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SENATE BILL

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE  
AND THE INDIAN AFFAIRS COMMITTEE

AN ACT

RELATING TO HEALTH CARE; AMENDING AND ENACTING SECTIONS OF THE  
DENTAL HEALTH CARE ACT; PROVIDING FOR LICENSURE AND A SCOPE OF  
PRACTICE FOR DENTAL THERAPISTS; PROVIDING FOR THE REGULATION,  
LICENSURE AND DISCIPLINE OF DENTAL THERAPISTS; 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 NONPROFIT HEALTH  
CARE PLAN LAW AND THE IMPAIRED DENTISTS AND DENTAL HYGIENISTS  
ACT; RENAMING THE IMPAIRED DENTISTS AND DENTAL HYGIENISTS ACT  
AS THE "IMPAIRED DENTAL PROFESSIONALS ACT"; PROVIDING  
PENALTIES.

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

SECTION 1. Section 61-5A-2 NMSA 1978 (being Laws 1994,  
Chapter 55, Section 2, as amended) is amended to read:

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1 "61-5A-2. PURPOSE.--

2 A. In the interest of the public health, safety and  
3 welfare and to protect the public from the improper,  
4 unprofessional, incompetent and unlawful practice of dentistry,  
5 dental therapy and dental hygiene, it is necessary to provide  
6 laws and rules controlling the granting and use of the  
7 privilege to practice dentistry, dental therapy and dental  
8 hygiene and to establish a board of dental health care, a joint  
9 committee and a dental hygienists committee to implement and  
10 enforce those laws and rules.

11 B. The primary duties of the New Mexico board of  
12 dental health care are:

13 (1) to issue licenses to qualified dentists  
14 and owners of dental practices;

15 (2) to certify qualified dental assistants,  
16 expanded-function dental auxiliaries and community dental  
17 health coordinators;

18 (3) to issue licenses to dental therapists in  
19 accordance with the recommendation of the joint committee;

20 [~~(3)~~] (4) to issue licenses to dental  
21 hygienists [~~through~~] in accordance with the recommendation of  
22 the [~~dental hygienists~~] committee;

23 [~~(4)~~] (5) to discipline incompetent or  
24 unprofessional dentists; dental assistants; owners of dental  
25 practices; [~~and, through the~~] dental therapists in accordance

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1 with the recommendation of the joint committee; and dental  
2 hygienists in accordance with the recommendation of the  
3 committee [~~dental hygienists~~]; and

4 [~~(5)~~] (6) to aid in the rehabilitation of  
5 impaired dentists, dental therapists and dental hygienists for  
6 the purpose of protecting the public."

7 SECTION 2. Section 61-5A-3 NMSA 1978 (being Laws 1994,  
8 Chapter 55, Section 3, as amended) is amended to read:

9 "61-5A-3. DEFINITIONS.--As used in the Dental Health Care  
10 Act:

11 A. "assessment" means the review and documentation  
12 of the oral condition, and the recognition and documentation of  
13 deviations from the healthy condition, without a diagnosis to  
14 determine the cause or nature of disease or its treatment;

15 B. "board" means the New Mexico board of dental  
16 health care;

17 C. "certified dental assistant" means an individual  
18 certified by the dental assisting national board;

19 D. "collaborative dental hygiene practice" means a  
20 New Mexico licensed dental hygienist practicing according to  
21 Subsections D through G of Section 61-5A-4 NMSA 1978;

22 E. "committee" means the New Mexico dental  
23 hygienists committee;

24 F. "community dental health coordinator" means a  
25 dental assistant, a dental hygienist or other trained personnel

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1 certified by the board as a community dental health coordinator  
2 to provide educational, preventive and limited palliative care  
3 and assessment services working collaboratively under the  
4 general supervision of a licensed dentist in settings other  
5 than traditional dental offices and clinics;

6 G. "consulting dentist" means a dentist who has  
7 entered into an approved agreement to provide consultation and  
8 create protocols with a collaborating dental hygienist and,  
9 when required, to provide diagnosis and authorization for  
10 services, in accordance with the rules of the board and the  
11 committee;

12 H. "dental assistant certified in expanded  
13 functions" means a dental assistant who meets specific  
14 qualifications set forth by rule of the board;

15 I. "dental health professional shortage area" means  
16 a geographic area of the state designated by a federal or state  
17 agency as having a significantly limited number of dental  
18 health care providers;

19 [H.] J. "dental hygiene-focused assessment" means  
20 the documentation of existing oral and relevant system  
21 conditions and the identification of potential oral disease to  
22 develop, communicate, implement and evaluate a plan of oral  
23 hygiene care and treatment;

24 [~~I.~~] "~~dental assistant certified in expanded~~  
25 ~~functions" means a dental assistant who meets specific~~

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1 ~~qualifications set forth by rule of the board;~~

2           ~~J.~~ K. "dental hygienist" means an individual who  
3 has graduated and received a degree from a dental hygiene  
4 educational program that is accredited by the commission on  
5 dental accreditation, that provides a minimum of two academic  
6 years of dental hygiene curriculum and that is an institution  
7 of higher education; and "dental hygienist" means, except as  
8 the context otherwise requires, an individual who holds a  
9 license to practice dental hygiene in New Mexico;

10           ~~K.~~ L. "dental laboratory" means any place where  
11 dental restorative, prosthetic, cosmetic and therapeutic  
12 devices or orthodontic appliances are fabricated, altered or  
13 repaired by one or more persons under the orders and  
14 authorization of a dentist;

15           ~~L.~~ M. "dental technician" means an individual,  
16 other than a licensed dentist, who fabricates, alters, repairs  
17 or assists in the fabrication, alteration or repair of dental  
18 restorative, prosthetic, cosmetic and therapeutic devices or  
19 orthodontic appliances under the orders and authorization of a  
20 dentist;

21           N. "dental therapist" means an individual licensed  
22 to practice dental therapy in the state;

23           O. "dental therapist management agreement" means a  
24 written general supervision agreement between a dentist and a  
25 dental therapist;

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1                    P. "dental therapy representative" means an  
2 individual who:

3                    (1) publicly supports or recommends the  
4 practice of dental therapy in the state;

5                    (2) has knowledge of the practice of dental  
6 therapy or of the educational or licensing requirements for the  
7 practice of dental therapy; and

8                    (3) has been nominated by a representative of:

9                    (a) New Mexico health resources, inc.;

10                   (b) health action New Mexico;

11                   (c) a state or regional dental  
12 therapists' association; or

13                   (d) an institution of higher education  
14 located in New Mexico that has a dental therapist education  
15 program;

16                   ~~[M-]~~ Q. "dentist" means an individual who has  
17 graduated and received a degree from a school of dentistry that  
18 is accredited by the commission on dental accreditation and,  
19 except as the context otherwise requires, who holds a license  
20 to practice dentistry in New Mexico;

21                   ~~[N-]~~ R. "direct supervision" means the process  
22 under which an act is performed when a dentist or a dental  
23 therapist licensed pursuant to the Dental Health Care Act:

24                   (1) is physically present throughout the  
25 performance of the act;

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1 (2) orders, controls and accepts full  
2 professional responsibility for the act performed; and

3 (3) evaluates and approves the procedure  
4 performed before the patient departs the care setting;

5 ~~[P.]~~ S. "expanded-function dental auxiliary" means  
6 a dental assistant, dental hygienist or other dental  
7 practitioner that has received education beyond that required  
8 for licensure or certification in that individual's scope of  
9 practice and that has been certified by the board as an  
10 expanded-function dental auxiliary who works under the direct  
11 supervision of a dentist;

12 ~~[P. "general supervision" means the authorization~~  
13 ~~by a dentist of the procedures to be used by a dental~~  
14 ~~hygienist, dental assistant or dental student and the execution~~  
15 ~~of the procedures in accordance with a dentist's diagnosis and~~  
16 ~~treatment plan at a time the dentist is not physically present~~  
17 ~~and in facilities as designated by rule of the board;]~~

18 T. "general supervision" means a dentist's  
19 authorization of the procedures that are executed:

20 (1) by a dental therapist, dental hygienist,  
21 dental assistant or dental student while the dentist is not  
22 physically present in the facility where a procedure is taking  
23 place; and

24 (2) in accordance with the following:

25 (a) for a dental therapist, in

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1 accordance with the dental therapist's diagnosis and treatment  
2 plan; and

3 (b) for a dental hygienist, dental  
4 assistant or dental student, in accordance with a dentist's  
5 diagnosis and treatment plan;

6 [Q-] U. "indirect supervision" means that a dentist  
7 or dental therapist, or in certain settings a dental hygienist  
8 or dental assistant certified in expanded functions, is present  
9 in the treatment facility while authorized treatments are being  
10 performed by a dental therapist, unlicensed graduate of a  
11 dental therapy education program, dental hygienist, dental  
12 assistant or dental student;

13 V. "joint committee" means the New Mexico dental  
14 therapist joint committee that makes recommendations to the  
15 board relating to the regulation of the practice of dental  
16 therapy and licensure of dental therapists;

17 [R-] W. "non-dentist owner" means an individual not  
18 licensed as a dentist in New Mexico or a corporate entity not  
19 owned by a majority interest of a New Mexico licensed dentist  
20 that employs or contracts with a dentist, dental therapist or  
21 dental hygienist to provide dental, dental therapy or dental  
22 hygiene services;

23 [S-] X. "palliative procedures" means nonsurgical,  
24 reversible procedures that are meant to alleviate pain and  
25 stabilize acute or emergent problems; [~~and~~]

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1           Y. "store-and-forward technology" means electronic  
2 information, imaging and communication, including interactive  
3 audio, video and data communications, that is transferred or  
4 recorded or otherwise stored for asynchronous use;

5           [~~F.~~] Z. "teledentistry" means a dentist's use of  
6 health information technology in real time to provide limited  
7 diagnostic and treatment planning services in cooperation with  
8 another dentist, a dental therapist, a dental hygienist, a  
9 community dental health coordinator or a student enrolled in a  
10 program of study to become a dental assistant, dental hygienist,  
11 dental therapist or dentist; and

12           AA. "telehealth" means the use of electronic  
13 information, imaging and communication technologies, including  
14 interactive audio, video and data communications, as well as  
15 store-and-forward technologies, to provide and support health  
16 care delivery, diagnosis, consultation treatment, transfer of  
17 medical data and education."

18           **SECTION 3.** Section 61-5A-9 NMSA 1978 (being Laws 1994,  
19 Chapter 55, Section 9, as amended by Laws 2003, Chapter 408,  
20 Section 5 and by Laws 2003, Chapter 409, Section 7) is amended  
21 to read:

22           "61-5A-9. COMMITTEE CREATED--POWERS.--

23           A. There is created the nine-member "New Mexico  
24 dental hygienists committee". The committee [~~shall be~~] is  
25 administratively attached to the regulation and licensing

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1 department. The committee [~~shall consist~~] consists of five  
2 dental hygienists, two dentists and two public members. The  
3 dental hygienists shall be actively practicing and have been  
4 licensed practitioners and residents of New Mexico for a period  
5 of five years preceding the date of their appointment. The  
6 dentists and public members shall be members of the board and  
7 shall be elected annually to sit on the committee by those  
8 members sitting on the board.

9 B. The governor may appoint the dental hygienists  
10 from a list of names submitted by the New Mexico dental  
11 hygienists association. There shall be one member from each  
12 district. Members shall serve until their successors have been  
13 appointed. No more than one member may be employed by or  
14 receive remuneration from a dental or dental hygiene  
15 educational institution.

16 C. Appointments for dental hygienist members shall  
17 be for terms of five years. Appointments shall be made so that  
18 the term of one dental hygienist expires on July 1 of each  
19 year.

20 D. A committee member failing to attend three  
21 committee or board meetings, either regular or special, during  
22 the committee member's term shall automatically be removed as a  
23 member of the committee unless excused from attendance by the  
24 committee for good cause shown. Members of the committee not  
25 sitting on the board shall not be required or allowed to attend

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1 board disciplinary hearings.

2 E. A committee member shall not serve more than two  
3 full terms on any state-chartered board whose responsibility  
4 includes the regulation of practice or licensure of dentistry  
5 or dental hygiene in New Mexico. A partial term of three or  
6 more years shall be considered a full term.

7 F. In the event of a vacancy, the secretary of the  
8 committee shall immediately notify the governor, the committee  
9 and board members and the New Mexico dental hygienists  
10 association of the reason for its occurrence and action taken  
11 by the committee, so as to expedite appointment of a new  
12 committee member.

13 G. The committee shall meet at least four times  
14 every year, and no more than two meetings shall be public rules  
15 hearings. Regular meetings shall not be more than one hundred  
16 twenty days apart. The committee may also hold special  
17 meetings and emergency meetings in accordance with the rules of  
18 the board and committee, upon written notification to all  
19 members of the committee and the board.

20 H. Members of the committee shall be reimbursed as  
21 provided in the Per Diem and Mileage Act and shall receive no  
22 other compensation, perquisite or allowance.

23 I. A simple majority of the committee members  
24 currently serving shall constitute a quorum, provided at least  
25 two of that quorum are not hygienist members and three are

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1 hygienist members.

2 J. The committee shall elect officers annually as  
3 deemed necessary to administer its duties and as provided in  
4 rules [~~and regulations~~] of the board and committee.

5 K. The committee shall make recommendations to the  
6 board, for ratification pursuant to Section 61-5A-11 NMSA 1978,  
7 relating to the regulation, examination, licensing, continuing  
8 education, scope of practice, standard of care, issuance of  
9 investigative subpoenas and discipline of dental hygienists.

10 L. In accordance with the Uniform Licensing Act,  
11 for any cause stated in the Dental Health Care Act, the  
12 committee may make its recommendations to the board in matters  
13 involving the granting, denial, review, censure, reprimand,  
14 fining and placement on probation and stipulation, suspension  
15 and revocation of licenses to practice dental hygiene."

16 SECTION 4. Section 61-5A-10 NMSA 1978 (being Laws 1994,  
17 Chapter 55, Section 10, as amended) is amended to read:

18 "61-5A-10. POWERS AND DUTIES OF THE BOARD [~~AND~~  
19 ~~COMMITTEE~~].--In addition to any other authority provided by  
20 law, the board [~~and the committee, when designated~~] shall:

21 A. enforce and administer the provisions of the  
22 Dental Health Care Act and the Dental Amalgam Waste Reduction  
23 Act;

24 B. adopt, publish, file and revise, in accordance  
25 with the Uniform Licensing Act and the State Rules Act, all

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1 rules as may be necessary to:

2 (1) regulate the examination and licensure of  
3 dentists, [~~and, through the committee, regulate the examination~~  
4 ~~and licensure of~~] dental therapists and dental hygienists;

5 (2) provide for the examination and  
6 certification of dental assistants by the board;

7 (3) provide for the regulation of dental  
8 technicians by the board;

9 (4) regulate the practice of dentistry, [~~and~~]  
10 dental assisting, [~~and, through the committee, regulate the~~  
11 ~~practice of~~] dental therapy and dental hygiene; and

12 (5) provide for the regulation and licensure  
13 of non-dentist owners by the board;

14 C. adopt and use a seal;

15 D. administer oaths to all applicants, witnesses  
16 and others appearing before the board or the committee, as  
17 appropriate;

18 E. keep an accurate record of all meetings,  
19 receipts and disbursements;

20 F. grant, deny, review, suspend and revoke licenses  
21 and certificates to practice dentistry, dental assisting, [~~and,~~  
22 ~~through the committee~~] dental therapy and dental hygiene and  
23 censure, reprimand, fine and place on probation and stipulation  
24 dentists, dental assistants, [~~and, through the committee~~]  
25 dental therapists and dental hygienists, in accordance with the

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1 Uniform Licensing Act for any cause stated in the Dental Health  
2 Care Act and the Dental Amalgam Waste Reduction Act;

3 G. grant, deny, review, suspend and revoke licenses  
4 to own dental practices and censure, reprimand, fine and place  
5 on probation and stipulation non-dentist owners, in accordance  
6 with the Uniform Licensing Act, for any cause stated in the  
7 Dental Health Care Act and the Dental Amalgam Waste Reduction  
8 Act;

9 H. maintain records of the name, address, license  
10 number and such other demographic data as may serve the needs  
11 of the board of licensees, together with a record of license  
12 renewals, suspensions, revocations, probations, stipulations,  
13 censures, reprimands and fines. The board shall make available  
14 composite reports of demographic data but shall limit public  
15 access to information regarding individuals to their names,  
16 addresses, license numbers and license actions or as required  
17 by statute;

18 I. hire and contract for services from persons as  
19 necessary to carry out the board's duties;

20 J. establish ad hoc committees whose members shall  
21 be appointed by the chair with the advice and consent of the  
22 board or committee and shall include at least one member of the  
23 board or committee as it deems necessary for carrying on its  
24 business;

25 K. have the authority to pay per diem and mileage

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1 to individuals who are appointed by the board or the committee  
2 to serve on ad hoc committees;

3 L. have the authority to hire or contract with  
4 investigators to investigate possible violations of the Dental  
5 Health Care Act and the Dental Amalgam Waste Reduction Act;

6 M. have the authority to issue investigative  
7 subpoenas prior to the issuance of a notice of contemplated  
8 action for the purpose of investigating complaints against  
9 dentists, dental assistants, [~~and, through the committee~~]  
10 dental therapists and dental hygienists licensed under the  
11 Dental Health Care Act and the Dental Amalgam Waste Reduction  
12 Act;

13 N. have the authority to sue or be sued and to  
14 retain the services of an attorney at law for counsel and  
15 representation regarding the carrying out of the board's  
16 duties;

17 O. have the authority to create and maintain a  
18 formulary, in consultation with the board of pharmacy, of  
19 medications that a dental therapist or dental hygienist may  
20 prescribe, administer or dispense in accordance with rules the  
21 board has promulgated; and

22 P. establish continuing education or continued  
23 competency requirements for dentists, certified dental  
24 assistants in expanded functions, dental technicians, [~~and,~~  
25 ~~through the committee~~] dental therapists and dental

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1       hygienists."

2               **SECTION 5.** A new section of the Dental Health Care Act is  
3 enacted to read:

4               "[NEW MATERIAL] NEW MEXICO DENTAL THERAPIST JOINT  
5 COMMITTEE--CREATION--MEMBERSHIP.--

6               A. There is created the thirteen-member "New Mexico  
7 dental therapist joint committee". The joint committee shall  
8 consist of thirteen members, including:

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

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

13                      (3) one dental therapist or dental therapy  
14 representative; and

15                      (4) two current public members of the board.

16               B. The joint committee shall make recommendations  
17 to the board, for ratification pursuant to Section 61-5A-11  
18 NMSA 1978, relating to the regulation, examination, licensing,  
19 continuing education, scope of practice, standard of care,  
20 issuance of investigative subpoenas and discipline of dental  
21 therapists.

22               C. Within thirty days of the effective date of this  
23 2015 act, the governor shall appoint the dental therapist or  
24 dental therapy representative member of the joint committee  
25 from a list of names submitted by New Mexico health resources,

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1 inc., health action New Mexico, a state or regional dental  
2 therapists' association or a state institution of higher  
3 education that has a dental therapy education program.

4 D. Appointment of the dental therapist or dental  
5 therapy representative member shall be for a term of five  
6 years.

7 E. A quorum at a meeting of the joint committee  
8 shall include the dental therapist member or dental therapy  
9 representative member of the joint committee.

10 F. In accordance with the Uniform Licensing Act,  
11 for any cause stated in the Dental Health Care Act, the joint  
12 committee may make its recommendations to the board in matters  
13 involving the granting, denial, review, censure, reprimand,  
14 fining and placement on probation and stipulation, suspension  
15 and revocation of licenses to practice dental therapy.

16 G. By August 1, 2015, the joint committee shall  
17 recommend for adoption and promulgation by the board rules  
18 relating to the practice of dental therapy."

19 SECTION 6. Section 61-5A-11 NMSA 1978 (being Laws 1994,  
20 Chapter 55, Section 11) is amended to read:

21 "61-5A-11. RATIFICATION OF DENTAL HYGIENIST COMMITTEE  
22 RECOMMENDATIONS--JOINT COMMITTEE RECOMMENDATIONS.--

23 A. The board shall ratify the recommendations of  
24 the dental hygienist committee or the joint committee unless  
25 the board makes a specific finding that a recommendation is:

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1 (1) beyond the jurisdiction of the dental  
2 hygienist committee or the joint committee;

3 (2) an undue financial impact upon the board;  
4 or

5 (3) not supported by the record.

6 B. The board shall provide the necessary  
7 [~~expenditures~~] funding for expenses incurred by the dental  
8 hygienist committee, [~~and~~] the joint committee or the board in  
9 implementing and executing [~~the~~] ratified recommendations."

10 SECTION 7. Section 61-5A-14.1 NMSA 1978 (being Laws 2011,  
11 Chapter 113, Section 10) is amended to read:

12 "61-5A-14.1. PUBLIC-SERVICE LICENSURE.-- [~~The board or the~~  
13 ~~committee may issue a temporary public-service license to~~  
14 ~~practice dentistry or dental hygiene to an applicant who is~~  
15 ~~licensed to practice dentistry or dental hygiene in another~~  
16 ~~state or territory of the United States or who is enrolled as a~~  
17 ~~dental resident in a residency program in this state and the~~  
18 ~~commission on dental accreditation has accredited that program.~~  
19 ~~That applicant shall be otherwise qualified to practice~~  
20 ~~dentistry or dental hygiene in this state. The following~~  
21 ~~provisions shall apply:~~

22 A. ~~the applicant for public-service licensure shall~~  
23 ~~hold a valid license in good standing in another state or~~  
24 ~~territory of the United States or be enrolled as a dental~~  
25 ~~resident in a residency program in the state that the~~

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1 ~~commission on dental accreditation has accredited;~~

2 ~~B. a temporary public-service license issued to a~~  
3 ~~dental residency student who has not taken and passed a~~  
4 ~~clinical examination accepted by the board shall not be renewed~~  
5 ~~after the student has completed the residency program;~~

6 ~~C. the applicant shall practice dentistry or dental~~  
7 ~~hygiene under the sponsorship of or in association with a~~  
8 ~~licensed New Mexico dentist or dental hygienist;~~

9 ~~D. the public-service license may be issued for~~  
10 ~~those activities as stipulated by the board or committee in the~~  
11 ~~rules of the board. It may be issued upon written application~~  
12 ~~of the applicant when accompanied by such proof of~~  
13 ~~qualifications as the secretary-treasurer of the board or~~  
14 ~~committee, in the secretary-treasurer's discretion, may~~  
15 ~~require. Public-service licensees shall engage in only those~~  
16 ~~activities specified on the public-service license for the time~~  
17 ~~designated, and the public-service license shall identify the~~  
18 ~~licensed New Mexico dentist or dental hygienist who will~~  
19 ~~sponsor or associate with the applicant during the time the~~  
20 ~~applicant practices dentistry or dental hygiene in New Mexico;~~

21 ~~E.]~~ A. The board may issue a temporary public-  
22 service license to practice dentistry to an applicant who is  
23 licensed to practice dentistry in another state or territory of  
24 the United States or who is enrolled as a dental resident in a  
25 residency program in the state that the commission on dental

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1 accreditation has accredited. The applicant shall be otherwise  
2 qualified to practice dentistry in the state. The board shall  
3 not renew the temporary public-service license of a dental  
4 residency student who has completed the student's residency  
5 program. The applicant shall practice dentistry under the  
6 sponsorship of or in association with a licensed New Mexico  
7 dentist, who shall be identified on the public-service license.  
8 A public-service licensee shall engage only in those activities  
9 the board specifies on the public-service license. The board  
10 may issue the public-service license upon an applicant's  
11 written application when accompanied by proof of qualifications  
12 as specified in board rules.

13 B. Upon the recommendation of the joint committee,  
14 the board shall issue a temporary public-service license to  
15 practice dental therapy to an applicant who is licensed to  
16 practice dental therapy in another state or another territory  
17 of the United States. The applicant shall be otherwise  
18 qualified to practice dental therapy in the state. The  
19 applicant shall practice dental therapy under the sponsorship  
20 of or in association with a licensed New Mexico dentist, dental  
21 therapist or dental hygienist, who shall be identified on the  
22 public-service license. A public-service licensee shall engage  
23 only in those activities specified on the public-service  
24 license. Upon the joint committee's recommendation, the board  
25 shall issue the public-service license upon an applicant's

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1 written application when accompanied by proof of qualifications  
2 as specified in board rules.

3 C. Upon the recommendation of the committee, the  
4 board shall issue a temporary public-service license to  
5 practice dental hygiene to an applicant who is licensed to  
6 practice dental hygiene in another state or another territory  
7 of the United States. The applicant shall be otherwise  
8 qualified to practice dental hygiene in the state. The  
9 applicant shall practice dental hygiene under the sponsorship  
10 of or in association with a licensed New Mexico dentist, dental  
11 therapist or dental hygienist, who shall be identified on the  
12 public-service license. A public-service licensee shall engage  
13 only in those activities specified on the public-service  
14 license. Upon the recommendation of the committee, the board  
15 shall issue the public-service license upon an applicant's  
16 written application when accompanied by proof of qualifications  
17 as specified in board rules.

18 D. The following provisions shall apply to any  
19 public-service licensure granted pursuant to this section:

20 (1) a public-service license shall be valid  
21 only for the time designated on the public-service license;

22 (2) the sponsoring or associating dentist,  
23 dental therapist or dental hygienist shall submit an affidavit  
24 attesting to the qualifications of the applicant and the  
25 activities the applicant will perform; and

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1                   ~~[F.]~~ (3) the public-service license shall be  
2 issued for a period not to exceed twelve months and may be  
3 renewed upon application and payment of required fees.

4                   ~~[G.—the]~~ E. An application for a public-service  
5 license under this section shall be accompanied by a license  
6 fee.

7                   ~~[H.—the]~~ F. A public-service licensee shall be  
8 required to comply with the Dental Health Care Act and all  
9 rules promulgated pursuant to that act. ~~[and~~

10                   ~~[.]~~ G. A dentist, dental therapist or dental  
11 hygienist providing dental care services to a charitable dental  
12 care project may provide dental care pursuant to a presumptive  
13 temporary public-service license valid for a period of no  
14 longer than three days. The dentist, dental therapist or  
15 dental hygienist shall be otherwise subject to the provisions  
16 of this section and board rules governing public-service  
17 licensure. This presumptive temporary public-service license  
18 is only valid when:

19                               (1) the dentist, dental therapist or dental  
20 hygienist receives no compensation;

21                               (2) the project is sponsored by an entity that  
22 meets the board's definition of "entity" and that the board has  
23 approved to undertake the charitable project;

24                               (3) the dental care is performed within the  
25 limits of the license that the dentist, dental therapist or

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1 dental hygienist holds in another jurisdiction;

2 (4) upon request, the out-of-state dentist,  
3 dental therapist or dental hygienist produces any document  
4 necessary to verify the dentist's, dental therapist's or dental  
5 hygienist's credentials; and

6 (5) the out-of-state dentist, dental therapist  
7 or dental hygienist works under the indirect supervision of a  
8 dentist, dental therapist or dental hygienist licensed in this  
9 state."

10 SECTION 8. Section 61-5A-15 NMSA 1978 (being Laws 1994,  
11 Chapter 55, Section 15) is amended to read:

12 "61-5A-15. CONTENT OF [~~LICENSE~~] LICENSES AND  
13 CERTIFICATES--DISPLAY OF [~~LICENSE--RENEWALS--RETIRE LICENSE~~]  
14 LICENSES AND CERTIFICATES.--

15 A. All dental licenses issued by the board shall  
16 bear:

- 17 (1) a serial number;
- 18 (2) the full name of the licensee;
- 19 (3) the date of issue;
- 20 (4) the seal of the board;
- 21 (5) if the license is a specialty license, the  
22 specialty to which practice is limited;
- 23 (6) the signatures of a majority of the board  
24 members; and
- 25 (7) the attestation of the board president and

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1 secretary.

2 B. All dental therapist licenses issued by the  
3 board shall bear:

- 4 (1) a serial number;
- 5 (2) the full name of the licensee;
- 6 (3) the date of issue;
- 7 (4) the seal of the board;
- 8 (5) the signatures of a majority of the joint  
9 committee members; and
- 10 (6) the attestation of the board president and  
11 secretary.

12 [~~B.~~] C. All dental hygienist licenses issued by the  
13 board shall bear:

- 14 (1) a serial number;
- 15 (2) the full name of the licensee;
- 16 (3) the date of issue;
- 17 (4) the seal of the board;
- 18 (5) the signatures of a majority of the  
19 committee members; and
- 20 (6) the attestation of the board president and  
21 secretary.

22 [~~C.~~] D. Certificates issued to dental assistants  
23 shall bear:

- 24 (1) a serial number;
- 25 (2) the full name of the assistant;

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- 1 (3) the date of issue;
- 2 (4) the date of expiration;
- 3 (5) the expanded functions certified to
- 4 perform; and
- 5 (6) the attestation of the board secretary.

6 ~~[D-]~~ E. All licenses and certificates shall be  
7 displayed in a conspicuous place in the office where the holder  
8 practices. The license or certificate shall, upon request, be  
9 exhibited to any ~~[of the members]~~ member or authorized agent of  
10 the board, the joint committee or the committee ~~[or its~~  
11 ~~authorized agent]."~~

12 **SECTION 9.** Section 61-5A-21 NMSA 1978 (being Laws 1994,  
13 Chapter 55, Section 21, as amended) is amended to read:

14 "61-5A-21. DISCIPLINARY PROCEEDINGS--APPLICATION OF  
15 UNIFORM LICENSING ACT.--

16 A. In accordance with the Uniform Licensing Act and  
17 rules of the board, the board ~~[and committee]~~ may fine and may  
18 deny, revoke, suspend, stipulate or otherwise limit any license  
19 or certificate, including those of licensed non-dentist owners,  
20 held or applied for under the Dental Health Care Act, upon  
21 findings by the board ~~[or the committee]~~ that the licensee,  
22 certificate holder or applicant:

23 (1) is guilty of fraud or deceit in procuring  
24 or attempting to procure a license or certificate;

25 (2) has been convicted of a crime punishable

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1 by incarceration in a federal prison or state penitentiary;  
2 provided a copy of the record of conviction, certified to by  
3 the clerk of the court entering the conviction, shall be  
4 conclusive evidence of such conviction;

5 (3) is guilty of gross incompetence or gross  
6 negligence, as defined by rules of the board, in the practice  
7 of dentistry, dental therapy, dental hygiene or dental  
8 assisting;

9 (4) is habitually intemperate or is addicted  
10 to the use of habit-forming drugs or is addicted to any vice to  
11 such degree as to render the licensee unfit to practice;

12 (5) is guilty of unprofessional conduct as  
13 defined by rule;

14 (6) is guilty of any violation of the  
15 Controlled Substances Act;

16 (7) has violated any provisions of the Dental  
17 Health Care Act or rule or regulation of the board [~~or the~~  
18 ~~committee~~];

19 (8) is guilty of willfully or negligently  
20 practicing beyond the scope of licensure;

21 (9) is guilty of practicing dentistry, dental  
22 therapy or dental hygiene without a license or aiding or  
23 abetting the practice of dentistry, dental therapy or dental  
24 hygiene by a person not licensed under the Dental Health Care  
25 Act;

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1 (10) is guilty of obtaining or attempting to  
2 obtain any fee by fraud or misrepresentation or has otherwise  
3 acted in a manner or by conduct likely to deceive, defraud or  
4 harm the public;

5 (11) is guilty of patient abandonment;

6 (12) is guilty of failing to report to the  
7 board any adverse action taken against the licensee by a  
8 licensing authority, peer review body, malpractice insurance  
9 carrier or other entity as defined in rules of the board [~~and~~  
10 ~~the committee~~];

11 (13) has had a license, certificate or  
12 registration to practice as a dentist, dental therapist or  
13 dental hygienist revoked, suspended, denied, stipulated or  
14 otherwise limited in any jurisdiction, territory or possession  
15 of the United States or another country for actions of the  
16 licensee similar to acts described in this subsection. A  
17 certified copy of the decision of the jurisdiction taking such  
18 disciplinary action will be conclusive evidence; or

19 (14) has failed to furnish the board, its  
20 investigators or its representatives with information requested  
21 by the board, the joint committee or the committee in the  
22 course of an official investigation.

23 B. Disciplinary proceedings may be instituted by  
24 sworn complaint by any person, including a board, joint  
25 committee or committee member, and shall conform with the

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1 provisions of the Uniform Licensing Act.

2 ~~[G. Licensees and certificate holders shall bear~~  
3 ~~the costs of disciplinary proceedings unless exonerated.~~

4 ~~D. Any person filing a sworn complaint shall be~~  
5 ~~immune from liability arising out of civil action if the~~  
6 ~~complaint is filed in good faith and without actual malice.~~

7 ~~E.]~~ C. Licensees whose licenses are in a  
8 probationary status shall pay reasonable expenses for  
9 maintaining probationary status, including but not limited to  
10 laboratory costs when laboratory testing of biological fluids  
11 or accounting costs when audits are included as a condition of  
12 probation."

13 **SECTION 10.** Section 61-5A-24 NMSA 1978 (being Laws 1994,  
14 Chapter 55, Section 24) is amended to read:

15 "61-5A-24. INJUNCTION TO STOP UNLICENSED DENTAL, DENTAL  
16 THERAPY OR DENTAL HYGIENE PRACTICE.--

17 A. The attorney general, the district attorney, the  
18 board, the joint committee, the committee or any citizen of any  
19 county where any person practices dentistry, dental therapy or  
20 dental hygiene without possessing a valid license to do so may,  
21 in accordance with the laws of New Mexico governing  
22 injunctions, maintain an action in the name of the state to  
23 enjoin such person from practicing dentistry, dental therapy or  
24 dental hygiene until a valid license to practice dentistry,  
25 dental therapy or dental hygiene is secured [~~and~~]. Any person

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1 who has been enjoined who violates the injunction shall be  
2 punished for contempt of court; provided that the injunction  
3 does not relieve any person practicing dentistry, dental  
4 therapy or dental hygiene without a valid license from a  
5 criminal prosecution [~~therefore~~] as provided by law.

6 B. In charging any person in a complaint for  
7 injunction, or in an affidavit, information or indictment with  
8 practicing dentistry, dental therapy or dental hygiene without  
9 a valid license, it is sufficient to charge that the person  
10 did, upon a certain day and in a certain county, engage in the  
11 practice of dentistry, dental therapy or dental hygiene without  
12 a valid license, without averring any further or more  
13 particular facts concerning the same."

14 SECTION 11. A new section of the Dental Health Care Act  
15 is enacted to read:

16 "[NEW MATERIAL] DENTAL THERAPY PRACTICE--SCOPE OF  
17 PRACTICE.--

18 A. As used in the Dental Health Care Act, "dental  
19 therapy practice" means the application of the science of the  
20 prevention and treatment of oral disease through education,  
21 prevention, assessment, diagnosis and clinical and other  
22 therapeutic services under the general supervision of a  
23 dentist. "Dental therapy practice" includes the practice of  
24 dental hygiene, as provided in Subsection B of Section 61-5A-4  
25 NMSA 1978, and:

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- 1 (1) behavioral management, oral health
- 2 instruction and disease prevention education, including
- 3 nutritional counseling and dietary analysis;
- 4 (2) diagnosis of dental disease and the
- 5 formulation of an individualized treatment plan, including
- 6 caries risk assessment;
- 7 (3) preliminary charting of the oral cavity;
- 8 (4) prescribing, exposing and interpreting
- 9 radiographs;
- 10 (5) mechanical polishing of teeth and
- 11 restorations;
- 12 (6) application of topical preventive or
- 13 prophylactic agents, including fluoride varnishes and pit and
- 14 fissure sealants;
- 15 (7) pulp vitality testing;
- 16 (8) application of desensitizing medication or
- 17 resin;
- 18 (9) fabrication of athletic mouthguards;
- 19 (10) placement of temporary restoration;
- 20 (11) tissue conditioning and soft reline;
- 21 (12) traumatic restorative therapy;
- 22 (13) dressing changes;
- 23 (14) emergency replacement and stabilization
- 24 of an avulsed or dislodged tooth to prevent the unintended loss
- 25 of a tooth or teeth;

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- 1 (15) administration of local anesthetic;  
2 (16) extractions of primary teeth;  
3 (17) extractions of permanent teeth that are  
4 not impacted and that do not need sectioning or an incision for  
5 removal;  
6 (18) emergency palliative treatment of dental  
7 pain;  
8 (19) placement and removal of space  
9 maintainers;  
10 (20) cavity preparation;  
11 (21) restoration of primary and permanent  
12 teeth;  
13 (22) placement of temporary crowns;  
14 (23) preparation and placement of pre-formed  
15 crowns;  
16 (24) pulpotomy of primary teeth;  
17 (25) indirect and direct pulp capping on  
18 primary and permanent teeth;  
19 (26) suture removal;  
20 (27) brush biopsies;  
21 (28) simple repairs and adjustments to  
22 removable prosthetic appliances;  
23 (29) re-cementing of permanent crowns;  
24 (30) prevention of potential orthodontic  
25 problems by early identification and appropriate referral;

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1 (31) prevention, identification and management  
2 of dental and medical emergencies and maintenance of current  
3 basic life-support certification;

4 (32) dispensing and administration of  
5 analgesics, anti-inflammatory medications and antibiotics only  
6 within the parameters of a dental therapist management  
7 agreement; and

8 (33) other related services as permitted by  
9 board rules.

10 B. A dental therapist shall practice under the  
11 general supervision of a dentist pursuant to a written  
12 supervision agreement between the dentist and the dental  
13 therapist. The board shall adopt and promulgate rules to  
14 establish minimum requirements for dental therapist management  
15 agreements.

16 C. General supervision of a dental therapist  
17 by a dentist includes communication between the dental  
18 therapist and dentist by use of telehealth.

19 D. A dental therapist may provide dental therapy  
20 services in private and public dental and medical offices,  
21 public and community medical facilities, federal Indian health  
22 service facilities, schools, hospitals and long-term care  
23 facilities and other settings located in dental health  
24 professional shortage areas as established in rules that the  
25 board has adopted and promulgated.



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1           E. After five consecutive years of employment with  
2 the same employer as a dental therapist, fifteen percent of the  
3 patients that the dental therapist serves shall be medicaid  
4 recipients.

5           F. To practice under the general supervision of a  
6 dentist, a dental therapist shall enter into a dental therapist  
7 management agreement with a dentist. The dental therapist  
8 management agreement shall set forth the scope of practice and  
9 conditions under which the dentist will provide general  
10 supervision of the dental therapist. A dental therapist  
11 management agreement shall not be subject to board or joint  
12 committee approval. The dental therapist management agreement  
13 shall be:

14                   (1) submitted annually to the joint committee;  
15 and

16                   (2) signed and maintained by the dentist and  
17 dental therapist.

18           G. A dentist and a dental therapist shall notify  
19 the joint committee upon the dissolution of their dental  
20 therapist management agreement.

21           H. A dental therapist may supervise under direct or  
22 indirect supervision dental assistants and dental hygienists.  
23 The dental therapist management agreement shall set forth the  
24 scope of practice and conditions under which the dental  
25 therapist may supervise dental assistants and dental

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1 hygienists."

2 SECTION 12. A new section of the Dental Health Care Act  
3 is enacted to read:

4 "[NEW MATERIAL] DENTAL THERAPISTS--LICENSURE--UNAUTHORIZED  
5 PRACTICE--IMPAIRED LICENSEES--DISCIPLINE--PENALTIES.--

6 A. To be licensed as a dental therapist, an  
7 applicant shall:

- 8 (1) be licensed as a dental hygienist;
- 9 (2) have passed a written examination covering  
10 the laws and rules for practice in the state; and
- 11 (3) have submitted, to the joint committee for  
12 its approval and recommendation, proof:

13 (a) of graduation and receipt of a  
14 degree from a dental therapy education program that provides a  
15 competency-based curriculum, developed in partnership with an  
16 accredited institution of higher education;

17 (b) of passage of a competency-based  
18 examination given by a nationally recognized regional testing  
19 agency if available or, if not available, by an institution of  
20 higher education with a dental therapy education program; and

21 (c) after graduation from a dental  
22 therapist competency-based education program, of having  
23 completed a minimum of four hundred additional clinical hours  
24 under the indirect supervision of a dentist.

25 B. Upon notification from the dental therapy

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1 education program that the dental therapist applicant has  
2 graduated from the education program and passed the  
3 competency-based examination, the board, in accordance with the  
4 joint committee's recommendation, shall issue a permit for the  
5 applicant to practice during the applicant's requirement to  
6 complete four hundred additional clinical hours pursuant to  
7 Subparagraph (c) of Paragraph (3) of Subsection A of this  
8 section.

9 C. In accordance with the joint committee's  
10 recommendation, the board shall issue a license to practice as  
11 a dental therapist without a practical or clinical examination  
12 to an applicant who is a licensed dental therapist by  
13 examination under the laws of another state or territory of the  
14 United States; provided that:

15 (1) the applicant's dental therapy license has  
16 been in good standing in that jurisdiction for the two years  
17 immediately preceding the application for licensure;

18 (2) the applicant has a valid license to  
19 practice dental hygiene in that jurisdiction; and

20 (3) the applicant meets the requirements  
21 relating to licensure as a dental therapist pursuant to the  
22 Dental Health Care Act, including payment of appropriate fees  
23 and passing of an examination covering the laws and rules of  
24 practice in the state.

25 D. After an applicant has met the qualifications

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1 set forth in Subsections A through C of this section, the  
2 board, in accordance with the joint committee's recommendation,  
3 shall issue the applicant a license to practice as a dental  
4 therapist.

5 E. A dental therapist shall renew the dental  
6 therapist's license triennially in accordance with board rules.

7 F. A person who practices as a dental therapist or  
8 who attempts to practice as a dental therapist in violation of  
9 the provisions of the Dental Health Care Act or without a  
10 license entitling the person to practice as a dental therapist  
11 in the state is guilty of a misdemeanor pursuant to Section  
12 31-19-1 NMSA 1978. Each occurrence of practicing as a dental  
13 therapist or attempting to practice as a dental therapist  
14 without complying with the Dental Health Care Act shall be a  
15 separate violation.

16 G. Nothing in this section shall preclude an  
17 individual from pursuing a degree in a combined dental therapy  
18 and dental hygiene education program.

19 H. By August 1, 2015, the joint committee shall  
20 establish rules relating to the practice of dental therapy in  
21 accordance with the Dental Health Care Act. By December 31,  
22 2015, the board shall ratify, adopt and promulgate the rules  
23 the joint committee has established pursuant to this section,  
24 unless the board finds good cause not to ratify the rules that  
25 the joint committee recommends because the rules:

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1 (1) are beyond the jurisdiction of the  
2 committee;

3 (2) will impose an undue financial impact upon  
4 the board; or

5 (3) are not supported by the record.

6 I. In the event that the board has failed, without  
7 good cause as described in Subsection H of this section, by  
8 December 31, 2015 to ratify, adopt and promulgate rules the  
9 joint committee has established pursuant to this section, the  
10 board shall be deemed to have adopted and shall promulgate  
11 those rules.

12 J. The joint committee shall establish, and, unless  
13 it finds due cause in accordance with the provisions of  
14 Subsection H of this section, the board shall ratify, adopt and  
15 promulgate rules to provide for the expedited issuance of a  
16 dental therapy license to an applicant after that applicant has  
17 received a license to practice dental hygiene.

18 K. For purposes of this section, "entity" means a  
19 corporation, business trust, estate, trust, partnership,  
20 limited liability company, association, organization, joint  
21 venture or any legal or commercial entity. As used in the  
22 Dental Health Care Act, "entity" excludes an individual or  
23 natural person."

24 **SECTION 13.** A new section of the Dental Health Care Act  
25 is enacted to read:

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1            "[NEW MATERIAL] FEES.--In accordance with the provisions  
2 of Section 61-5A-11 NMSA 1978, the board shall establish a  
3 schedule of fees for dental therapists that shall be equivalent  
4 to fifty percent of the fees established for dental hygienists  
5 pursuant to Section 61-5A-20 NMSA 1978."

6            SECTION 14. Section 7-9-93 NMSA 1978 (being Laws 2004,  
7 Chapter 116, Section 6, as amended) is amended to read:

8            "7-9-93. DEDUCTION--GROSS RECEIPTS--CERTAIN RECEIPTS FOR  
9 SERVICES PROVIDED BY HEALTH CARE PRACTITIONER.--

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

21            B. For the purposes of this section:

22            (1) "commercial contract services" means  
23 health care services performed by a health care practitioner  
24 pursuant to a contract with a managed health care provider or  
25 health care insurer other than those health care services

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1 provided for medicare patients pursuant to Title 18 of the  
2 federal Social Security Act or for medicaid patients pursuant  
3 to Title 19 or Title 21 of the federal Social Security Act;

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

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

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

12 (3) "health care practitioner" means:

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

16 (b) a dentist, dental therapist or  
17 dental hygienist licensed pursuant to the Dental Health Care  
18 Act;

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

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

24 (e) an osteopathic physician licensed  
25 pursuant to the provisions of Chapter 61, Article 10 NMSA 1978

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1 or an osteopathic physician's assistant licensed pursuant to  
2 the provisions of the Osteopathic Physicians' Assistants Act;

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

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

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

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

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

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

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

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

23 (n) a speech-language pathologist or  
24 audiologist licensed pursuant to the Speech-Language Pathology,  
25 Audiology and Hearing Aid Dispensing Practices Act;

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

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

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

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

- 22 (a) health maintenance organizations;
- 23 (b) preferred provider organizations;
- 24 (c) individual practice associations;
- 25 (d) competitive medical plans;

- 1 (e) exclusive provider organizations;  
2 (f) integrated delivery systems;  
3 (g) independent physician-provider  
4 organizations;  
5 (h) physician hospital-provider  
6 organizations; and  
7 (i) managed care services organizations;  
8 and

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

13 SECTION 15. Section 26-1-2 NMSA 1978 (being Laws 1967,  
14 Chapter 23, Section 2, as amended) is amended to read:

15 "26-1-2. DEFINITIONS.--As used in the New Mexico Drug,  
16 Device and Cosmetic Act:

17 A. "board" means the board of pharmacy or its duly  
18 authorized agent;

19 B. "person" includes an individual, partnership,  
20 corporation, association, institution or establishment;

21 C. "biological product" means a virus, therapeutic  
22 serum, toxin, antitoxin or analogous product applicable to the  
23 prevention, treatment or cure of diseases or injuries of humans  
24 and domestic animals, and, as used within the meaning of this  
25 definition:

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

5 (2) a "therapeutic serum" is a product  
6 obtained from blood by removing the clot or clot components and  
7 the blood cells;

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

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

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

23 E. "drug" means articles:

- 24 (1) recognized in an official compendium;  
25 (2) intended for use in the diagnosis, cure,

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

8 (3) other than food, that affect the structure  
9 or any function of the human body or the bodies of other  
10 animals; and

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

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

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

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

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

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

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

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

20 G. "counterfeit drug" means a drug that is  
21 deliberately and fraudulently mislabeled with respect to its  
22 identity, ingredients or sources. Types of such pharmaceutical  
23 counterfeits may include:

24 (1) "identical copies", which are counterfeits  
25 made with the same ingredients, formulas and packaging as the

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1 originals but not made by the original manufacturer;

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

6 (3) "rejects", which are drugs that have been  
7 rejected by the manufacturer for not meeting quality standards;  
8 and

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

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

20 (1) recognized in an official compendium;

21 (2) intended for use in the diagnosis of  
22 disease or other conditions or in the cure, mitigation,  
23 treatment or prevention of disease in humans or other animals;  
24 or

25 (3) intended to affect the structure or a

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1 function of the human body or the bodies of other animals and  
2 that does not achieve any of its principal intended purposes  
3 through chemical action within or on the human body or the  
4 bodies of other animals and that is not dependent on being  
5 metabolized for achievement of any of its principal intended  
6 purposes;

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

16 J. "practitioner" means a certified advanced  
17 practice chiropractic physician, physician, doctor of oriental  
18 medicine, dentist, veterinarian, euthanasia technician,  
19 certified nurse practitioner, clinical nurse specialist,  
20 pharmacist, pharmacist clinician, certified nurse-midwife,  
21 physician assistant, prescribing psychologist, dental  
22 therapist, dental hygienist or other person licensed or  
23 certified to prescribe and administer drugs that are subject to  
24 the New Mexico Drug, Device and Cosmetic Act;

25 K. "cosmetic" means:

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

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

9 L. "official compendium" means the official United  
10 States pharmacopoeia national formulary or the official  
11 homeopathic pharmacopoeia of the United States or any  
12 supplement to either of them;

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

22 N. "immediate container" does not include package  
23 liners;

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

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1 (1) on an article or its containers or  
2 wrappers; or

3 (2) accompanying an article;

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

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

20 R. "antiseptic", when used in the labeling or  
21 advertisement of an antiseptic, shall be considered to be a  
22 representation that it is a germicide, except in the case of a  
23 drug purporting to be or represented as an antiseptic for  
24 inhibitory use as a wet dressing, ointment, dusting powder or  
25 such other use as involves prolonged contact with the body;

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S. "new drug" means a drug:

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

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

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

U. "selling of drugs, devices or cosmetics" shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article for sale and the sale and the supplying or applying of any such article in the conduct of a drug or cosmetic establishment;

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1           V. "color additive" means a material that:  
2                 (1) is a dye, pigment or other substance made  
3 by a process of synthesis or similar artifice or extracted,  
4 isolated or otherwise derived, with or without intermediate or  
5 final change of identity, from a vegetable, mineral, animal or  
6 other source; or

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

13           W. "federal act" means the Federal Food, Drug and  
14 Cosmetic Act;

15           X. "restricted device" means a device for which the  
16 sale, distribution or use is lawful only upon the written or  
17 oral authorization of a practitioner licensed by law to  
18 administer, prescribe or use the device and for which the  
19 federal food and drug administration requires special training  
20 or skills of the practitioner to use or prescribe. This  
21 definition does not include custom devices defined in the  
22 federal act and exempt from performance standards or premarket  
23 approval requirements under Section 520(b) of the federal act;

24           Y. "prescription device" means a device that,  
25 because of its potential for harm, the method of its use or the

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

15 Z. "valid practitioner-patient relationship" means  
16 a professional relationship, as defined by the practitioner's  
17 licensing board, between the practitioner and the patient;

18 AA. "pedigree" means the recorded history of a  
19 drug; and

20 BB. "drug order" means an order either directly  
21 from a licensed practitioner or the practitioner's agent to the  
22 pharmacist, including by means of electronic transmission or  
23 indirectly by means of a written order signed by the licensed  
24 practitioner or the practitioner's agent, and bearing the name  
25 and address of the practitioner and the practitioner's license

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1 classification and the name and quantity of the drug or device  
2 ordered for use at an inpatient or outpatient facility."

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

5 "27-2-12. MEDICAL ASSISTANCE PROGRAMS.--

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

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

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

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

5 SECTION 17. Section 59A-22-32 NMSA 1978 (being Laws 1984,  
6 Chapter 127, Section 454, as amended) is amended to read:

7 "59A-22-32. FREEDOM OF CHOICE OF HOSPITAL AND  
8 PRACTITIONER.--

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

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1 condition shall be deemed to have complied with the  
2 requirements of the policy, contract or health care plan as to  
3 submission of proof of loss upon submitting written proof  
4 supported by the certificate of any hospital currently licensed  
5 by the department of health or any practitioner of the healing  
6 arts or optometrist, psychologist, podiatrist, physician  
7 assistant, certified nurse-midwife, registered lay midwife,  
8 dental hygienist, dental therapist or registered nurse in  
9 expanded practice.

10 B. As used in this section:

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

20 (2) "practitioner of the healing arts" means a  
21 person holding a license or certificate authorizing the  
22 licensee to offer or undertake to diagnose, treat, operate on  
23 or prescribe for any human pain, injury, disease, deformity or  
24 physical or mental condition pursuant to:

25 (a) the Chiropractic Physician Practice

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1 Act;

2 (b) the Dental Health Care Act;

3 (c) the Medical Practice Act;

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

5 and

6 (e) the Acupuncture and Oriental

7 Medicine Practice Act;

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

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

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

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

22 (7) "certified nurse-midwife" means a person  
23 licensed by the board of nursing as a registered nurse and who  
24 is registered with the public health division of the department  
25 of health as a certified nurse-midwife;

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

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

14 (10) "dental hygienist" means an individual  
15 licensed to practice dental hygiene pursuant to the Dental  
16 Health Care Act; and

17 (11) "dental therapist" means an individual  
18 licensed to practice dental therapy pursuant to the Dental  
19 Health Care Act.

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

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1           SECTION 18. Section 59A-47-28.4 NMSA 1978 (being Laws  
2 2003, Chapter 343, Section 4) is amended to read:

3           "59A-47-28.4. COVERAGE FOR DENTAL THERAPISTS AND  
4 COLLABORATIVE PRACTICE DENTAL HYGIENISTS.--An individual or  
5 group subscriber contract delivered or issued for delivery in  
6 New Mexico that, on a prepaid, service or indemnity basis,  
7 provides for treatment of persons for the prevention, cure or  
8 correction of any illness or physical or mental condition shall  
9 include coverage for the services of a dental therapist and of  
10 a dental hygienist in a collaborative practice pursuant to the  
11 Dental Health Care Act."

12           SECTION 19. Section 61-5B-1 NMSA 1978 (being Laws 1994,  
13 Chapter 55, Section 30) is amended to read:

14           "61-5B-1. SHORT TITLE.--~~[Sections 31 through 41 of this~~  
15 ~~act]~~ Chapter 61, Article 5B NMSA 1978 shall be cited as the  
16 "Impaired ~~[Dentists and] Dental [Hygienists]~~ Professionals  
17 Act".

18           SECTION 20. Section 61-5B-2 NMSA 1978 (being Laws 1994,  
19 Chapter 55, Section 31, as amended) is amended to read:

20           "61-5B-2. DEFINITIONS.--As used in the Impaired ~~[Dentists~~  
21 ~~and] Dental [Hygienists]~~ Professionals Act:

22           A. "board" means the New Mexico board of dental  
23 health care;

24           B. "dental hygienists committee" means the New  
25 Mexico dental hygienists committee;

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1                    C. "dental therapy representative" means an  
2 individual who:

3                           (1) publicly supports or recommends the  
4 practice of dental therapy in the state;

5                           (2) has knowledge of the practice of dental  
6 therapy or of the educational or licensing requirements for the  
7 practice of dental therapy; and

8                           (3) has been nominated by a representative of:

9                                   (a) New Mexico health resources, inc.;

10                                   (b) health action New Mexico;

11                                   (c) a state or regional dental  
12 therapists' association; or

13                                   (d) an institution of higher education  
14 located in New Mexico that has a dental therapist education  
15 program;

16                    ~~[G.]~~ D. "dentistry, dental therapy or dental  
17 hygiene" means the practice of dentistry, dental therapy or  
18 dental hygiene; ~~[and]~~

19                           E. "joint committee" means the New Mexico dental  
20 therapist joint committee that makes recommendations to the  
21 board relating to the regulation of the practice of dental  
22 therapy and licensure of dental therapists; and

23                           ~~[D.]~~ F. "licensee" means a dentist, dental  
24 therapist or dental hygienist licensed by the board."

25                    SECTION 21. Section 61-5B-3 NMSA 1978 (being Laws 1994,

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1 Chapter 55, Section 32) is amended to read:

2 "61-5B-3. GROUNDS FOR RESTRICTION, SUSPENSION,  
3 REVOCATION, STIPULATION OR OTHER LIMITATION OF LICENSE OR  
4 CERTIFICATE.--The license of any [~~dentist or dental~~  
5 ~~hygienist~~] licensee to practice dentistry, dental therapy or  
6 dental hygiene, or the certificate of a dental assistant to  
7 practice dental assisting, in this state shall be subject to  
8 restriction, suspension, revocation or stipulation or may  
9 otherwise be limited in case of inability of the licensee or  
10 certificate holder to practice with reasonable skill and  
11 safety to patients by reason of one or more of the following:

- 12 A. mental illness;
- 13 B. physical illness, including but not limited to  
14 deterioration through the aging process or loss of motor  
15 skills;
- 16 C. habitual or excessive use or abuse of drugs,  
17 as defined in the Controlled Substances Act; or
- 18 D. habitual or excessive use or abuse of  
19 alcohol."

20 SECTION 22. Section 61-5B-4 NMSA 1978 (being Laws 1994,  
21 Chapter 55, Section 33) is amended to read:

22 "61-5B-4. BOARD, JOINT COMMITTEE OR DENTAL HYGIENISTS  
23 COMMITTEE--ADDITIONAL POWERS AND DUTIES AS RELATED TO THE  
24 IMPAIRED [~~DENTISTS AND~~] DENTAL [~~HYGIENISTS~~] PROFESSIONALS  
25 ACT.--

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1           A. If the board, joint committee or dental  
2           hygienists committee has reasonable cause to believe that a  
3           ~~[person licensed to practice dentistry or dental hygiene]~~  
4           licensee is unable to practice with reasonable skill and  
5           safety to patients because of a condition described in the  
6           Impaired ~~[Dentists and]~~ Dental ~~[Hygienists]~~ Professionals  
7           Act, the board shall cause an examination of ~~[such]~~ the  
8           licensee to be made and shall, following the examination,  
9           take appropriate action within the provisions of the Impaired  
10          ~~[Dentists and]~~ Dental ~~[Hygienists]~~ Professionals Act.

11          B. Examination of a licensee pursuant to an order  
12          of the board shall be conducted by an examining committee  
13          designated by the board. ~~[Each examining committee shall be~~  
14          ~~composed of two duly licensed dentists, or two duly licensed~~  
15          ~~dental hygienists if the licensee is a dental hygienist, and~~  
16          ~~two duly licensed physicians, one of whom shall be a~~  
17          ~~psychiatrist who is knowledgeable and experienced in the~~  
18          ~~field of chemical dependency if a question of mental illness~~  
19          ~~or dependency is involved. Whenever possible, examining~~  
20          ~~committee members shall be selected for their knowledge or~~  
21          ~~experience in the areas of alcoholism, chemical dependency,~~  
22          ~~mental health and geriatrics and may be rehabilitated~~  
23          ~~impaired dentists, dental hygienists or physicians. In~~  
24          ~~designating the members of such examining committee, the~~  
25          ~~board may consider nominations from the New Mexico dental~~

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1 ~~association for the dentist member, the New Mexico dental~~  
2 ~~hygienists' association for dental hygiene members thereof~~  
3 ~~and nomination from the New Mexico medical society for the~~  
4 ~~physician members thereof. No current members of the board,~~  
5 ~~dental hygienists committee or New Mexico board of medical~~  
6 ~~examiners shall be designated as a member of an examining~~  
7 ~~committee.] An examining committee shall be composed of two~~  
8 ~~licensed physicians, one of whom shall be a psychiatrist who~~  
9 ~~is knowledgeable and experienced in the field of chemical~~  
10 ~~dependency if a question of mental illness or dependency is~~  
11 ~~involved. An examining committee shall also include~~  
12 ~~additional members in the following manner:~~

13 (1) if the licensee is a dentist, the  
14 examining committee shall include two licensed dentists;

15 (2) if the licensee is a dental therapist,  
16 the examining committee shall include two licensed dental  
17 therapists or two dental therapy representatives; and

18 (3) if the licensee is a dental hygienist,  
19 the examining committee shall include two licensed dental  
20 hygienists.

21 C. Whenever possible, examining committee members  
22 shall be selected for their knowledge of or experience in the  
23 areas of alcoholism, chemical dependency, mental health and  
24 geriatrics. Members of the examining committee may be  
25 rehabilitated impaired dentists, dental therapists, dental

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1 hygienists or physicians.

2 D. In designating the members of an examining  
3 committee, the licensing authority may consider nominations  
4 from the New Mexico medical society for physician members and  
5 nominations from the following entities:

6 (1) for dentist members, from the New Mexico  
7 dental association;

8 (2) for dental therapist members, a state or  
9 regional dental therapists' association, if available, or a  
10 dental therapy education program located in the state; and

11 (3) for dental hygienist members, the New  
12 Mexico dental hygienists' association.

13 E. A current member of the board, the joint  
14 committee, the dental hygienists committee or the New Mexico  
15 board of medical examiners shall not be designated as a  
16 member of an examining committee."

17 **SECTION 23.** Section 61-5B-5 NMSA 1978 (being Laws 1994,  
18 Chapter 55, Section 34) is amended to read:

19 "61-5B-5. EXAMINATION BY COMMITTEE.--

20 A. The examining committee assigned to examine a  
21 licensee pursuant to referral by the board shall conduct an  
22 examination of the licensee for the purpose of determining  
23 the fitness of the licensee to practice dentistry, dental  
24 therapy or dental hygiene with reasonable skill and safety to  
25 patients, either on a restricted or unrestricted basis, and

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1 shall report its findings and recommendations to the board.  
2 The findings and recommendations shall be based on findings  
3 by the examining committee that the licensee examined  
4 possesses one or more of the impairments set forth in the  
5 Impaired ~~[Dentists and]~~ Dental ~~[Hygienists]~~ Professionals Act  
6 and ~~[such]~~ the impairment does, in fact, affect the ability  
7 of the licensee to skillfully and safely practice dentistry,  
8 dental therapy or dental hygiene. The examining committee  
9 shall order the licensee to appear before it for a hearing  
10 and give the licensee fifteen days' notice of the time and  
11 place of the hearing, together with a statement of the cause  
12 for ~~[such examination]~~ the hearing. The notice shall be  
13 served upon the licensee either personally or by registered  
14 or certified mail with return receipt requested.

15 B. If the examining committee, in its discretion,  
16 deems a mental or physical examination of the licensee  
17 necessary to its determination of the fitness of the licensee  
18 to practice, the examining committee shall order the licensee  
19 to submit to ~~[such]~~ the examination. Any ~~[person licensed to~~  
20 ~~practice dentistry or dental hygiene]~~ licensee in this state  
21 shall, by so practicing or by making or filing an annual  
22 registration to practice dentistry, dental therapy or dental  
23 hygiene in this state, be deemed to have:

24 (1) given consent to submit to mental or  
25 physical examination when so directed by the examining

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1 committee; and

2 (2) waived all objections to the  
3 admissibility of the report of the examining committee to the  
4 board, the joint committee or the dental hygienists committee  
5 on the grounds of privileged communication.

6 C. Any licensee who submits to a diagnostic  
7 mental or physical examination as ordered by the examining  
8 committee shall have a right to designate an accompanying  
9 individual to be present at the examination and make an  
10 independent report to the board.

11 D. Failure of a licensee to comply with an  
12 examining committee order under Subsection B of this section  
13 to appear before it for hearing or to submit to mental or  
14 physical examination under this section shall be reported by  
15 the examining committee to the board, the joint committee or  
16 the dental hygienists committee and, unless due to  
17 circumstances beyond the control of the licensee, shall be  
18 grounds for the immediate and summary suspension by the board  
19 [~~of the licensee~~] to practice dentistry, dental therapy or  
20 dental hygiene in this state until further order of the  
21 board."

22 SECTION 24. Section 61-5B-6 NMSA 1978 (being Laws 1994,  
23 Chapter 55, Section 35) is amended to read:

24 "61-5B-6. VOLUNTARY RESTRICTION OF LICENSURE.--

25 A. A licensee may request in writing to the board

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1 a restriction to practice under [~~his~~] the licensee's existing  
2 license, and the board [~~and the dental hygienists committee~~]  
3 shall have authority, if [~~it deems~~] deemed appropriate, to  
4 attach stipulations to the licensure of the licensee to  
5 practice dentistry, dental therapy or dental hygiene within  
6 specified limitations and waive the commencement of [~~any~~] a  
7 proceeding. Removal of a voluntary restriction on licensure  
8 to practice dentistry, dental therapy or dental hygiene shall  
9 be subject to the procedure for reinstatement of license. As  
10 a condition for accepting such voluntary limitation of  
11 practice, the board may require [~~each~~] the licensee to:

12 (1) agree to and accept care, counseling or  
13 treatment of physicians or other appropriate health care  
14 providers acceptable to the board;

15 (2) participate in a program of education  
16 prescribed by the board; or

17 (3) practice under the direction of a  
18 dentist acceptable to the board for a specified period of  
19 time.

20 B. Subject to the provisions of the Impaired  
21 [~~Dentists and~~] Dental [~~Hygienists~~] Professionals Act, a  
22 violation of any of the conditions of the voluntary  
23 limitation of practice statement by [~~such~~] the licensee shall  
24 be due cause for the refusal of renewal, or the suspension or  
25 revocation, of the license by the board."

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1           SECTION 25. Section 61-5B-7 NMSA 1978 (being Laws 1994,  
2 Chapter 55, Section 36) is amended to read:

3           "61-5B-7. REPORT TO THE BOARD, JOINT COMMITTEE OR  
4 DENTAL HYGIENISTS COMMITTEE--ACTION.--

5           A. The examining committee shall report to the  
6 board, joint committee or the dental hygienists committee its  
7 findings on the examination of the licensee, the  
8 determination of the examining committee as to the fitness of  
9 the licensee to engage in the practice of dentistry, dental  
10 therapy or dental hygiene with reasonable skill and safety to  
11 patients, either on a restricted or unrestricted basis, and  
12 any intervention that the examining committee may recommend.  
13 Such recommendation by the examining committee shall be  
14 advisory only and shall not be binding on the board.

15           B. The board, joint committee or dental  
16 hygienists committee may accept or reject the recommendation  
17 of the examining committee to permit a licensee to continue  
18 to practice with or without any restriction on [~~his~~] the  
19 licensee's licensure to practice dentistry, dental therapy or  
20 dental hygiene or may refer the matter back to the examining  
21 committee for further examination [~~and report thereon~~].

22           C. In the absence of a voluntary agreement by a  
23 licensee for restriction of the licensure of the dentist,  
24 dental therapist or the dental hygienist to practice  
25 dentistry or dental hygiene, [~~any~~] the licensee shall be

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1 entitled to a hearing before the board under and in  
2 accordance with the procedure contained in the Uniform  
3 Licensing Act and a determination on the evidence as to  
4 whether [~~or not~~] restriction, suspension or revocation of  
5 licensure shall be imposed."

6 SECTION 26. Section 61-5B-8 NMSA 1978 (being Laws 1994,  
7 Chapter 55, Section 37) is amended to read:

8 "61-5B-8. PROCEEDINGS.--

9 A. The board may formally proceed against a  
10 licensee under the Impaired [~~Dentists and~~] Dental  
11 [~~Hygienists~~] Professionals Act in accordance with the  
12 procedures contained in the Uniform Licensing Act.

13 B. When the licensee being considered for action  
14 is a dental hygienist, the board shall act upon  
15 recommendation of the dental hygienists committee on all  
16 aspects of procedures in the Impaired [~~Dentists and~~] Dental  
17 [~~Hygienists~~] Professionals Act.

18 C. When the licensee being considered for action  
19 is a dental therapist, the board shall act upon  
20 recommendation of the joint committee on all aspects of  
21 procedures pursuant to the Impaired Dental Professionals Act.

22 [~~G.~~] D. At the conclusion of [~~the~~] a hearing  
23 conducted pursuant to the Impaired Dental Professionals Act,  
24 the board [~~or the dental hygienists committee~~] shall make the  
25 following findings:

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1 (1) whether ~~[or not]~~ the licensee is  
2 impaired by one of the grounds for restriction, suspension or  
3 revocation listed ~~[herein]~~ in Section 61-5B-3 NMSA 1978;

4 (2) whether ~~[or not such]~~ the impairment  
5 does in fact limit the ability of the licensee to practice  
6 dentistry, dental therapy or dental hygiene skillfully and  
7 safely; and

8 (3) to what extent ~~[such]~~ the impairment  
9 limits the ability of the licensee to practice dentistry,  
10 dental therapy or dental hygiene skillfully and safely and  
11 whether the board ~~[or dental hygienists committee]~~ finds that  
12 ~~[such]~~ the impairment is such that the license should be  
13 suspended, revoked or restricted in the licensee's practice  
14 of dentistry, dental therapy or dental hygiene. ~~[and;~~

15 ~~(4)]~~ D. If the finding recommends suspension or  
16 restriction of the ability of the licensee to practice  
17 dentistry, dental therapy or dental hygiene, ~~[then]~~ the board  
18 shall make specific recommendations as to the length and  
19 nature of the suspension or restriction and shall recommend  
20 how ~~[such]~~ the suspension or restriction shall be carried out  
21 and supervised.

22 ~~[D.]~~ E. At the conclusion of the hearing, the  
23 board ~~[or the dental hygienists committee]~~ shall make a  
24 determination of the merits and may order one or more of the  
25 following:

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1 (1) placement of the licensee on probation  
2 on such terms and conditions as it deems proper for the  
3 protection of the public;

4 (2) suspension or restriction of the license  
5 of the licensee to practice dentistry, dental therapy or  
6 dental hygiene for the duration of the licensee's impairment;

7 (3) revocation of the license of the  
8 licensee to practice dentistry, dental therapy or dental  
9 hygiene; or

10 (4) reinstatement of the license of the  
11 licensee to practice dentistry, dental therapy or dental  
12 hygiene without restriction.

13 [~~E.~~] F. The board may temporarily suspend the  
14 license of any licensee without a hearing, simultaneously  
15 with the institution of proceedings under the Uniform  
16 Licensing Act, if it finds that the evidence in support of  
17 the determination of the examining committee is clear and  
18 convincing and that continuation in practice would constitute  
19 an imminent danger to public health and safety.

20 [~~F.~~] G. Neither the record of the proceeding nor  
21 any order entered against a licensee may be used against the  
22 licensee in any other legal proceeding except upon judicial  
23 review."

24 **SECTION 27.** Section 61-5B-9 NMSA 1978 (being Laws 1994,  
25 Chapter 55, Section 38) is amended to read:

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1 "61-5B-9. REINSTATEMENT OF LICENSE.--

2 A. A licensee whose licensure has been  
3 restricted, suspended or revoked under the Impaired [~~Dentists~~  
4 ~~and~~] Dental [~~Hygienists~~] Professionals Act, voluntarily or by  
5 action of the board, shall have a right at reasonable  
6 intervals to petition for reinstatement of the license and to  
7 demonstrate that the licensee can resume the competent  
8 practice of dentistry, dental therapy or dental hygiene with  
9 reasonable skill and safety to patients.

10 B. The petition shall be made in writing. If the  
11 licensee is a dental hygienist, the dental hygienists  
12 committee shall be advised and given all information [~~so that~~  
13 ~~their~~] that the dental hygienists committee requests to  
14 inform its decision. The dental hygienists committee shall  
15 provide its recommendation [~~can be given~~] to the board for  
16 ratification.

17 C. If the licensee is a dental therapist, the  
18 joint committee shall be advised and given all information  
19 that the joint committee requests to inform its decision.  
20 The joint committee shall provide its recommendation to the  
21 board for ratification in accordance with the provisions of  
22 Section 61-5A-11 NMSA 1978.

23 [~~G.~~] D. Action of the board on [~~the~~] a petition  
24 for reinstatement shall be initiated by referral to and  
25 examination by [~~the~~] an examining committee.

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1           ~~[D-]~~ E. The board may, in its discretion, upon  
2 written recommendation of the examining committee, restore  
3 the licensure of the licensee on a general or limited basis."

4           **SECTION 28.** Section 61-5B-10 NMSA 1978 (being Laws  
5 1994, Chapter 55, Section 39) is amended to read:

6           "61-5B-10. IMPAIRED DENTISTS, DENTAL THERAPISTS AND  
7 DENTAL HYGIENISTS TREATMENT PROGRAM.--

8           A. The board has the authority to enter into an  
9 agreement with a nonprofit corporation to implement an  
10 impaired dentists, dental therapists and dental hygienists  
11 treatment program.

12           B. For the purposes of this section:

13                   (1) "dental therapist" means an individual  
14 licensed to perform dental therapy pursuant to the provisions  
15 of the Dental Health Care Act; and

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

22           **SECTION 29.** Section 61-5B-11 NMSA 1978 (being Laws  
23 1994, Chapter 55, Section 40) is amended to read:

24           "61-5B-11. IMPAIRED [~~DENTISTS AND~~] DENTAL [~~HYGIENISTS~~]  
25 PROFESSIONALS FUND CREATED.--



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1           A. There is created an "impaired [~~dentists and~~  
2 dental [~~hygienist~~] professionals fund".

3           B. The fund shall be initially established by an  
4 assessment to all licensees as determined by the board, the  
5 joint committee and the dental hygienists committee.

6           C. All [~~funds~~] money received by the board for an  
7 impaired assessment, either special or at time of  
8 relicensure, shall be deposited with the state treasurer.  
9 The state treasurer shall credit this money to the [~~impaired~~  
10 ~~dentists and dental hygienists~~] fund.

11           D. Payments out of the fund shall be [~~on~~] made  
12 pursuant to vouchers issued and signed by the secretary-  
13 treasurer of the board upon warrants drawn by the department  
14 of finance and administration [~~in accordance with the~~  
15 ~~responsibilities of the board~~] as approved by that  
16 department.

17           E. All amounts paid into the fund are subject to  
18 the order of the board and are to be used only for meeting  
19 necessary expenses incurred in executing the provisions and  
20 duties of the Impaired [~~Dentists and~~] Dental [~~Hygienists~~]  
21 Professionals Act. All money unused at the end of any fiscal  
22 year shall remain in the fund for use in accordance with  
23 provisions of the Impaired [~~Dentists and~~] Dental [~~Hygienists~~]  
24 Professionals Act.

25           F. Licensees shall be assessed an impaired fee at

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1 the time of renewal. The amount of the impaired fee shall be  
2 determined by the board, the joint committee and the dental  
3 hygienists committee and shall be established to meet the  
4 need for enforcing the Impaired [~~Dentists and~~] Dental  
5 [~~Hygienists~~] Professionals Act.

6 G. The fund shall be used for the purpose of  
7 administration, testing, monitoring, hearings and  
8 consultation fees by the board, the joint committee or the  
9 dental hygienists committee or [~~their~~] its agent, which are  
10 necessary to enforce the Impaired [~~Dentists and~~] Dental  
11 [~~Hygienists~~] Professionals Act. It is not the purpose of the  
12 fund to pay for treatment of impaired dentists, [~~and~~] dental  
13 therapists or dental hygienists."