submitted upon a standardized form agreed to by the law
9 enforcement agency and the department.

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

20 D. If the child alleged to be abused or neglected
21 is in the care or control of or in a facility administratively
22 connected to the department, the report shall be investigated
23 by a local law enforcement officer trained in the investigation
24 of child abuse and neglect. The investigation shall ensure
25 that immediate steps are taken to protect the health or welfare

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1 of the alleged abused or neglected child, as well as that of
2 any other child under the same care who may be in danger of
3 abuse or neglect.

4 E. A law enforcement agency or the department shall
5 have access to any of the records pertaining to a child abuse
6 or neglect case maintained by any of the persons enumerated in
7 Subsection A of this section, except as otherwise provided in
8 the Abuse and Neglect Act.

9 F. A person who violates the provisions of
10 Subsection A of this section is guilty of a misdemeanor and
11 shall be sentenced pursuant to the provisions of Section
12 31-19-1 NMSA 1978.

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

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1 pursuant to this subsection.

2 H. A [~~volunteer~~] contractor or staff of a hospital,
 3 [~~or~~] freestanding birthing center or clinic that provides
 4 prenatal or perinatal care shall:

5 (1) complete a written plan of safe care for a
 6 substance-exposed newborn or a pregnant person who agrees to
 7 creating a plan of safe care, as provided for by department of of
 8 health rule and the Children's Code; and

9 (2) provide notification to the department of of
 10 health. Notification by a health care provider pursuant to
 11 this paragraph shall not be construed as a report of child
 12 abuse or neglect.

13 I. As used in this section, "notification" means
 14 informing the department of of health that a substance-exposed
 15 newborn was born and providing a copy of the plan of safe care
 16 that was created for the child; provided that notification
 17 shall comply with federal guidelines and shall not constitute a
 18 report of child abuse or neglect. The department of health
 19 shall be responsible for ensuring compliance with federal
 20 reporting requirements related to plans of safe care.

21 J. As used in this section, "school employee"
 22 includes employees of a school district or a public school."

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

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