

SENATE BILL 38

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

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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 GOVERNMENT ORGANIZATION; CLARIFYING STATUTORY PROVISIONS PERTAINING TO CHILD CARE FACILITIES; CLARIFYING THE EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT'S RESPONSIBILITIES FOR INFANTS, TODDLERS AND CHILDREN WITH DEVELOPMENTAL DELAYS; AUTHORIZING THE EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT TO PERFORM CRIMINAL HISTORY INVESTIGATIONS FOR CHILD CARE FACILITY LICENSURE AND OTHER PURPOSES; REQUIRING CONFIDENTIALITY; INCLUDING THE EARLY CHILDHOOD EDUCATION AND

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CARE DEPARTMENT IN THE MEMBERSHIP OF RELEVANT BOARDS; PROVIDING A PENALTY.

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

SECTION 1. Section 9-7-6.4 NMSA 1978 (being Laws 2004, Chapter 46, Section 8, as amended) is amended to read:

"9-7-6.4. INTERAGENCY BEHAVIORAL HEALTH PURCHASING COLLABORATIVE.--

A. [~~There is created~~] The "interagency behavioral health purchasing collaborative" is created, consisting of the secretaries of aging and long-term services; Indian affairs; human services; health; corrections; children, youth and families; early childhood education and care; finance and administration; workforce solutions; public education; and transportation; the directors of the administrative office of the courts; the New Mexico mortgage finance authority; the governor's commission on disability; the developmental disabilities [~~planning~~] council; the instructional support and vocational [~~rehabilitation~~] education division of the public education department; and the New Mexico health policy commission; and the governor's health policy coordinator, or their designees. The collaborative shall be chaired by the secretary of human services with the respective secretaries of health and children, youth and families alternating annually as co-chairs.

B. The collaborative shall meet regularly and at .221495.2SAAIC February 9, 2022 (2:15pm)

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the call of either co-chair and shall:

(1) identify behavioral health needs statewide, with an emphasis on that hiatus between needs and services set forth in the department of health's gap analysis and in ongoing needs assessments, and develop a master plan for statewide delivery of services;

(2) give special attention to regional differences, including cultural, rural, frontier, urban and border issues;

(3) inventory all expenditures for behavioral health, including mental health and substance abuse;

(4) plan, design and direct a statewide behavioral health system, ensuring both availability of services and efficient use of all behavioral health funding, taking into consideration funding appropriated to specific affected departments; and

(5) contract for operation of one or more behavioral health entities to ensure availability of services throughout the state.

C. The plan for delivery of behavioral health services shall include specific service plans to address the needs of infants, children, adolescents, adults and seniors, as well as to address workforce development and retention and quality improvement issues. The plan shall be revised every two years and shall be adopted by the department of health as part of the statewide health plan.

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D. The plan shall take the following principles into consideration, to the extent practicable and within available resources:

(1) services should be individually centered and family-focused based on principles of individual capacity for recovery and resiliency;

(2) services should be delivered in a culturally responsive manner in a home- or community-based setting, where possible;

(3) services should be delivered in the least restrictive and most appropriate manner;

(4) individualized service planning and case management should take into consideration individual and family circumstances, abilities and strengths and be accomplished in consultation with appropriate family, caregivers and other persons critical to the individual's life and well-being;

(5) services should be coordinated, accessible, accountable and of high quality;

(6) services should be directed by the individual or family served to the extent possible;

(7) services may be consumer- or family-provided, as defined by the collaborative;

(8) services should include behavioral health promotion, prevention, early intervention, treatment and community support; and

(9) services should consider regional

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differences, including cultural, rural, frontier, urban and border issues.

E. The collaborative shall seek and consider suggestions of Native American representatives from Indian nations, tribes and pueblos and the urban Indian population, located wholly or partially within New Mexico, in the development of the plan for delivery of behavioral health services.

F. Pursuant to the State Rules Act, the collaborative shall adopt rules through the human services department for:

(1) standards of delivery for behavioral health services provided through contracted behavioral health entities, including:

- (a) quality management and improvement;
- (b) performance measures;
- (c) accessibility and availability of services;
- (d) utilization management;
- (e) credentialing of providers;
- (f) rights and responsibilities of consumers and providers;
- (g) clinical evaluation and treatment and supporting documentation; and
- (h) confidentiality of consumer records;

and

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(2) approval of contracts and contract amendments by the collaborative, including public notice of the proposed final contract.

G. The collaborative shall, through the human services department, submit a separately identifiable consolidated behavioral health budget request. The consolidated behavioral health budget request shall account for requested funding for the behavioral health services program at the human services department and any other requested funding for behavioral health services from agencies identified in Subsection A of this section that will be used pursuant to Paragraph (5) of Subsection B of this section. Any contract proposed, negotiated or entered into by the collaborative is subject to the provisions of the Procurement Code.

H. The collaborative shall, with the consent of the governor, appoint a "director of the collaborative". The director is responsible for the coordination of day-to-day activities of the collaborative, including the coordination of staff from the collaborative member agencies.

I. The collaborative shall provide a quarterly report to the legislative finance committee on performance outcome measures. The collaborative shall submit an annual report to the legislative finance committee and the interim legislative health and human services committee that provides information on:

(1) the collaborative's progress toward

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achieving its strategic plans and goals;

(2) the collaborative's performance information, including contractors and providers; and

(3) the number of people receiving services, the most frequently treated diagnoses, expenditures by type of service and other aggregate claims data relating to services rendered and program operations."

SECTION 2. Section 9-29-1 NMSA 1978 (being Laws 2019, Chapter 48, Section 1) is amended to read:

"9-29-1. SHORT TITLE.--~~[Sections 1 through 12 of this act]~~ Chapter 9, Article 29 NMSA 1978 may be cited as the "Early Childhood Education and Care Department Act"."

SECTION 3. Section 9-29-8 NMSA 1978 (being Laws 2019, Chapter 48, Section 8) is amended to read:

"9-29-8. DEPARTMENT--DUTIES.--The department shall:

A. develop priorities for department programs and the use of department resources based on state policy, national best-practice standards, evidence-based interventions and practices and local considerations and priorities;

B. coordinate and align an early childhood education and care system to:

(1) include the family, infant, toddler program, child care, pre-kindergarten, early pre-kindergarten, home visitation, early head start, head start, early childhood special education and early intervention and family support; and

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(2) provide New Mexico families with consistent access to appropriate early childhood care and education services;

C. administer the child care assistance, child care facility licensing and registered child care home programs;

D. develop standards for the department-sponsored delivery of early childhood programs;

E. cooperate with other state agencies that affect children to develop common contracting procedures and service definitions and a uniform system of access to early childhood programs;

F. develop reimbursement criteria for child care [~~centers~~] facilities and home providers licensed by the department;

G. conduct biennial assessments of child care or early learning service gaps and needs and establish plans to address those service gaps and needs;

H. conduct pre-employment fingerprint-based national criminal background checks on all department employees, including those whose employment by the department arises as a result of the transfer provisions of [~~Section 34 of this 2019 act~~] Laws 2019, Chapter 48, Section 34, and on staff members and volunteers of department-contracted providers whose jobs involve direct contact with children participating in programs delivered by the department or those providers;

I. provide a system of seamless transition from

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prenatal to early childhood programs to kindergarten;

J. provide consumer education and accessibility to early childhood care and education programs;

K. advance quality early childhood education and care programs to support the development of children to prepare them for success in school;

L. ensure effective collaboration with state and local child welfare programs and early childhood health and behavioral health programs;

M. develop and manage effective data systems to support the necessary functions of a coordinated program;

N. develop an aligned system of workforce development for early childhood professionals; and

O. promote culturally and linguistically appropriate programming and provide equal education and care opportunities to non-English speaking families."

**SECTION 4.** A new section of the Early Childhood Education and Care Department Act is enacted to read:

"[NEW MATERIAL] CRIMINAL HISTORY INVESTIGATIONS--  
PROCEDURES--CONFIDENTIALITY--VIOLATION--PENALTY.--

A. To investigate the suitability of an applicant for licensure or registration as a child care facility or child care home programs or for employment or volunteering at a licensed child care facility or registered child care home program, including any facility or program that has primary custody of infants, toddlers and children for twenty hours or

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more per week, the department shall have access to criminal history records information furnished by the department of public safety and the federal bureau of investigation, subject to any restrictions imposed by federal law.

B. An applicant for a license or registration or for employment or volunteering shall undergo a state and national criminal history records check, and the applicant shall submit an electronic set of fingerprints to the department of public safety for that purpose. The department of public safety shall conduct a check of state criminal history records and forward the fingerprints to the federal bureau of investigation for a national criminal history records check to determine the existence and content of records of convictions and arrests in this state or other law enforcement jurisdictions and to generate a criminal history records check in accordance with rules of the department of public safety and regulations of the federal bureau of investigation. The department of public safety shall review the information obtained from the criminal history records check and shall compile and provide that information to the early childhood education and care department. The early childhood education and care department shall use the information to investigate and determine whether an applicant is qualified to hold a license or an employment or volunteer position. **SJC→The department shall promulgate rules for the investigation and determination of qualifications.**←SJC

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C. Criminal history information obtained by the department is confidential and shall be used only for the purpose of determining the suitability for licensure, employment or volunteer service and shall not be disclosed to anyone other than public employees directly involved in the decision affecting the applicant.

D. A person who releases or discloses criminal history records or information contained in those records in violation of the provisions of this section is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978."

SECTION 5. Section 24-1-2 NMSA 1978 (being Laws 1973, Chapter 359, Section 2, as amended) is amended to read:

"24-1-2. DEFINITIONS.--As used in the Public Health Act:

A. "condition of public health importance" means an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community;

B. "crisis triage center" means a health facility that:

(1) is licensed by the department of health;

and

(2) provides stabilization of behavioral health crises and may include residential and nonresidential stabilization;

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C. "department" means:

- (1) the department of health; or
- (2) the children, youth and families

department as to [~~child care centers~~] residential treatment centers that serve persons up to twenty-one years of age, community mental health centers that serve only persons up to twenty-one years of age, day treatment centers that serve persons up to twenty-one years of age, shelter care homes and those outpatient facilities that are also community-based behavioral health facilities serving only persons up to twenty-one years of age;

D. "director" means the secretary;

E. "health care provider" means [~~an individual~~] a person licensed to provide health care in the ordinary course of business, except as otherwise defined in the Public Health Act;

F. "health facility" means a public hospital, profit or nonprofit private hospital, general or special hospital, outpatient facility, crisis triage center, freestanding birth center, adult daycare facility, nursing home, intermediate care facility, assisted living facility, boarding home not under the control of an institution of higher learning, child care [~~center~~] facility, shelter care home, diagnostic and treatment center, rehabilitation center, infirmary, community mental health center that serves both children and adults or adults only, residential treatment

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center that serves persons up to twenty-one years of age, community mental health center that serves only persons up to twenty-one years of age and day treatment center that serves persons up to twenty-one years of age or a health service organization operating as a freestanding hospice or a home health agency. The designation of these entities as health facilities is only for the purposes of definition in the Public Health Act and does not imply that a freestanding hospice or a home health agency is considered a health facility for the purposes of other provisions of state or federal laws. "Health facility" also includes those facilities that, by federal regulation, must be licensed by the state to obtain or maintain full or partial, permanent or temporary federal funding. It does not include the offices and treatment rooms of licensed private practitioners;

G. "screening" means a preliminary procedure, including a test or examination, that:

- (1) may require further investigation; and
- (2) can identify individuals with unrecognized health risk factors or asymptomatic disease conditions in populations;

H. "secretary" means:

- (1) the secretary of health; [øø]
- (2) the secretary of children, youth and families as to [child care centers] residential treatment centers that serve persons up to twenty-one years of age,

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community mental health centers that serve only persons up to twenty-one years of age, day treatment centers that serve persons up to twenty-one years of age, shelter care homes and those outpatient facilities that are also community-based behavioral health facilities serving only persons up to twenty-one years of age; or

(3) the secretary of early childhood education and care for child care facilities; and

I. "test" means any diagnostic or investigative analysis or medical procedure that determines the presence of, absence of or exposure to a condition of public health importance or its precursor in an individual."

SECTION 6. Section 28-10-1 NMSA 1978 (being Laws 1973, Chapter 349, Section 1, as amended) is amended to read:

"28-10-1. GOVERNOR'S COMMISSION ON DISABILITY.--

A. [~~There is created~~] The "governor's commission on disability" is created, consisting of [~~fifteen~~] sixteen members, nine of whom shall be appointed by the governor. The [~~six~~] seven remaining members shall be the director of the vocational rehabilitation division of the public education department, the secretary of [~~labor~~] workforce solutions or the secretary's designee, the director of the behavioral health services division of the human services department, the secretary of children, youth and families or the secretary's designee, the secretary of early childhood education and care or the secretary's designee, the secretary of aging and long-

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term services or the secretary's designee and the secretary of human services or the secretary's designee. Initially, three members shall be appointed for terms ending December 31, 1978, three members for terms ending December 31, 1980 and three members for terms ending December 31, 1982. Thereafter, appointments shall be for six years expiring on December 31 of even-numbered years. Appointed members shall be appointed from different geographic areas of the state and from the major disability services in the state. Appointed members shall include ~~[individuals]~~ persons with disabilities, representatives of government and private enterprise, parents or guardians of ~~[individuals]~~ persons with disabilities and professionals in, or those who are interested in, service for ~~[individuals]~~ persons with disabilities. Not more than five of the members appointed by the governor shall be of the same political party.

B. A majority of the members of the commission constitutes a quorum for the transaction of business. The commission shall meet at least twice a year and shall annually elect a chair and a vice chair.

C. The commission shall be primarily concerned with those ~~[individuals]~~ persons with disabilities who have a condition that, regardless of its physical or mental origin, constitutes a substantial occupational disadvantage."

SECTION 7. Section 28-16A-4 NMSA 1978 (being Laws 1993, Chapter 50, Section 4, as amended) is amended to read:

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"28-16A-4. DEVELOPMENTAL DISABILITIES COUNCIL--CREATION--  
MEMBERSHIP--TERMS.--

A. The "developmental disabilities council" is created in accordance with the federal Developmental Disabilities Assistance and Bill of Rights Act. The council shall be an adjunct agency as provided in the Executive Reorganization Act.

B. The council shall consist of no fewer than [~~twenty-five~~] twenty-six members, at least sixty percent of whom shall be:

- (1) [~~individuals~~] persons with developmental disabilities;
- (2) parents or legal guardians of children with developmental disabilities; or
- (3) immediate relatives or guardians of adults with mentally impairing developmental disabilities who cannot advocate for themselves.

C. Of the sixty percent of members described in Subsection B of this section, one-third shall be [~~individuals~~] persons with developmental disabilities, one-third shall be members described in Paragraphs (2) and (3) of Subsection B of this section and one-third shall be a combination of members described in Subsection B of this section. At least one member described in Subsection B of this section shall be an immediate relative or guardian of [~~an individual~~] a person who resides or previously resided in an institution or shall be [~~an~~

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~~individual]~~ a person with a developmental disability who resides or previously resided in an institution. No member of the council shall be an employee, or someone who manages employees, of a state agency that receives funds to provide developmental disabilities supports and services.

D. The council shall also include:

- (1) the secretary of health, or the secretary's designee;
- (2) the secretary of human services, or the secretary's designee;
- (3) the secretary of children, youth and families, or the secretary's designee;
- (4) the secretary of early childhood education and care SJC→, or the secretay's designee←SJC;

~~(4)~~ (5) the secretary of aging and long-term services, or the secretary's designee;

~~(5)~~ (6) the secretary of public education, or the secretary's designee;

~~(6)~~ (7) the director of the vocational rehabilitation division of the public education department, or the director's designee;

~~(7)~~ (8) the director of the state protection and advocacy system established pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act of 1990, or the director's designee;

~~(8)~~ (9) the director of an entity within a

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state institution of higher education designated as a university center for excellence in developmental disabilities education, research and service; and

[~~(9)~~] (10) at all times, representatives of local and nongovernmental agencies and private nonprofit groups concerned with services for ~~[individuals]~~ persons with developmental disabilities in New Mexico.

E. The governor shall select the members of the council for appointment pursuant to Subsection B and ~~[Paragraph]~~ Paragraphs (9) and (10) of Subsection D of this section after soliciting recommendations from organizations representing a broad range of ~~[individuals]~~ persons with developmental disabilities and ~~[individuals]~~ other persons interested in ~~[individuals]~~ persons with developmental disabilities. The council may, at the initiative of the council or at the request of the governor, coordinate council and public input to the governor regarding all recommendations.

F. The membership of the council shall be geographically representative of the state and reflect the diversity of the state with respect to race and ethnicity.

G. Members, except for ex-officio members, shall be appointed by the governor for terms of three years.

H. The governor shall provide for rotation of the membership of the council. These provisions shall allow members to continue to serve on the council until those members' successors are appointed and qualified.

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I. The council shall notify the governor regarding membership requirements of the council and shall notify the governor when vacancies on the council remain unfilled for a significant period of time.

J. Council members shall recuse themselves from any discussion of grants or contracts for which such members' departments, agencies or programs are grantees, contractors or applicants. The council shall ensure that no council member casts a vote on any matter that would provide direct financial benefit to the member or otherwise give the appearance of a conflict of interest."

SECTION 8. Section 28-16A-6 NMSA 1978 (being Laws 1993, Chapter 50, Section 6, as amended) is amended to read:

"28-16A-6. ELIGIBILITY.--

A. For purposes of eligibility for support and services, "developmental disability" means a severe chronic disability of [~~an individual~~] a person, which disability:

(1) is attributable to a mental or physical impairment, including the result from trauma to the brain, or combination of mental and physical impairments;

(2) is manifested before the person reaches the age of twenty-two years;

(3) is expected to continue indefinitely;

(4) results in substantial functional limitations in three or more of the following areas of major life activity:

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- (a) self-care;
- (b) receptive and expressive language;
- (c) learning;
- (d) mobility;
- (e) self-direction;
- (f) capacity for independent living; and
- (g) economic self-sufficiency; and

(5) reflects the person's need for a combination and sequence of special, interdisciplinary or generic care treatment or other support and services that are of [~~life-long~~] lifelong or extended duration and are individually planned and coordinated.

B. A child, from birth through two years of age, who is at risk for or who has a developmental delay as defined by rules of the early childhood education and care department is eligible for early intervention services.

C. [~~An individual~~] A person who is eligible for developmental disability supports and services based on any previous definition of developmental disability used by the state and was receiving services on June 15, 1993 shall remain eligible for developmental disability supports and services. However, a child, from birth through age two, who is determined to be at risk for or who has a developmental delay shall be eligible for early intervention services only, unless the child meets the criteria set forth in Subsection A of this section."

SECTION 9. Section 28-16A-8 NMSA 1978 (being Laws 1993,

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Chapter 50, Section 8, as amended) is amended to read:

"28-16A-8. REPORTING ON COMMUNITY SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES.--The department of health, the human services department, the public education department, the vocational rehabilitation division of the public education department, the children, youth and families department, the early childhood education and care department, the New Mexico school for the blind and visually impaired and the New Mexico school for the deaf shall provide to the council, on an annual basis, information and data with respect to the actual or estimated number of ~~[individuals]~~ persons with developmental disabilities served by the agency, the type of services provided, any major changes in policies adopted in the previous year or anticipated in the coming year that have had or are expected to have a beneficial or deleterious effect on persons with developmental disabilities and any gaps in eligibility or services that pose a barrier to the provision of services needed by persons with developmental disabilities."

SECTION 10. Section 28-16A-9 NMSA 1978 (being Laws 1993, Chapter 50, Section 9, as amended) is amended to read:

"28-16A-9. INFORMATION AND REFERRAL SYSTEM--COORDINATION AND CONTINUATION.--In order to coordinate information and referral services and eliminate the duplication of effort, the council shall provide information and referral services for persons with disabilities, their families, providers of support and services and local and state agencies, including:

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- A. the human services department;
- B. the department of health;
- C. the public education department and its vocational rehabilitation division;
- D. the New Mexico school for the deaf;
- E. the New Mexico school for the blind and visually impaired;
- F. the Carrie Tingley crippled children's hospital;
- [and]
- G. the children, youth and families department; and
- H. the early childhood education and care department."

SECTION 11. Section 28-16A-13 NMSA 1978 (being Laws 1993, Chapter 50, Section 13, as amended) is amended to read:

"28-16A-13. AUTHORIZATION FOR PROVIDING SUPPORT AND SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES.--

A. Subject to the availability of appropriations provided expressly for this purpose, the department may:

(1) acquire, provide or coordinate support and services for persons with developmental disabilities;

(2) enter into contracts and provider agreements with agencies and [~~individuals~~] persons capable of providing support and services to persons with developmental disabilities; and

(3) establish advisory councils and task forces as necessary to guide the development and review of

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support and services to persons with developmental disabilities.

B. Support and services shall be provided based on individual support and service plans developed by an interdisciplinary team. The team is responsible for collectively evaluating ~~the~~ a child's or adult's needs and developing an individual support and service plan to meet the needs; provided that the early childhood education and care department shall be responsible for the team that is evaluating a child for family, infant, toddler program services.

C. The department or, for children eligible for family, infant, toddler program services, the early childhood education and care department shall:

(1) solicit the involvement of consumers, providers, parents, professional organizations and other governmental organizations prior to the adoption or revision of ~~[any policies or regulations]~~ rules concerning the provision of support, services, standards or funding systems. Participants shall be selected in a manner that reflects geographical, cultural, organizational and professional representation across the state;

(2) develop ~~[policies, procedures]~~ rules, ~~[and regulations]~~ including policies and procedures that, to the extent possible, will promote uniformity in reimbursement and quality assurance systems regardless of the source of funding; and

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(3) convene and maintain a family, infant, toddler [~~inter-agency~~] interagency coordinating council and a statewide adult support and services task force that shall, at a minimum, address quality assurance."

SECTION 12. Section 28-16A-18 NMSA 1978 (being Laws 1993, Chapter 50, Section 18, as amended) is amended to read:

"28-16A-18. DEVELOPMENTAL DISABILITIES EARLY CHILDHOOD EVALUATION SYSTEM.--The state shall have a timely, comprehensive, multidisciplinary system for evaluating infants, toddlers and preschool-age children suspected of having developmental delays. Diagnostic evaluations for infants and toddlers shall address family service needs and shall include training capabilities to educate community providers and parents in the understanding and application of the evaluations. This diagnostic evaluation system shall be jointly provided through a coordinated system by the children's medical services bureau of the public health division or the developmental disabilities supports division of the department, the early childhood education and care department, the university of New Mexico's center for development and disability and the public education department."

SECTION 13. Section 28-16A-19 NMSA 1978 (being Laws 2003, Chapter 323, Section 1, as amended) is amended to read:

"28-16A-19. INFORMATION AND REFERRAL TASK FORCE CREATION.--~~[There is created an]~~ The "information and referral task force" [~~located~~] is created in the council to develop a



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statewide, comprehensive "211" information and referral plan for use as a telephone dialing code for access to health and human services. The plan shall include a tariff structure based on existing agreements, a common taxonomy of terms, coordination between public and private systems and standardized statewide training and exploration of a centralized information repository. The task force shall include representation from the department of health; the human services department; the children, youth and families department; the early childhood education and care department; the workforce solutions department; the aging and long-term services department; the internet long-term care link program; the governor's commission on disability; the New Mexico commission for the blind; the commission for deaf and hard-of-hearing persons; a statewide organization that raises money for health and human service purposes; and other interested parties."

SECTION 14. Section 32A-15-3 NMSA 1978 (being Laws 1985, Chapter 103, Section 3 and Laws 1985, Chapter 140, Section 3, as amended) is amended to read:

"32A-15-3. CRIMINAL HISTORY RECORDS CHECK--BACKGROUND CHECKS.--

A. [~~Nationwide~~] State and national criminal history [~~record~~] records checks shall be conducted on all operators, staff, [~~and~~] employees and volunteers and prospective operators, staff, [~~and~~] employees and volunteers of child care

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facilities, including every facility or program that has primary custody of children for twenty hours or more per week, and juvenile detention, correction or treatment facilities.

[~~Nationwide~~] State and national criminal history [~~record~~] records checks shall also be conducted on all prospective foster or adoptive parents and other adult relatives and non-relatives residing in the prospective foster or adoptive parent's household. The objective of conducting the [~~record~~] records checks is to protect the children involved and promote the children's safety and welfare while receiving service from the facilities and programs.

~~B. The department shall fingerprint all operators, staff and employees and prospective operators, staff and employees of child care facilities and all prospective foster or adoptive parents and other adult relatives and non-relatives residing in the prospective foster or adoptive parent's household. The department shall conduct a background check of all operators, staff and employees and prospective operators, staff and employees of child care facilities and all prospective foster or adoptive parents and other adult relatives and non-relatives residing in the prospective foster or adoptive parent's household and shall submit a fingerprint card for those individuals to the department of public safety and the federal bureau of investigation for this purpose.~~

~~C. Criminal history records obtained by the department pursuant to the provisions of this section are~~

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~~confidential. The department is authorized to use criminal history records obtained from the federal bureau of investigation to conduct background checks on prospective operators, staff and employees of child care facilities and foster parents.]~~

B. The early childhood education and care department shall have access to criminal history information on prospective and current operators, staff, employees and volunteers of child care facilities, including every facility or program under the department's authority that has primary custody of infants, toddlers and children for twenty hours or more per week.

C. The children, youth and families department shall have access to criminal history information on:

(1) prospective and current operators, staff, employees and volunteers of juvenile detention, correction or treatment facilities or a facility or program under the department's authority that has primary custody of children for twenty hours or more per week; and

(2) all prospective foster or adoptive parents or other adult relatives and non-relatives residing in a prospective foster or adoptive parent's household.

D. For purposes of investigating the suitability of persons enumerated in Subsections B and C of this section, the early childhood education and care department or the children, youth and families department, as applicable, shall have access

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to criminal history records information furnished by the department of public safety and the federal bureau of investigation, subject to any restrictions imposed by federal law. As directed by the applicable department, a person enumerated in Subsection A of this section shall submit a set of electronic fingerprints to the department of public safety. The department of public safety shall conduct a check of state criminal history records and forward the fingerprints to the federal bureau of investigation for a national criminal history records check to determine the existence and content of records of convictions and arrests in this state or other law enforcement jurisdictions and to generate a criminal history records check in accordance with rules of the department and regulations of the federal bureau of investigation. The department of public safety shall review the information returned from the criminal history records check and compile and disseminate a response to the appropriate department, which shall use the information to investigate and determine whether a person is qualified to provide care for a child or be a foster or adoptive parent.

[D.] E. Criminal history records obtained pursuant to the provisions of this section are confidential and are not a public record for purposes of the Inspection of Public Records Act and shall not be used for any purpose other than [conducting background checks] determining suitability for licensure, employment, volunteer service, fostering or

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adoption. Criminal history records obtained pursuant to the provisions of this section and the information contained in those records shall not be released or disclosed to any other person or agency, except pursuant to a court order or with the written consent of the person who is the subject of the records.

[E-] F. A person who releases or discloses criminal history records or information contained in those records in violation of the provisions of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978."

**SECTION 15. EFFECTIVE DATE.**--The effective date of the provisions of this act is July 1, 2022.