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HOUSE BILL

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO HEALTH CARE; ENACTING THE DENTAL THERAPIST-HYGIENIST ACT; PROVIDING FOR LICENSURE AND A SCOPE OF PRACTICE FOR DENTAL THERAPIST-HYGIENISTS; PROVIDING FOR THE CREATION OF A JOINT COMMITTEE TO REGULATE, LICENSE AND DISCIPLINE DENTAL THERAPIST-HYGIENISTS; PROVIDING FOR FEES; PROVIDING FOR RULEMAKING; AMENDING SECTIONS OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT, THE NEW MEXICO DRUG, DEVICE AND COSMETIC ACT, THE PUBLIC ASSISTANCE ACT, CHAPTER 59A, ARTICLE 22 NMSA 1978, THE HEALTH MAINTENANCE ORGANIZATION LAW, THE NONPROFIT HEALTH CARE PLAN LAW AND THE DENTAL HEALTH CARE ACT; PROVIDING FOR DELAYED REPEAL AND TERMINATION OF AGENCY LIFE.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 9 of this act may be cited as the "Dental Therapist-.194985.3

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1 Hygienist Act".

2 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
3 Dental Therapist-Hygienist Act:

4 A. "board" means the New Mexico board of dental
5 health care;

6 B. "committee" means the New Mexico dental
7 hygienists committee;

8 C. "dental therapist-hygienist" means an individual
9 who holds both of the following:

10 (1) a license to practice dental therapy-
11 hygiene in the state; and

12 (2) a license to practice dental hygiene
13 pursuant to the Dental Health Care Act;

14 D. "dental therapist-hygienist advocate" means an
15 individual who publicly supports or recommends the practice of
16 dental therapy-hygiene in the state and who has been nominated
17 by a representative of New Mexico health resources, health
18 action New Mexico, a state or regional dental therapists'
19 association or a state institution of higher education that has
20 a dental therapist-hygienist education program;

21 E. "dental therapist-hygienist management
22 agreement" means a written general supervision agreement
23 between a dentist and a dental therapist-hygienist;

24 F. "direct supervision" means the process under
25 which an act is performed when a dentist or dental therapist-

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1 hygienist is physically present throughout the performance of
2 the act;

3 G. "general supervision" means a dentist's
4 authorization of the procedures that are executed by a dental
5 therapist-hygienist while the dentist is not physically present
6 in the facility where the procedures are taking place and in
7 accordance with the dental therapist-hygienist's diagnosis and
8 treatment plan;

9 H. "indirect supervision" means the process under
10 which an act is performed when a dentist or dental therapist-
11 hygienist is present in the treatment facility throughout the
12 performance of the act;

13 I. "joint committee" means the committee created
14 pursuant to Section 6 of the Dental Therapist-Hygienist Act to
15 regulate and license the practice of dental therapy-hygiene;

16 J. "person" means an individual, corporation,
17 business trust, estate, trust, partnership, limited liability
18 company, association, joint venture or any legal or commercial
19 entity;

20 K. "store-and-forward technology" means electronic
21 information, imaging and communication, including interactive
22 audio, video and data communications, that is transferred or
23 recorded or otherwise stored for asynchronous use; and

24 L. "telehealth" means the use of electronic
25 information, imaging and communication technologies, including

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1 interactive audio, video and data communications, as well as
2 store-and-forward technologies, to provide and support health
3 care delivery, diagnosis, consultation, treatment, transfer of
4 medical data and education.

5 SECTION 3. [NEW MATERIAL] DENTAL THERAPY-HYGIENE
6 PRACTICE--SCOPE OF PRACTICE.--

7 A. "Dental therapy-hygiene practice" means the
8 application of the science of the prevention and treatment of
9 oral disease through education, prevention, assessment,
10 diagnosis and clinical and other therapeutic services under the
11 general supervision of a dentist. "Dental therapy-hygiene
12 practice" includes the practice of dental hygiene, as provided
13 in Subsection B of Section 61-5A-4 NMSA 1978, and:

14 (1) behavioral management, oral health
15 instruction and disease prevention education, including
16 nutritional counseling and dietary analysis;

17 (2) diagnosis of dental disease and the
18 formulation of an individualized treatment plan, including
19 caries risk assessment;

20 (3) preliminary charting of the oral cavity;

21 (4) prescribing, exposing and interpreting
22 radiographs;

23 (5) mechanical polishing of teeth and
24 restorations;

25 (6) application of topical preventive or

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- 1 prophylactic agents, including fluoride varnishes and pit and
2 fissure sealants;
- 3 (7) pulp vitality testing;
- 4 (8) application of desensitizing medication or
5 resin;
- 6 (9) fabrication of athletic mouthguards;
- 7 (10) placement of temporary restoration;
- 8 (11) tissue conditioning and soft reline;
- 9 (12) a traumatic restorative therapy;
- 10 (13) dressing changes;
- 11 (14) tooth reimplantation and stabilization of
12 reimplanted teeth;
- 13 (15) administration of local anesthetic and
14 nitrous oxide;
- 15 (16) extractions of primary teeth;
- 16 (17) extractions of permanent teeth that have
17 no impactions and no need of sectioning for removal;
- 18 (18) emergency palliative treatment of dental
19 pain;
- 20 (19) placement and removal of space
21 maintainers;
- 22 (20) cavity preparation;
- 23 (21) restoration of primary and permanent
24 teeth;
- 25 (22) placement of temporary crowns;

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- 1 (23) preparation and placement of pre-formed
2 crowns;
- 3 (24) pulpotomy of primary teeth;
- 4 (25) indirect and direct pulp capping on
5 primary and permanent teeth;
- 6 (26) suture removal;
- 7 (27) brush biopsies;
- 8 (28) simple repairs and adjustments to
9 removable prosthetic appliances;
- 10 (29) re-cementing of permanent crowns;
- 11 (30) prevention of potential orthodontic
12 problems by early identification and appropriate referral;
- 13 (31) prevention, identification and management
14 of dental and medical emergencies and maintenance of current
15 basic life-support certification;
- 16 (32) prescribing, dispensing and
17 administration of analgesics, anti-inflammatory medications and
18 antibiotics only within the parameters of a dental therapist-
19 hygienist management agreement; and
- 20 (33) other related services as permitted by
21 board rules.

22 B. A dental therapist-hygienist shall practice
23 under the general supervision of a dentist pursuant to a
24 written supervision agreement between the dentist and the
25 dental therapist-hygienist. The joint committee may establish

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1 minimum requirements for dental therapist-hygienist management
2 agreements.

3 C. General supervision of a dental therapist-
4 hygienist by a dentist includes communication between the
5 dental therapist-hygienist and dentist by use of telehealth.

6 D. A dental therapist-hygienist may provide dental
7 therapy-hygiene services in private and public dental and
8 medical offices, public and community medical facilities,
9 federal Indian health service facilities, schools, hospitals
10 and long-term care facilities and other settings as determined
11 by joint committee rules.

12 E. To practice under the general supervision of a
13 dentist, a dental therapist-hygienist shall enter into a dental
14 therapist-hygienist management agreement with a dentist. The
15 dental therapist-hygienist management agreement shall set forth
16 the scope of practice and conditions under which the dentist
17 will provide general supervision of the dental therapist-
18 hygienist. A dental therapist-hygienist management agreement
19 shall not be subject to board, committee or joint committee
20 approval. The dental therapist-hygienist management agreement
21 shall be:

22 (1) submitted annually to the joint committee;

23 and

24 (2) signed and maintained by the dentist and
25 dental therapist-hygienist.

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1 F. A dentist and a dental therapist-hygienist shall
2 notify the board upon the dissolution of their dental
3 therapist-hygienist management agreement.

4 G. A dental therapist-hygienist may supervise under
5 direct or indirect supervision dental assistants and dental
6 hygienists. The dental therapist-hygienist management
7 agreement shall set forth the scope of practice and conditions
8 under which the dental therapist-hygienist may supervise dental
9 assistants and dental hygienists.

10 SECTION 4. [NEW MATERIAL] DENTAL THERAPISTS-HYGIENISTS--
11 LICENSURE--UNAUTHORIZED PRACTICE--IMPAIRED LICENSEES--
12 DISCIPLINE--PENALTIES.--

13 A. To be licensed as a dental therapist-hygienist,
14 an applicant shall have:

15 (1) passed a written examination covering the
16 laws and rules for practice in the state; and

17 (2) submitted proof to the joint committee for
18 its approval and recommendation:

19 (a) of graduation and receipt of a
20 degree from one of the following education programs developed
21 in partnership with an accredited institution of higher
22 education: 1) a dental therapy-hygiene education program that
23 provides a competency-based curriculum; or 2) both a dental
24 hygiene education program that has met the requirements for a
25 dental hygiene education program pursuant to the Dental Health

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1 Care Act and a dental therapy education program that provides a
2 competency-based dental therapy curriculum;

3 (b) that the applicant: 1) has received
4 a letter of recommendation from a person in the community or
5 from the sponsoring entity in which the applicant plans to
6 practice as part of the application process for the dental
7 therapy-hygiene education program; and 2) maintains an ongoing
8 relationship with the sponsoring entity, including one
9 community prevention project in the supporting community during
10 coursework;

11 (c) of passage of a competency-based
12 examination given by a nationally recognized regional testing
13 agency if available or, if not available, by an institution of
14 higher education with a dental therapy-hygiene education
15 program that the applicant has passed following the applicant's
16 completion of a dental therapy-hygiene educational program; and

17 (d) after graduation from a dental
18 therapist-hygiene competency-based education program, has
19 completed a minimum of four hundred additional clinical hours
20 under the indirect supervision of a dentist.

21 B. Upon notification from the dental therapy-
22 hygiene education program that the dental therapist-hygienist
23 applicant has graduated from the education program and passed
24 the competency-based examination, the joint committee shall
25 issue a permit for the applicant to practice during the

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1 applicant's requirement to complete four hundred additional
2 clinical hours pursuant to Subparagraph (d) of Paragraph (2) of
3 Subsection A of this section.

4 C. The joint committee shall issue a license to
5 practice as a dental therapist-hygienist without a practical or
6 clinical examination to an applicant who is a licensed dental
7 therapist-hygienist by examination under the laws of another
8 state or territory of the United States; provided that the
9 license is in good standing for the two previous years in that
10 jurisdiction and that the applicant meets the requirements of
11 the Dental Therapist-Hygienist Act, including payment of
12 appropriate fees and the passing of an examination covering the
13 laws and rules of dental therapy-hygiene practice in the state.

14 D. After an applicant has met the qualifications
15 set forth in Subsections A through C of this section, the joint
16 committee shall issue the applicant a license to practice as a
17 dental therapist-hygienist.

18 E. A dental therapist-hygienist shall renew the
19 dental therapist-hygienist's license triennially in accordance
20 with joint committee rules.

21 F. A person who practices as a dental therapist-
22 hygienist or who attempts to practice as a dental therapist-
23 hygienist in violation of the provisions of the Dental
24 Therapist-Hygienist Act or without a license entitling the
25 person to practice as a dental therapist-hygienist in the state

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1 is guilty of a misdemeanor and upon conviction shall be
2 sentenced to imprisonment for a definite period of less than
3 one year and, in the discretion of the sentencing court, to a
4 fine not to exceed one thousand dollars (\$1,000), or both.
5 Each occurrence of practicing as a dental therapist-hygienist
6 or attempting to practice as a dental therapist-hygienist
7 without complying with the Dental Therapist-Hygienist Act shall
8 be a separate violation.

9 G. In accordance with the Uniform Licensing Act and
10 rules of the joint committee, the joint committee may fine and
11 may deny, revoke, suspend, stipulate or otherwise limit any
12 license or certificate, including those of licensed non-dentist
13 owners, held or applied for under the Dental Therapist-
14 Hygienist Act, upon findings by the joint committee that the
15 licensee or applicant:

16 (1) is guilty of fraud or deceit in procuring
17 or attempting to procure a license;

18 (2) has been convicted of a crime punishable
19 by incarceration in a federal prison or state penitentiary;
20 provided a copy of the record of conviction, certified to by
21 the clerk of the court entering the conviction, shall be
22 conclusive evidence of such conviction;

23 (3) is guilty of gross incompetence or gross
24 negligence, as defined by rules of the joint committee, in the
25 practice of dental therapy-hygiene;

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1 (4) is habitually intemperate or is addicted
2 to the use of habit-forming drugs or is addicted to any vice to
3 such degree as to render the licensee unfit to practice dental
4 therapy-hygiene;

5 (5) is guilty of unprofessional conduct as
6 defined by rule of the joint committee;

7 (6) is guilty of any violation of the
8 Controlled Substances Act;

9 (7) has violated any provisions of the Dental
10 Therapy-Hygiene Act or rule or regulation of the board or the
11 joint committee;

12 (8) is guilty of willfully or negligently
13 practicing beyond the scope of licensure;

14 (9) is guilty of practicing dental therapy-
15 hygiene without a license or aiding or abetting the practice of
16 dental hygiene-therapy by a person not licensed under the
17 Dental Therapy-Hygiene Act;

18 (10) is guilty of obtaining or attempting to
19 obtain any fee by fraud or misrepresentation or has otherwise
20 acted in a manner or by conduct likely to deceive, defraud or
21 harm the public;

22 (11) is guilty of patient abandonment;

23 (12) is guilty of failing to report to the
24 joint committee any adverse action taken against the licensee
25 by a licensing authority, peer review body, malpractice

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1 insurance carrier or other entity as defined in rules of the
2 joint committee;

3 (13) has had a license to practice as a dental
4 therapist-hygienist revoked, suspended, denied, stipulated or
5 otherwise limited in any jurisdiction, territory or possession
6 of the United States or another country for actions of the
7 licensee similar to acts described in this subsection. A
8 certified copy of the decision of the jurisdiction taking such
9 disciplinary action will be conclusive evidence; or

10 (14) has failed to furnish the joint
11 committee, investigators or its representatives with
12 information requested by the joint committee in the course of
13 an official investigation.

14 H. Disciplinary proceedings may be instituted by
15 sworn complaint by any person, including a board or joint
16 committee member, and shall conform with the provisions of the
17 Uniform Licensing Act.

18 I. A licensee shall bear the costs of disciplinary
19 proceedings unless exonerated.

20 J. Any person filing a sworn complaint shall be
21 immune from liability arising out of civil action if the
22 complaint is filed in good faith and without actual malice.

23 K. The joint committee may establish reasonable
24 fees related to the maintenance of a license in probationary
25 status, including laboratory costs when laboratory testing of

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1 biological fluids or accounting costs when audits are included
2 as a condition of probation.

3 L. The joint committee shall reinstate the license
4 of a dental therapist-hygienist as follows:

5 (1) unless otherwise stated in the order of
6 revocation, the joint committee shall not accept a motion for
7 reinstatement of a revoked license until at least three years
8 from the effective date of the revocation;

9 (2) if the joint committee denies a motion for
10 reinstatement, it shall not consider any further motions for
11 reinstatement for a period of one year;

12 (3) at the expiration of the period specified
13 in the order of suspension, the joint committee shall
14 automatically reinstate a license that has been suspended for a
15 specific period of time. The automatic reinstatement shall
16 apply as of the day after the expiration of the period of
17 suspension unless the administrative prosecutor has filed with
18 the joint committee written objections. If the administrative
19 prosecutor has filed objections in accordance with joint
20 committee procedures, the petition for reinstatement shall be
21 referred to the joint committee for hearing pursuant to
22 Paragraph (5) of this subsection;

23 (4) indefinite suspension of dental therapist-
24 hygienists shall occur as follows:

25 (a) a licensee who has been suspended

1 for an indefinite period of time may, at any time after
2 complying with the conditions of reinstatement, file a petition
3 for reinstatement with the joint committee;

4 (b) the petition shall be referred to
5 the joint committee for hearing under Paragraph (5) of this
6 subsection; and

7 (c) if the motion for reinstatement is
8 denied, no further motions for reinstatement will be considered
9 for a period of one year; and

10 (5) procedures for reinstatement hearings are
11 as follows:

12 (a) applications for reinstatement shall
13 be referred to the joint committee for hearing if the applicant
14 meets the criteria set forth in this subsection;

15 (b) the joint committee shall schedule a
16 hearing as soon as practical. At the hearing, the applicant
17 for reinstatement shall have the burden of demonstrating that
18 the applicant has met the following criteria established by
19 joint committee rules: 1) the applicant meets the moral
20 qualifications for reinstatement; 2) the applicant is once
21 again fit to resume the practice of dental therapy-hygiene; and
22 3) the resumption of the applicant's practice of dental
23 therapy-hygiene will not be detrimental to the public interest;

24 (c) the joint committee shall file its
25 findings of fact, conclusions of law and decision within ninety

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1 days of the hearing; and

2 (d) the joint committee's decision to
3 refuse to reinstate a license shall not be reviewable except
4 for an abuse of discretion.

5 SECTION 5. [NEW MATERIAL] TEMPORARY LICENSURE.--

6 A. The joint committee may issue a temporary
7 license to practice dental therapy-hygiene to an applicant who
8 is licensed to practice dental therapy-hygiene in another state
9 or territory of the United States and who is otherwise
10 qualified to practice dental therapy-hygiene in the state. The
11 following provisions shall apply to temporary licensure:

12 (1) the applicant shall hold a valid license
13 in good standing in another state or territory of the United
14 States;

15 (2) the applicant shall practice dental
16 therapy-hygiene under the sponsorship of or in association with
17 a licensed New Mexico dentist, dental therapist-hygienist or
18 dental hygienist;

19 (3) the temporary license may be issued for
20 those activities as stipulated by the joint committee in the
21 rules of the board. It may be issued upon written application
22 of the applicant when accompanied by such proof of
23 qualifications as the secretary-treasurer of the joint
24 committee, in the secretary-treasurer's discretion, may
25 require. Temporary licensees shall engage in only those

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1 activities specified on the temporary license for the time
2 designated, and the temporary license shall identify the
3 licensed New Mexico dentist, dental therapist-hygienist or
4 dental hygienist who will sponsor or associate with the
5 applicant during the time the applicant practices dental
6 therapy-hygiene in New Mexico;

7 (4) the sponsoring or associating dentist,
8 dental therapist-hygienist or dental hygienist shall submit an
9 affidavit attesting to the qualifications of the applicant and
10 the activities the applicant will perform;

11 (5) the temporary license shall be issued for
12 a period not to exceed twelve months and may be renewed upon
13 application and payment of required fees;

14 (6) the application for a temporary license
15 under this section shall be accompanied by a license fee; and

16 (7) the temporary licensee shall be required
17 to comply with the Dental Therapist-Hygienist Act and all rules
18 promulgated pursuant thereto.

19 B. The joint committee may grant to a dental
20 therapist-hygienist who meets the requirements of Subsection A
21 of this section and who is licensed to practice dental
22 therapy-hygiene in another state or territory of the United
23 States temporary licensure to practice and serve as faculty for
24 a dental therapy-hygiene education program in a state
25 institution, a program approved or maintained by the department

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1 of health or a program or clinic that the department of health
2 designates as serving a health care underserved area.

3 SECTION 6. [NEW MATERIAL] JOINT COMMITTEE--CREATION--
4 MEMBERSHIP.--

5 A. The joint committee shall regulate, license and
6 discipline dental therapist-hygienists.

7 B. The joint committee is made up of thirteen
8 members, including:

9 (1) five members of the board who are
10 dentists;

11 (2) five members who are members of the New
12 Mexico dental hygienists committee who are dental hygienists;

13 (3) one dental therapist-hygienist or dental
14 therapist-hygienist advocate; and

15 (4) two public members of the board.

16 C. Within thirty days of the effective date of the
17 Dental Therapist-Hygienist Act, the governor shall appoint the
18 dental therapist-hygienist or dental therapist-hygienist
19 advocate member of the joint committee from a list of names
20 submitted by New Mexico health resources, health action New
21 Mexico, a state or regional dental therapists' association or a
22 state institution of higher education that has a dental
23 therapy-hygiene education program.

24 D. Appointment of the dental therapist-hygienist or
25 dental therapist-hygienist advocate member shall be for a term

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1 of five years.

2 E. The dental therapist-hygienist or dental
3 therapist-hygienist advocate member of the joint committee
4 shall be chosen from those members of the board who are also
5 members of the committee.

6 F. To achieve a quorum at a meeting of the joint
7 committee, the dental therapist-hygienist or dental therapist-
8 hygienist advocate member of the joint committee shall be in
9 attendance.

10 G. In accordance with the Uniform Licensing Act,
11 for any cause stated in the Dental Therapist-Hygienist Act, the
12 joint committee may grant, deny, review, censure, reprimand,
13 fine and place on probation and stipulation, suspend and revoke
14 licenses to practice dental therapy-hygiene.

15 H. Within six months of the appointment of the
16 dental therapist-hygienist or dental therapist-hygienist
17 advocate members, the joint committee shall adopt and
18 promulgate rules relating to the practice of dental therapy-
19 hygiene.

20 SECTION 7. [NEW MATERIAL] CONTENT OF LICENSES.--

21 A. A dental therapist-hygienist license shall bear:

- 22 (1) a serial number;
23 (2) the full name of the licensee;
24 (3) the date of issue;
25 (4) the seal of the board;

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1 (5) the signatures of a majority of the
2 members of the joint committee; and
3 (6) the attestation of the board president and
4 secretary.

5 B. A dental therapist-hygienist license shall be
6 displayed in a conspicuous manner in the facility where the
7 holder practices. Upon request, the license shall be exhibited
8 to a member of the board, the joint committee or the authorized
9 agent of the board or joint committee.

10 SECTION 8. [NEW MATERIAL] FEES.--The joint committee
11 shall establish a schedule of reasonable fees for dental
12 therapist-hygienists, not to exceed the following:

- | | | |
|----|--|---------|
| 13 | A. licensure by examination | \$1,000 |
| 14 | B. licensure by credential | \$1,500 |
| 15 | C. temporary license: | |
| 16 | (1) forty-eight hours | \$ 50 |
| 17 | (2) six months | \$ 200 |
| 18 | (3) twelve months | \$ 300 |
| 19 | D. triennial license renewal | \$ 450 |
| 20 | E. late renewal | \$ 100 |
| 21 | F. reinstatement of license | \$ 300 |
| 22 | G. administrative fees | \$ 300 |
| 23 | H. impaired dental therapist-hygienist | \$ 75 |
| 24 | I. application for inactive status | \$ 50 |
| 25 | J. triennial renewal of inactive license | \$ 90. |

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1 SECTION 9. ~~[NEW MATERIAL]~~ TERMINATION OF AGENCY LIFE--
2 DELAYED REPEAL.--The joint committee is terminated on January
3 1, 2023 pursuant to the provisions of the Sunset Act. The
4 joint committee shall continue to operate according to the
5 provisions of the Dental Therapist-Hygienist Act until January
6 1, 2024. Effective January 1, 2024, the Dental Therapist-
7 Hygienist Act is repealed.

8 SECTION 10. Section 7-9-93 NMSA 1978 (being Laws 2004,
9 Chapter 116, Section 6, as amended) is amended to read:

10 "7-9-93. DEDUCTION--GROSS RECEIPTS--CERTAIN RECEIPTS FOR
11 SERVICES PROVIDED BY HEALTH CARE PRACTITIONER.--

12 A. Receipts from payments by a managed health care
13 provider or health care insurer for commercial contract
14 services or medicare part C services provided by a health care
15 practitioner that are not otherwise deductible pursuant to
16 another provision of the Gross Receipts and Compensating Tax
17 Act may be deducted from gross receipts, provided that the
18 services are within the scope of practice of the person
19 providing the service. Receipts from fee-for-service payments
20 by a health care insurer may not be deducted from gross
21 receipts. The deduction provided by this section shall be
22 separately stated by the taxpayer.

23 B. For the purposes of this section:

24 (1) "commercial contract services" means
25 health care services performed by a health care practitioner

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1 pursuant to a contract with a managed health care provider or
2 health care insurer other than those health care services
3 provided for medicare patients pursuant to Title 18 of the
4 federal Social Security Act or for medicaid patients pursuant
5 to Title 19 or Title 21 of the federal Social Security Act;

6 (2) "health care insurer" means a person that:

7 (a) has a valid certificate of authority
8 in good standing pursuant to the New Mexico Insurance Code to
9 act as an insurer, health maintenance organization or nonprofit
10 health care plan or prepaid dental plan; and

11 (b) contracts to reimburse licensed
12 health care practitioners for providing basic health services
13 to enrollees at negotiated fee rates;

14 (3) "health care practitioner" means:

15 (a) a chiropractic physician licensed
16 pursuant to the provisions of the Chiropractic Physician
17 Practice Act;

18 (b) a dentist or dental hygienist
19 licensed pursuant to the Dental Health Care Act;

20 (c) a doctor of oriental medicine
21 licensed pursuant to the provisions of the Acupuncture and
22 Oriental Medicine Practice Act;

23 (d) an optometrist licensed pursuant to
24 the provisions of the Optometry Act;

25 (e) an osteopathic physician licensed

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1 pursuant to the provisions of Chapter 61, Article 10 NMSA 1978
2 or an osteopathic physician's assistant licensed pursuant to
3 the provisions of the Osteopathic Physicians' Assistants Act;

4 (f) a physical therapist licensed
5 pursuant to the provisions of the Physical Therapy Act;

6 (g) a physician or physician assistant
7 licensed pursuant to the provisions of Chapter 61, Article 6
8 NMSA 1978;

9 (h) a podiatrist licensed pursuant to
10 the provisions of the Podiatry Act;

11 (i) a psychologist licensed pursuant to
12 the provisions of the Professional Psychologist Act;

13 (j) a registered lay midwife registered
14 by the department of health;

15 (k) a registered nurse or licensed
16 practical nurse licensed pursuant to the provisions of the
17 Nursing Practice Act;

18 (l) a registered occupational therapist
19 licensed pursuant to the provisions of the Occupational Therapy
20 Act;

21 (m) a respiratory care practitioner
22 licensed pursuant to the provisions of the Respiratory Care
23 Act;

24 (n) a speech-language pathologist or
25 audiologist licensed pursuant to the Speech-Language Pathology,

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1 Audiology and Hearing Aid Dispensing Practices Act;

2 (o) a professional clinical mental
3 health counselor, marriage and family therapist or professional
4 art therapist licensed pursuant to the provisions of the
5 Counseling and Therapy Practice Act who has obtained a master's
6 degree or a doctorate;

7 (p) an independent social worker
8 licensed pursuant to the provisions of the Social Work Practice
9 Act; ~~and~~

10 (q) a clinical laboratory that is
11 accredited pursuant to 42 U.S.C. Section 263a but that is not a
12 laboratory in a physician's office or in a hospital defined
13 pursuant to 42 U.S.C. Section 1395x; and

14 (r) a dental therapist-hygienist
15 licensed pursuant to the Dental Therapist-Hygienist Act;

16 (4) "managed health care provider" means a
17 person that provides for the delivery of comprehensive basic
18 health care services and medically necessary services to
19 individuals enrolled in a plan through its own employed health
20 care providers or by contracting with selected or participating
21 health care providers. "Managed health care provider" includes
22 only those persons that provide comprehensive basic health care
23 services to enrollees on a contract basis, including the
24 following:

25 (a) health maintenance organizations;

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- 1 (b) preferred provider organizations;
2 (c) individual practice associations;
3 (d) competitive medical plans;
4 (e) exclusive provider organizations;
5 (f) integrated delivery systems;
6 (g) independent physician-provider
7 organizations;
8 (h) physician hospital-provider
9 organizations; and
10 (i) managed care services organizations;
11 and

12 (5) "medicare part C services" means services
13 performed pursuant to a contract with a managed health care
14 provider for medicare patients pursuant to Title 18 of the
15 federal Social Security Act."

16 SECTION 11. Section 26-1-2 NMSA 1978 (being Laws 1967,
17 Chapter 23, Section 2, as amended) is amended to read:

18 "26-1-2. DEFINITIONS.--As used in the New Mexico Drug,
19 Device and Cosmetic Act:

20 A. "board" means the board of pharmacy or its duly
21 authorized agent;

22 B. "person" includes an individual, partnership,
23 corporation, association, institution or establishment;

24 C. "biological product" means a virus, therapeutic
25 serum, toxin, antitoxin or analogous product applicable to the

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1 prevention, treatment or cure of diseases or injuries of humans
2 and domestic animals, and, as used within the meaning of this
3 definition:

4 (1) a "virus" is interpreted to be a product
5 containing the minute living cause of an infectious disease and
6 includes filterable viruses, bacteria, rickettsia, fungi and
7 protozoa;

8 (2) a "therapeutic serum" is a product
9 obtained from blood by removing the clot or clot components and
10 the blood cells;

11 (3) a "toxin" is a product containing a
12 soluble substance poisonous to laboratory animals or humans in
13 doses of one milliliter or less of the product and, following
14 the injection of nonfatal doses into an animal, having the
15 property of or causing to be produced therein another soluble
16 substance that specifically neutralizes the poisonous substance
17 and that is demonstrable in the serum of the animal thus
18 immunized; and

19 (4) an "antitoxin" is a product containing the
20 soluble substance in serum or other body fluid of an immunized
21 animal that specifically neutralizes the toxin against which
22 the animal is immune;

23 D. "controlled substance" means a drug, substance
24 or immediate precursor enumerated in Schedules I through V of
25 the Controlled Substances Act;

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1 E. "drug" means articles:

2 (1) recognized in an official compendium;

3 (2) intended for use in the diagnosis, cure,
4 mitigation, treatment or prevention of disease in humans or
5 other animals and includes the domestic animal biological
6 products regulated under the federal Virus-Serum-Toxin Act,
7 37 Stat 832-833, 21 U.S.C. 151-158, and the biological products
8 applicable to humans regulated under Federal 58 Stat 690, as
9 amended, 42 U.S.C. 216, Section 351, 58 Stat 702, as amended,
10 and 42 U.S.C. 262;

11 (3) other than food, that affect the structure
12 or any function of the human body or the bodies of other
13 animals; and

14 (4) intended for use as a component of
15 Paragraph (1), (2) or (3) of this subsection, but "drug" does
16 not include devices or their component parts or accessories;

17 F. "dangerous drug" means a drug, other than a
18 controlled substance enumerated in Schedule I of the Controlled
19 Substances Act, that because of a potentiality for harmful
20 effect or the method of its use or the collateral measures
21 necessary to its use is not safe except under the supervision
22 of a practitioner licensed by law to direct the use of such
23 drug and hence for which adequate directions for use cannot be
24 prepared. "Adequate directions for use" means directions under
25 which the layperson can use a drug or device safely and for the

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1 purposes for which it is intended. A drug shall be dispensed
2 only upon the prescription or drug order of a practitioner
3 licensed by law to administer or prescribe the drug if it:

4 (1) is a habit-forming drug and contains any
5 quantity of a narcotic or hypnotic substance or a chemical
6 derivative of such substance that has been found under the
7 federal act and the board to be habit forming;

8 (2) because of its toxicity or other potential
9 for harmful effect or the method of its use or the collateral
10 measures necessary to its use is not safe for use except under
11 the supervision of a practitioner licensed by law to administer
12 or prescribe the drug;

13 (3) is limited by an approved application by
14 Section 505 of the federal act to the use under the
15 professional supervision of a practitioner licensed by law to
16 administer or prescribe the drug;

17 (4) bears the legend: "Caution: federal law
18 prohibits dispensing without prescription.";

19 (5) bears the legend: "Caution: federal law
20 restricts this drug to use by or on the order of a licensed
21 veterinarian."; or

22 (6) bears the legend "RX only";

23 G. "counterfeit drug" means a drug that is
24 deliberately and fraudulently mislabeled with respect to its
25 identity, ingredients or sources. Types of such pharmaceutical

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1 counterfeit may include:

2 (1) "identical copies", which are counterfeits
3 made with the same ingredients, formulas and packaging as the
4 originals but not made by the original manufacturer;

5 (2) "look-alikes", which are products that
6 feature high-quality packaging and convincing appearances but
7 contain little or no active ingredients and may contain harmful
8 substances;

9 (3) "rejects", which are drugs that have been
10 rejected by the manufacturer for not meeting quality standards;
11 and

12 (4) "relabels", which are drugs that have
13 passed their expiration dates or have been distributed by
14 unauthorized foreign sources and may include placebos created
15 for late-phase clinical trials;

16 H. "device", except when used in Subsection P of
17 this section and in Subsection G of Section 26-1-3, Subsection
18 L and Paragraph (4) of Subsection A of Section 26-1-11 and
19 Subsection C of Section 26-1-24 NMSA 1978, means an instrument,
20 apparatus, implement, machine, contrivance, implant, in vitro
21 reagent or other similar or related article, including any
22 component, part or accessory, that is:

23 (1) recognized in an official compendium;

24 (2) intended for use in the diagnosis of
25 disease or other conditions or in the cure, mitigation,

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1 treatment or prevention of disease in humans or other animals;
2 or

3 (3) intended to affect the structure or a
4 function of the human body or the bodies of other animals and
5 that does not achieve any of its principal intended purposes
6 through chemical action within or on the human body or the
7 bodies of other animals and that is not dependent on being
8 metabolized for achievement of any of its principal intended
9 purposes;

10 I. "prescription" means an order given individually
11 for the person for whom prescribed, either directly from a
12 licensed practitioner or the practitioner's agent to the
13 pharmacist, including by means of electronic transmission, or
14 indirectly by means of a written order signed by the
15 prescriber, and bearing the name and address of the prescriber,
16 the prescriber's license classification, the name and address
17 of the patient, the name and quantity of the drug prescribed,
18 directions for use and the date of issue;

19 J. "practitioner" means a certified advanced
20 practice chiropractic physician, physician, doctor of oriental
21 medicine, dentist, veterinarian, euthanasia technician,
22 certified nurse practitioner, clinical nurse specialist,
23 pharmacist, pharmacist clinician, certified nurse-midwife,
24 physician assistant, prescribing psychologist, dental
25 therapist-hygienist, dental hygienist or other person licensed

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1 or certified to prescribe and administer drugs that are subject
2 to the New Mexico Drug, Device and Cosmetic Act;

3 K. "cosmetic" means:

4 (1) articles intended to be rubbed, poured,
5 sprinkled or sprayed on, introduced into or otherwise applied
6 to the human body or any part thereof for cleansing,
7 beautifying, promoting attractiveness or altering the
8 appearance; and

9 (2) articles intended for use as a component
10 of any articles enumerated in Paragraph (1) of this subsection,
11 except that the term shall not include soap;

12 L. "official compendium" means the official United
13 States pharmacopoeia national formulary or the official
14 homeopathic pharmacopoeia of the United States or any
15 supplement to either of them;

16 M. "label" means a display of written, printed or
17 graphic matter upon the immediate container of an article. A
18 requirement made by or under the authority of the New Mexico
19 Drug, Device and Cosmetic Act that any word, statement or other
20 information appear on the label shall not be considered to be
21 complied with unless the word, statement or other information
22 also appears on the outside container or wrapper, if any, of
23 the retail package of the article or is easily legible through
24 the outside container or wrapper;

25 N. "immediate container" does not include package

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1 liners;

2 O. "labeling" means all labels and other written,
3 printed or graphic matter:

4 (1) on an article or its containers or
5 wrappers; or

6 (2) accompanying an article;

7 P. "misbranded" means a label to an article that is
8 misleading. In determining whether the label is misleading,
9 there shall be taken into account, among other things, not only
10 representations made or suggested by statement, word, design,
11 device or any combination of the foregoing, but also the extent
12 to which the label fails to reveal facts material in the light
13 of such representations or material with respect to
14 consequences that may result from the use of the article to
15 which the label relates under the conditions of use prescribed
16 in the label or under such conditions of use as are customary
17 or usual;

18 Q. "advertisement" means all representations
19 disseminated in any manner or by any means, other than by
20 labeling, for the purpose of inducing, or that are likely to
21 induce, directly or indirectly, the purchase of drugs, devices
22 or cosmetics;

23 R. "antiseptic", when used in the labeling or
24 advertisement of an antiseptic, shall be considered to be a
25 representation that it is a germicide, except in the case of a

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1 drug purporting to be or represented as an antiseptic for
2 inhibitory use as a wet dressing, ointment, dusting powder or
3 such other use as involves prolonged contact with the body;

4 S. "new drug" means a drug:

5 (1) the composition of which is such that the
6 drug is not generally recognized, among experts qualified by
7 scientific training and experience to evaluate the safety and
8 efficacy of drugs, as safe and effective for use under the
9 conditions prescribed, recommended or suggested in the labeling
10 thereof; or

11 (2) the composition of which is such that the
12 drug, as a result of investigation to determine its safety and
13 efficacy for use under such conditions, has become so
14 recognized, but that has not, otherwise than in such
15 investigations, been used to a material extent or for a
16 material time under such conditions;

17 T. "contaminated with filth" applies to a drug,
18 device or cosmetic not securely protected from dirt, dust and,
19 as far as may be necessary by all reasonable means, from all
20 foreign or injurious contaminations, or a drug, device or
21 cosmetic found to contain dirt, dust, foreign or injurious
22 contamination or infestation;

23 U. "selling of drugs, devices or cosmetics" shall
24 be considered to include the manufacture, production,
25 processing, packing, exposure, offer, possession and holding of

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1 any such article for sale and the sale and the supplying or
2 applying of any such article in the conduct of a drug or
3 cosmetic establishment;

4 V. "color additive" means a material that:

5 (1) is a dye, pigment or other substance made
6 by a process of synthesis or similar artifice or extracted,
7 isolated or otherwise derived, with or without intermediate or
8 final change of identity, from a vegetable, mineral, animal or
9 other source; or

10 (2) when added or applied to a drug or
11 cosmetic or to the human body or a part thereof, is capable,
12 alone or through reaction with other substances, of imparting
13 color thereto; except that such term does not include any
14 material that has been or hereafter is exempted under the
15 federal act;

16 W. "federal act" means the Federal Food, Drug and
17 Cosmetic Act;

18 X. "restricted device" means a device for which the
19 sale, distribution or use is lawful only upon the written or
20 oral authorization of a practitioner licensed by law to
21 administer, prescribe or use the device and for which the
22 federal food and drug administration requires special training
23 or skills of the practitioner to use or prescribe. This
24 definition does not include custom devices defined in the
25 federal act and exempt from performance standards or premarket

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1 approval requirements under Section 520(b) of the federal act;

2 Y. "prescription device" means a device that,
3 because of its potential for harm, the method of its use or the
4 collateral measures necessary to its use, is not safe except
5 under the supervision of a practitioner licensed in this state
6 to direct the use of such device and for which "adequate
7 directions for use" cannot be prepared, but that bears the
8 label: "Caution: federal law restricts this device to sale by
9 or on the order of a _____", the blank to be filled with
10 the word "physician", "physician assistant", "certified
11 advanced practice chiropractic physician", "doctor of oriental
12 medicine", "dentist", "veterinarian", "euthanasia technician",
13 "certified nurse practitioner", "clinical nurse specialist",
14 "pharmacist", "pharmacist clinician", "certified nurse-
15 midwife", dental therapist-hygienist or "dental hygienist" or
16 with the descriptive designation of any other practitioner
17 licensed in this state to use or order the use of the device;

18 Z. "valid practitioner-patient relationship" means
19 a professional relationship, as defined by the practitioner's
20 licensing board, between the practitioner and the patient;

21 AA. "pedigree" means the recorded history of a
22 drug; and

23 BB. "drug order" means an order either directly
24 from a licensed practitioner or the practitioner's agent to the
25 pharmacist, including by means of electronic transmission or

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1 indirectly by means of a written order signed by the licensed
2 practitioner or the practitioner's agent, and bearing the name
3 and address of the practitioner and the practitioner's license
4 classification and the name and quantity of the drug or device
5 ordered for use at an inpatient or outpatient facility."

6 SECTION 12. Section 27-2-12 NMSA 1978 (being Laws 1973,
7 Chapter 376, Section 16, as amended) is amended to read:

8 "27-2-12. MEDICAL ASSISTANCE PROGRAMS.--

9 A. Consistent with the federal act and subject to
10 the appropriation and availability of federal and state funds,
11 the medical assistance division of the department may by rule
12 provide medical assistance, including the services of licensed
13 doctors of oriental medicine, licensed chiropractic physicians,
14 licensed dental therapist-hygienists and licensed dental
15 hygienists in collaborating practice, to persons eligible for
16 public assistance programs under the federal act.

17 B. Subject to appropriation and availability of
18 federal, state or other funds received by the state from public
19 or private grants or donations, the medical assistance division
20 of the department may by rule provide medical assistance,
21 including assistance in the payment of premiums for medical or
22 long-term care insurance, to children up to the age of twelve
23 if not part of a sibling group; children up to the age of
24 eighteen if part of a sibling group that includes a child up to
25 the age of twelve; and pregnant women who are residents of the

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1 state of New Mexico and who are ineligible for public
2 assistance under the federal act. The department, in
3 implementing the provisions of this subsection, shall:

4 (1) establish rules that encourage pregnant
5 women to participate in prenatal care; and

6 (2) not provide a benefit package that exceeds
7 the benefit package provided to state employees."

8 **SECTION 13.** Section 59A-22-32 NMSA 1978 (being Laws 1984,
9 Chapter 127, Section 454, as amended) is amended to read:

10 "59A-22-32. FREEDOM OF CHOICE OF HOSPITAL AND
11 PRACTITIONER.--

12 A. Within the area and limits of coverage offered
13 an insured and selected by the insured in the application for
14 insurance, the right of a person to exercise full freedom of
15 choice in the selection of a hospital for hospital care or of a
16 practitioner of the healing arts or optometrist, psychologist,
17 podiatrist, physician assistant, certified nurse-midwife,
18 registered lay midwife, dental therapist-hygienist or
19 registered nurse in expanded practice, as defined in Subsection
20 B of this section, for treatment of an illness or injury within
21 that person's scope of practice shall not be restricted under
22 any new policy of health insurance, contract or health care
23 plan issued after June 30, 1967 in this state or in the
24 processing of a claim thereunder. A person insured or claiming
25 benefits under any such health insurance policy, contract or

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1 health care plan providing within its coverage for payment of
2 service benefits or indemnity for hospital care or treatment of
3 persons for the cure or correction of any physical or mental
4 condition shall be deemed to have complied with the
5 requirements of the policy, contract or health care plan as to
6 submission of proof of loss upon submitting written proof
7 supported by the certificate of any hospital currently licensed
8 by the department of health or any practitioner of the healing
9 arts or optometrist, psychologist, podiatrist, physician
10 assistant, certified nurse-midwife, registered lay midwife,
11 dental therapist-hygienist or registered nurse in expanded
12 practice.

13 B. As used in this section:

14 (1) "hospital care" means hospital service
15 provided through a hospital that is maintained by the state or
16 a political subdivision of the state or a place that is
17 currently licensed as a hospital by the department of health
18 and has accommodations for resident bed patients, a licensed
19 professional registered nurse always on duty or call, a
20 laboratory and an operating room where surgical operations are
21 performed, but "hospital care" does not include a convalescent
22 or nursing or rest home;

23 (2) "practitioner of the healing arts" means a
24 person holding a license or certificate authorizing the
25 licensee to offer or undertake to diagnose, treat, operate on

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1 or prescribe for any human pain, injury, disease, deformity or
2 physical or mental condition pursuant to:

3 (a) the Chiropractic Physician Practice
4 Act;

5 (b) the Dental Health Care Act;

6 (c) the Medical Practice Act;

7 (d) Chapter 61, Article 10 NMSA 1978;

8 and

9 (e) the Acupuncture and Oriental
10 Medicine Practice Act;

11 (3) "optometrist" means a person holding a
12 license provided for in the Optometry Act;

13 (4) "podiatrist" means a person holding a
14 license provided for in the Podiatry Act;

15 (5) "psychologist" means a person who is duly
16 licensed or certified in the state where the service is
17 rendered and has a doctoral degree in psychology and has had at
18 least two years of clinical experience in a recognized health
19 setting or has met the standards of the national register of
20 health service providers in psychology;

21 (6) "physician assistant" means a person who
22 is licensed by the New Mexico medical board to practice as a
23 physician assistant and who provides services to patients under
24 the supervision and direction of a licensed physician;

25 (7) "certified nurse-midwife" means a person

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1 licensed by the board of nursing as a registered nurse and who
2 is registered with the public health division of the department
3 of health as a certified nurse-midwife;

4 (8) "registered lay midwife" means a person
5 who practices lay midwifery and is registered as a registered
6 lay midwife by the public health division of the department of
7 health; ~~and~~

8 (9) "registered nurse in expanded practice"
9 means a person licensed by the board of nursing as a registered
10 nurse approved for expanded practice pursuant to the Nursing
11 Practice Act as a certified nurse practitioner, certified
12 registered nurse anesthetist, certified clinical nurse
13 specialist in psychiatric mental health nursing or clinical
14 nurse specialist in private practice and who has a master's
15 degree or doctorate in a defined clinical nursing [~~speciality~~]
16 specialty and is certified by a national nursing organization;
17 and

18 (10) "dental therapist-hygienist" means an
19 individual licensed to practice dental therapy-hygiene pursuant
20 to the Dental Therapist-Hygienist Act.

21 C. This section shall apply to any such policy that
22 is delivered or issued for delivery in this state on or after
23 July 1, 1979 and to any existing group policy or plan on its
24 anniversary or renewal date after June 30, 1979 or at
25 expiration of the applicable collective bargaining contract, if

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1 any, whichever is later."

2 SECTION 14. Section 59A-46-35 NMSA 1978 (being Laws 1987,
3 Chapter 335, Section 1, as amended) is amended to read:

4 "59A-46-35. PROVIDER DISCRIMINATION PROHIBITED.--No class
5 of licensed individual providers willing to meet the terms and
6 conditions offered by a health maintenance organization shall
7 be excluded from a health maintenance organization. For
8 purposes of this section, "providers" means those persons
9 licensed pursuant to:

- 10 A. the Optometry Act;
- 11 B. Section 61-3-23.2 NMSA 1978;
- 12 C. the Chiropractic Physician Practice Act;
- 13 D. the Dental Health Care Act;
- 14 E. the Medical Practice Act;
- 15 F. the Podiatry Act;
- 16 G. the Professional Psychologist Act;
- 17 H. Chapter 61, Article 10 NMSA 1978; [~~or~~]
- 18 I. the Pharmacy Act; or
- 19 J. the Dental Therapist-Hygienist Act."

20 SECTION 15. Section 59A-47-28.4 NMSA 1978 (being Laws
21 2003, Chapter 343, Section 4) is amended to read:

22 "59A-47-28.4. COVERAGE FOR DENTAL THERAPIST-HYGIENISTS
23 AND COLLABORATIVE PRACTICE DENTAL HYGIENISTS.--An individual or
24 group subscriber contract delivered or issued for delivery in
25 New Mexico that, on a prepaid, service or indemnity basis,

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1 provides for treatment of persons for the prevention, cure or
2 correction of any illness or physical or mental condition shall
3 include coverage for the services of a dental therapist-
4 hygienist and of a dental hygienist in a collaborative practice
5 pursuant to the Dental Health Care Act."

6 SECTION 16. Section 61-5B-10 NMSA 1978 (being Laws 1994,
7 Chapter 55, Section 39) is amended to read:

8 "61-5B-10. IMPAIRED DENTISTS, DENTAL THERAPIST-HYGIENISTS
9 AND DENTAL HYGIENISTS TREATMENT PROGRAM.--

10 A. The board has the authority to enter into an
11 agreement with a nonprofit corporation to implement an impaired
12 dentists, dental therapist-hygienists and dental hygienists
13 treatment program.

14 B. For the purposes of this section:

15 (1) "dental therapist-hygienist" means an
16 individual licensed to perform dental therapy-hygiene pursuant
17 to the provisions of the Dental Therapist-Hygienist Act; and

18 (2) "impaired dentists, dental therapist-
19 hygienists and dental hygienists treatment program" means a
20 program of care and rehabilitation services provided by those
21 organizations authorized by the board to provide for the
22 detention, intervention and monitoring of an impaired [~~dentist~~
23 ~~or dental hygienist~~] licensee."