The Legislature
of the
State of New Mexico

52nd Legislature, 1st Session

LAWS 2015

CHAPTER 116

SENATE BILL 299, as amended

Introduced by

SENATOR HOWIE C. MORALES
CHAPTER 114

AN ACT

RELATING TO HEALTH CARE; UPDATING CERTAIN SECTIONS OF LAW TO INCLUDE AN ADVANCED PRACTICE REGISTERED NURSE, A CERTIFIED NURSE-MIDWIFE OR A PHYSICIAN ASSISTANT WORKING WITHIN THAT PERSON'S SCCPE OF PRACTICE; EXPANDING CERTAIN PROVISIONS OF THE UNIFORM HEALTH-CARE DECISIONS ACT TO INCLUDE NON-PHYSICIAN PRIMARY CARE PRACTITIONERS; REQUIRING STATE AGENCIES AND POLITICAL SUBDIVISIONS TO UPDATE THEIR RULES TO INCLUDE THESE HEALTH CARE PRACTITIONERS WHERE APPROPRIATE.

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

SECTION 1. Section 7-2-18.1 NMSA 1978 (being Laws 1981, Chapter 170, Section 1, as amended) is amended to read:

"7-2-18.1. CREDIT FOR EXPENSES FOR DEPENDENT CHILD DAY CARE NECESSARY TO ENABLE GAINFUL EMPLOYMENT TO PREVENT INDIGENCY.--

A. As used in this section:

(1) "caregiver" means a corporation or an individual eighteen years of age or over who receives compensation from a resident for providing direct care, supervision and guidance to a qualifying dependent of the resident for less than twenty-four hours daily and includes related individuals of the resident but does not include a dependent of the resident;

(2) "cost of maintaining a household" means
the expenses incurred for the mutual benefit of the occupants
thereof by reason of its operation as the principal place of
abode of such occupants, including property taxes, mortgage
interest, rent, utility charges, upkeep and repairs, property
insurance and food consumed on the premises. "Cost of
maintaining a household" shall not include expenses otherwise
incurred, including cost of clothing, education, medical
treatment, vacations, life insurance, transportation and
mortgages;

(3) "dependent" means "dependent" as defined
by Section 152 of the Internal Revenue Code, as that section
may be amended or renumbered, but also includes any minor
child or stepchild of the resident who would be a dependent
for federal income tax purposes if the public assistance
contributing to the support of the child or stepchild was
considered to have been contributed by the resident;

(4) "disabled person" means a person who has
a medically determinable physical or mental impairment, as
certified by a licensed physician or an advanced practice
registered nurse, certified nurse-midwife or physician
assistant working within that person's scope of practice,
that renders such person unable to engage in gainful
employment;

(5) "gainfully employed" means working for
remuneration for others, either full time or part time, or
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self-employment in a business or partnership; and

(6) "qualifying dependent" means a dependent under the age of fifteen at the end of the taxable year who receives the services of a caregiver.

B. Any resident who files an individual New Mexico income tax return and who is not a dependent of another taxpayer may claim a credit for child day care expenses incurred and paid to a caregiver in New Mexico during the taxable year by such resident if the resident:

(1) singly or together with a spouse furnishes over half the cost of maintaining the household for one or more qualifying dependents for any period in the taxable year for which the credit is claimed;

(2) is gainfully employed for any period for which the credit is claimed or, if a joint return is filed, both spouses are gainfully employed or one is disabled for any period for which the credit is claimed;

(3) compensates a caregiver for child day care for a qualifying dependent to enable such resident together with the resident's spouse, if any and if not disabled, to be gainfully employed;

(4) is not a recipient of public assistance under a program of aid to families with dependent children, a program under the New Mexico Works Act or any successor program during any period for which the credit provided by SB 299 Page 3
this section is claimed; and

(5) has a modified gross income, including child support payments, if any, of not more than the annual income that would be derived from earnings at double the federal minimum wage.

C. The credit provided for in this section shall be forty percent of the actual compensation paid to a caregiver by the resident for a qualifying dependent not to exceed four hundred eighty dollars ($480) for each qualifying dependent or a total of one thousand two hundred dollars ($1,200) for all qualifying dependents for a taxable year. For the purposes of computing the credit, actual compensation shall not exceed eight dollars ($8.00) per day for each qualifying dependent.

D. The caregiver shall furnish the resident with a signed statement of compensation paid by the resident to the caregiver for day care services. Such statements shall specify the dates and the total number of days for which payment has been made.

E. If the resident taxpayer has a federal tax liability, the taxpayer shall claim from the state not more than the difference between the amount of the state child care credit for which the taxpayer is eligible and the federal credit for child and dependent care expenses the taxpayer is able to deduct from federal tax liability for the
same taxable year; provided, for first year residents only, the amount of the federal credit for child and dependent care expenses may be reduced to an amount equal to the amount of federal credit for child and dependent care expenses the resident is able to deduct from federal tax liability multiplied by the ratio of the number of days of residence in New Mexico during the resident's taxable year to the total number of days in the resident's taxable year.

F. The credit provided for in this section may be deducted from the taxpayer's New Mexico income tax liability for the taxable year. If the credit exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

G. A husband and wife maintaining a household for one or more qualifying dependents and filing separate returns for a taxable year for which they could have filed a joint return:

(1) may each claim only one-half of the credit that would have been claimed on a joint return; and

(2) are eligible for the credit provided in this section only if their joint modified gross income, including child support payments, if any, is not more than the annual income that would be derived from earnings at double the federal minimum wage."

SECTION 2. Section 12-10A-13 NMSA 1978 (being Laws
2003, Chapter 218, Section 13) is amended to read:

  "12-10A-13. VACCINATION AND TREATMENT.--

  A. During a state of public health emergency, a
  qualified person authorized by the secretary of health may
  vaccinate persons to prevent infection by a threatening
  communicable disease and to protect against the spread of
  that disease.

  B. To protect against the spread of a threatening
  communicable disease, the secretary of health may isolate or
  quarantine a person who is unable or unwilling for reasons of
  health, religion or conscience to undergo vaccination
  pursuant to the standards and procedures set forth in the

  C. A qualified person authorized by the secretary
  of health may vaccinate a minor less than eighteen years of
  age, unless the minor or the minor's duly authorized
  representative presents a certificate issued by a duly
  licensed physician or an advanced practice registered nurse,
  certified nurse-midwife or physician assistant working within
  that person's scope of practice that states that the minor's
  physical condition is such that the vaccination would
  seriously endanger the minor's life or health.

  D. During a state of public health emergency, in
  order to provide treatment to a person who is exposed to or
  infected with a threatening communicable disease:
(1) treatment may be administered by a
public health official;

(2) treatment shall be approved pursuant to
appropriate regulations promulgated by the federal food and
drug administration; and

(3) the secretary of health may isolate or
quarantine a person who is unable or unwilling, for reasons
of health, religion or conscience, to undergo treatment
pursuant to the standards and procedures set forth in the
Public Health Emergency Response Act."

SECTION 3. Section 22-10A-34 NMSA 1978 (being Laws
1967, Chapter 16, Section 112, as amended) is amended to
read:

"22-10A-34. COMMUNICABLE DISEASES--PROHIBITED
EMPLOYMENT--PENALTY.--

A. No person afflicted with a communicable disease
in a transmissible stage dangerous to the health of students
shall be employed in a public or private school in this
state.

B. The department of health after consultation
with the public education department shall adopt and issue
regulations designating those communicable diseases in a
transmissible stage that are dangerous to the health of
students.

C. Each person employed in a public or private
school, including bus drivers, shall present to the governing
authority of the school where employed, upon initial
employment, a certificate from a licensed physician or an
advanced practice registered nurse, certified nurse-midwife
or physician assistant working within that person's scope of
practice stating that the person is free from all
communicable diseases in a transmissible stage dangerous to
the health of students.

D. The certificate from a licensed physician or an
advanced practice registered nurse, certified nurse-midwife
or physician assistant working within that person's scope of
practice shall be according to a form prescribed by the
department of health and approved by the public education
department. The certificate shall be obtained from a
licensed physician or an advanced practice registered nurse, 
certified nurse-midwife or physician assistant working within
that person's scope of practice not more than ninety days
prior to the date of employment.

E. Any person violating the provisions of this
section by not obtaining a certificate from a licensed
physician or an advanced practice registered nurse, certified
nurse-midwife or physician assistant working within that
person's scope of practice as required is guilty of a petty
misdemeanor."

SECTION 4. Section 24-7A-1 NMSA 1978 (being Laws 1995, SB 299
Chapter 182, Section 1, as amended) is amended to read:

"24-7A-1. DEFINITIONS.--As used in the Uniform Health-Care Decisions Act:

A. "advance health-care directive" means an individual instruction or a power of attorney for health care made, in either case, while the individual has capacity;

B. "agent" means an individual designated in a power of attorney for health care to make a health-care decision for the individual granting the power;

C. "capacity" means an individual's ability to understand and appreciate the nature and consequences of proposed health care, including its significant benefits, risks and alternatives to proposed health care and to make and communicate an informed health-care decision. A determination of lack of capacity shall be made only according to the provisions of Section 24-7A-11 NMSA 1978;

D. "emancipated minor" means an individual between the ages of sixteen and eighteen who has been married, who is on active duty in the armed forces or who has been declared by court order to be emancipated;

E. "guardian" means a judicially appointed guardian or conservator having authority to make a health-care decision for an individual;

F. "health care" means any care, treatment, service or procedure to maintain, diagnose or otherwise
affect an individual's physical or mental condition;

C. "health-care decision" means a decision made by
an individual or the individual's agent, guardian or
surrogate, regarding the individual's health care, including:

(1) selection and discharge of health-care
practitioners and institutions;

(2) approval or disapproval of diagnostic
tests, surgical procedures, programs of medication and orders
not to resuscitate;

(3) directions relating to life-sustaining
treatment, including withholding or withdrawing
life-sustaining treatment and the termination of life
support; and

(4) directions to provide, withhold or
withdraw artificial nutrition and hydration and all other
forms of health care;

H. "health-care institution" means an institution,
facility or agency licensed, certified or otherwise
authorized or permitted by law to provide health care in the
ordinary course of business;

I. "health-care practitioner" means an individual
licensed, certified or otherwise authorized or permitted by
law to provide health care in the ordinary course of business
or practice of a profession;

J. "individual instruction" means an individual's
direction concerning a health-care decision for the
individual made while the individual has capacity;
  K. "life-sustaining treatment" means any medical
treatment or procedure without which the individual is likely
to die within a relatively short time, as determined to a
reasonable degree of medical certainty by the primary care
practitioner;
  L. "person" means an individual, corporation,
business trust, estate, trust, partnership, association,
joint venture, government, governmental subdivision, agency
or instrumentality or any other legal or commercial entity;
  M. "physician" means an individual authorized to
practice medicine or osteopathy;
  N. "power of attorney for health care" means the
designation of an agent to make health-care decisions for the
individual granting the power, made while the individual has
capacity;
  O. "primary care practitioner" means a health-care
practitioner designated by an individual or the individual's
agent, guardian or surrogate to have primary responsibility
for the individual's health care;
  P. "principal" means an adult or emancipated minor
who, while having capacity, has made a power of attorney for
health care by which the adult or emancipated minor delegates
the right to make health-care decisions for the adult or
emancipated minor to an agent;

C. "protected person" means an adult or emancipated minor for whom a guardian has been appointed;

R. "qualified health-care professional" means a health-care practitioner who is a physician, physician assistant, nurse practitioner, nurse, psychologist or social worker;

S. "reasonably available" means readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health-care needs;

T. "state" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico or a territory or insular possession subject to the jurisdiction of the United States;

U. "supervising health-care practitioner" means the primary care practitioner, or if there is no primary care practitioner or if the primary care practitioner is not reasonably available, the health-care practitioner who has undertaken primary responsibility for an individual's health care; and

V. "surrogate" means an individual, other than a patient's agent or guardian, authorized under the Uniform Health-Care Decisions Act to make a health-care decision for the patient."
SECTION 5. Section 24-7A-4 NMSA 1978 (being Laws 1995,
Chapter 182, Section 4, as amended) is amended to read:

"24-7A-4. OPTIONAL FORM.--The following form may, but
need not, be used to create an advance health-care directive.
The other sections of the Uniform Health-Care Decisions Act
govern the effect of this or any other writing used to create
an advance health-care directive. An individual may complete
or modify all or any part of the following form:

"OPTIONAL ADVANCE HEALTH-CARE DIRECTIVE

Explaination

You have the right to give instructions about your own
health care. You also have the right to name someone else to
make health-care decisions for you. This form lets you do
either or both of these things. It also lets you express
your wishes regarding the designation of your primary care
practitioner.

THIS FORM IS OPTIONAL. Each paragraph and word of this
form is also optional. If you use this form, you may cross
out, complete or modify all or any part of it. You are free
to use a different form. If you use this form, be sure to
sign it and date it.

PART 1 of this form is a power of attorney for health
care. PART 1 lets you name another individual as agent to
make health-care decisions for you if you become incapable of
making your own decisions or if you want someone else to make
those decisions for you now even though you are still capable. You may also name an alternate agent to act for you if your first choice is not willing, able or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator or employee of a health-care institution at which you are receiving care.

Unless the form you sign limits the authority of your agent, your agent may make all health-care decisions for you. This form has a place for you to limit the authority of your agent. You need not limit the authority of your agent if you wish to rely on your agent for all health-care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to:

(a) consent or refuse consent to any care, treatment, service or procedure to maintain, diagnose or otherwise affect a physical or mental condition;
(b) select or discharge health-care practitioners and institutions;
(c) approve or disapprove diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and
(d) direct the provision, withholding or withdrawal of artificial nutrition and hydration and all other forms of health care.
PART 2 of this form lets you give specific instructions about any aspect of your health care. Choices are provided for you to express your wishes regarding life-sustaining treatment, including the provision of artificial nutrition and hydration, as well as the provision of pain relief. In addition, you may express your wishes regarding whether you want to make an anatomical gift of some or all of your organs and tissue. Space is also provided for you to add to the choices you have made or for you to write out any additional wishes.

PART 3 of this form lets you designate a primary care practitioner to have primary responsibility for your health care.

After completing this form, sign and date the form at the end. It is recommended but not required that you request two other individuals to sign as witnesses. Give a copy of the signed and completed form to your physician, to any other health-care practitioners you may have, to any health-care institution at which you are receiving care and to any health-care agents you have named. You should talk to the person you have named as agent to make sure that he or she understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health-care directive or replace this form at any time.
PART 1

POWER OF ATTORNEY FOR HEALTH CARE

(1) DESIGNATION OF AGENT:  I designate the following individual as my agent to make health-care decisions for me:

<p>| (name of individual you choose as agent) |</p>
<table>
<thead>
<tr>
<th>(address)</th>
<th>(city)</th>
<th>(state)</th>
<th>(zip code)</th>
</tr>
</thead>
</table>

(home phone) (work phone)

If I revoke my agent's authority or if my agent is not willing, able or reasonably available to make a health-care decision for me, I designate as my first alternate agent:

<p>| (name of individual you choose as first alternate agent) |</p>
<table>
<thead>
<tr>
<th>(address)</th>
<th>(city)</th>
<th>(state)</th>
<th>(zip code)</th>
</tr>
</thead>
</table>

(home phone) (work phone)

If I revoke the authority of my agent and first alternate agent or if neither is willing, able or reasonably available to make a health-care decision for me, I designate as my second alternate agent:
(name of individual you choose as second alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

(2) AGENT’S AUTHORITY: My agent is authorized to obtain and review medical records, reports and information about me and to make all health-care decisions for me, including decisions to provide, withhold or withdraw artificial nutrition, hydration and all other forms of health care to keep me alive, except as I state here:

(Add additional sheets if needed.)

(3) WHEN AGENT’S AUTHORITY BECOMES EFFECTIVE: My agent’s authority becomes effective when my primary care practitioner and one other qualified health-care professional determine that I am unable to make my own health-care decisions. If I initial this box [ ], my agent’s authority to make health-care decisions for me takes effect immediately.

(4) AGENT’S OBLIGATION: My agent shall make health-care decisions for me in accordance with this power of attorney for health care, any instructions I give in PART 2
of this form and my other wishes to the extent known to my
agent. To the extent my wishes are unknown, my agent shall
make health-care decisions for me in accordance with what my
agent determines to be in my best interest. In determining
my best interest, my agent shall consider my personal values
to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my
person needs to be appointed for me by a court, I nominate
the agent designated in this form. If that agent is not
willing, able or reasonably available to act as guardian, I
nominate the alternate agents whom I have named, in the order
designated.

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine
what is best for you in making end-of-life decisions, you
need not fill out this part of the form. If you do fill out
this part of the form, you may cross out any wording you do
not want.

(6) END-OF-LIFE DECISIONS: If I am unable to make
or communicate decisions regarding my health care, and IF
(i) I have an incurable or irreversible condition that will
result in my death within a relatively short time, OR (ii) I
become unconscious and, to a reasonable degree of medical
certainty, I will not regain consciousness, OR (iii) the
likely risks and burdens of treatment would outweigh the expected benefits, THEN I direct that my health-care practitioners and others involved in my care provide, withhold or withdraw treatment in accordance with the choice I have initialed below in one of the following three boxes:

[ ] I CHOOSE NOT To Prolong Life
    I do not want my life to be prolonged.

[ ] I CHOOSE To Prolong Life
    I want my life to be prolonged as long as possible within the limits of generally accepted health-care standards.

[ ] I CHOOSE To Let My Agent Decide
    My agent under my power of attorney for health care may make life-sustaining treatment decisions for me.

(7) ARTIFICIAL NUTRITION AND HYDRATION: If I have chosen above NOT to prolong life, I also specify by marking my initials below:

[ ] I DO NOT want artificial nutrition OR

[ ] I DO want artificial nutrition.

[ ] I DO NOT want artificial hydration unless required for my comfort OR

[ ] I DO want artificial hydration.

(8) RELIEF FROM PAIN: Regardless of the choices I have made in this form and except as I state in the following
space, I direct that the best medical care possible to keep
me clean, comfortable and free of pain or discomfort be
provided at all times so that my dignity is maintained, even
if this care hastens my death:

(9) ANATOMICAL GIFT DESIGNATION: Upon my death I
specify as marked below whether I choose to make an
anatomical gift of all or some of my organs or tissue:

[ ] I CHOOSE to make an anatomical gift of all of
my organs or tissue to be determined by medical suitability
at the time of death, and artificial support may be
maintained long enough for organs to be removed.

[ ] I CHOOSE to make a partial anatomical gift of
some of my organs and tissue as specified below, and
artificial support may be maintained long enough for organs
to be removed.

[ ] I REFUSE to make an anatomical gift of any of
my organs or tissue.

[ ] I CHOOSE to let my agent decide.

(10) OTHER WISHES: (If you wish to write your own
instructions, or if you wish to add to the instructions you
have given above, you may do so here.) I direct that:
(Add additional sheets if needed.)

PART 3

PRIMARY CARE PRACTITIONER

(11) I designate the following as my primary care practitioner:

(name of primary care practitioner)

(address)  (city)  (state)  (zip code)

(phone)

If the primary care practitioner I have designated above is not willing, able or reasonably available to act as my primary care practitioner, I designate the following as my primary care practitioner:

(name of primary care practitioner)

(address)  (city)  (state)  (zip code)

(phone)

* * * * * * * * * * * * * * * * * * *

(12) EFFECT OF COPY: A copy of this form has the
same effect as the original.

(13) REVOCAUTION: I understand that I may revoke this OPTIONAL ADVANCE HEALTH-CARE DIRECTIVE at any time, and that if I revoke it, I should promptly notify my supervising health-care practitioner and any health-care institution where I am receiving care and any others to whom I have given copies of this power of attorney. I understand that I may revoke the designation of an agent either by a signed writing or by personally informing the supervising health-care practitioner.

(14) SIGNATURES: Sign and date the form here:

__________________________  ________________________
(date)  (sign your name)

__________________________  ________________________
(address)  (print your name)

__________________________  ________________________
(city)  (state)  (your social security number)

(Optional) SIGNATURES OF WITNESSES:

First witness  Second witness

__________________________  ________________________
(print name)  (print name)

__________________________  ________________________
(address)  (address)

__________________________  ________________________
(city)  (state)  (city)  (state)
(signature of witness)          (signature of witness)
(date)                          (date)"

SECTION 6. Section 24-7A-6.1 NMSA 1978 (being Laws
1997, Chapter 168, Section 13, as amended) is amended to
read:

"24-7A-6.1. LIFE-SUSTAINING TREATMENT FOR UNEMANCIPATED
MINORS.--

A. Except as otherwise provided by law, a parent
or guardian of an unemancipated minor may make that minor's
health-care decisions.

B. A parent or guardian of an unemancipated minor
shall have the authority to withhold or withdraw
life-sustaining treatment for the unemancipated minor,
subject to the provisions of this section and the standards
for surrogate decision-making for adults provided for in the
Uniform Health-Care Decisions Act.

C. Subject to the provisions of Subsection B of
this section, if an unemancipated minor has capacity
sufficient to understand the nature of that unemancipated
minor's medical condition, the risks and benefits of
treatment and the contemplated decision to withhold or
withdraw life-sustaining treatment, that unemancipated minor
shall have the authority to withhold or withdraw

E. For purposes of Subsection C of this section, a
determination of the mental and emotional capacity of an
unemancipated minor shall be determined by two qualified
health-care professionals, one of whom shall be the
unemancipated minor's primary care practitioner and the other
of whom shall be a health-care practitioner that works with
unemancipated minors of the minor's age in the ordinary
course of that health-care practitioner's practice. If the
unemancipated minor lacks capacity due to mental illness or
developmental disability, one of the qualified health-care
professionals shall be a person whose training and expertise
aid in the assessment of functional impairment.

E. If the unemancipated minor's primary care
practitioner has reason to believe that a parent or guardian
of an unemancipated minor, including a non-custodial parent,
has not been informed of a decision to withhold or withdraw
life-sustaining treatment, the primary care practitioner
shall make reasonable efforts to determine if the uninformed
parent or guardian has maintained substantial and continuous
contact with the unemancipated minor and, if so, shall make
reasonable efforts to notify that parent or guardian before
implementing a decision.

F. If there is disagreement regarding the decision
to withhold or withdraw life-sustaining treatment for an
unemancipated minor, the provisions of Section 24-7A-11 NMSA 1978 shall apply."

SECTION 7. Section 24-7A-7 NMSA 1978 (being Laws 1995, Chapter 182, Section 7, as amended) is amended to read:

"24-7A-7. OBLIGATIONS OF HEALTH-CARE PRACTITIONER.--

A. Before implementing a health-care decision made for a patient, a supervising health-care practitioner shall promptly communicate to the patient the decision made and the identity of the person making the decision.

B. A supervising health-care practitioner who knows of the existence of an advance health-care directive, a revocation of an advance health-care directive, a challenge to a determination of lack of capacity or a designation or disqualification of a surrogate shall promptly record its existence in the patient's health-care record and, if it is in writing, shall request a copy and, if one is furnished, shall arrange for its maintenance in the health-care record.

C. A supervising health-care practitioner who makes or is informed of a determination that a patient lacks or has recovered capacity or that another condition exists that affects an individual instruction or the authority of an agent, guardian or surrogate shall promptly record the determination in the patient's health-care record and communicate the determination to the patient and to any person then authorized to make health-care decisions for the
D. Except as provided in Subsections E and F of this section, a health-care practitioner or health-care institution providing care to a patient shall comply:

   (1) before and after the patient is determined to lack capacity, with an individual instruction of the patient made while the patient had capacity;

   (2) with a reasonable interpretation of the individual instruction made by a person then authorized to make health-care decisions for the patient; and

   (3) with a health-care decision for the patient that is not contrary to an individual instruction of the patient and is made by a person then authorized to make health-care decisions for the patient, to the same extent as if the decision had been made by the patient while having capacity.

E. A health-care practitioner may decline to comply with an individual instruction or health-care decision for reasons of conscience. A health-care institution may decline to comply with an individual instruction or health-care decision if the instruction or decision is contrary to a policy of the health-care institution that is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to a person then authorized to make health-care decisions for the patient.
F. A health-care practitioner or health-care institution may decline to comply with an individual instruction or health-care decision that requires medically ineffective health care or health care contrary to generally accepted health-care standards applicable to the health-care practitioner or health-care institution. "Medically ineffective health care" means treatment that would not offer the patient any significant benefit, as determined by a health-care practitioner.

G. A health-care practitioner or health-care institution that declines to comply with an individual instruction or health-care decision shall:

   (1) promptly so inform the patient, if possible, and any person then authorized to make health-care decisions for the patient;

   (2) provide continuing care to the patient until a transfer can be effected; and

   (3) unless the patient or person then authorized to make health-care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health-care practitioner or health-care institution that is willing to comply with the individual instruction or decision.

H. A health-care practitioner or health-care
institution may not require or prohibit the execution or
revocation of an advance health-care directive as a condition
for providing health care.

I. The Uniform Health-Care Decisions Act does not
require or permit a health-care institution or health-care
practitioner to provide any type of health care for which the
health-care institution or health-care practitioner is not
licensed, certified or otherwise authorized or permitted by
law to provide."

SECTION 8. Section 24-7A-11 NMSA 1978 (being Laws 1995,
Chapter 182, Section 11, as amended) is amended to read:

"24-7A-11. CAPACITY.--

A. The Uniform Health-Care Decisions Act does not
affect the right of an individual to make health-care
decisions while having capacity to do so.

B. An individual is presumed to have capacity to
make a health-care decision, to give or revoke an advance
health-care directive and to designate a surrogate.

C. Unless otherwise specified in a written advance
health-care directive, a determination that an individual
lacks or has recovered capacity or that another condition
exists that affects an individual instruction or the
authority of an agent shall be made by two qualified
health-care professionals, one of whom shall be the primary
care practitioner. If the lack of capacity is determined to
exist because of mental illness or developmental disability, one of the qualified health-care professionals shall be a person whose training and expertise aid in the assessment of functional impairment.

D. An individual shall not be determined to lack capacity solely on the basis that the individual chooses not to accept the treatment recommended by a health-care practitioner.

E. An individual, at any time, may challenge a determination that the individual lacks capacity by a signed writing or by personally informing a health-care practitioner of the challenge. A health-care practitioner who is informed by the individual of a challenge shall promptly communicate the fact of the challenge to the supervising health-care practitioner and to any health-care institution at which the individual is receiving care. Such a challenge shall prevail unless otherwise ordered by the court in a proceeding brought pursuant to the provisions of Section 24-7A-14 NMSA 1978.

F. A determination of lack of capacity under the Uniform Health-Care Decisions Act shall not be evidence of incapacity under the provisions of Article 5 of the Uniform Probate Code."

SECTION 9. Section 24-8-4 NMSA 1978 (being Laws 1973, Chapter 107, Section 4) is amended to read:

"24-8-4. PROHIBITION AGAINST INTERFERENCE WITH MEDICAL
JUDGMENT OF CERTAIN HEALTH CARE PROFESSIONALS.--The Family Planning Act does not prohibit or inhibit any person from refusing to provide any family planning service on the grounds that there are valid medical reasons for the refusal and that those reasons are based upon the judgment of a physician or a physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice given in the specific case of the person for whom services are refused."

SECTION 10. Section 24-8-5 NMSA 1978 (being Laws 1973, Chapter 107, Section 5) is amended to read:

"24-8-5. PROHIBITION AGAINST IMPOSITION OF STANDARDS AND REQUIREMENTS AS PREREQUISITES FOR RECEIPT OF REQUESTED FAMILY PLANNING SERVICES.--Neither the state, its local governmental units nor any health facility furnishing family planning services shall subject any person to any standard or requirement as a prerequisite to the receipt of any requested family planning service except for:

A. a requirement of referral to a physician or a physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice when the requested family planning service is something other than information about family planning or nonprescription items;

B. any requirement imposed by law or regulation as
a prerequisite to the receipt of a family planning service; or

C. payment for the service when payment is required in the ordinary course of providing the particular service to the person involved."

SECTION 11. Section 24-10C-6 NMSA 1978 (being Laws 1999, Chapter 94, Section 6, as amended) is amended to read:

"24-10C-6. EXEMPTION.--Nothing in the Cardiac Arrest Response Act precludes a physician or a physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice from prescribing an automated external defibrillator to a patient for use by the patient's caregiver on an individual patient, and the use does not require the individual to function in an approved program."

SECTION 12. Section 32A-6A-12 NMSA 1978 (being Laws 2007, Chapter 162, Section 12) is amended to read:

"32A-6A-12. PERSONAL RIGHTS OF A CHILD IN AN OUT-OF-HOME TREATMENT OR HABILITATION PROGRAM--SCOPE.--

A. A child in an out-of-home treatment or habilitation program shall have, in addition to other rights set forth in the Children's Mental Health and Developmental Disabilities Act, the right to:

(1) be placed in a manner consistent with the least restrictive means principle;
(2) have access to the state's designated protection and advocacy system and access to an attorney of the child's choice, provided that the child is not entitled to appointment of an attorney at public expense, except as otherwise provided in Subsection C of Section 32A-6A-13 NMSA 1978;

(3) receive visitors of the child's own choosing on a daily basis, subject to restrictions imposed in the best interests of the child by the child's clinician for good cause. Hours during which visitors may be received shall be limited only in the interest of effective treatment and the reasonable efficiency of the program and shall be sufficiently flexible to accommodate the individual needs of the child and the child's visitors. Notwithstanding the provisions of this subsection, each child has the right to receive visits from the child's attorney; physician; physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice; psychologist; clergy; guardian ad litem; or representatives from the state's protection and advocacy system or children, youth and families department in private at any reasonable time, irrespective of visiting hours, provided the visitor shows reasonable cause for visiting at times other than normal visiting hours;

(4) have writing materials and postage
stamps reasonably available for the child's use in writing
letters and other communications. Reasonable assistance
shall be provided for writing, addressing and posting letters
and other documents upon request. The child has the right to
send and receive sealed and uncensored mail. The child has
the right to reasonable private access to telephones, and, in
cases of personal emergencies when other means of
communication are not satisfactory, the child shall be
afforded reasonable use of long distance calls; provided that
for other than mail or telephone calls to a court; an
attorney; a physician; a physician assistant, advanced
practice registered nurse or certified nurse-midwife working
within that person's scope of practice; a psychologist;
clergy; a guardian ad litem; a representative from the
state's protection and advocacy system; or a social worker,
mailing or telephone privileges may be restricted by the
child's clinician for good cause shown. A child who is
indigent shall be furnished writing, postage and telephone
facilities without charge;

(5) reasonable access to a legal custodian
and a family member through visitation, videoconferencing,
telephone access and opportunity to send and receive mail.
In-person visitation is preferred, and reasonable efforts
shall be made to facilitate such visitation unless the child
and family choose otherwise. Access by legal custodians and
family members to the child shall be limited only in the
interest of effective treatment and the reasonable efficiency
of the program and shall be sufficiently flexible to
accommodate the individual needs of legal custodians and
family members. Treatment needs that justify limitation on
the access rights of a legal custodian or family member must
be specifically documented by the clinician in the child's
record, and any such limitation automatically expires in
seven days;

(6) follow or abstain from the practice of
religion. The program shall provide appropriate assistance
in this connection, including reasonable accommodations for
religious worship and transportation to nearby religious
services. A child who does not wish to participate in
religious practice shall be free from pressure to do so or to
accept religious beliefs;

(7) a humane psychological and physical
environment. The child shall be provided a comfortable bed
and adequate changes of linen and reasonable secure storage
space for personal possessions. Except when curtailed for
reasons of safety or therapy as documented in the child's
record by the child's physician, the child shall be afforded
reasonable privacy in sleeping and personal hygiene
practices;

(8) reasonable daily opportunities for
physical exercise and outdoor exercise and reasonable access
to recreational areas and equipment, including equipment
adapted to the child's developmental and physical needs;
(9) a nourishing, well-balanced, varied and
appetizing diet;
(10) prompt and adequate medical attention
for a physical ailment. Each child shall receive a complete
physical examination upon admission, except when
documentation is provided that the child has had such
examination within the six months immediately prior to the
current admission. Each child shall receive a complete
physical examination every twelve months thereafter;
(11) a clean, safe and comfortable
environment in a structure that complies with applicable fire
and safety requirements;
(12) appropriate medication and freedom from
unnecessary or excessive medication. Medication shall not be
used as discipline, as a substitute for programs, for the
convenience of staff or in quantities that interfere with the
child's treatment or habilitation program. No medication
shall be administered unless by written order of a clinician
licensed to prescribe medication or by an oral order noted
immediately in the patient's medical record and signed by
that clinician within twenty-four hours. All prescriptions
for psychotropic medications must be reviewed at least every
thirty days. Notation of each child's medication shall be kept in the child's medical records and shall include a notation by the clinician licensed to prescribe medication of the behavioral or symptomatic baseline data upon which the medication order was made; and

(13) a free public education. The child shall be educated in regular classes with nondisabled children whenever appropriate. In no event shall a child be allowed to remain in an out-of-home treatment or habilitation program for more than ten days without receiving educational services. If the child's placement in an out-of-home treatment or habilitation program is required by an individualized education plan that conforms to the requirements of state and federal law, the sending school is responsible for the provision of education to the child. In all other situations, the local school district in which the out-of-home treatment or habilitation program is located is responsible for the provision of educational services to the child. Nothing in this subsection shall limit a child's right to public education under state, tribal or federal law.

B. A child receiving services in an out-of-home treatment or habilitation program, including but not limited to residential treatment or habilitation programs, shall be provided notice of rights immediately upon admission to such program."
SECTION 13. Section 33-2-13 NMSA 1978 (being Laws 1889, Chapter 76, Section 44, as amended) is amended to read:

"33-2-13. PHYSICIAN, PHYSICIAN ASSISTANT, ADVANCED PRACTICE REGISTERED NURSE OR CERTIFIED NURSE-MIDWIFE WORKING WITHIN THAT PERSON'S SCOPE OF PRACTICE--RULES--PRISONER'S DISABILITY--RECORDS.--A physician or a physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice, when visiting the penitentiary of New Mexico, shall conform to its rules and regulations. The physician or the physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice shall express no opinion as to the disability of any prisoner except in records kept in the penitentiary."

SECTION 14. Section 52-1-55 NMSA 1978 (being Laws 1929, Chapter 113, Section 23, as amended) is amended to read:

"52-1-55. PHYSICAL EXAMINATIONS--STATEMENTS REGARDING DEPENDENTS--PRE-EMPLOYMENT PHYSICAL CONDITION STATEMENTS.--

A. It is the duty of the worker at the time of the worker's employment or thereafter at the request of the employer to submit to examination by a physician or surgeon duly authorized to practice medicine in the state, or by a physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice, who shall be paid by the employer, for the purpose
of determining the worker's physical condition.

E. It is also the duty of the worker, if required, to give the names, addresses, relationship and degree of dependency of the worker's dependents, if any, or any subsequent change thereof to the employer, and when the employer or the employer's insurance carrier requires, the worker shall make a detailed verified statement relating to such dependents, matters of employment and other information incident thereto.

C. It is also the duty of the worker, if requested by the employer or the employer's insurance carrier, to make a detailed verified statement as part of an application for employment disclosing specifically any preexisting permanent physical impairment."

SECTION 15. Section 66-3-16 NMSA 1978 (being Laws 1978, Chapter 35, Section 36, as amended) is amended to read:

"66-3-16. DISTINCTIVE REGISTRATION PLATES--PERSONS WITH SIGNIFICANT MOBILITY LIMITATION--PARKING PLACARD.--

A. The division shall issue distinctive registration plates for use on motor vehicles and motorcycles owned by a person with a significant mobility limitation who requests a distinctive registration plate and who proves satisfactorily to the division that the person meets the standard provided in Subsection J of this section. No fee in addition to the regular registration fee, if any, applicable
to the motor vehicle or motorcycle shall be collected for
issuance of distinctive registration plates pursuant to this
section.

B. No person shall falsely claim to have a
significant mobility limitation so as to be eligible to be
issued a distinctive registration plate or a parking placard
pursuant to this section when the person does not in fact
have a significant mobility limitation. Upon notice and
opportunity to be heard, the division may revoke and demand
return of any placard when:

(1) it was issued in error or with false
information;

(2) the person receiving the placard is no
longer eligible; or

(3) the placard is being used by ineligible
persons.

C. Upon written application to the division
accompanied by a medical statement by a licensed physician or
a physician assistant, advanced practice registered nurse or
certified nurse-midwife working within that person's scope of
practice attesting to the permanent significant mobility
limitation, a resident of the state who has a significant
mobility limitation, as provided in this section, may apply
for and be issued no more than two parking placards for
display upon a motor vehicle registered to the person or
motor vehicle owned by another person who is transporting the
person with a significant mobility limitation. The physician
or the physician assistant, advanced practice registered
nurse or certified nurse-midwife working within that person's
scope of practice shall provide the division all information
and records necessary to issue a permanent parking placard.

Once approved for use of a permanent parking placard, a
person with a significant mobility limitation shall not be
required to furnish further medical information.

D. A parking placard issued pursuant to this
section shall expire four years from the date it was issued.

E. The division shall issue two-sided hanger-style
parking placards with the following characteristics:

(1) a picture of the international symbol of
access;

(2) a hologram to make duplication
difficult;

(3) an imprinted expiration date; and

(4) a full-face photograph of the holder on
the inside of the placard covered by a flap.

F. The division shall consult with the governor's
commission on disability for continued issuance and format of
the placard.

G. The division may issue an identification card
containing a full-face photograph of the holder of the
registration plate or parking placard and the number of the registration plate or parking placard issued to that person.

H. Upon written application to the division accompanied by a medical statement from a licensed physician or a physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice attesting to a temporary significant mobility limitation, a person may be issued a temporary placard for no more than one year. The physician or the physician assistant, advanced practice registered nurse or certified nurse-midwife working within that person's scope of practice shall provide the division all information and records necessary to issue a temporary placard.

I. Registration plates or parking placards issued to a person with a significant mobility limitation by another state or foreign jurisdiction shall be honored until the motor vehicle or motorcycle is registered or the parking placard holder establishes residency in this state.

J. A "person with a significant mobility limitation" means a person who:

(1) cannot walk one hundred feet without stopping to rest;

(2) cannot walk without the use of a brace, cane or crutch or without assistance from another person, a prosthetic device, a wheelchair or other assistive device;
(3) is restricted by lung disease to such an extent that the person's forced respiratory volume, when exhaling for one second, when measured by spirometry, is less than one liter or the arterial oxygen tension is less than sixty millimeters on room air at rest;

(4) uses portable oxygen;

(5) has a severe cardiac condition; or

(6) is so severely limited in the ability to walk due to an arthritic, neurologic or orthopedic condition that the person cannot ascend or descend more than ten stair steps."

SECTION 16. TEMPORARY PROVISION--DIRECTING STATE AGENCIES AND POLITICAL SUBDIVISIONS TO UPDATE RULES REQUIRING AN EXAMINATION BY, OR CERTIFICATE OR STATEMENT OF, A LICENSED PHYSICIAN TO INCLUDE ADVANCED PRACTICE REGISTERED NURSE, CERTIFIED NURSE-MIDWIFE OR PHYSICIAN ASSISTANT WORKING WITHIN THAT PERSON'S SCOPE OF PRACTICE.--

By January 1, 2016, every cabinet secretary, agency head and head of a political subdivision of the state shall update rules requiring an examination by, a certificate from or a statement of a licensed physician to also accept such examination, certificate or statement from an advanced practice registered nurse, certified nurse-midwife or physician assistant working within that person's scope of practice.
John A. Sánchez, President
Senate

Lenore M. Naranjo, Chief Clerk
Senate

Don L. Tripp, Speaker
House of Representatives

Denise Ramonas, Chief Clerk
House of Representatives

Approved by me this ___ day of April, 2015

Governor Susana Martinez
State of New Mexico