

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 230

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO CHILDREN; CLARIFYING THE ROLE OF HOSPITAL AND  
BIRTHING CENTER STAFF, CONTRACTORS AND VOLUNTEERS IN REPORTING  
CHILD ABUSE AND NEGLECT BASED SOLELY ON A FINDING OF DRUG USE  
BY A PREGNANT WOMAN; REQUIRING REFERRAL OF A DRUG-EXPOSED  
INFANT AND THE INFANT'S RELATIVES, GUARDIANS OR CARETAKERS TO A  
PLAN OF CARE; REQUIRING SHARING OF CERTAIN DATA; REQUIRING THE  
CHILDREN, YOUTH AND FAMILIES DEPARTMENT TO WORK WITH VARIOUS  
STAKEHOLDERS TO CREATE GUIDELINES AND TRAINING MATERIALS FOR  
THE CREATION OF PLANS OF CARE; REQUIRING MEDICAL ASSISTANCE  
PLANS TO ESTABLISH A PROCESS FOR CREATION AND IMPLEMENTATION OF  
PLANS OF CARE.

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:

.213450.5

underscored material = new  
[bracketed material] = delete

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

2 A. "adult" means a person who is eighteen years of  
3 age or older;

4 B. "child" means a person who is less than eighteen  
5 years old;

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

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

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

18 F. "custodian" means an adult with whom the child  
19 lives who is not a parent or guardian of the child;

20 G. "department" means the children, youth and  
21 families department, unless otherwise specified;

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

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

5 J. "guardian" means a person appointed as a  
6 guardian by a court or Indian tribal authority or a person  
7 authorized to care for the child by a parental power of  
8 attorney as permitted by law;

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

14 L. "Indian child" means an unmarried person who is:  
15 (1) less than eighteen years old;  
16 (2) a member of an Indian tribe or is eligible  
17 for membership in an Indian tribe; and  
18 (3) the biological child of a member of an  
19 Indian tribe;

20 M. "Indian child's tribe" means:  
21 (1) the Indian tribe in which an Indian child  
22 is a member or eligible for membership; or  
23 (2) in the case of an Indian child who is a  
24 member or eligible for membership in more than one tribe, the  
25 Indian tribe with which the Indian child has more significant

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1 contacts;

2 N. "Indian tribe" means a federally recognized  
3 Indian tribe, community or group pursuant to 25 U.S.C. Section  
4 1903(1);

5 O. "judge", when used without further  
6 qualification, means the judge of the court;

7 P. "legal custody" means a legal status created by  
8 order of the court or other court of competent jurisdiction or  
9 by operation of statute that vests in a person, department or  
10 agency the right to determine where and with whom a child shall  
11 live; the right and duty to protect, train and discipline the  
12 child and to provide the child with food, shelter, personal  
13 care, education and ordinary and emergency medical care; the  
14 right to consent to major medical, psychiatric, psychological  
15 and surgical treatment and to the administration of legally  
16 prescribed psychotropic medications pursuant to the Children's  
17 Mental Health and Developmental Disabilities Act; and the right  
18 to consent to the child's enlistment in the armed forces of the  
19 United States;

20 Q. "parent" or "parents" includes a biological or  
21 adoptive parent if the biological or adoptive parent has a  
22 constitutionally protected liberty interest in the care and  
23 custody of the child;

24 R. "permanency plan" means a determination by the  
25 court that the child's interest will be served best by:

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- 1 (1) reunification;
- 2 (2) placement for adoption after the parents'
- 3 rights have been relinquished or terminated or after a motion
- 4 has been filed to terminate parental rights;
- 5 (3) placement with a person who will be the
- 6 child's permanent guardian;
- 7 (4) placement in the legal custody of the
- 8 department with the child placed in the home of a fit and
- 9 willing relative; or
- 10 (5) placement in the legal custody of the
- 11 department under a planned permanent living arrangement;

12 S. "person" means an individual or any other form

13 of entity recognized by law;

14 T. "plan of care" means a plan created by a health

15 care professional intended to ensure the safety and well-being

16 of a substance-exposed newborn by addressing the treatment

17 needs of the child and any of the child's parents, relatives,

18 guardians, family members or caregivers;

19 [~~T.~~] U. "preadoptive parent" means a person with

20 whom a child has been placed for adoption;

21 [~~U.~~] V. "protective supervision" means the right to

22 visit the child in the home where the child is residing,

23 inspect the home, transport the child to court-ordered

24 diagnostic examinations and evaluations and obtain information

25 and records concerning the child;

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1           ~~[V.]~~ W. "relative" means a person related to  
2 another person by blood within the fifth degree of  
3 consanguinity or through marriage by the fifth degree of  
4 affinity;

5           ~~[W.]~~ X. "reunification" means either a return of  
6 the child to the parent or to the home from which the child was  
7 removed or a return to the noncustodial parent;

8           ~~[X.]~~ Y. "tribal court" means:

9                   (1) a court established and operated pursuant  
10 to a code or custom of an Indian tribe; or

11                   (2) any administrative body of an Indian tribe  
12 that is vested with judicial authority;

13           ~~[Y.]~~ Z. "tribal court order" means a document  
14 issued by a tribal court that is signed by an appropriate  
15 authority, including a judge, governor or tribal council  
16 member, and that orders an action that is within the tribal  
17 court's jurisdiction; and

18           ~~[Z.]~~ AA. "tribunal" means any judicial forum other  
19 than the court."

20           **SECTION 2.** Section 32A-4-3 NMSA 1978 (being Laws 1993,  
21 Chapter 77, Section 97, as amended) is amended to read:

22           "32A-4-3. DUTY TO REPORT CHILD ABUSE AND CHILD NEGLECT--  
23 RESPONSIBILITY TO INVESTIGATE CHILD ABUSE OR NEGLECT--PENALTY--  
24 NOTIFICATION OF PLAN OF CARE.--

25           A. Every person, including a licensed physician; a

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

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

14 B. A law enforcement agency receiving the report  
15 shall immediately transmit the facts of the report and the  
16 name, address and phone number of the reporter by telephone to  
17 the department and shall transmit the same information in  
18 writing within forty-eight hours. The department shall  
19 immediately transmit the facts of the report and the name,  
20 address and phone number of the reporter by telephone to a  
21 local law enforcement agency and shall transmit the same  
22 information in writing within forty-eight hours. The written  
23 report shall contain the names and addresses of the child and  
24 the child's parents, guardian or custodian, the child's age,  
25 the nature and extent of the child's injuries, including any

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1 evidence of previous injuries, and other information that the  
2 maker of the report believes might be helpful in establishing  
3 the cause of the injuries and the identity of the person  
4 responsible for the injuries. The written report shall be  
5 submitted upon a standardized form agreed to by the law  
6 enforcement agency and the department.

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

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

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

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

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

24           H. A volunteer, contractor or staff of a hospital  
25 or freestanding birthing center shall:

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1                   (1) complete a written plan of care for a  
2 substance-exposed newborn and the child's parents, relatives,  
3 guardians or caretakers as provided for by department rule and  
4 the Children's Code; and

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

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

15                   SECTION 3. A new section of the Children's Code is  
16 enacted to read:

17                   "[NEW MATERIAL] PLAN OF CARE--GUIDELINES--CREATION--DATA  
18 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 and the department of health, shall develop  
23 rules to guide hospitals, birthing centers, medical providers,  
24 medicaid managed care organizations and private insurers in the  
25 care of newborns who exhibit physical, neurological or

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

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

7 (1) participation in the discharge planning  
8 process, including the creation of a written plan of care that  
9 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; and

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

25 (2) definitions and evidence-based screening

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

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

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

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

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

24 (4) identification of appropriate agencies to  
25 be included as supports and services in the plan of care, based

1 on an assessment of the needs of the child and the child's  
2 relatives, parents, guardians or caretakers, performed by a  
3 discharge planner prior to the child's discharge from the  
4 hospital or birthing center, which may include:

- 5 (a) public health agencies;
- 6 (b) maternal and child health agencies;
- 7 (c) home visitation programs;
- 8 (d) substance use disorder prevention  
9 and treatment providers;
- 10 (e) mental health providers;
- 11 (f) public and private children and  
12 youth agencies;
- 13 (g) early intervention and developmental  
14 services;
- 15 (h) courts;
- 16 (i) local education agencies;
- 17 (j) managed care organizations; or
- 18 (k) hospitals and medical providers; and
- 19 (5) engagement of the child's relatives,  
20 parents, guardians or caretakers in order to identify the need  
21 for access to treatment for any substance use disorder or other  
22 physical or behavioral health condition that may impact the  
23 safety, early childhood development and well-being of the  
24 child.

25 C. Reports made pursuant to Paragraph (3) of

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1 Subsection B of this section shall be collected by the  
2 department as distinct and separate from any child abuse report  
3 as captured and held or investigated by the department, such  
4 that the reporting of a plan of care shall not constitute a  
5 report of suspected child abuse and neglect and shall not  
6 initiate investigation by the department or a report to law  
7 enforcement.

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

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

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

23 G. The department shall work in consultation with  
24 the department of health to create and distribute training  
25 materials to support and educate discharge planners or social

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1 workers on the following:

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

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

9 (3) how to assess whether to create a plan of  
10 care when a referral to the department is not required; and

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

13 H. No person shall have a cause of action for any  
14 loss or damage caused by any act or omission resulting from the  
15 implementation of the provisions of Subsection G of this  
16 section or resulting from any training, or lack thereof,  
17 required by Subsection G of this section.

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

21 **SECTION 4.** A new section of the Public Assistance Act,  
22 Section 27-2-12.24 NMSA 1978, is enacted to read:

23 "27-2-12.24. [NEW MATERIAL] MEDICAL ASSISTANCE--PLAN OF  
24 CARE--PARTICIPATION REQUIRED.--

25 A. By January 1, 2020, the secretary shall require

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1 medical assistance plans to establish, in consultation with the  
2 department, hospitals, birthing centers, the children, youth  
3 and families department and the department of health, a process  
4 for the creation and implementation of a plan of care for a  
5 substance-exposed newborn and the relatives, parents, guardians  
6 or caretakers of a substance-exposed newborn as provided for in  
7 the Children's Code.

8           B. As used in this section, "plan of care" means a  
9 plan created by a health care professional pursuant to the  
10 Children's Code that is intended to ensure the safety and well-  
11 being of a substance-exposed newly born child by addressing the  
12 treatment needs of the child and any of the child's parents,  
13 relatives, guardians, family members or caregivers."

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