State of New Mexico
Health Care Authority
Human Services Register

HEALTH CARE AUTHORITY

I. DEPARTMENT
NEW MEXICO HEALTH CARE AUTHORITY

II. SUBJECT
8.3.2 NMAC, FAMILY HEALTH AND WELL-BEING, PLAN OF SAFE CARE FOR SUBSTANCE-EXPOSED INFANTS

III. PROGRAM AFFECTED
(TITLE XIX) MEDICAID

IV. ACTION
FINAL RULE

V. BACKGROUND SUMMARY
The New Mexico Health Care Authority (HCA) Register Volume 49, Register 10, dated March 10, 2026, issued the proposed New Mexico Administrative Code (NMAC) 8.3.2, *Family Health and Well-Being, Plan of Safe Care for Substance-Exposed Infants.*

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: March 10, 2026
Hearing Date: April 9, 2026
Adoption Date: July 1, 2026
Technical Citations: NMSA 32A-3A-13

A public hearing was held on April 9, 2026, to receive public comments and testimony on this proposed rule.

Summarized Comments	HCA Reply
Multiple comments stating the rule does not go far enough re: ICWA/IFPA	The POSC is to provide support services and not a child custody proceeding. While the CARA program seeks to educate health care professionals about ICWA and IFPA, the CARA program itself is not a custody proceeding.

72-hour automatic newborn holds is problematic	This is from the Gov Directive, not the CARA NMAC.
Non-compliance means 'an intentional failure' and shall not be determined when barriers are due to lack of access	Thank you for your comment. Good faith engagement is required by the CARA Navigator.
Substance exposed infant means an infant under "90 days"	Thank you for your comment. HCA is committed to supporting families through the newborn's first year.
Labs are "to verify toxicology reports and pregnant parent disclosure"	Routine labs are not recommended and can have both false positives and false negatives.
The rule should clarify the identification and process for "high priority" CARA cases. High priority cases are those where the infant has been born substance exposed to fentanyl, methamphetamine, cocaine or polysubstance exposure that includes one of the aforementioned items	Thank you for your comment. The statute does not list specific substances or high priority cases.
People on MOUD should not require a POSC	Thank you for your comment. The statute requires a POSC for newborns showing withdrawal symptoms. These medications can cause withdrawal symptoms.
Understanding the risks of punitive policies, these rules need to take a step further and explicitly state that substance use does not equate child abuse.	Thank you for your comment. This is beyond the scope of this rule.
Screening and testing recommendations need to reflect national standards.	Thank you for your comment. The statute has certain requirements for screening.
This draft rule mandates a referral to a substance use treatment program	The statute requires this referral.
Finally, the POSC should be a tool that supports families with meaningful, practical, no-barrier resources. These draft rules place a disproportionate emphasis on how the tool will be used by and entangled with CYFD involvement. The draft rules spend a lot of time discussing the many pathways to CYFD involvement and not enough time talking about how the POSC will be accountable to the families. How does the state intend to make this tool beneficial for families?	The bill reads, "If the parents, relatives, guardians, custodians or caretakers of a child released from a hospital or freestanding birthing center pursuant to a plan of safe care fail to comply with that plan, the health care authority, a medicaid managed care organization insurance plan care coordinator or a care coordinator contracted with the health care authority shall notify the department within twenty-four hours of the failure to comply and the department shall

A useful tool will not be linked to CYFD. It will not be accessible by CYFD without explicit consent from the parent. It cannot be a safe tool if it is being weaponized as a database that CYFD has unrestricted access to.	conduct a family assessment."
Please explain why a referral to CYFD is necessary?? Someone may decline because they are already in treatment and receiving services, this should be noted and used as a positive to support the newborn and caregivers.	The bill reads, "If the parents, relatives, guardians, custodians or caretakers of a child released from a hospital or freestanding birthing center pursuant to a plan of safe care fail to comply with that plan, the health care authority, a medicaid managed care organization insurance plan care coordinator or a care coordinator contracted with the health care authority shall notify the department within twenty-four hours of the failure to comply and the department shall conduct a family assessment."
This is very confusing as DOH advertises CARA Navigators on their website, yet these rules indicate that it is all managed out of HCA?? For providers this section needs to be more clear. Perhaps state, HCA shall work with DOH CARA Program for Navigation services, etc.	The bill moves the CARA program to HCA 7/1/2026. DOH CARA Navigators will be contracted with HCA to provide CARA Navigation services.
IFPA and ICWA need to be defined under "I" as they are both referred to in the rules	Definitions added
Why would a family be referred to the courts on POSC??????? This needs to be removed.	The statute states: (b) may include: 1) public health agencies; 2) maternal and child health agencies; 3) mental health providers; 4) infant mental health providers; 5) public and private children and youth agencies; 6) early intervention and developmental services; 7) courts; 8) local education agencies; 9) managed care organizations; or 10) hospitals and medical providers;
I am strongly opposed to asking CARA navigators to monitor CARA participants for law enforcement activity and emergency medical care. This far exceeds the authority of CARA Navigators and should not be allowed. This is a direct contradiction to treatment SUD as a medical disorder rather than a moral failing of the parent, and seems only intended to advance the Governor's Executive Directive of	The idea was to reach out and offer support, not be an extension of the police state. It was removed. Thank you for your comment.

immediate removal at the time of birth for any substance exposed infant. This makes the CARA program an extension of the police state rather than a supportive intervention.	
Federal law requires states to establish policies and procedures to ensure that "infant[s] born and identified as being affected by substance abuse or withdrawal symptoms, or a Fetal Alcohol Spectrum Disorder" receive a plan of safe care.34 A plain reading of this language suggests that the target is 1) infants who have been born, and; 2) are experiencing some demonstrable health impact from substance exposure. Per se substance exposure on its own in the prenatal period does not satisfy either of these criteria.	The goal with prenatal POSC is to support the pregnant person who also deserves treatment and care
To effectuate the CARA program's goal of "ensur[ing] the safety and well-being of infants,"45 HCA should revise this rule to considerably narrow its focus to circumstances where 1) there is toxicologically confirmed substance exposure; and 2) there is some demonstrable and clinically significant impact on an infant from that substance exposure.	Routine labs are not recommended and can have both false positives and false negatives. Some demonstrable and clinically significant impacts on babies are not observed at the time of birth. These babies can benefit from early intervention and home visiting.
The reference to "parental competence" in the definition of "home visiting" is an early signal in the proposed rule of an orientation that disfavors parents and facilitates negative presumptions that will have harmful consequences for families	Parental competence is not meant to be a negative term and is the verbiage used in the Children's Code
We urge HCA to comprehensively revisit the proposed rule to avoid coercion and punitive responses to a family's purported "non-compliance.	The bill reads, "If the parents, relatives, guardians, custodians or caretakers of a child released from a hospital or freestanding birthing center pursuant to a plan of safe care fail to comply with that plan, the health care authority, a medicaid managed care organization insurance plan care coordinator or a care coordinator contracted with the health care authority shall notify the department within twenty-four hours of the failure to comply and the department shall conduct a family assessment."
. While private adoption and surrogacy are rare, they are important and significant means for gay	Adoption can be a wonderful option. Children who were exposed to substances in utero,

men, trans women, and gender non-binary people to be able to have children. This rule does not create an exception to the mandatory plans of care for private adoption or surrogacy. Imagine a gay male couple who used a surrogate to conceive a child. The surrogate had to have some kind of emergency surgery during her first trimester, which required a few days of prescription pain medication. Under this rule, the surrogate would be required to be referred to a substance use prevention and treatment program (8.3.2.11(A)), her partner and the gay couple would be required to be referred to a substance abuse screening or referral program and all would be required to participate in that program for 13 months. Refusing to agree to this plan would subject the surrogate and the parents to a SCI report at CYFD. These referrals are unnecessary when the pregnant person surrenders all parental rights. a. Suggested change: Add "A plan of safe care is not required for a substance exposed infant who is placed for private adoption or born to a surrogate." Alternatively, allow a plan of safe care to list no required service items for the exceptional situations where no services are necessary to ensure the child's safety	even if they are adopted, may still have challenges and have the opportunity to be supported by a POSC.
Suggested change: prescription pain medication, when taken as prescribed during pregnancy, should be removed from the list of substance-exposures. If it is not removed, patients must be given the opportunity to give informed consent when they are prescribed these medications, so they can choose between taking the medication or subjecting their family to a mandatory 13-month plan of care that could lead to a child abuse investigation if not followed.	Regular use of prescription opioids can still affect a child's health after birth. POSC is to support families when a baby is born with withdrawal symptoms. It is appropriate for a pregnant person to discuss medications and their effect on pregnancy with her provider.
9. 8.3.2.10 (A) (2) requires disclosure of the plan of care to the child's parents. This requirement puts domestic violence victims at risk because it discloses the birthing parent's address, phone number and private medical information to the other parent. a. Suggested change: Add	Edited to reflect this. Thank you.

"on request from the birth parent, contact information and protected health information shall be redacted on the copy of the plan of care that is sent to other parents, caregivers, or guardians.	

VI. RULE

These amendments will be contained in 8.3.2 NMAC. The final register and rule language is available on the HCA website at: https://www.hca.nm.gov/lookingforinformation/registers/ and https://www.hca.nm.gov/providers/rules-nm-administrative-code/. If you do not have internet access, a copy of the final register and rules may be requested by contacting the Medical Assistance Division at (505) 827-1337.

VII. EFFECTIVE DATE

This rule will have an effective date of July 1, 2026.

VIII. PUBLICATION

Publication of this rule is approved by:

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KARI ARMIJO, SECRETARY
HEALTH CARE AUTHORITY