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| <b>LFC Requester:</b> | <b>Allegra Hernandez</b> |
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**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**

**[AgencyAnalysis.nmlegis.gov](http://AgencyAnalysis.nmlegis.gov) and email to [billanalysis@dfa.nm.gov](mailto:billanalysis@dfa.nm.gov)**

*(Analysis must be uploaded as a PDF)*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** 02/21/2025 *Check all that apply:*  
**Bill Number:** HB 500 Original  Correction   
 Amendment  Substitute

**Sponsor:** Alan T. Martinez **Agency Name and Code Number:** Office of Family Representation and Advocacy - 68000  
**Short Title:** CYFD Substitute Care Review **Person Writing:** Farra R. Fong  
**Title:** CYFD Substitute Care Review **Phone:** 505-537-3903 **Email:** Farra.fong@ofra.nm.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

| Appropriation |      | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY25          | FY26 |                           |               |
|               |      |                           |               |
|               |      |                           |               |

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

| Estimated Revenue |      |      | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------|---------------|
| FY25              | FY26 | FY27 |                           |               |
|                   |      |      |                           |               |
|                   |      |      |                           |               |

(Parenthesis ( ) indicate revenue decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

|              | FY25 | FY26 | FY27 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|------|------|-------------------|---------------------------|---------------|
| <b>Total</b> |      |      |      |                   |                           |               |

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: SB 458, HB 205, HJR 5, SB 307, HB 5, HB 391, and SB 363. See below.

Duplicates/Relates to Appropriation in the General Appropriation Act

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

HB 500 appears to mirror many aspects of SB 458 and HB 205 (sections related to the substitute care advisory council) with a few major differences:

- maintains the substitute care advisory council as administratively attached to the regulation and licensing department, and
- adds the responsibility of handling grievances against CYFD pertaining to substitute care.

#### **FISCAL IMPLICATIONS**

No new appropriation is included.

#### **SIGNIFICANT ISSUES**

Proposed amendments to Section 32A-8-2, the Citizen Substitute Care Review Act are extensive. The proposed amendments change the purpose of the act and cite the need to meet federal requirements for citizen review panels under the federal Child Abuse Prevention and Treatment Act.

The proposed amendments: 1) reinforce the independent nature of the substitute care advisory council as an administratively attached agency to the regulation and licensing department; 2) change the composition of the council; 3) increases the requirement that the council meet from twice annually to quarterly; 4) changes the rules the council is required to establish to include compliance with the Open Meetings Act, procedures to provide for public outreach and comment, criteria for establishment of the council's designation of cases and review processes, and other procedures to provide for compliance with the federal Child Abuse Prevention and Treatment Act as it relates to citizen review panels; 5) makes the substitute care advisory council responsible for accepting grievances against CYFD 6) changes the council's reporting requirements.

**This analysis will only address the differences between HB 500 and SB 458/HB 205.**

**Section 1 – Confidentiality (page 3, lines 3-7)** adds additional people permitted access to child abuse/neglect case records, including any member of the council, council staff, and members of the voluntary board. This provision is overly broad and likely subject to challenge, given that the information obtained or generated would not only contain confidential case information, not subject to disclosure, but also department staffing, caseload, and compliance information that would be subject to disclosure pursuant to a Public Records Act request.

Another concerning provision of this section allows a member of the council, staff, or board member to disclose otherwise confidential information if the identified child or adult who is the subject of the case either consents in writing or provides oral consent for the disclosure to another person that is immediately documented in writing by council staff. This is concerning because there is no requirement that the consenting child or adult be counseled before agreeing to the disclosure, no requirement that the consent to disclosure be knowing and voluntary, and no requirement that the disclosure be limited only to information about the consenting child or adult

and will not identify or disclose information about any other party to the case. OFRA staff and contract attorneys would need to be vigilant regarding this provision to ensure that their client's confidential information is not disclosed without their knowing and voluntary consent.

**Section 4 (page 8, lines 17 – 20)** keeps the SCAC with the regulation and licensing department and further clarifies that the council shall function independently from the department, without any control or regulation by the regulation and licensing department. It also increases the council from nine members to ten members but continues to allow for secretaries of state agencies to appoint a designee and removes the requirement offered by SB 458/HB 205 that one member of the council have expertise in the Indian Family Protection Act and the Indian Child Welfare Act of 1978.

**It deletes from SB 458 and HB 205** the requirement for the council to designate cases for review, before October 1<sup>st</sup> of each year, that involve cases with children under the age of 5 or who have been in foster care for more than 6 months. Instead, the bill adds the requirement for the council to promulgate rules related to the identification of cases for review.

It also changes who the council is required to submit reports to by broadening to “the legislature” rather than identifying specific legislative committees.

**Section 7 (beginning page 16, line 24)** proposes that the council serve as the agency to whom grievances against CYFD are submitted, requiring the council to promulgate rules to accept and process grievances; submitting reports to CYFD regarding strengths, concerns and recommendations; and requiring CYFD to submit a report indicating the department's position as to each recommendation made by the council. Requires quarterly meetings between the council and department to develop solutions and prohibits retaliation against complainants.

**Section 9 (page 20, line 4-5)** differs in that it complies with notice requirements under ICWA instead of IFPA.

**Section 9.E. (page 20 – lines 12 -15)** provides less time for CYFD response. CYFD is required to respond to recommendations made by the council within 10 business days and does not require the department to include a written plan for action.

**Section 10** adds access to records related to the processing of grievances.

**Section 11** adds confidentiality for those filing grievances unless they sign a release of information or provide oral consent that is documented by a council staff.

#### **PERFORMANCE IMPLICATIONS**

No performance measures are included. It is unclear how the efficacy of the substitute care advisory council will be measured or monitored.

#### **ADMINISTRATIVE IMPLICATIONS**

It is unknown how these changes might impact the Office of Family Representation and Advocacy. At minimum, OFRA would need to provide training for its staff and contract attorneys and interdisciplinary staff regarding the new case review process, including training regarding the sharing of confidential case information with the council. It is unlikely that the restructuring of the Substitute Advisory Care Council would impact OFRA's staffing needs.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

This bill appears to offer alternative changes to the substitute care advisory council that were presented in SB 458 and HB 205.

Changes recommended in this bill also conflict with numerous legislation proposed related to increased oversight of CYFD and the handling of grievances. This includes, but is not limited to HJR 5, SB 307, HB 5, HB 391, and SB 363.

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

OFRA continues to be concerned about the growing number of bills that directly affect the Children, Youth, and Families Department (CYFD) and the child and family welfare system more broadly. While these bills may not directly conflict with one another or duplicate efforts, this piecemeal approach could lead to a patchwork of uncoordinated requirements. Together, these changes would create significant administrative and programmatic burdens on CYFD.

Additionally, many of the requirements proposed in the multitude of bills would not improve practices or lead to better outcomes for children and families. OFRA is concerned that these bills, if passed without coordination, would negatively impact our clients and their ability to work with CYFD to reunify their families.

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

## **AMENDMENTS**