

1 HOUSE BILL 202

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Meredith Dixon and Candie G. Sweetser and Marian Matthews

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10 AN ACT

11 RELATING TO CHILDREN; AMENDING THE DEPARTMENT OF HEALTH ACT,
12 ABUSE AND NEGLECT ACT AND CHILDREN'S MENTAL HEALTH AND
13 DEVELOPMENTAL DISABILITIES ACT; PROVIDING ADDITIONAL
14 REQUIREMENTS FOR CHILDREN IN CUSTODY.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

19 "9-7-6.4. INTERAGENCY BEHAVIORAL HEALTH PURCHASING
20 COLLABORATIVE.--

21 A. There is created the "interagency behavioral
22 health purchasing collaborative", consisting of the secretaries
23 of aging and long-term services; Indian affairs; human
24 services; health; corrections; children, youth and families;
25 finance and administration; workforce solutions; public

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1 education; and transportation; the directors of the
2 administrative office of the courts; the New Mexico mortgage
3 finance authority; the governor's commission on disability; the
4 developmental disabilities planning council; the instructional
5 support and vocational ~~[rehabilitation]~~ education division of
6 the public education department; and the New Mexico health
7 policy commission; and the governor's health policy
8 coordinator, or their designees. The collaborative shall be
9 chaired by the secretary of human services with the respective
10 secretaries of health and children, youth and families
11 alternating annually as co-chairs.

12 B. The collaborative shall meet regularly and at
13 the call of either co-chair and shall:

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

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

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

24 (4) plan, design and direct a statewide
25 behavioral health system, ensuring both availability of

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1 services and efficient use of all behavioral health funding,
2 taking into consideration funding appropriated to specific
3 affected departments; and

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

7 C. The plan for delivery of behavioral health
8 services shall include specific service plans to address the
9 needs of infants, children, adolescents, including the unique
10 needs of those in the custody of the children, youth and
11 families department, adults and seniors, as well as to address
12 workforce development and retention and quality improvement
13 issues. The plan shall be revised every two years and shall be
14 adopted by the department of health as part of the statewide
15 health plan.

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

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

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

25 (3) services should be delivered in the least

1 restrictive and most appropriate manner;

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

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

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

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

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

16 (9) services should consider regional
17 differences, including cultural, rural, frontier, urban and
18 border issues.

19 E. The plan shall include a process for the human
20 services department and the children, youth and families
21 department to jointly offer trauma-responsive services and
22 supports, including screening, assessing, referring, treating
23 and providing transition services to children in the custody of
24 the children, youth and families department, including children
25 who were never removed from the home and children who have

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1 returned home but are still in custody.

2 ~~[F.]~~ F. The collaborative shall seek and consider
3 suggestions of Native American representatives from Indian
4 nations, tribes and pueblos and the urban Indian population,
5 located wholly or partially within New Mexico, in the
6 development of the plan for delivery of behavioral health
7 services.

8 ~~[F.]~~ G. Pursuant to the State Rules Act, the
9 collaborative shall adopt rules through the human services
10 department for:

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

- 14 (a) quality management and improvement;
- 15 (b) performance measures;
- 16 (c) accessibility and availability of
17 services;
- 18 (d) utilization management;
- 19 (e) credentialing of providers;
- 20 (f) rights and responsibilities of
21 consumers and providers;
- 22 (g) clinical evaluation and treatment
23 and supporting documentation; and
- 24 (h) confidentiality of consumer records;

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

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

15 ~~[H.]~~ I. The collaborative shall, with the consent
16 of the governor, appoint a "director of the collaborative".
17 The director is responsible for the coordination of day-to-day
18 activities of the collaborative, including the coordination of
19 staff from the collaborative member agencies.

20 ~~[I.]~~ J. The collaborative shall provide a quarterly
21 report to the legislative finance committee on performance
22 outcome measures. The collaborative shall submit an annual
23 report to the legislative finance committee and the interim
24 legislative health and human services committee that provides
25 information on:

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1 (1) the collaborative's progress toward
2 achieving its strategic plans and goals;

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

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

9 SECTION 2. Section 32A-4-14 NMSA 1978 (being Laws 1993,
10 Chapter 77, Section 108, as amended) is amended to read:

11 "32A-4-14. CHANGE IN PLACEMENT.--

12 A. When the child's placement is changed, including
13 a return to the child's home, written notice of the factual
14 grounds supporting the change in placement shall be sent to the
15 child's guardian ad litem or attorney, all parties, the child's
16 CASA, the child's foster parents and the court ten days prior
17 to the placement change, unless an emergency situation requires
18 moving the child prior to sending notice.

19 B. When the child, by and through the child's
20 guardian ad litem or attorney, files a motion and requests a
21 court hearing to contest the proposed change, the department
22 shall not change the child's placement pending the results of
23 the court hearing, unless an emergency requires changing the
24 child's placement prior to the hearing.

25 C. When a child's placement is changed without

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1 prior notice as provided for in Subsection A of this section,
2 written notice shall be sent to the child's guardian ad litem
3 or attorney, all parties, the child's CASA, the child's foster
4 parents and the court within three days after the placement
5 change.

6 D. Written notice is not required for removal of a
7 child from temporary emergency care, emergency foster care or
8 respite care. The department shall provide oral notification
9 of the removal to the child's guardian ad litem or attorney.

10 E. Notice need not be given to the parties, other
11 than the child, or to the court when placement is changed at
12 the request of the child's foster parents or substitute care
13 provider. Notice shall be given to the child's guardian ad
14 litem or attorney.

15 F. A child shall not be placed in a hotel or motel
16 or with an out-of-state provider, office of a contractor or
17 state agency office except in extraordinary circumstances
18 necessary to protect the safety and security of the child as
19 documented in the child's record and approved by the secretary
20 of the department or the director of the protective services
21 division of the department. In any such extraordinary
22 circumstance, the department shall immediately provide notice
23 to the child's guardian ad litem or attorney when possible, but
24 in no case more than twenty-four hours after the placement of
25 the child. Notification to the court specifying the type of

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1 placement and articulating the extraordinary circumstance shall
2 occur within three business days of the placement. When a
3 child is placed with an out-of-state provider, notice to the
4 child's guardian ad litem or attorney and the court to which
5 the child's case is assigned shall be given prior to the
6 placement.

7 G. For a child in out-of-home care, the rate of
8 moves from a placement setting shall not exceed three moves per
9 one thousand calendar days in custody. When the department
10 initiates the third change of placement within one thousand
11 calendar days in custody, the department shall provide notice
12 ten days prior to the placement change to the child's guardian
13 ad litem or attorney and the court specifying that this will be
14 the third placement change within the last one thousand
15 calendar days of time spent in custody. The notice shall also
16 specify what interventions, behavioral supports and services
17 are in place to support the child. In addition, the department
18 shall initiate a written education plan to ensure continuity in
19 the child's education, including a plan for transportation and
20 educational supports to minimize the transition. The education
21 plan shall be provided to the child's guardian ad litem or
22 attorney."

23 SECTION 3. Section 32A-6A-4 NMSA 1978 (being Laws 2007,
24 Chapter 162, Section 4, as amended) is amended to read:

25 "32A-6A-4. DEFINITIONS.--As used in the Children's Mental
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1 Health and Developmental Disabilities Act:

2 A. "aversive intervention" means any device or
3 intervention, consequences or procedure intended to cause pain
4 or unpleasant sensations, including interventions causing
5 physical pain, tissue damage, physical illness or injury;
6 electric shock; isolation; forced exercise; withholding of
7 food, water or sleep; humiliation; water mist; noxious taste,
8 smell or skin agents; and over-correction;

9 B. "behavioral health services" means a
10 comprehensive array of professional and ancillary services for
11 the treatment, habilitation, prevention and identification of
12 mental illnesses, behavioral symptoms associated with
13 developmental disabilities, substance abuse disorders and
14 trauma spectrum disorders;

15 C. "capacity" means a child's ability to:

16 (1) understand and appreciate the nature and
17 consequences of proposed health care, including its significant
18 benefits, risks and alternatives to proposed health care; and

19 (2) make and communicate an informed health
20 care decision;

21 D. "chemical restraint" means a medication that is
22 not standard treatment for the patient's medical or psychiatric
23 condition that is used to control behavior or to restrict a
24 patient's freedom of movement;

25 E. "child" means a person who is a minor;

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1 F. "clinician" means a person whose licensure
2 allows the person to make independent clinical decisions,
3 including a physician, licensed psychologist, psychiatric nurse
4 practitioner, licensed independent social worker, licensed
5 marriage and family therapist and licensed professional
6 clinical counselor;

7 G. "continuum of services" means a comprehensive
8 array of emergency, outpatient, intermediate and inpatient
9 services and care, including screening, early identification,
10 diagnostic evaluation, medical, psychiatric, psychological and
11 social service care, habilitation, education, training,
12 vocational rehabilitation and career counseling;

13 H. "developmental disability" means a severe
14 chronic disability that:

15 (1) is attributable to a mental or physical
16 impairment or a combination of mental or physical impairments;

17 (2) is manifested before a person reaches
18 twenty-two years of age;

19 (3) is expected to continue indefinitely;

20 (4) results in substantial functional
21 limitations in three or more of the following areas of major
22 life activities:

23 (a) self-care;

24 (b) receptive and expressive language;

25 (c) learning;

- 1 (d) mobility;
- 2 (e) self-direction;
- 3 (f) capacity for independent living; or
- 4 (g) economic self-sufficiency; and

5 (5) reflects a person's need for a combination
6 and sequence of special, interdisciplinary or other supports
7 and services that are of lifelong or extended duration that are
8 individually planned or coordinated;

9 I. "evaluation facility" means a community mental
10 health or developmental disability program, a medical facility
11 having psychiatric or developmental disability services
12 available or, if none of the foregoing is reasonably available
13 or appropriate, the office of a licensed physician or a
14 licensed psychologist, any of which shall be capable of
15 performing a mental status examination adequate to determine
16 the need for appropriate treatment, including possible
17 involuntary treatment;

18 J. "family" means persons with a kinship
19 relationship to a child, including the relationship that exists
20 between a child and a biological or adoptive parent, relative
21 of the child, a step-parent, a godparent, a member of the
22 child's tribe or clan or an adult with whom the child has a
23 significant bond;

24 K. "habilitation" means services, including
25 behavioral health services based on evaluation of the child,

1 that are aimed at assisting the child to prevent, correct or
2 ameliorate a developmental disability. The purpose of
3 habilitation is to enable the child to attain, maintain or
4 regain maximum functioning or independence. "Habilitation"
5 includes programs of formal, structured education and treatment
6 and rehabilitation services;

7 L. "individual instruction" means a child's
8 direction concerning a mental health treatment decision for the
9 child, made while the child has capacity and is fourteen years
10 of age or older, which is to be implemented when the child has
11 been determined to lack capacity;

12 M. "least restrictive means principle" means the
13 conditions of habilitation or treatment for the child,
14 separately and in combination that:

15 (1) are no more harsh, hazardous or intrusive
16 than necessary to achieve acceptable treatment objectives for
17 the child;

18 (2) involve no restrictions on physical
19 movement and no requirement for residential care, except as
20 reasonably necessary for the administration of treatment or for
21 the protection of the child or others from physical injury;

22 [~~and~~]

23 (3) are conducted at the suitable available
24 facility closest to the child's place of residence;

25 (4) are provided, in descending order of

1 preference, at home, in a family setting or in the most home-
2 like setting appropriate to a child's needs and consistent with
3 the Children's Code; and

4 (5) are provided at the suitable available
5 placement closest to the child's place of residence, with the
6 goal of keeping the child in the child's family and community
7 to the extent appropriate to the child's needs and
8 circumstances;

9 N. "legal custodian" means a biological or adoptive
10 parent of a child unless legal custody has been vested in a
11 person, department or agency and also includes a person
12 appointed by an unexpired power of attorney;

13 O. "licensed psychologist" means a person who holds
14 a current license as a psychologist issued by the New Mexico
15 state board of psychologist examiners;

16 P. "likelihood of serious harm to self" means that
17 it is more likely than not that in the near future a child will
18 attempt to commit suicide or will cause serious bodily harm to
19 the child by violent or other self-destructive means, as
20 evidenced by behavior causing, attempting or threatening such
21 harm, which behavior gives rise to a reasonable fear of such
22 harm from the child;

23 Q. "likelihood of serious harm to others" means
24 that it is more likely than not that in the near future the
25 child will inflict serious bodily harm on another person or

1 commit a criminal sexual offense, as evidenced by behavior
2 causing, attempting or threatening such harm, which behavior
3 gives rise to a reasonable fear of such harm from the child;

4 R. "mechanical restraint" means any device or
5 material attached or adjacent to the child's body that
6 restricts freedom of movement or normal access to any portion
7 of the child's body and that the child cannot easily remove but
8 does not include mechanical supports or protective devices;

9 S. "mechanical support" means a device used to
10 achieve proper body position, designed by a physical therapist
11 and approved by a physician or designed by an occupational
12 therapist, such as braces, standers or gait belts, but not
13 including protective devices;

14 T. "medically necessary services" means clinical
15 and rehabilitative physical, mental or behavioral health
16 services that are:

17 (1) essential to prevent, diagnose or treat
18 medical conditions or are essential to enable the child to
19 attain, maintain or regain functional capacity;

20 (2) delivered in the amount, duration, scope
21 and setting that is clinically appropriate to the specific
22 physical, mental and behavioral health care needs of the child;

23 (3) provided within professionally accepted
24 standards of practice and national guidelines; and

25 (4) required to meet the physical, mental and

1 behavioral health needs of the child and are not primarily for
2 the convenience of the child, provider or payer;

3 U. "mental disorder" means a substantial disorder
4 of the child's emotional processes, thought or cognition, not
5 including a developmental disability, that impairs the child's:

6 (1) functional ability to act in
7 developmentally and age-appropriate ways in any life domain;

8 (2) judgment;

9 (3) behavior; and

10 (4) capacity to recognize reality;

11 V. "mental health or developmental disabilities
12 professional" means a person who by training or experience is
13 qualified to work with persons with mental disorders or
14 developmental disabilities;

15 W. "out-of-home treatment or habilitation program"
16 means an out-of-home residential program that provides twenty-
17 four-hour care and supervision to children with the primary
18 purpose of providing treatment or habilitation to children.

19 "Out-of-home treatment or habilitation program" includes, but
20 is not limited to, treatment foster care, group homes,
21 psychiatric hospitals, psychiatric residential treatment
22 facilities and non-medical and community-based residential
23 treatment centers;

24 X. "parent" means a biological or adoptive parent
25 of a child whose parental rights have not been terminated;

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1 Y. "physical restraint" means the use of physical
2 force without the use of any device or material that restricts
3 the free movement of all or a portion of a child's body;

4 Z. "protective devices" means helmets, safety
5 goggles or glasses, guards, mitts, gloves, pads and other
6 common safety devices that are normally used or recommended for
7 use by persons without disabilities while engaged in a sport or
8 occupation or during transportation;

9 AA. "residential treatment or habilitation program"
10 means diagnosis, evaluation, care, treatment or habilitation
11 rendered inside or on the premises of a mental health or
12 developmental disabilities facility, hospital, clinic,
13 institution, supervisory residence or nursing home when the
14 child resides on the premises and where one or more of the
15 following measures is available for use:

16 (1) a mechanical device to restrain or
17 restrict the child's movement;

18 (2) a secure seclusion area from which the
19 child is unable to exit voluntarily;

20 (3) a facility or program designed for the
21 purpose of restricting the child's ability to exit voluntarily;
22 and

23 (4) the involuntary emergency administration
24 of psychotropic medication;

25 BB. "restraint" means the use of a physical,

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1 chemical or mechanical restraint;

2 CC. "seclusion" means the confinement of a child
3 alone in a room from which the child is physically prevented
4 from leaving;

5 DD. "trauma-responsive" means an approach to
6 providing care that, in all aspects of service delivery,
7 recognizes and addresses the behavioral, social, medical and
8 neurodevelopmental impacts of trauma using community-based,
9 evidence-supported and promising practices to promote
10 resiliency and recovery; trauma-responsive services reflect an
11 understanding of the prevalence of trauma and are specifically
12 designed to avoid re-traumatizing those they serve;

13 [~~DD.~~] EE. "treatment" means provision of behavioral
14 health services based on evaluation of the child, aimed at
15 assisting the child to prevent, correct or ameliorate a mental
16 disorder. The purpose of treatment is to enable the child to
17 attain, maintain or regain maximum functioning;

18 [~~EE.~~] FF. "treatment team" means a team consisting
19 of the child, the child's parents unless parental rights have
20 specifically been limited pursuant to an order of a court,
21 legal custodian, guardian ad litem, treatment guardian,
22 clinician and any other professionals involved in treatment of
23 the child, other members of the child's family, if requested by
24 the child, and the child's attorney if requested by the child,
25 unless in the professional judgment of the treating clinician

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1 for reasons of safety or therapy one or more members should be
2 excluded from participation in the treatment team; and

3 ~~[FF-]~~ GG. "treatment plan" means an individualized
4 plan developed by a treatment team based on assessed strengths
5 and needs of the child and family."

6 **SECTION 4.** Section 32A-6A-7 NMSA 1978 (being Laws 2007,
7 Chapter 162, Section 7) is amended to read:

8 "32A-6A-7. RIGHT TO INDIVIDUALIZED TREATMENT OR
9 HABILITATION SERVICES AND PLAN.--

10 A. A child receiving mental health or habilitation
11 services shall have the right to prompt, evidence-based
12 treatment and habilitation pursuant to an individualized
13 treatment plan that is culturally and linguistically competent
14 and consistent with the least restrictive means principle.

15 B. A preliminary treatment plan shall be prepared
16 within seven days of initial provision of mental health or
17 habilitation services.

18 C. An individualized treatment or habilitation plan
19 shall be prepared within twenty-one days of the provision of
20 mental health or habilitation services.

21 D. The individualized treatment or habilitation
22 plan shall be developed by the child's treatment team. The
23 child, ~~[and]~~ the child's legal custodian and parent and other
24 relevant family members shall, to the maximum extent possible,
25 be involved in the preparation of the child's individualized

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1 treatment or habilitation plan.

2 E. An individualized treatment or habilitation plan
3 shall include:

4 (1) a statement of the nature of the specific
5 problem and the specific needs of the child;

6 (2) a statement of the least restrictive
7 conditions necessary to achieve the purposes of treatment or
8 habilitation;

9 (3) a description of intermediate and long-
10 range goals, with the projected timetable for their attainment;

11 (4) a statement and rationale for the plan of
12 treatment or habilitation for achieving these intermediate and
13 long-range goals;

14 (5) specification of staff responsibility and
15 a description of the proposed staff involvement with the child
16 in order to attain these goals;

17 (6) criteria for release to less restrictive
18 settings for treatment or habilitation, criteria for discharge
19 and a projected date for discharge; and

20 (7) provision for access to cultural practices
21 and traditional treatments in accordance with the child's
22 assessed needs, and for an Indian child, culturally competent
23 placement, treatment and practices and, after appropriate
24 consent, tribal consultation.

25 F. A treatment or habilitation plan for a child in

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1 an out-of-home treatment or habilitation program shall be based
2 on documented assessments that may include assessments of
3 mental status; intellectual function; psychological status,
4 including the use of psychological testing; psychiatric
5 evaluation and medication; education, vocation, psychosocial
6 assessment, physical status and the child's cultural needs.

7 G. A treatment or habilitation plan for children in
8 the custody of the department, including children who were
9 never removed from the home or children who have returned home
10 but who are still in custody, shall provide for trauma-
11 responsive services, including screenings, assessments,
12 referrals, treatment and transition services.

13 [~~G.~~] H. The child's progress in attaining the goals
14 and objectives set forth in the individualized treatment or
15 habilitation plan shall be monitored and noted in the child's
16 records, and revisions in the plan may be made as circumstances
17 require. The members of the child's treatment team shall be
18 informed of major changes and shall have the opportunity to
19 participate in decisions."