

HOUSE BILL 434

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

INTRODUCED BY

Christine Trujillo and Gail Chasey

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 CHILDREN; ADDING A BASIC RIGHT FOR CHILDREN;
REVISING GUIDELINES FOR INTERDEPARTMENTAL COLLABORATION;
MANAGING CARE OF CERTAIN NEWBORNS; MONITORING COMPLIANCE WITH
PLANS OF CARE; AMENDING SECTIONS OF THE NMSA 1978 HHC→;
~~MAKING~~←HHC HHC→.←HHC HHC→~~APPROPRIATIONS.~~←HHC

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

SECTION 1. Section 32A-1-16 NMSA 1978 (being Laws 1993,

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Chapter 77, Section 25, as amended) is amended to read:

"32A-1-16. BASIC RIGHTS.--

A. A child subject to the provisions of the Children's Code is entitled to the same basic rights as an adult, except as otherwise provided in the Children's Code.

B. A person afforded rights under the Children's Code shall be advised of those rights at that person's first appearance before the court on a petition under the Children's Code.

C. A child, youth or family subject to the provisions of and afforded rights under the Children's Code is afforded advocacy by and a mechanism for filing complaints with the office of children's and families' rights.

~~[G.]~~ D. An eligible adult retains all of the basic rights of an adult while receiving services pursuant to the fostering connections program."

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

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

~~[A. By January 1, 2020, the department, in consultation with medicaid managed care organizations, private insurers, the office of superintendent of insurance, the human services department and the department of health, shall develop rules to guide hospitals, birthing centers, medical providers,~~

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~~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.]~~

A. State agencies that have a role in supporting the health and well-being of children and families and preventing adverse childhood experiences, including abuse and neglect, including the department, the early childhood education and care department, the department of health, the human services department and the public education department, shall coordinate and collaborate on a regular basis to ensure the following:

(1) sharing of data to improve outcomes and alignment of outcome metrics that include shared accountability and demonstrate measurable progress;

(2) development of screening guidelines and referral pathways for high-risk families to ensure that they are linked to high-quality support and services; and

(3) submission of a report of recommendations and outcomes of the collaboration, submitted to the child welfare innovation center and the secretaries of health, human services, early childhood education and care and public education.

B. By January 1, 2024, the department of health, in

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consultation and collaboration with medicaid managed care organizations, private insurers, the office of superintendent of insurance, the early childhood education and care department, the human services department and the children, youth and families department, shall update rules promulgated pursuant to this section 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. Rules shall include guidelines to hospitals, birthing centers, medical providers, medicaid managed care organizations and private insurers regarding:

(1) participation in the discharge planning process, including the creation of a written plan of 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]~~ shall 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]~~ shall monitor the implementation of the plan of care after discharge,

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if the child is uninsured; and

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

(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;

(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 of health when: 1) a plan of care has been developed; and 2) a family has been referred for a plan of 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~~

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~~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 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 or caregivers identified in a plan of care; and

(d) data collected by managed care organizations identifying service outcomes of each plan of care for use by the public health division of the department of health in epidemiological reports and to support program improvement;

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

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youth agencies;

(g) early intervention and developmental services;

(h) courts;

(i) local education agencies;

(j) managed care organizations; or

(k) hospitals and medical providers;

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(5) engagement of the child's relatives, parents, guardians 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

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H AFC → (6) facilitation of meetings of providers who comprise the multidisciplinary team by means that ensure ongoing and consistent collaboration and coordination. ← H AFC

C. Reports made pursuant to Paragraph (3) of Subsection B of this section shall be collected by the department of health 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 care shall not constitute a report of suspected child abuse and neglect and shall not initiate investigation by the department or a report

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to law enforcement.

D. The department of health 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.

F. Reports made pursuant to the requirements in this section shall not be construed to relieve a person of the 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 shall work in consultation with the department of health and the early childhood education and care department 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

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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 care when a referral to the department is not required; and

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

H. No person shall 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.

J. As used in this section, "managed care organization" means an entity that HHHC→participates in centennial care←HHHC HHHC→is←HHHC under contract with the human services department to assist the state in meeting the requirements established under Section 27-2-12 NMSA 1978."

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

"32A-3A-14. NOTIFICATION TO THE DEPARTMENT H AFC→OF HEALTH←H AFC OF NONCOMPLIANCE WITH A PLAN OF CARE.--

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A. If the parents, relatives, guardians or caretakers of a child released from a hospital or freestanding birthing center pursuant to a plan of care fail to comply with that plan, the department H AFC→of health←H AFC shall be notified and the department H AFC→of health←H AFC H AFC→may←H AFC H AFC→shall←H AFC 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 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 or caretakers decline those services or programs, the department may proceed with an investigation.~~] Compliance with the plan of care shall be determined by the family's care coordinator or comprehensive addiction and recovery act navigator. Noncompliance shall only be reported by a care coordinator or a comprehensive addiction and recovery act navigator when there are concerns that a family member is not able to be reached HHHC→after a reasonable amount of time←HHHC , and the family has failed to engage referred services that are critical to the immediate health and safety of the infant, including medication-assisted treatment for the primary caregiver, basic needs provisions or medical treatment

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for the infant. H AFC → ~~HHHC~~ → ~~If the family has failed to engage in services, the state shall conduct a family assessment.~~ ← HHHC ← H AFC Families shall not be reported for noncompliance under this section if they are unable to reasonably access needed services so long as there are no concerns about the infant's well-being or if it can be confirmed that the family is accessing substantially similar services from other providers.

B. As used in this section:

(1) "comprehensive addiction and recovery act navigator" means a person with the department ~~HHHC~~ → ~~and a person with~~ ← HHHC HHHC →, the early childhood education and care department or ← HHHC the department of health who helps assure compliance with state law and accept plans of care and notifications of substance- exposed infants and provides technical assistance and navigation to the entities and individuals involved in plans of care; and

(2) "family assessment" means a comprehensive assessment prepared by the department H AFC → of health ← H AFC at the time the department H AFC → of health ← H AFC receives notification of failure to comply with the plan of care to determine the needs of a child and the child's parents, relatives, guardians or caretakers, including an assessment of the likelihood of:

[(+)] (a) imminent danger to a child's

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well-being;

[~~(2)~~] (b) the child becoming an abused child or a neglected child; and

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

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

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

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

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

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country.

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

C. The recipient of a report under Subsection A of this section shall take immediate steps to ensure prompt investigation of the report. The investigation shall ensure that immediate steps are taken to protect the health or welfare of the alleged abused or neglected child, as well as that of any other child under the same care who may be in danger of

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abuse or neglect. A local law enforcement officer trained in the investigation of child abuse and neglect is responsible for investigating reports of alleged child abuse or neglect at schools, daycare facilities or child care facilities.

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

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

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

G. A finding that a pregnant woman is using or abusing drugs made pursuant to an interview, self-report, clinical observation or routine toxicology screen shall not

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alone form a sufficient basis to report child abuse or neglect to the department pursuant to Subsection A of this section. A volunteer, contractor or staff of a hospital or freestanding birthing center shall not make a report based solely on that finding and shall make a notification pursuant to Subsection H of this section. Nothing in this subsection shall be construed to prevent a person from reporting to the department a reasonable suspicion that a child is an abused or neglected child based on other criteria as defined by Section 32A-4-2 NMSA 1978, or a combination of criteria that includes a finding pursuant to this subsection.

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

(1) complete a written plan of care for a substance-exposed newborn as provided for by department of health rule and the Children's Code; and

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

I. As used in this section, "notification" means informing the department of health that a substance-exposed newborn was born and providing a copy of the plan of care that was created for the child; provided that notification shall comply with federal guidelines and shall not constitute a

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report of child abuse or neglect.

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

HHHC→~~SECTION 5. APPROPRIATION.--~~

~~A. One million five hundred forty-nine thousand one hundred four dollars (\$1,549,104) is appropriated from the general fund to the department of health for expenditure in fiscal year 2024 to sustain the implementation of the Family Services Act and plans of care related to the federal Comprehensive Addiction and Recovery Act of 2016. Any unexpended or unencumbered balance remaining at the end of fiscal year 2024 shall revert to the general fund.~~

~~B. One million dollars (\$1,000,000) is appropriated from the general fund to the early childhood education and care department for expenditure in fiscal year 2024 to sustain the implementation of the Family Services Act and plans of care related to the federal Comprehensive Addiction and Recovery Act of 2016. Any unexpended or unencumbered balance remaining at the end of fiscal year 2024 shall revert to the general fund.~~←HHHC

SECTION HHHC→~~6.~~←HHHC HHHC→~~5.~~←HHHC EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.