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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION
WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
AgencyAnalysis.nmlegis.gov and email to 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: 2/14/2025 *Check all that apply:*
Bill Number: SB 42 Original Correction
 Amendment Substitute

Sponsor: Michael Padilla and Gail Armstrong **Agency Name and Code** AOC 218
Short Title: COMPREHENSIVE ADDICTION AND RECOVERY PROGRAM **Number:** _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	N/A	

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
None	None	None	N/A	

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	N/A	

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Conflict: HB 205, HB 173, and HB 343.
Duplicates/Relates to Appropriation in the General Appropriation Act: None

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB 42 seeks to amend the Children's Code, specifically:

- **Section 32A-1-4 NMSA 1978:**
 - Subsection Y: amends the definition of “plan of care” to “plan of *safe care*” while also adding the terms “written” and “immediate and ongoing.”
 - New Subsection FF: adds the definition of “substance-exposed newborn.”
- **Section 32A-3A-2 NMSA 1978:**
 - New Subsection A: adds the definition of “birthing facility.”
 - New Subsection B: adds the definition of “CARA navigator.”
 - New Subsection C: adds the definition of “care coordinator.”
 - New Subsection E: adds the definition of “family assessment.”
 - New Subsection L: adds the definition of “managed care organization.”
- **Section 32A-3A-13 NMSA 1978:** changes the title of the section to add the word “safe” and changes the word “guidelines” to “requirements.” Throughout the section, changes the term from “plan of care” to “plan of safe care.”
 - Removes current Subsections A and B and replaces them with:
 - New Subsection A: requires a birthing facility to participate in the discharge planning process, including a plan of safe care being created prior to a substance-exposed newborn's discharge from the facility that is sent to the child's doctor, DOH, and CYFD.
 - The plan shall be signed by a representative of the birthing facility and the newborn's parent, relative, guardian, or caretaker upon discharge who are also to receive a copy.
 - Health care providers at the birthing facility shall use “definitions and evidence-based screening tools based on standards of professional practice” to identify withdrawal symptoms from prenatal drug exposure or fetal alcohol syndrome.
 - New Subsection B: describes what the plan of safe care shall entail.
 - New Subsection C: after a plan of safe care is received, the CARA navigator is to conduct in-home visits.
 - New Subsection D: by January 1, 2026, DOH and others shall develop rules to guide birthing facilities and others in the care of substance-exposed newborns. Rules shall include requirements regarding procedures for monitoring compliance and include: CARA navigators to immediately triage a case after receiving notification; CARA navigators to make active efforts to connect newborns and families to services; CARA navigators and care coordinators to work in partnership; updates to the plans of safe care that include referrals; collecting and reporting data to CYFD and DOH.
 - Re-lettered Subsection E: includes DOH with CYFD to collect reports.
 - Re-lettered Subsection F: changes the responsibility from CYFD to the DOH for

- summarizing and reporting data.
- Re-lettered Subsection I: adds to the list of those who CYFD has to work in consultation with to include health care providers, care coordinators, and CARA navigators. This subsection also adds to the list of what CYFD is to consult with those partners on, and includes: avoiding stigma and bias; mandatory reporting requirement; and proper coding of substance exposure and neonatal abstinence syndrome.
- New Subsection L: provides civil and criminal liability immunity to the entity or agency fulfilling the obligations imposed in 32A-3A-13.
- **Section 32A-3A-14 NMSA 1978:**
 - Amended Subsection A: requires CYFD to be notified within three business days and proceed with an investigation if the family of a substance-exposed newborn refuses to engage in a family assessment conducted by a CARA navigator, disengages with a CARA navigator and the family assessment indicates a risk of imminent harm, or for failure to comply with the plan of safe care.
 - New Subsection B: provides civil and criminal liability immunity to the entity or agency fulfilling the obligations imposed in 32A-3A-14.
- **Section 32A-4-3 NMSA 1978:** changes the title of the section to add the word “safe” and Throughout the section, changes the term from “plan of care” to “plan of safe care.” Requires notification to DOH as well as CYFD.

There is no appropriation listed in this bill.

There is no effective date of this bill. It is assumed that the effective date is June 20, 2025, which is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions, and appeals from convictions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

1) The development and enactment of the Comprehensive Addiction and Recover Act (CARA) followed the amendment to the federal Child Abuse Prevention and Treatment Act (CAPTA) that requires all state child welfare agencies to ensure every baby born exposed to substances receives a plan of care and that data be reported to the federal agency. In 2023, the study, *An Implementation Evaluation of the Comprehensive Addiction Recovery Act (CARA) Policy in New Mexico*, evaluated how CARA is working in New Mexico and came to the following conclusion:

Program funding, limited system capacity, lack of systematic screening for prenatal substance use, regional differences in access to care, and provider biases toward pregnant people using substances affected health-care workers’ ability to identify at-risk families and develop plans of safe care. To support CARA implementation, healthcare systems must implement universal prenatal substance use screening, increase the level of anti-bias training pertaining to substance use,

increase hospital supports, and improve data management systems.

See The Nation Library of Medicine, <https://pmc.ncbi.nlm.nih.gov/articles/PMC10691990/>.

2) Senate Bill 42 adds the term "substance-exposed newborn" to the definitions section of the Children's Code, Section 32A-1-4, and defines it as "an infant under the age of one who has been prenatally exposed to a controlled substance, including a prescribed or non-prescribed drug or alcohol, that may affect the infant's health or development..." This definition is overly broad and may unintentionally encompass newborns whose mothers were taking medications prescribed during pregnancy.

The single biggest challenge in identifying prescription drug abuse in pregnancy by drug testing is separating out misuse from other causes such as dietary poppy seeds, legitimate maternal prescriptions, or medications given to mother or infant in the peripartum period.

The Challenge of Detecting Prescription Opioid Abuse in Pregnancy, Matthew D. Krasowski, page 2, <https://www.iowaepsdt.org/wp-content/uploads/2015/03/Fall13.pdf>

Even common medications prescribed by physicians during pregnancy, such as antidepressants, can cause a newborn to suffer from short-term symptoms of quitting the medication. (See *Antidepressants: Safe During Pregnancy*, Mayo Clinic, <https://www.mayoclinic.org/healthy-lifestyle/pregnancy-week-by-week/in-depth/antidepressants/art-20046420>. See also *Antidepressants and Pregnancy: What to Know*, John Hopkins Medicine, <https://www.hopkinsmedicine.org/health/wellness-and-prevention/antidepressants-and-pregnancy-tips-from-an-expert> "About 30 percent of babies whose mothers take SSRIs will experience neonatal adaptation syndrome, which can cause increased jitteriness, irritability and respiratory distress (difficulty breathing), among other symptoms.")

3) In Section 32A-3-2 NMSA 1978, SB 42 defines the "family assessment" that is to be done during the home visit by a CARA navigator, an employee of the department of health. A family assessment is to include an assessment of the likelihood of the child "becoming an abused child or neglected child." Investigating for abuse or neglect is a function of CYFD, although SB 42's amendments to Section 32A-3A-13(I) require CYFD to "create and distribute training materials to support and educate..." CARA navigators, among others.

4) Noncompliance with a plan of safe care is detailed in Section 32A-3A-14 NMSA 1978; amendments provided in SB 42 include requiring CYFD to proceed with an investigation when it is reported to CYFD that a family, (1) refuses to engage in a family assessment, (2) disengages with a CARA navigator and the family assessment indicates a risk of imminent harm to the newborn, or (3) fails to comply with the plan of safe care. Requiring CYFD to proceed with an investigation removes CYFD's discretion which may create a more punitive atmosphere for families. Under current law, the hospital or freestanding birthing center is already required in Sec. 32A-3A-14(A) to notify CYFD when there is a failure to comply with a plan of care, but CYFD can then address each case individually, considering fact-specific modifiers such as a lack of resources, when determining the next steps. This allows for 'failure to comply' to be balanced against each scenario.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with HB 205, HB 173, and HB 343

TECHNICAL ISSUES

The term “birthing facility” is added to the definitions section of the Children’s Code, Section 32A-1-4, and is defined as “a hospital, clinic, birthing center, or other location where a pregnant person gives birth to a baby with assistance by a health care provider...” It appears the intent of making “birthing facility” a defined term in the Children’s Code is so the extensive list of places a person gives birth does not have to be listed each time. Instead, the use of the term “hospitals and birthing facilities” throughout Subsection D in Section 32A-3A-13 can be reduced to merely “birthing facilities.”

OTHER SUBSTANTIVE ISSUES

SB 42 may result in the plan of care being viewed as a punitive tool by those it is meant to help, discouraging pregnant people from seeking prenatal care and treatment for substance use disorders. This could result in greater risks for pregnant persons and their child[ren] and lessen opportunities for treatment for pregnant women as well as appropriate therapy for exposed infants. “Early identification and treatment of women with substance use disorders and/or dependence is a critical component of preconception and prenatal care and is important for supporting healthy birth outcomes.” See *Criminalization of Pregnant Women with Substance Use Disorders*, AWHONN Position Statement, [https://www.jogmn.org/article/S0884-2175\(15\)31770-6/fulltext](https://www.jogmn.org/article/S0884-2175(15)31770-6/fulltext)

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS