

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 3/04/19
LAST UPDATED 3/14/19 **HB** 230/HJCS/aSCORC

SPONSOR HJC

SHORT TITLE Plan of Safe Care Bill **SB** _____

ANALYST Chilton/Daly

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
	\$225.0	\$225.0	Recurring	Federal Funds

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Minimal	Minimal	Minimal	Minimal	Recurring	General Funds

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From the Following Regarding the Original Bill

Children, Youth & Families Department (CYFD)

Administrative Office of the Courts (AOC)

Department of Health (DOH)

Human Services Department (HSD)

SUMMARY

Synopsis of SORC Amendments

The Senate Corporations and Transportation Committee amendments to the House Judiciary Committee Substitute for House Bill 230:

- As to any of the child’s parents, relatives, guardians, family members or caregivers, limit the plan of care created by a health care professional, which is intended to ensure the safety and well-being of a substance-exposed newly born child, to treatment needs that are relevant to the safety of the child; and

- Require notification to CYFD if the parents, relatives, guardians or caretakers of a child released from a hospital or birthing center pursuant to a plan of care fail to comply with that plan. Upon notification, CYFD may conduct a family assessment as defined in the amendments and includes assessing the likelihood of imminent danger to the child's well-being, the child becoming abused or neglected, and the strengths and needs of the child's family members with respect to providing for the child's health and safety. If these persons decline any services or programs offered subsequent to that assessment, CYFD may proceed with an investigation.

Synopsis of Bill

The House Judiciary Committee substitute for House Bill 230 (CS/HB230) amends the mandatory duty to report child abuse statute to clarify that a finding that a pregnant woman has been using or abusing drugs during her pregnancy by itself does not trigger the duty to report child abuse or neglect; such a finding alone is not a sufficient basis for such a report. If other criteria under the Abuse and Neglect Act exist, however, including a combination of criteria that includes such a finding, this exception shall not be construed to prevent reporting a reasonable suspicion of child abuse or neglect to CYFD. The bill also adds language requiring referral of a drug-exposed infant and the infant's parents, relatives, guardians or caretakers for services described in a written plan of safe care as provided by CYFD rule and the Children's Code.

Section 3 of CS/HB230 adds a new section of the Children's Code requiring that by January 1, 2020, CYFD consult with Medicaid managed care organizations (MCOs), HSD and the Department of Health and develop rules to provide guidance in the safe planning for newborns who exhibit symptoms of drug exposure, drug withdrawal or fetal alcohol syndrome. The rules must include discharge planning, screening, data collection, identification of a lead agency, and engagement of the child's parents, relatives, guardians or caretakers to identify access to treatment.

Finally, in Section 4, this bill amends the Public Assistance Act to mandate that by January 1, 2020, the secretary of CYFD require medical assistance plans for safe care of drug-exposed newborns and the parents, relatives, guardians or caretakers of those newborns.

A summary of the bill's provisions by sections appears under "Significant Issues," below.

FISCAL IMPLICATIONS

CYFD advises that in recent years, New Mexico has lost approximately \$225 thousand per year in federal funding under the Child Abuse Prevention Treatment Act (CAPTA) as amended (by the 2016 Comprehensive Addiction and Recovery Act, or CARA) because state law is not in compliance with that federal law. CYFD reports that this bill would bring the state into compliance, and CAPTA funding is reflected in the Revenue Table beginning in FY 20.

CYFD does not identify any specific costs related to implementation of HB 230, while HSD reports minimal administrative implications, so LFC staff estimates the impact on operating budgets as minimal.

SIGNIFICANT ISSUES

Provisions of the Committee Substitution:

Section of HB 230/HJCS	Section of Statute Modified	Provisions Modified
1: Definitions	32A-1-4	Adds to existing definitions “plan of care”, a health care professional’s plan to ensure safety and well-being of a substance-exposed infant and his/her family
2: Duty to Report Child Abuse and Neglect	32A-4-3	States that the fact that a pregnant woman’s use or abuse of drugs is not to be considered as the sole reason for referral of a family for child abuse or neglect, although the report could be made if there were other factors suggesting abuse or neglect were occurring. Personnel at a birth hospital or birthing center would complete a written plan of care for the family and notify CYFD and submit the plan of care to CYFD, but this would not be considered a report of child abuse or neglect.
3. Plan of Care Guidelines	New section of Children’s Code (32A)	CYFD, with help from HSD, DOH, insurers and Medicaid managed care organizations (MCOs), would be required to develop rules to help providers with care of infants showing signs of prenatal drug exposure, to include guidelines on creating a plan of care. That plan of care would be shared with the child’s primary care physician and the Medicaid MCO or with DOH’s Children’s Medical Services division. The plan of care would identify community resources and agencies and family members that would be helpful to the child and family. These records would be kept apart from any child abuse report. Data would be collected for federal uses or to coordinate plans of uninsured infants. If there were evidence of child abuse or neglect (not to include solely drug use during pregnancy), the person observing it would still be obligated to report to CYFD. CYFD would develop training materials to help discharge planners on indications for referral for child abuse or neglect, on notification regarding maternal drug use, on creating plans of care.
4:Plan of Care Participation	27-2-12.24 Public Assistance Act	Medical assistance plans must establish a process for developing and implementing plans of care for substance-abused newborns by DOH rule by January 1, 2020.

CYFD advises this bill brings New Mexico law into compliance with CAPTA by providing for safe plans of care for children who are born exposed to drugs or alcohol. It explains that its Protective Services Division:

has been under a mandate from the Administration for Children and Families to comply with CARA Safe Planning requirements. CYFD was placed on a Program Improvement Plan in 2017 and was mandated to meet the Plan requirements by June 30, 2018. While

CYFD submitted the plan for CAPTA requirement timely, the plan was not approved, as the ACF felt the state has not done enough beyond planning to mobilize this federal legislation. Specifically, they are looking for New Mexico to enact legislation that will support the mandate for CARA safe planning with birthing hospitals and clinics. This proposed legislation will assist CYFD in meeting the federal mandate which will restore CAPTA funding.

As HSD explains the underlying purpose of the federal legislation:

CARA attempts to ensure the safety and well-being of substance-exposed infants by addressing the treatment needs of the infant and affected family members or caregivers and requiring states to develop monitoring systems to determine whether and in what manner local entities are providing referrals to and delivery of appropriate services for these infants and affected family members or caregivers. Under CARA, states are required to report, to the maximum extent practicable, the number of substance-exposed infants identified; the number for whom a plan of safe care was developed; and the number for whom a referral was made for appropriate services.

Additionally, CYFD believes this legislation will help create prevention systems for families in New Mexico. Many families struggling with substance use disorder have situations that become more complicated when a referral to CYFD is made, as this can be an additional stressor to a family. This may also include criminal investigation and potentially charges, as every referral accepted by CYFD is referred to law enforcement as well. Under the CARA safe planning model, pregnant women receive pre-natal screening for substance use disorders. Treatment and supports will be offered during the pregnancy in the hopes that the number of babies born with substance use exposure is decreased, and that supports are identified early on for families. Treating substance use disorder as a medical issue requiring medical interventions will support families who currently would otherwise be referred to the child welfare system, with its possible consequence of law enforcement involvement. Hopefully, the number of children born exposed to substances will decrease, leading to a drop in the number of CYFD cases.

Similarly, DOH advises that in the last several decades, consensus has shifted regarding the best policy response to drug-exposed newborns. Research indicates that non-punitive interventions are the most beneficial to children and families. This includes interventions that emphasize treatment and preserve attachment and bonding between mother and baby whenever safe and possible to do so (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC419718/>). HB230 would allow a non-punitive approach and provision of services focused directly on parent (s) and caregivers of babies affected by drug/alcohol exposure in utero. The Plan of Safe Care is a targeted intervention and will provide ongoing follow up and better access to services, particularly treatment for substance use and addiction.

Although CYFD expresses concern that the bill as drafted does not expressly require a report to CYFD once a child is born with drug exposure symptoms of withdrawal or fetal alcohol syndrome, that obligation may be already addressed in the general reporting requirement in current law and not subject to the exception being created in HB 230.

AOC notes the provisions of this bill are consistent with New Mexico's recognition of the rights of both the pregnant woman and a newborn child.

PERFORMANCE IMPLICATIONS

CYFD reports it has performance measures related to the safety and well-being of children.

Similarly, DOH reports that this bill related to Result 1 in its strategic plan: improved health status for New Mexicans.

ADMINISTRATIVE IMPLICATIONS

CYFD will need to comply with the timeline set out in statute for development of and implementation of the rules required in Sections 2 and 3. In addition, CYFD reports the state will need to training to medical providers on best practices for early pre-natal screening and the development of plans of safe care, including ensuring adequate resources for implementation of those plans. HSD reports it will need to amend Medicaid MCO contracts and policy manuals to comply with the requirements of HB 230.

OTHER SUBSTANTIVE ISSUES

DOH advises that it receives reports of exposure to alcohol and other drugs of babies and children up to age four from all 21 birthing hospitals in the state, who are then referred to assure that the child and family are receiving services. DOH reports that in New Mexico, the rate of these types of exposure has increased 324 percent between 2008 (3.3 per 1,000 live births) and 2017 (14.0). In the United States, the rate increased by 207percent between 2008 (2.8) and 2016 (8.6).

HSD reports New Mexico has assembled a task force to implement the CARA amendments to CAPTA. The task force, which includes HSD and the Medicaid MCOs, has agreed on a set of priorities for working with families that have substance use issues and other forms of trauma.

According to DOH, other states including California, Connecticut, Delaware, Louisiana, Michigan, Nevada, North Dakota, South Carolina and Virginia have introduced legislation similar to HB230. More information on what other states have done can be found in “A Planning Guide: Steps to Support a Comprehensive Approach to Plans of Safe Care” March 2018, National Center on Substance Abuse and Child Welfare (https://www.cffutures.org/files/fdc/A-Planning-Guide_-_Steps-to-Support-a-Comprehensive-Approach-to-Plans-of-Safe-Care-3.21.18-final.pdf). Several states address the requirements of CAPTA regarding Plans of Safe Care for substance-exposed newborns in their statutes. Most focus on assessment of treatment needs, which may or may not occur within the context of a report to child protective services agencies (<https://www.childwelfare.gov/pubPDFs/drugexposed.pdf>

TECHNICAL ISSUES

Section 3, Subsection B(1)(b) specifies what is to be done if a child is insured through a Medicaid managed care organization or is uninsured, but does not specify a course of action if a child has fee-for-service Medicaid or private insurance.

AMENDMENTS

DOH points to the language on page 9, line 10 which declares: “A finding that a pregnant

woman is using or abusing drugs made pursuant to an interview, self-report, clinical observation or routine toxicology screen shall not alone form a sufficient basis to report child abuse or neglect to the department pursuant to Subsection A of this section.” It advises that a report to the department alleging abuse or neglect of an unborn child would not meet the criteria for abuse or neglect.

DOH suggests that language might instead read: “A finding that *a woman who used or abused drugs during pregnancy*, made pursuant to an interview, self-report, clinical observation, or routine toxicology screen of *either mother or newborn* shall not alone form a sufficient basis to report child abuse or neglect to the department pursuant to Subsection A of this section.”

LC/gb/al/sb