FIFTY-SEVENTH LEGISLATURE
FIRST SESSION

PROPOSED AMENDMENT DIRECTED TO A COMMITTEE

March 19, 2025

Madam Chair:

I propose to the HOUSE JUDICIARY COMMITTEE the following amendments to

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE RULES COMMITTEE SUBSTITUTE FOR
SENATE BILL 42

1. On page 1, line 13, after the semicolon, insert "REQUIRING THE USE OF STATE-ISSUED ELECTRONIC DEVICES WHEN PERFORMING DEPARTMENTAL DUTIES; REQUIRING THE BACKUP AND RETENTION OF ELECTRONIC RECORDS;".

2. On page 1, line 16, strike "DEPARTMENT OF HEALTH" and insert in lieu thereof "HEALTH CARE AUTHORITY".

3. On page 2, line 9, after "REPORTS", strike the remainder of the line and strike line 10 up to the period.

4. 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 only use 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. An employee's failure to comply with the provisions of this subsection may constitute grounds for immediate termination of 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 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."".

5. On page 5, strike lines 9 through 14.

6. Reletter the succeeding subsections accordingly.

7. On page 11, strike lines 13 through 17.

8. Reletter the succeeding subsections accordingly.

9. On page 12, strike lines 10 through 21.

10. Reletter the succeeding subsections accordingly.

11. On page 13, strike lines 11 through 13.

12. Reletter the succeeding subsections accordingly.

13. 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 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~~] or a care coordinator employed by or contracted with the health care authority; 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 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;

(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;

(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; and

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

[~~(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 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 newborn's name;

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

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

(d) the names of the parents, relatives, guardians, custodians or caretakers who will be living with the substance-exposed newborn;

[~~(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 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 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:

"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

(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."".

14. On page 31, strike line 25, strike pages 32 through 34 and on page 35, strike lines 1 through 21 and insert in lieu thereof:

"**SECTION 8.** 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 SAFE 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 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 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 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 or clinic that provides prenatal or perinatal care shall:

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

(2) provide notification to the [~~department~~] health care authority. 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~~] health care authority that a substance-exposed newborn was born and providing a copy of the plan of safe care that

was created for the child; provided that notification shall comply with federal guidelines and shall not constitute a report of child abuse or neglect. The health care authority shall be responsible for ensuring compliance with federal reporting requirements related to plans of safe care.

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

15. On page 58, line 24, strike "13 through 16" and insert in lieu thereof "14 through 17".

16. On page 66, strike lines 5 through 13.

17. Renumber sections to correspond to these amendments.

Respectfully submitted,

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