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FISCAL IMPACT REPORT

SPONSOR	<u>Armstrong/Dixon/Chávez, E/Jones/Dow</u>	LAST UPDATED	<u>2/15/2025</u>
	CYFD Plans of Safe Care for Certain	ORIGINAL DATE	<u>2/15/2025</u>
SHORT TITLE	<u>Children</u>	BILL	
		NUMBER	<u>House Bill 343</u>
		ANALYST	<u>Garcia</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
CYFD**	No fiscal impact	At least \$11,600	At least \$11,600	At least \$11,600	Recurring	General Fund and Federal Funds

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

**Includes both General Fund and Federal Funds. See fiscal implications

Conflicts with House Bill 205, House Bill 173, and Senate Bill 42
Relates to an appropriation in the General Appropriations Act

Sources of Information

LFC Files

Agency Analysis Received From

New Mexico Attorney General (NMAG)
Administrative Office of the Courts (AOC)
Office of Family Representation and Advocacy (OFRA)
Department of Health (DOH)
Health Care Authority (HCA)

Agency Analysis was Solicited but Not Received From

Children, Youth and Families Department (CYFD)

Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

SUMMARY

Synopsis of House Bill 343

House Bill 343 makes a variety of changes to Section 32A-3A-2 NMSA 1978 (the Voluntary Placement and Services Act), related to the state's implementation of the federal Comprehensive Addiction and Recovery Act (CARA) and plans of safe care.

First, the bill would add a definition related to a “substance-exposed newborn,” which is now defined as “a newborn child who is affected by prenatal exposure to a controlled substance, including prescribed and unprescribed drug or alcohol ingested by the mother in utero” and adds the word “safe” to references of “plans of care” throughout this section of statute.

In the section of statute related to the creation of plans of care for substance exposed newborns, House Bill 343 would add a new section that notes a health care provider or other individual who is involved in the creation of a newborn’s plan of safe care has concerns about the continued safety of the child prior to or after discharge from the hospital or birthing center, the provider shall make a report to the Children, Youth and Families Department’s (CYFD) statewide central intake system.

Upon receiving such a report, the bill would require CYFD to conduct an assessment to determine if the infant’s plan of safe care is complete, adequately addresses the newborn’s health, safety, and well-being, and meets the treatment needs of the newborn’s family and care givers. The statewide central intake system must take into account any past CYFD involvement with the family.

If the department determines the newborns needs are not met, the department shall initiate an investigation and update the newborn’s plan of safe care based on the findings of the investigation. This update shall include any reports regarding the newborn receiving from statewide central intake system.

The bill also amends Section 32A-4-3, related to the duty to report child abuse and neglect, in the section that previously noted a finding that a pregnant woman is using or abusing drugs shall not alone be a sufficient basis to report child abuse or neglect. The bill would amend this statute to note that positive toxicology screen for methamphetamine, fentanyl, cocaine, or heroin in a newborn is sufficient basis to report child abuse or neglect.

The effective date of this bill is July 1, 2025

FISCAL IMPLICATIONS

This bill would require CYFD to conduct investigations for all instances in which a toxicology report identifies substance exposure to certain illegal substances and in cases in which someone who worked to develop a plan of safe care reports concerns.

The 2023 LFC program evaluation *Implementation and Outcomes of the Comprehensive Addiction and Recovery Act* found between 2020 and 2022, the state established plans of safe care for 3,770 infants. Of these, 40 percent of families with a safe care plan were ultimately referred to CYFD, 27 percent of referrals were ultimately screened in as an accepted report, and 18 percent of accepted reports ultimately resulted in cases of substantiated abuse or neglect. During this period of time, LFC analysis found that roughly 44 percent of plans of safe care were developed in response to exposure to illegal substances, as opposed to cannabis, alcohol, or a drug used in medication-assisted treatment (MAT). Thus, LFC estimates House Bill 343 could result in up to an estimated 528 investigations annually.

LFC analysis estimates a child welfare investigation costs New Mexico roughly \$1 thousand, and

LFC reports have estimated a single year of foster care, including foster care maintenance payments and administrative costs, are roughly \$21 thousand per child. Currently, the median length of time in foster care is roughly 18.4 months. Assuming an additional 528 investigations, resulting in a year-long foster care placement for half of these investigations, House Bill 343 could result in additional costs to CYFD of at least \$11.6 million annually, with an estimated impact of \$3.3 million to the general fund, assuming the remainder may be reimbursed by federal Title IV-E revenue.

The Department of Health (DOH) reports \$2.3 million in costs associated with moving the CARA program to the Department of Health, effective December 2024. However, this move is not included in House Bill 343 and conflicts with existing statute. As such, this costs is not included in the table above.

The Office of Family Representation and Advocacy (OFRA) notes the bill would likely result in more protective services investigations, resulting in potential impacts to the agency, but did not provide specific cost estimates.

CYFD did not provide analysis in time for inclusion in this FIR.

There is no appropriation listed in the bill.

SIGNIFICANT ISSUES

According to LFC analysis, New Mexico has a higher rate of newborns who have been exposed to substances than the national average. The federal Comprehensive Addiction and Recovery Act (CARA) amended the federal Child Abuse Prevention and Treatment Act (CAPTA) to require states develop plans and monitor the implementation of plans of safe care. Under CAPTA, a plan of safe care is a collaborative plan designed to ensure the safety and well-being of infants affected by prenatal substance exposure, by addressing the health and substance use treatment needs of the infant and their caregivers and aiming to prevent child safety risks.

In 2019, New Mexico passed legislation requiring staff in hospitals and birthing centers develop plans of care for substance-exposed newborns, which refer families to voluntary support and treatment services. New Mexico's CARA law changed reporting requirements to the Children, Youth and Families Department (CYFD) such that a finding that a woman is using or abusing drugs would not alone be a sufficient basis to report child abuse or neglect. However, the law spread the responsibility for developing and monitoring voluntary plans of care across multiple state agencies and healthcare organizations, including the Health Care Authority, the Department of Health, birthing hospitals, Managed Care Organizations, and CYFD.

The 2023 LFC program evaluation found New Mexico's implementation of CARA had substantive gaps, specifically noting the majority of CARA families were not being referred or receiving support services or substance use treatment, and the state needed to improve CARA-related case management, screening, and identification. Specifically, the report highlighted roughly 1-in-7 CARA families were ultimately receiving substance use treatment, and families who accept services often were not participating in these services. Several bills introduced during the 2025 legislative session could make changes to sections of the Children's Code related to the state's implementation of plans of safe care (Section 32A-3A-13).

DOH notes changing statutory language from “plan of care” to “plans of safe care” aligns with the federal statute.

DOH states:

In the last several decades, consensus has shifted regarding the best policy response for substance-exposed newborns. Research indicates that non-punitive interventions are most beneficial for 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. The New Mexico statute passed in 2019 was in line with this non-punitive approach, in stating that substance use alone is not sufficient for a report of child abuse or neglect, and that the plan of care was not sufficient to prompt a report to protective services. Rather a separate report needed to be filed with the Children Youth and Families Department...if there were additional reasons to suspect a child was not safe at home. Again, it should be emphasized that taking a public approach aimed at treatment and bonding may be more beneficial to the family unless there is evidence suggesting the infant’s safety is an immediate concern, in which case, an immediate SCI report to CYFD should be required.

DOH notes House Bill 343 requires a different response, in that exposure to certain types of substances would prompt an automatic report to the statewide central intake system for investigation of possible child abuse and neglect and suggests this approach may deter parents from seeking prenatal care due to substance use and fear of punitive actions.

DOH also reports, “House Bill 343 assumes that CYFD is the agency for receiving and monitoring plans of safe care. However, in December 2024, the Executive moved the CARA program to DOH.” However, this arrangement does not align with existing statute.

OFRA highlights vagueness in the provision of HB343 which would require a person involved in creating a plan of safe care who “has concerns about the continued safety of the child” to report these concerns to the statewide central intake system. OFRA notes:

“Concerns” is not defined and the requirement is not linked to existing definitions of abuse or neglect that provide the basis for other required reports, nor is “safety,” leaving this section vague, overly broad, and potentially subject to inconsistent interpretation statewide.

OFRA also indicates concerns regarding the assessment CYFD is proposed to complete regarding the completion and adequacy of the plan of safe care, noting “CYFD investigators, who are not medical or mental health experts, do not have adequate training or education to make the assessments required by this provision,”

OFRA notes the provision that would require CYFD to update the plan of safe care should:

Include collaboration with the parent, guardian, or custodian who is subject to the plan, as well as in collaboration and consultation with appropriate medical and mental health experts or providers. Any unilateral updates to the plan are likely to be resisted or rejected by the parent, guardian or custodian, and may include services or requirements that are inappropriate to the family’s needs.

The Administrative Office of the Courts (AOC) and OFRA also noted the definition of “substance-exposed newborn” may be overly broad. AOC reported the definition may, for

example, unintentionally encompass “newborns whose mothers were taking medications prescribed during pregnancy or even eating poppy seeds.” NMAG also reported the definition of “substance-exposed newborn” to be vague.

OFRA notes the related to the updating the plans of safe care to “include any reports regarding the newborn” is confusing.

PERFORMANCE IMPLICATIONS

AOC notes potential impact on the number of cases filed and disposed.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 343 relates to House Bill 173, House Bill 205, and Senate Bill 42, all of which make changes to sections of statute related to plans of care for substance-exposed newborns.

House Bill 173 would require CYFD to conduct a family assessment in cases of non-compliance and proceed to investigation if referred services are declined.

House Bill 205 would require CYFD to conduct a family assessment in cases of non-compliance and then proceed to investigation only if the assessment suggests declined services present an imminent threat to child safety. House Bill 205 also makes several substantial changes to the statute related to implementation of plans of safe care, including making the Health Care Authority the lead entity responsible for implementing plans of safe care, without making any changes the section of statute which notes substance misuse in a mother alone is not abuse and neglect.

Senate Bill 42 would make changes to the state’s implementation of CARA, including moving responsibility for the program to the Department of Health.

The LFC recommendation for the General Appropriations Act includes an appropriation of \$1.8 million to the Health Care Authority to implement plans of safe care.

TECHNICAL ISSUES

AOC notes the bill would add the term “safe” to the term “plan of care” throughout Section 32A-3 and Section 32-4-3. The term “plan of care” is defined in the definitions section of the Children’s Code, but the term “plan of safe care” is not defined.

The New Mexico Attorney General notes a potential conflict related to the existing statutory language related to a family assessment and the use of the term in House Bill 343, which includes “relevant involvement with protective services.”

OTHER SUBSTANTIVE ISSUES

AOC cites research which suggests the amendment to Section 32A-4-3 NMSA 1978, which allows for toxicology screens in infants that detect methamphetamine, fentanyl, cocaine, or heroin to form the basis of a report of child abuse or neglect to be problematic because of the

limitations of toxicology testing may inappropriately result in a positive screening.

NMAG also notes concerns about the use of a positive toxicology screen:

[Toxicology screening] could cause issues if fentanyl appears on a toxicology screen because it was prescribed to the pregnant person or used in an epidural during childbirth. Concerning this same portion of the bill, the proposed deletion of language could result in lack of clarity and or a significant change in the law because the deleted language addresses admissions and screenings conducted before childbirth, while the proposed inserted language addresses testing conducted once the child is born.

The Health Care Authority notes the bill will require reports of abuse and neglect upon positive toxicology reports for a specific list of illicit substances:

Considering the quickly changing landscape of dangerous illicit substances into statute may make the bill outdated quickly. For example, a common cause of several substance use disorder on the East Coast is Xylazine...and this drug is not listed.

OFRA notes this proposed law may not adequately include children with private insurance, as plans of safe care for children with private insurance may not receive the same level of monitoring as other children under the provisions of Section 32A-3A-13(B).

RMG/SL2