

HOUSE BILL 434

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

INTRODUCED BY

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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; MAKING
APPROPRIATIONS.

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

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

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1 appearance before the court on a petition under the Children's
2 Code.

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

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

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

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

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

24 A. State agencies that have a role in supporting
25 the health and well-being of children and families and

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1 preventing adverse childhood experiences, including abuse and
2 neglect, including the department, the early childhood
3 education and care department, the department of health, the
4 human services department and the public education department,
5 shall coordinate and collaborate on a regular basis to ensure
6 the following:

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

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

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

18 B. By January 1, 2024, the department of health, in
19 consultation and collaboration with medicaid managed care
20 organizations, private insurers, the office of superintendent
21 of insurance, the early childhood education and care
22 department, the human services department and the children,
23 youth and families department, shall update rules promulgated
24 pursuant to this section to guide hospitals, birthing centers,
25 medical providers, medicaid managed care organizations and

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1 private insurers in the care of newborns who exhibit physical,
2 neurological or behavioral symptoms consistent with prenatal
3 drug exposure, withdrawal symptoms from prenatal drug exposure
4 or fetal alcohol spectrum disorder. Rules shall include
5 guidelines to hospitals, birthing centers, medical providers,
6 medicaid managed care organizations and private insurers
7 regarding:

8 (1) participation in the discharge planning
9 process, including the creation of a written plan of care that
10 shall be sent to:

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

12 (b) a medicaid managed care organization
13 insurance plan care coordinator who ~~[will]~~ shall monitor the
14 implementation of the plan of care after discharge, if the
15 child is insured, or to a care coordinator in the children's
16 medical services of the family health bureau of the public
17 health division of the department of health who ~~[will]~~ shall
18 monitor the implementation of the plan of care after discharge,
19 if the child is uninsured; and

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

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

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

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

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

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

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

6 (4) identification of appropriate agencies to
7 be included as supports and services in the plan of care, based
8 on an assessment of the needs of the child and the child's
9 relatives, parents, guardians or caretakers, performed by a
10 discharge planner prior to the child's discharge from the
11 hospital or birthing center, which may include:

- 12 (a) public health agencies;
- 13 (b) maternal and child health agencies;
- 14 (c) home visitation programs;
- 15 (d) substance use disorder prevention
16 and treatment providers;
- 17 (e) mental health providers;
- 18 (f) public and private children and
19 youth agencies;
- 20 (g) early intervention and developmental
21 services;
- 22 (h) courts;
- 23 (i) local education agencies;
- 24 (j) managed care organizations; or
- 25 (k) hospitals and medical providers; and

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1 (5) engagement of the child's relatives,
2 parents, guardians or caretakers in order to identify the need
3 for access to treatment for any substance use disorder or other
4 physical or behavioral health condition that may impact the
5 safety, early childhood development and well-being of the
6 child.

7 C. Reports made pursuant to Paragraph (3) of
8 Subsection B of this section shall be collected by the
9 department of health as distinct and separate from any child
10 abuse report [~~as captured and held or investigated by the~~
11 ~~department~~] such that the reporting of a plan of care shall not
12 constitute a report of suspected child abuse and neglect and
13 shall not initiate investigation by the department or a report
14 to law enforcement.

15 D. The department of health shall summarize and
16 report data received pursuant to Paragraph (3) of Subsection B
17 of this section at intervals as needed to meet federal
18 regulations.

19 E. The [~~children's medical services of the family~~
20 ~~health bureau of the~~] public health division of the department
21 of health shall collect and record data reported pursuant to
22 Subparagraph (c) of Paragraph (3) of Subsection B of this
23 section to support and monitor care coordination of plans of
24 care for children born without insurance.

25 F. Reports made pursuant to the requirements in

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1 this section shall not be construed to relieve a person of the
2 requirement to report to the department knowledge of or a
3 reasonable suspicion that a child is an abused or neglected
4 child based on criteria as defined by Section 32A-4-2 NMSA
5 1978.

6 G. The department shall work in consultation with
7 the department of health and the early childhood education and
8 care department to create and distribute training materials to
9 support and educate discharge planners or social workers on the
10 following:

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

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

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

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

22 H. No person shall have a cause of action for any
23 loss or damage caused by any act or omission resulting from the
24 implementation of the provisions of Subsection G of this
25 section or resulting from any training, or lack thereof,

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1 required by Subsection G of this section.

2 I. The training, or lack thereof, required by the
3 provisions of Subsection G of this section shall not be
4 construed to impose any specific duty of care.

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

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

12 "32A-3A-14. NOTIFICATION TO THE DEPARTMENT OF
13 NONCOMPLIANCE WITH A PLAN OF CARE.--

14 A. If the parents, relatives, guardians or
15 caretakers of a child released from a hospital or freestanding
16 birthing center pursuant to a plan of care fail to comply with
17 that plan, the department shall be notified and the department
18 may conduct a family assessment. ~~[Based on the results of the~~
19 ~~family assessment, the department may offer or provide~~
20 ~~referrals for counseling, training, or other services aimed at~~
21 ~~addressing the underlying causative factors that may jeopardize~~
22 ~~the safety or well-being of the child. The child's parents,~~
23 ~~relatives, guardians or caretakers may choose to accept or~~
24 ~~decline any service or program offered subsequent to the family~~
25 ~~assessment; provided that if the child's parents, relatives,~~

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1 ~~guardians or caretakers decline those services or programs, the~~
2 ~~department may proceed with an investigation.]~~ Compliance with
3 the plan of care shall be determined by the family's care
4 coordinator or comprehensive addiction and recovery act
5 navigator. Noncompliance shall only be reported by a care
6 coordinator or a comprehensive addiction and recovery act
7 navigator when there are concerns that a family member is not
8 able to be reached after a reasonable amount of time, and the
9 family has failed to engage referred services that are critical
10 to the immediate health and safety of the infant, including
11 medication-assisted treatment for the primary caregiver, basic
12 needs provisions or medical treatment for the infant. Families
13 shall not be reported for noncompliance under this section if
14 they are unable to reasonably access needed services so long as
15 there are no concerns about the infant's well-being or if it
16 can be confirmed that the family is accessing substantially
17 similar services from other providers.

18 B. As used in this section:

19 (1) "comprehensive addiction and recovery act
20 navigator" means a person with the department and a person with
21 the department of health who helps assure compliance with state
22 law and accept plans of care and notifications of substance-
23 exposed infants and provides technical assistance and
24 navigation to the entities and individuals involved in plans of
25 care; and

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

7 ~~[(1)]~~ (a) imminent danger to a child's
8 well-being;

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

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

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

17 "32A-4-3. DUTY TO REPORT CHILD ABUSE AND CHILD NEGLECT--
18 RESPONSIBILITY TO INVESTIGATE CHILD ABUSE OR NEGLECT--PENALTY--
19 NOTIFICATION OF PLAN OF CARE.--

20 A. Every person, including a licensed physician; a
21 resident or an intern examining, attending or treating a child;
22 a law enforcement officer; a judge presiding during a
23 proceeding; a registered nurse; a visiting nurse; a school
24 employee; a social worker acting in an official capacity; or a
25 member of the clergy who has information that is not privileged

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1 as a matter of law, who knows or has a reasonable suspicion
2 that a child is an abused or a neglected child shall report the
3 matter immediately to:

- 4 (1) a local law enforcement agency;
- 5 (2) the department; or
- 6 (3) a tribal law enforcement or social
7 services agency for any Indian child residing in Indian
8 country.

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

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1 enforcement agency and the department.

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

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

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

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1 F. A person who violates the provisions of
2 Subsection A of this section is guilty of a misdemeanor and
3 shall be sentenced pursuant to the provisions of Section
4 31-19-1 NMSA 1978.

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

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

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

24 (2) provide notification to the department of
25 health. Notification by a health care provider pursuant to

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1 this paragraph shall not be construed as a report of child
2 abuse or neglect.

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

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

11 SECTION 5. APPROPRIATION.--

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

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

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1 the end of fiscal year 2024 shall revert to the general fund.

2 SECTION 6. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2023.

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