

NMSCAC



**SUBSTITUTE CARE
ADVISORY COUNCIL**

**ANNUAL REPORT
FY 20**



Adopted October 27, 2020



Substitute Care Advisory Council
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November 1, 2020

Dear Judicial, Legislative, and Executive Members,

Pursuant to *Chapter 32 [32], Article 8 NMSA 1978, Citizen Substitute Care Review Act*, enclosed is the state fiscal year 2020 (FY 20) Annual Report of the New Mexico Substitute Care Advisory Council (Council). This report is also posted on our website at www.nmscac.org for your convenience.

Thank you for your attention to the recommendations contained within this report. Should you have any have questions, please contact the Council Director, Shelly A. Bucher, LMSW at 505.469.4781 (cell with text) or Email shelly.bucher@state.nm.us.

Sincerely,

A handwritten signature in blue ink, appearing to read "Angie K. Schneider".

The Honorable Angie K. Schneider
Chair

Contents

EXECUTIVE SUMMARY	4
FY 20 RECOMMENDATIONS.....	5
AUTHORITY.....	6
PURPOSE.....	6
'ADMINISTRATIVELY ATTACHED'	7
COUNCIL COMPOSITION	7
FUNDING.....	8
CITIZEN PARTICIPATION.....	8
REPORTS.....	9
CYFD RESPONSE TO FY 19 ANNUAL REPORT RECOMMENDATIONS.....	10
FY 20 CHILD/YOUTH REVIEWS.....	11
RECOMMENDATIONS FROM CASE REVIEWS.....	14
YOUTH SERVICES	14
EDUCATIONAL STABILITY	14
PSYCHOTROPIC MEDICATION OVERSIGHT	15
PLACEMENT TRACKING	15
ACCESS TO INFORMATION.....	16
APPENDIX I SUBSTITUTE CARE ADVISORY COUNCIL.....	17
APPENDIX II COUNCIL STAFF	18
APPENDIX III FY 20 COUNCIL ACTIVITIES.....	19
APPENDIX IV FY MEMBER TRAINING.....	20
APPENDIX V CHANGES TO CHAPTER 32 [32] ARTICLE 8 NMSA 1978.	21
APPENDIX VI CYFD CHILDREN & YOUTH REVIEWED BY CYFD REGION	25

EXECUTIVE SUMMARY

The intent of the Citizen Substitute Care Review Act, Chapter 32 [32], Article 8 NMSA 1978 (hereinafter “Act”) is to serve an independent oversight function to the Children, Youth and Families Department (hereinafter “CYFD”) with the aim of ultimately improving overall results of the New Mexico’s child protection response system. Although there is a long history in New Mexico of citizen review board oversight of children who are in the custody of CYFD, there has never been an on-going solution-focused dialogue which is needed to efficiently effect system change.

The Act, in Fiscal Year (“hereinafter “FY”) 17, created the Substitute Care Advisory Council (hereinafter “Council”), to provide a permanent system for independent and objective monitoring of children placed in the custody of CYFD. In FY 19, the Council recognized the current statute, as written, is missing essential assessment tools needed for the Council to fulfill its purpose. Of critical note is the absence of an ongoing dialogue with CYFD which is needed to drive process improvement discussions and share feedback recommendations.

While the Act requires the Council to report recommendations to CYFD, the courts and others involved in individual cases, as well as annually report systemic recommendations to CYFD, the courts and legislators, the Act does not require a response, written or otherwise, to any report from any entity. As such, while the Council has been able to meet part of its statutory obligation, it has had challenges in meeting the intent to improve upon the child protection response system in New Mexico.

This annual report focuses on the changes needed to enhance the functionality of the Council to result in improvements to the child protection response system, the intended goal of the Act. It is imperative that these enhancements be institutionalized in order to create and sustain an organizational culture of transparency and accountability as well as promote ongoing collaboration needed to inform system practice changes for positive outcomes for children, youth and families. As noted in CYFD’s press release of February 1, 2020, *Big Plans for Increased Transparency & Accountability from CYFD*¹, “as a government agency, the public’s involvement in oversight and expectation of accountability are crucial elements of ensuring we stay on the right path for kids”. Enhancing the functionality of the Council is a crucial element in this oversight.

As in past years, case reviews conducted in FY 20² elicited repeated concerns as noted in previous annual reports. Council Staff performed reviews and pursuant to the Act, provided written reports to the courts and CYFD regarding the strengths, concerns and recommendations for 100³ children/youth. Some of the reviews were conducted to determine progress made since the prior review. Disturbingly, it was found that concerns previously noted had not been remediated. This annual report contains recommendations to CYFD from concerns noted in the case reviews.

In March 2020, CYFD and the Human Services Department (hereinafter “HSD”) entered into a settlement agreement⁴ as a result of litigation brought against these two agencies (known as ‘Kevin S’). The litigation was brought on behalf of 14 children and youth alleging that CYFD and HSD had not fulfilled their child protection responsibilities. Concerns in the lawsuit were similar to, if not the same as, the concerns raised by the Council in individual case review reports and annual reports. The settlement agreement includes specific actions CYFD and HSD must implement within a limited time period as well as pay \$2,400,000 for plaintiffs’ attorneys’ fees and costs⁵.

The Act requires the Council to make recommendations, however it currently does not require CYFD to provide any response to the recommendations. This missing coordination increases the probability that practices will continue with no accountability for improvement, further exacerbating trauma of the children/youth in the care of CYFD as evidenced in FY 20 case reviews. With increased communication between the Council and CYFD, not only would outcomes for children, youth and families of New Mexico improve, lawsuits, such as Kevin S, may become obsolete.

¹ <https://cyfd.org/news/news/big-plans-for-increased-transparency-accountability-from-cyfd>; last retrieved 12 October 2020.

² For a listing of FY 20 Council Activities see Appendix III.

³ This number includes children/youth who were reviewed more than once in FY 20. A ‘child’ is under age 14 while a ‘youth’ is age 14 and older.

⁴ https://kevinsettlement.files.wordpress.com/2020/03/2020_02_06-kevin_s_agreement_final.pdf

⁵ Provision XI of the Kevin S Settlement Agreement.

FY 20 RECOMMENDATIONS

To improve the functionality of the Council and to fulfill its purpose of independent and objective oversight resulting in an improved child protection response system, the following recommendations are made to the Act⁶:

- Clarify the purpose of the Act is to monitor CYFD's discharge of child protection responsibilities and to meet federal requirements for citizen review panels (page 6 'Purpose').
- Administratively attach the Council to the Office of State Auditor, in accordance with NMSA 1978 Section 9-1-7 (page 7 'Administratively Attached').
- Expand the composition of the Council from 9 to 11 members and designate voting rights of members (page 7 'Council Composition').
- Reinstate a line-item in House Bill 2 (HB 2) for state general fund appropriation for the Substitute Care Advisory Council and specify an interagency transfer of funds from CYFD (page 8 'Funding').
- Remove the limitation on citizen eligibility to participate in Council activities (page 9 'Citizen Participation').
- Replace the 6-member advisory committee with workgroups comprised of eligible citizens and other stakeholders (page 8 'Citizen Participation').
- Provide periodic reports on the work of the Council in addition to an annual report and establish a timeline for required written responses by CYFD and a process for the purpose of reconciling any differences (page 9 'Reports').
- Require CYFD to provide a written response to Council Staff when there is disagreement with a recommendation made from a review of a case and to meet with Council Staff within a designated timeframe for the purpose of reconciling any disagreement (page 9 'Reports').
- Include sections on access to, and confidentiality of, information (page 16 'Access to Information').

Recommendations to CYFD

- Establish a workgroup to revise standard reports to the court; members of the workgroup should at a minimum include representatives of Council Staff, CYFD Quality Assurance Unit, CYFD staff (i.e., direct worker, supervisor), youth, and legal representatives (i.e., Guardian ad Litem, Youth Attorney, Respondent Attorney, CYFD Children's Court Attorney) (pages 14-15 'Youth Services', 'Educational Stability', 'Psychotropic Medication Oversight').
- In collaboration with the Public Education Department (PED), co-lead a workgroup to develop protocols to ensure that changes in school settings meet state and federal requirements (page 14 'Educational Stability').
- Review data reporting to ensure that data provided is accurate, accounts for all children/youth in its custody and includes ongoing verification of data presented (page 15 'Placement Tracking').
- In collaboration with Council Staff, update policy and procedures regarding the Substitute Care Advisory Council; such as the sharing of information, staff participation in the processing of case reviews and grievances to include providing written responses within a specified timeline and inclusion of Council Staff on task forces/workgroups and develop ongoing training for CYFD staff regarding the role and function of the Council (page 16 'Access to Information').

⁶ See Appendix V for recommended changes to Chapter 32 [32], Article 8 NMSA 1978.

AUTHORITY

The Substitute Care Advisory Council (hereinafter “Council”) is created under Chapter 32 [32], Article 8 NMSA 1978, (hereinafter “Act”). The purpose of the Act is to provide a permanent system for independent and objective monitoring of children placed in the custody of the Children, Youth and Families Department (hereinafter “CYFD”) by examining the policies, procedures and practices of CYFD and, where appropriate, specific cases to evaluate the extent to which CYFD is effectively discharging its child protection responsibilities⁷.

The Act meets the requirement of the federal Child Abuse Prevention & Treatment Act⁸ (hereinafter “CAPTA”), which requires states to establish volunteer citizen panels⁹ to:

- Examine policies, procedures, and practices of State and local agencies and where appropriate, specific cases to evaluate the extent that state and local child protection systems are:
 - effectively discharging their child protection responsibilities, and [are]
 - in compliance with the CAPTA state plan, child protection standards and “any other criteria the panel considers important to ensure the protection of children”.⁷
- Provide “public outreach to assess the impact of current procedures and practices upon children and families in the community”.¹⁰

CAPTA requires the state agency (CYFD) to:

- Provide volunteer citizen panels with access to information on cases to be reviewed¹¹.
- Within six months of the date of the annual report, “submit a written response to State and local child protection systems and the [Council] that describes whether or how the State will incorporate the recommendations to make measurable progress in improving the State and local child protection system”¹².

PURPOSE

As stated, the purpose of the Act and CAPTA allows the Council to review aspects of the child protection system, to include investigations (i.e., how a child may enter custody). However, as currently stated, the Act may be limiting and not include programs designed to support youth who turn 18 and remain under the jurisdiction of the court or who continue to work with CYFD on a voluntary basis; or to accept and process grievances regarding CYFD’s action or inaction which may adversely affect a child/youth or CYFD’s compliance with a law or policy/procedure. Further while it is understood that the Act meets the CAPTA requirements, the purpose, as currently stated, is not explicit in that regard.

At present, CYFD relies upon its internal Constituent Affairs and Inspector General to respond to concerns raised by stakeholders. The Cabinet Secretary of CYFD¹³, along with stakeholders have expressed the need to have an independent grievance process, which is in alignment with the purpose of the Council.

Council Recommendation: To improve the functionality of the Council, it is recommended to revise the purpose of the Act to read: ‘to provide a permanent system for independent and objective monitoring of CYFD by examining the policies, procedures and practices of CYFD to evaluate its effectiveness in discharging its child protection responsibilities and to meet federal requirements for citizen review panels’.

⁷ NMSA 1978, Section 32A-8-1 et seq., Citizen Substitute Care Act; 32-8-4A.

⁸ CAPTA, Section 106.c. Citizen Review Panels.

⁹ In New Mexico, volunteers are referred to as Members. Citizens interested in becoming a Member undergo an application process which includes background and reference checks, interviews, observations, training and the acknowledgement and adherence to confidentiality agreements and the Member Code of Conduct.

¹⁰ CAPTA, Section 106.c. Citizen Review Panels; 4. Functions.

¹¹ CAPTA, Section 106.c. Citizen Review Panels; 5. State Assistance.

¹² CAPTA, Section 106.c. Citizen Review Panels, 6. Reports.

¹³ <https://cyfd.org/news/news/big-plans-for-increased-transparency-accountability-from-cyfd>; last retrieved 12 October 2020.

'ADMINISTRATIVELY ATTACHED'

Presently the Council is administratively attached to the Regulation and Licensing Department (hereinafter "RLD") in accordance with NMSA 1978 Section 9-1-7 which states *'an agency which is attached to a department for administrative purposes only shall exercise its functions independently of the department and without approval or control of the department'* to include the hiring of its own personnel and to have budgetary requests submitted without changes in the departmental budget.

From the onset, the Council has not operated independently or autonomously and continues to fall under the direct purview of RLD. RLD began by absorbing the Council into their Boards and Commissions Division and viewed the Council as a 'board' or 'commission' which oversees professional and occupational licenses. An internal executive order¹⁴ effective 6 May 2017 and in effect until rescinded in writing by the Superintendent, ordered *'the permanent transfer of the Substitute Care Advisory Council and all its associated program(s) from Boards and Commission Division to the Office of Superintendent'*. Further, this order directed the Deputy Superintendent of RLD to *'assume the supervision of the overall program and the direct supervision of the CRB Program Manager/Executive Director'* and established a 'Council Steering Committee' comprised of the following RLD staff: Deputy Superintendent, General Counsel or their designee, Administrative Services Director or their designee, Director of Boards and Commissions or their designee, the attorney for the Boards and Commissions Division as well as the Program Director of the Council or their designee.

Furthermore, the Council has been held to the practices of RLD, including the process of hiring personnel which has resulted in the Council experiencing staff vacancies despite the Council's requests for personnel actions that RLD has deemed are not necessarily a priority¹⁵.

Council Recommendation: To improve the functionality of the Council, administratively attach the Council to the Office of State Auditor in accordance with NMSA 1978 Section 9-1-7. In addition, the Council and the Office of State Auditor enter into a Memorandum of Understanding (MOU) detailing support related to finances and associated budget activities, record-keeping, human resources activities and related administrative and clerical assistance provided by the Office of State Auditor to the Council and any related costs.

COUNCIL COMPOSITION

Presently, the nine-member¹⁶ Council is comprised of the Cabinet Secretary or their designee of the Department of Finance and Administration (hereinafter "DFA"), Department of Health (hereinafter "DOH"), Human Services Department (hereinafter "HSD") and the Public Education Department (hereinafter "PED"). The Governor appoints the remaining five members: one children's court judge, two public members with expertise in child welfare and two public members between the ages of 18 and 30 who have been in substitute care.

Council Recommendation: To improve the functionality of the Council, it is recommended to expand the composition of the Council to include voting and non-voting members. In FY 20, the Early Childhood Education & Care Department (hereinafter "ECECD") was established for an effective coordination of programs related to children. These programs impact children in substitute care and as such the Cabinet Secretary or their designee would provide valuable contributions to fulfill the purpose of the Council. The Cabinet Secretary or their designee of ECECD would be a voting member as would the Cabinet Secretary or designee of DFA, DOH, HSD, PED, the Children's Court Judge and public members appointed by the Governor.

¹⁴ RLD Executive Order 00001-2017 signed and dated 5 May 2017.

¹⁵ Email from RLD HR Manager to Council Director 2 December 2019.

¹⁶ See Appendix I for the appointees of the Council.

Currently the Act does not include the Cabinet Secretary of CYFD as part of the Council. Without a designated presence of CYFD on the Council, the ongoing dialogue that is needed to improve the child protection system will continue to be challenging at best and non-existent at worst.

Council Recommendation: To improve the functionality of the Council, the addition of the Cabinet Secretary or designee of CYFD as a non-voting member of the Council is imperative.

Council Staff¹⁷ consists of a Director, Coordinators and Administrative Assistant. As noted above, in FY 20, vacancies of the Council Staff were not filled resulting in understaffing. Despite these staffing challenges the Council was able to surpass the minimum requirements of conducting a case review in each of the thirteen Judicial Districts for each quarter¹⁸; as well as participate on the NM Child Fatality Review Board, the Children's Court Improvement Commission (CCIC), the National Citizen Review Panel Advisory Board, and the Children's Law Institute (CLI) Planning Committee and continued to process over 26,000 documents received related to children and youth in the custody of CYFD.

In FY 20, the Office of the Attorney General assigned an attorney to provide legal representation and advice to the Council.

FUNDING

The Council is funded through state general funds as well as an interagency transfer of funds from CYFD¹⁹. As noted in previous annual reports, the interagency transfer of funds has proven to be unreliable and inconsistent. The Council was established in FY 17 and at that time there was an expectation of an interagency recurring annual funding from CYFD of approximately \$180,000²⁰. However, in FY 17, CYFD did not transfer any funds to the Council; in FY 18 CYFD transferred \$98,590 to the Council; in FY 19, CYFD transferred \$33,997 to the Council and in FY 20 CYFD transferred \$111,549. The instability of the interagency fund transfer as agreed upon hinders the Council's ability to function to its full potential.

Prior to FY 17, state general funds to support the work of citizen substitute care review boards was a line-item in HB 2 under DFA's agency budget. Although the Act required all appropriations of DFA related to the Citizen Substitute Care Review Act to be transferred to the Council, the appropriations for the Council are included in the RLD appropriations for Boards and Commissions general fund without any specific line-item or notation. As such the funds to support the Council are absorbed into the regular RLD budget without restriction and the ability to be used to support RLD programs and operations exists.

Council Recommendation: To improve the functionality of the Council, it is recommended that a line-item for the Substitute Care Advisory Council in HB 2 be reinstated and to include an interagency transfer of funds from CYFD.

CITIZEN PARTICIPATION

Both CAPTA and the Act require the involvement of citizens in evaluating the effectiveness of CYFD in discharging their child protection responsibilities. Citizen participation is important and key in this evaluation as it serves to educate citizens regarding child protection responses, it promotes community-based services and it prevents an agency from becoming a 'system unto itself'²¹.

¹⁷ See Appendix III.

¹⁸ NMAC 8.26.7.13.

¹⁹ Historically CYFD provided an interagency transfer of funds to DFA until FY 17.

²⁰ According to published HB2s between the years of 2011 and 2016, these amounts ranged from \$174.3 to \$239.9 per FY with the amount in FY 16 being \$180.0.

²¹ Dr. Blake Jones, Children's Bureau Technical Assistance to Citizen Review Panels, presentation at 2019 national CRP conference.

Citizens should be representative of their communities and include those with ‘expertise in the prevention and treatment of child abuse and neglect, [which] may include adult former victims of child abuse or neglect’²².

In New Mexico, citizens who meet eligibility requirements are known as ‘Members’. Members must adhere to a code of conduct which includes treating all individuals with dignity and respect and without preference or discrimination; meeting training²³ and participation requirements and maintaining confidentiality of all case information. In FY 20, Members participated in reviews of children/youth both within and outside their county of residence. This allows Members to gain a larger perspective of the child protection system in New Mexico.

Currently, the Act limits citizen participation by barring ‘a person or a relative of a person employed by’ DFA, CYFD, HSD, PED, DOH, or a district court from serving as a volunteer. In addition, the definition of a relative is held to the Children’s Code standard of ‘within the fifth degree of consanguinity’. Clearly this severely limits the citizens who may be eligible to volunteer. Interestingly, the Act does not bar someone who is a current foster parent or Court Appointed Special Advocate (hereinafter “CASA”) from being a member. The Council Staff effectively manages any real or perceived conflict of interest a member may have with a specific case under review.

Council Recommendation: To improve the functionality of the Council, it is recommended to remove the limitation of an employee or a relative of a person employed by DFA, CYFD, HSD, DOH and a district court and require a protocol to address any real, perceived or potential conflict of interest of a citizen participating in any activity where a conflict of interest exists or may exist.

At present the Act requires the annual appointment of a six-member committee comprised of members for the purpose of advising the Council on substitute care matters.

Council Recommendation: To improve the functionality of the Council it is recommended to replace this committee with workgroups established by the Council on an as needed basis and to have workgroups comprised of current Members and other stakeholders.

REPORTS

Both the Act and CAPTA require an annual report from the Council which includes recommendations for improvement to the child protection response system. CAPTA requires a written response to the annual report by CYFD within six months of receiving the annual report; as noted earlier, the Act does not require a response, written or otherwise from CYFD. A timeline of six months to respond to an annual report does not lend itself to ongoing or efficient dialogue resulting in effective systemic change.

Council Recommendation: To improve the functionality of the Council, it is recommended the Council provide periodic reports on the work of the Council, in addition to an annual report, and a timeline be established for required written response by CYFD and a process for reconciling any differences.

When the Council conducts a case review, the Act requires submission of a report to the Court following the review. This report includes a summary of the case, noted strengths, concerns and recommendations and is provided to CYFD, the presiding judge and other Interested Parties²⁴ to the case. As with the annual report, the Act does not require a response (written or otherwise) from CYFD upon receipt of a report of a case reviewed. Without opportunities to correct practices timely, the ability to create and sustain an environment which mitigates continued trauma to a child/youth is lost.

²² NMSA 1978, Section 32A-8-1 et seq., Citizen Substitute Care Act; 32A-8-5D. CAPTA 106.c.2 Citizen Review Panels Membership.

²³ See Appendix IV for FY 20 training requirements for members.

²⁴ An Interested Party includes biological/adoptive parents, legal guardians, foster parents, relatives, CYFD staff, legal representatives, service providers and Court Appointed Special Advocates (CASA) specific to a legal case.

Council Recommendation: To improve the functionality of the Council, it is recommended that if there is a CYFD dispute with a recommendation in the report of a case review, CYFD will provide a written response within a designated timeframe detailing the specifics of the disagreement and that staff of CYFD and the Council will meet within a designated timeframe for the purpose of reconciling the disagreement.

CYFD RESPONSE TO ANNUAL REPORT RECOMMENDATIONS

FY 19

Pursuant to the Act, the FY 19 annual report²⁵ was submitted on 1 November 2019 to CYFD, the courts, the Interim Legislative Committees of Health and Human Services; Behavioral Health; Courts, Corrections and Justice; the Legislative Finance Committee and other stakeholders.

In addition to the same concerns noted in the FY 18 annual report of case management, placement instability²⁶ and maltreatment while in substitute care, the FY 19 case reviews specific to youth aged 14 and older found that the youth services policies and procedures were not implemented according to policy and procedure. For example, of the youth reviewed, youth did not have evidence of the Independent Living Assessments being completed according to procedure, or an updated case plan with a clear component of a Life Skills Plan established in accordance with procedures. Of particular note was the lack of youth involvement in these processes, a disconnect between the CYFD Permanency Planning Worker²⁷ (hereinafter “PPW”) and the CYFD Youth Transition Specialist²⁸ (hereinafter “YTS”) and a lack of understanding by CYFD workers and Youth Attorneys that youth services are intended to prepare youth for a successful transition to adulthood and as such is required for all youth regardless of permanency plan or placement. These assessments are the foundation of the Youth Services Program and, when these are not completed, other services which may be available are not provided in accordance with CYFD Policy and Procedures or best practices for youth in state custody.

The Council expressed concern that the success of The Fostering Connections Act²⁹, signed by the Governor in April 2019 to provide ongoing services to support youth who ‘age out’ of the CYFD system until age 21, would be in jeopardy without CYFD providing a solid foundation of engaging and providing services to youth in their custody prior to age 18 and the courts ensuring the CYFD Youth Services Policies and Procedures are being followed.

In addition, the Council noted concerns regarding incomplete responses to the recommendations in the annual report and the need for ongoing dialogue with CYFD, the legislature, the courts and other stakeholders to achieve systemic improvements.

The FY 19 annual report was distributed November 1, 2019 and included the following recommendations to CYFD:

- By December 31, 2019 the Council Staff and CYFD administration hold solution-focused meetings regarding the FY 17 and FY 18 recommendations and the overall results of cases of youth reviewed in FY 19.
- By January 31, 2020 the Council, in collaboration with the CYFD Secretary, develop a Joint Powers Agreement which includes, but is not limited to:
 - Stabilization of interagency transfer of funds.

²⁵ Council Annual Reports and CYFD responses may be found at <http://www.scacnm.org/about-us/>

²⁶ Changes in placement are the number of times a child changes a placement setting but does not include trial home visits, runaway, respite care and changes in a single foster family home’s status, such as foster care to adoption.

²⁷ Per CYFD NMAC 8.10.9 a Permanency Planning Worker has primary responsibility for youth in custody and works in collaboration with the youth transition specialist (YTS) to promote the safety, permanency and well-being for the youth, promote positive youth development, and assist the youth in successfully transitioning into adult living⁷

²⁸ Per CYFD NMAC 8.10.9 a Youth Transition Specialist ‘is a PSD worker who works in conjunction with the PPW with regard to all youth in custody age 14 or older, including youth age 18 who remain under the jurisdiction of the court, and youth who were adopted at age 16 and older. The YTS has primary responsibility for youth who have aged out of foster care at age 18 and are working with PSD on a voluntary basis’.

²⁹ New Mexico Senate Bill 23, “Fostering Connections Act”, Chapter 149 April 2, 2019.

- Access to all information related to children/youth in custody.
- CYFD support of, and participation in, the QSR process.
- CYFD written response to reports following a case review.
- Council Staff participation in ongoing task forces/work groups/committees of CYFD, such as the Fostering Connections Advisory Committee and the Foster Parent Task Force.
- CYFD Secretary participation in quarterly meetings with the Council to identify how the work of the Council is informing CYFD for systemic change.

As noted earlier, only CAPTA requires CYFD to provide a written response to the annual report and that response is not required until six months after a report is issued. Per CAPTA, the written response must include a description ‘whether or how’ CYFD ‘will incorporate the recommendations to make measurable progress in improving the state and local child protection system’³⁰.

CYFD provided the following response, received on June 2, 2020³¹ to the above recommendations:

“CYFD is currently in the late planning stages of restructuring how we work with older youth in foster care. You may be aware that we are extending foster care services for youth up to age 21, using a phased-in approach that begins in FY21. To serve these youth and young adults, we will be implementing a new practice model that is relational rather than transactional, with clearly operationalized goals and principles designed to improve outcomes. As this new model will require careful consideration of caseloads and specialized training, our hope is that youth aged 16-21 will have one worker assigned to them, as opposed to the current structure in which the Youth Transition Services worker merely augments the primary case management that is provided by the youth’s Permanency Planning Worker.”

The response did not address the specific recommendations above; however in February 2020, CYFD issued a press release on ‘Big Plans for Increased Transparency & Accountability from CYFD’³² which stated in part ‘at the top of the list: increasing funding to the Substitute Care Advisory Council (SCAC), which currently operates in an ombudsman-like role with the Department. Along with more funding, CYFD is considering options for supporting its increased independence by moving it to a new place within state government where SCAC could have a broader reach, promote better coordination and oversight of multiple child-serving agencies and be most effective at providing oversight and implementing needed changes. CYFD plans to provide more data to the SCAC so that they can have more information for exploring the Department’s operations and outcomes respective to goals.’ Further, the same press release spoke of a grievance process for foster care providers which ‘may also refer the complaint to higher bodies such as the SCAC.’

FY 18

In October 2019, CYFD’s response to the FY 18 recommendations of the Council included revising their policies and procedures related to information shared with the Council and psychotropic medication protocols and practices. As of this report, neither have been revised.

FY 20 CHILD/YOUTH REVIEWS

Pursuant to the Act and CAPTA, the Council is authorized to conduct case reviews, as needed, to fulfill the purpose of the Act and CAPTA. In New Mexico, case reviews are conducted through Substitute Care Review Board (hereinafter “SCRB”) meetings. Each SCRБ is comprised of trained Members and each meeting is facilitated by Council Staff. Reviews include research of documents, CYFD policy and procedures, best practices and receipt of confidential individual³³ input. In FY 20, cases of children and youth were reviewed in each of CYFD’s five Regions and in each of

³⁰ CAPTA 106 c.6 Citizen Review Panels, Reports.

³¹ Letter from Brian Blalock, CYFD Cabinet Secretary to Ms. Schneider and Ms. Bucher dated 26 May 2020 and received 2 June 2020.

³² <https://cyfd.org/news/news/big-plans-for-increased-transparency-accountability-from-cyfd>; last retrieved 12 October 2020.

³³ Notification of opportunity to provide confidential input during a child/youth review is given to known biological/adoptive parents, legal guardians, foster parents, relatives, CYFD staff, legal representatives, service providers and Court Appointed Special Advocates (CASA).

the 13 Judicial Districts resulting in 100 children and youth being reviewed³⁴. Children and youth reviewed in FY 20 included follow up to prior reviews to determine progress made towards permanency.

Pursuant to the Act, for each case reviewed, a summary report, including strengths, concerns and recommendations, was prepared by Council Staff and submitted to CYFD, the presiding judge and other known stakeholders to a child/youth. However, the Act does not require a response from CYFD regarding whether or not the recommendations will be implemented.

As in previous years, the FY 20 reviews of children/youth in custody elicited the same concerns previously noted regarding case management, placement instability, sibling connections, psychotropic medication oversight, repeat maltreatment while in CYFD custody, prior involvement of CYFD and youth services implemented in accordance to CYFD policy and procedures. The following include examples of FY 20 reviews³⁵:

A child in custody of CYFD for 17 months experienced 11 changes in placement and at the time of review was placed in an out-of-state residential treatment center and prescribed multiple medications. A discharge plan was not provided to include efforts to identify a placement within New Mexico.

A youth in custody of CYFD for 12 months had experienced 8 changes in placement and at the time of review had been residing in an in-state residential treatment center for 4 months. The youth was prescribed psychotropic medications without evidence of fully informed consent of treatment and medication nor were Youth Services being provided in accordance with CYFD policy and procedure.

Two children entered custody of CYFD as part of a sibling group of 4 with ages ranging from 1 to 5 years of age. Fifty-nine months later, the two younger children were adopted by a non-relative out-of-state and sibling contact was lost. At the time of review, the oldest sibling who entered custody at age 5½, had spent 47% of life in CYFD custody, had been residing in an in-state residential treatment center for 2 months and a discharge plan was not provided. The second oldest sibling entered CYFD custody at age 3, had spent 62% of life in custody at the time of review and had been residing in a therapeutic foster care home for 7 months without a clear discharge plan. Both children had been given diagnoses and prescribed psychotropic medications however CYFD did not provide information on diagnoses or medications.

A child who entered custody of CYFD at age 9 had been in custody for 36 months and experienced 14 changes in placement, to include extended periods in residential treatment centers. At the time of review the child was in an out-of-county emergency respite therapeutic foster care home awaiting another therapeutic foster care or residential treatment center placement. This child was given diagnoses and prescribed medications however CYFD was not able to provide information in accordance with their policy and procedure for oversight of psychotropic medications.

A child who entered custody of CYFD at age 4½ had been placed with out-of-state relatives for adoption 26 months of the 36 months in custody. At the time of review, the child was 7½ years of age, having spent 39% of life in custody and legally free for adoption for 17 months yet the adoption had not yet been finalized.

A child who entered custody of CYFD as part of a sibling group at age 2½, was age 13 at the time of review, experiencing 19 changes in placement, disruptions in service providers, possible sexual abuse, separation from siblings and prolonged placement in a residential treatment center. Although the child completed the program at the out-of-state residential treatment center, discharge was delayed due to CYFD not identifying a placement within New Mexico.

³⁴ See page 15 for overview of CYFD children/youth reviewed in FY 20.

³⁵ Examples are from the individual child/youth reviews conducted during FY 20 and may not be representative of the experience of every child/youth in CYFD custody.

A sibling group of 2 entered custody of CYFD at ages 5 and 6 and although allegations of sexual abuse by the bio-father was substantiated and the bio-father had previously entered a 'habitual offender plea', CYFD requested the no contact order between the siblings and their bio-father be lifted to reunify the siblings with their bio-father. This permanency plan was against therapeutic recommendations, the wishes of the victims and without services to mitigate recidivism or increase protective capacity of the bio-mother. Subsequently the siblings disclosed sexual abuse following a visit with their bio-father and an amended abuse/neglect petition to include the sexual abuse/molestation charges was filed. However, six months after the filing of the petition, it appears an adjudicatory hearing was not held rather CYFD accepted the relinquishment of both parents' parental rights while leaving a younger sibling of the same gender in the home and without sibling contact.

Particularly troubling was the lack of progress towards permanency when children/youth were followed up from a prior review. For example:

In the 9 months since review, a youth with 12 placement changes experienced 5 more placement changes to include a placement in a residential treatment center out-of-state. Although the youth completed the program, discharge was delayed due to a placement in New Mexico not identified timely. Youth Services were still not provided in accordance with CYFD Policy and Procedure and an adoption resource still not identified although the youth has been in custody for 57 months and legally free for adoption for 41 months.

In the 12 months since review of two siblings in their second episode of CYFD custody, neither youth were provided youth assessments meant to help develop a case plan that identifies resources and supports needed for successful transition to adulthood. An evaluation of the youth's immediate and long-term need for psychotropic medications was not conducted and the status of an application for SSI benefits and restitution of the youth's inheritance from a relative was unclear.

In the 8 months since review of two siblings, the oldest sibling, a youth who had been residing in an out-of-state residential treatment center without a discharge plan experienced two more changes in placement and was residing in a youth shelter for 4 months at the time of review. The younger sibling, at age 11, remained in an out-of-county residential treatment center where the child has been for 24 months; a written discharge plan was still not provided nor was information provided regarding prescribed medications.

This is the 5th time this youth has been reviewed wherein the issues and concerns continue to remain the same with little to no remedial efforts. This youth was reviewed again two months prior to emancipation to conclude that this youth spent over 10 years in CYFD custody via two episodes of custody, experiencing sexual abuse, multiple changes in placement and levels of treatment, prescription for psychotropic medications, dual adjudication in the juvenile justice system and did not achieve a high school diploma or GED or ongoing services to successfully transition to adulthood.

At the time of this review, no evidence was provided that the recommendations from the previous case reviews were implemented. Youth Services are still not implemented in accordance with CYFD policy and procedure and the youth is in an out-of-state residential treatment center without a discharge date nor an identified placement to transition to in New Mexico.

At this review 6 months later, youth services are still not being implemented in accordance with CYFD policy & procedure.

Since the last review, the youth, who was in custody of CYFD for the third time, was discharged from an out-of-state residential treatment center, experienced a fourth failed adoption attempt and changed placements at least 15 times in thirteen months.

As previously mentioned, the Act does not require CYFD to respond to recommendations provided for individual children and youth. As such, opportunities to correct practices are lost, resulting in further trauma to a child/youth thereby supporting the need to require a written response from CYFD to recommendations it may disagree with and a time-limited process to reconcile any differences on recommendations.

RECOMMENDATIONS FROM FY 20 CASE REVIEWS

YOUTH SERVICES

Of the cases reviewed in FY 20, it appears that CYFD services to youth may not have been implemented in accordance with its policies and procedures. In May 2020, CYFD notified the Council that efforts were underway to restructure how it worked with older youth in foster care to include having one worker assigned to youth ages 16-21³⁶. As of this report, policies and procedures are still under review.

At present, the CYFD standard report to the court does not differentiate when a youth turns 14 although CYFD procedures requires specific assessments, life skills plan and case planning requirements, such as a case planning team which includes two individuals chosen by the youth who are not the foster care provider or caseworker³⁷ and development of the case plan in consultation with the youth.

Council Recommendation: In consultation with stakeholders, CYFD develop a standard report to the court for youth age 14 and older and to include but not be limited to, the members of the youth's case planning team, youth assessments completed, specific goals related to life skills and document participation through ensuring all signatures are obtained before filing with the court.

EDUCATIONAL STABILITY

An additional concern noted in FY 20 reviews included changes in school settings which may not have been in accordance with state and federal requirements³⁸. A child/youth who enters the custody of CYFD should remain in their school of origin unless a determination has been made vis-à-vis a Best Interest Determination Meeting; a collaborative student-centered discussion amongst the child/youth's team to reach consensus³⁹. This meeting is to be documented on the Education Best Interest Determination Form provided to all parties⁴⁰.

The school of origin is the school in which a child is enrolled at the time of placement in foster care; however should a determination be made through the Best Interest Determination Meeting process, the new school becomes the school of origin³⁸. Although nearly every child/youth of school age reviewed in FY 20 had multiple changes in school settings, documentation was not provided to support Best Interest Determination Meetings being held. Nor is this information captured in CYFD's progress report to the court. The standard report form used by CYFD asks *'is the child in the same educational setting as at the time of removal? If no, and reasonable and in the child's best interest, what efforts have been made to keep each child in the same setting?'*⁴¹ Responses vary to this question; for example:

- For a sibling group of two who entered custody at ages 3 and 5 and were ages 8 and 10 at the time of the review, respectively experiencing 6 and 10 changes in placement and an estimated 5 and 8 changes in schools, the response was only *'no, [children] were under the school age at the time of removal'*.

³⁶ Letter from Brian Blalock, CYFD Cabinet Secretary to Ms. Schneider and Ms. Bucher dated 26 May 2020 and received 2 June 2020.

³⁷ CYFD PR13 Case Planning Case Planning for Youth 14 Years of Age and Older.

³⁸ Fostering Connections and Increasing Adoptions Act of 2008; Every Student Succeeds Act as amended through P.L. 114-95; Sections 22-12-10 and 22-13-33 NMSA 1978.

³⁹ NMPED Providing Educational Stability and Supporting Students in Foster Care Every Student Succeeds Act (ESSA) <https://webnew.ped.state.nm.us/wp-content/uploads/2018/09/PED-Foster-Care-Guidelines-with-NMAC-Trans.pdf>

⁴⁰ CYFD Program Instruction Guideline 08-2019-#5 Updates to 8.10.8 Permanency Planning Procedures-PR 18: Education.

⁴¹ Judicial Review and/or Permanency Hearing Report; Judicial Review and/or Permanency Hearing Report - Adoption Placement.

- For a youth who entered custody at age 13 and was age 14 at the time of review, experiencing 8 changes in placement and an estimated 4 changes in schools, the response was only *'no, [youth] was attending [school]*.
- For a youth who entered custody at age 8 and was age 14 at the time of review, experiencing 39 changes in placement and an estimated 20 changes in schools, the response was only *"[youth] was enrolled in elementary school at the time of removal from care. [youth] is currently in the process of enrolling in the first year of high school'*.
- For a youth who entered custody at age 11 and was age 15 at the time of review, experiencing 25 changes in placement and an estimated 18 changes in schools, the response listed the schools and dates attended since the last court hearing, however there was only one mention of a Best Interest Determination being completed associated with a change of schools.

Council Recommendations:

- CYFD and PED co-lead a workgroup to develop protocols and procedures to ensure that changes in school settings meet state and federal requirements as well as establish a timeline for ongoing joint evaluation of the process.
- CYFD revise the standard reports to the court to include an ongoing listing of changes in schools, dates of Best Interest Determination Meeting completed, the basis for the change of schools as well as to recognize success when there may be a change of placement but not a change in school.

PSYCHOTROPIC MEDICATION OVERSIGHT

An ongoing concern by the Council has been CYFD's ability to demonstrate effective oversight of psychotropic medications. As noted earlier, CYFD informed the Council in October 2019 that efforts were underway to revise their psychotropic medication protocols and practices. In FY 20 the Council Director participated in quarterly meetings facilitated by the National Center for Youth Law which focused on information for judges, Guardian ad Litem and caregivers. CYFD still has their current psychotropic medication policy and procedure under review which may change or clarify current practice. At present, the CYFD standard report to the court does not include a section on diagnoses or medications prescribed to a child/youth or fully informed consents provided.

Council Recommendation: CYFD revise its standard report to the court to include a section on diagnoses and medications prescribed, the reason for the medication, dosage, dates of medication review and confirmation fully informed consent was provided.

PLACEMENT TRACKING

Through the Joint Powers Agreement effective July 1, 2016, CYFD provides a monthly list to the Council of children/youth who have been adjudicated and in its care. This list includes name of a child/youth's placement and the number of federal placement changes⁴². During FY 20 of the children/youth reviewed, it was noted on more than one occasion that a monthly list may not include a child/youth who is known to still be in the custody of CYFD or, in the instances of two youth, the placement location was continually listed as 'runaway' although CYFD was aware of the location of the youth⁴³.

Council Recommendation: CYFD review its data entry practices to ensure that the accounting of children and youth in its custody is accurately reported and establish a timeline for ongoing verification of data reported.

⁴²Changes in placement are the number of times a child changes a placement setting but does not include changes in placement due to trial home visits, runaway, respite care or changes in a single foster family home's status, such as foster care to adoption.

⁴³ One youth, who has been in detention for 10 months remains listed as a 'runaway'; another youth who CYFD has been providing services to for 9 months (including prenatal services) remains listed as a 'runaway'.

ACCESS TO INFORMATION

As noted in past reports, access to information continues to be a challenge. In October 2019, CYFD notified the Council that its policies and procedures to address how information is provided, when it is due and how information is tracked would be revised. As of this report the policies and procedures have not been revised.

When Council Staff contacts CYFD staff, more likely than not, CYFD staff do not indicate knowledge of the Council's function or recognition of the Council's existence. When attempting to gather information from providers under contract with CYFD, many times the information is not made available due to the provider indicating CYFD approval is needed. Further, Council Staff are not routinely involved in changes in policies and procedures or on task forces/workgroups related to services and programs within CYFD.

Council Recommendations:

- CYFD, in consultation with Council Staff, update policy and procedures related to the Substitute Care Advisory Council and develop ongoing training for CYFD staff regarding the role and function of the Council.
- The Act include provisions for Council's access to, and confidentiality of, information.

APPENDIX I

SUBSTITUTE CARE ADVISORY COUNCIL

The Act established a nine-member Council; four members are the Cabinet Secretary or designee of specific state agencies, five members are appointed by the Governor.

STATE AGENCY	CURRENT APPOINTEE
Department of Finance and Administration	RENEE M. WARD, MHA Deputy Cabinet Secretary
Department of Health	THOMAS MASSARO, M.D., Ph.D. Chief Medical Officer/School Health Officer
Human Services Department	ANGELA MEDRANO Deputy Cabinet Secretary
Public Education Department	LAURA HENRY (COUNCIL VICE-CHAIR) State Coordinator Migrant Education Program And Foster Care Education Point of Contact
APPOINTED BY GOVERNOR	CURRENT APPOINTEE
Children’s Court Judge	THE HONORABLE ANGIE K. SCHNEIDER (COUNCIL CHAIR) Chief Judge, Twelfth Judicial District Division IV
Public Member with Child Welfare expertise	Vacant ⁴⁴
Public Member with Child Welfare expertise	Vacant ²⁰
Public Member age 18-30 previously in substitute care	Vacant ²⁰
Public Member age 18-30 previously in substitute care	Vacant ²⁰

SCAC ADVISORY COMMITTEE⁴⁵

OCTOBER 2019 – SEPTEMBER 2020

<u>NAME</u>	<u>COUNTY</u>
PEGGY ADEGOKE	BERNALILLO
MARIA ORTIZ BUSTOS	DOÑA ANA
JACK CARPENTER	TAOS
MARY CARR	EDDY
NANCY TREAT	SANTA FE
ALLAN TROSCLAIR	SANDOVAL

⁴⁴Although the Office of the Governor indicated in October 2019 that the appointments should be completed the end of the month and in December 2019 indicated background checks were nearly complete, these appointments have not been made. Recent requests to the Governor’s office regarding the status of these appointments are unanswered.

⁴⁵Pursuant to Chapter 32 [32], Article 8 NMSA 1978, Citizen Substitute Care Review Act the Council appoints by 1 October of each year, a 6-member committee to one-year renewable terms, to advise on matters related to substitute care.

APPENDIX II

COUNCIL STAFF

DIRECTOR: SHELLY A. BUCHER, LMSW

Ms. Bucher serves as the Director for the Council. She has been in this position since October 2016 having previously administered a contract for citizen review boards through New Mexico State University. Ms. Bucher holds a Master of Social Work with a concentration in Administration from the University of Kansas and a Bachelor of Social Work, Summa Cum Laude and a BS in Human Development and Family Studies from Kansas State University, Summa Cum Laude.

Ms. Bucher has 31 years of child welfare experience; 19 years of which are in NM. Past positions include:

Director, Southwest Region National Child Protection Center at NMSU.

Interim Director, School of Social Work NMSU (3 years).

General Inspection Specialist, European Command Headquarters, Stuttgart Germany.

Relocation Readiness Program Manager, Army Community Services, Stuttgart Germany.

Settlement Administrator, Kansas Department of Social and Rehabilitation Services (SRS).

Director, Child Development Center, Saudi Arabia.

Social Worker (Investigations/Foster Care), KS SRS.

COORDINATOR: KIMBERLY ANGUIANO, BSW

Ms. Anguiano joined the Council Staff in July 2018 after completing an academic year of internship assisting Council Staff. Fully bilingual in Spanish, Ms. Anguiano graduated with honors from New Mexico State University with a Bachelor of Social Work and Minors in Counseling and Educational Psychology and Gender and Sexuality Studies.

COORDINATOR: MARY YOUNGER

Ms. Younger joined the Council Staff in October 2016 after serving as contract coordinator of citizen review boards for two years. She has 12 years of child welfare experience, including past positions of Volunteer Coordinator for the Eddy County Fifth Judicial District CASA (Court Appointed Special Advocate) program and Detention Officer for the Eddy County Detention Center.

ADMINISTRATIVE ASSISTANT: RAYMUNDO "RAY" VILLEGAS

Mr. Villegas is an Air Force veteran and retired US Postmaster who, since October 2016, has been sharing his knowledge and skills to organize and maintain resources to support the functioning of Council Staff. Mr. Villegas is from Deming, NM and attended Western New Mexico University.

APPENDIX III

FY 20 COUNCIL ACTIVITIES

During this time period, Council activities included:

- Distribution of the FY 19 annual report (1 November 2019) to CYFD, the courts, the Interim Legislative Committees of Health and Human Services; Behavioral Health; Courts, Corrections and Justice; the Legislative Finance Committee and other stakeholders.
- Regular Council meetings⁴⁶:
 - September 18, 2019
 - October 31, 2019
 - December 6, 2019
- Appointment of the six-member Advisory Committee.
- Obtained appointment of legal counsel from the Office of the Attorney General.
- Adoption of the *Quality Services Review* model for case reviews⁴⁷.
- Review of 100 children/youth.
- Member (Volunteer) Quarterly Online Training.
- Improved Court Report template.
- Participation on:
 - Children Court Improvement Commission.
 - New Mexico Child Fatality Review Board.
 - Children's Law Institute.
 - National Citizen Review Advisory Panel.

⁴⁶ The Council was scheduled to meet in March and May 2020 however these meetings were cancelled due to the public health emergency declared by Governor Lujan Grisham. Regular Council meetings resumed in July 2020 via electronic platform with meetings scheduled monthly through December 2020.

⁴⁷ 06 December 2019 Regular Council Meeting.

APPENDIX IV

FY 20 MEMBER TRAINING

Member training requirements in FY 20 included in-person and online quarterly training.

In-person training was suspended due to the public health orders issued by Governor Lujan Grisham.

Quarterly Online:

- *First Quarter:*
 - Federal Disability Categories for Special Education.
 - How Students Qualify for Special Education Services.
 - Components of a Legally-Defensible Individualized Education Program.
 - What are Section 504 Regulations & Accommodations in Public Schools?

- *Second Quarter:*
 - Complex PTSD: Symptoms, Treatment & Test.
 - Anxiety Disorder Medical Terminology.
 - Acute Stress Disorder: Definition, Causes and Treatment.
 - Emotional Numbness: Causes & Symptoms.
 - What is Child Trauma? Symptoms & Effects.
 - Self-Destructive Behavior: Signs, Causes & Effects.

- *Third Quarter:*
 - How Experiences Impact Early Childhood Development.
 - How Socioeconomic Status Impacts Early Childhood Development.
 - How Environment Impacts Early Childhood Development.
 - Lifespan Development and Vulnerability to Mental Illness.
 - Lifespan Development Disorders: Definition and Perspectives.

- *Fourth Quarter:*
 - Stress Disorders: Definition and Perspectives.
 - Alarm Stage of Stress: Definition & Explanation.
 - The Diathesis-Stress Model and Mental Illness.
 - Diathesis, Stress, and Protective Factors: Understanding the Diathesis-Stress Model.
 - Assessing the Diathesis-Stress Model: Strengths and Weaknesses.
 - What is Stress Management? Definition & Benefits.

APPENDIX V CHANGES TO CHAPTER 32 ARTICLE 8 NMSA 1978

32A-8-2 Purpose of Act to read:

The purpose of the Citizen Substitute Care Review Act is to provide a permanent system for independent and objective monitoring of the department by examining the policies, procedures and practices of the department to evaluate its effectiveness in discharging its child protection responsibilities and to meet federal requirements for citizen review panels.

New Material: Definitions as used in the Citizen Substitute Care Review Act

- A. "administratively attached" means to function independently of and not under the control of another agency and in accordance with Section 9-1-7 NMSA 1978;
- B. "case" means one or more identified children or adults.
- C. "council staff" means those persons hired by the council to fulfill the responsibilities of the Citizen Substitute Care Review Act;
- D. "county office manager" means the person who is assigned day to day operations of county department offices or their successor;
- E. "identified child/youth or adult" means any child or adult who meets of the following criteria:
 - 1) A child/youth who is subject of a referral of abuse and neglect made to the department;
 - 2) a child/youth to whom the department has been providing services;
 - 3) a child/youth in the custody of the department due to abuse and neglect proceedings or juvenile justice proceedings;
 - 4) an adult who is participating in the Foster Care to 21 Program or its successor;
- F. "grievance" means a real or perceived wrong or other cause for complaint or protest related to:
 - 1) any action or inaction that may adversely affect the health, safety, welfare or rights of an identified child or adult; or
 - 2) the failure of the department to comply with the law or department policies;
- G. "member" means a citizen who has met eligibility requirements to participate in activities deemed appropriate by the council;
- H. "substitute care review board" means a board of members facilitated by council staff convened for the purpose of reviews of designated cases or other activities deemed appropriate by the council.

32A-8-4A Substitute Care advisory council; members; compensation; responsibilities to read:

- A. The "substitute care advisory council" in accordance with the provisions of Section 9-1-7 NMSA 1978, is administratively attached to the office of state auditor. The council functions independently of any state agency in the performance of their responsibilities. The council shall be composed of ten voting members and one non-voting member. Voting members include:
 - (1) the secretary of public education or the secretary's designee;
 - (2) the secretary of human services or the secretary's designee;
 - (3) the secretary of finance and administration or the secretary's designee;
 - (4) the secretary of health or the secretary's designee;
 - (5) the secretary of early childhood education & care or the secretary's designee;
 - (6) two public members, appointed by the governor, who:
 - (a) are at least eighteen and no more than thirty years of age at the time of appointment; and
 - (b) were previously placed in substitute care;
 - (7) two public members, appointed by the governor, who have expertise in the area of child welfare; and
 - (8) one children's court judge, appointed by the governor.Non-voting member includes:
 - (9) the secretary of the children, youth and families department or the secretary's designee.

- B. Except as provided pursuant to Paragraphs (8 and 9) of Subsection A of this section, a person or a relative of a person employed by the department or a district court shall not serve on the council.
- C. Terms of office of public members of the council shall be three years. Public members shall be eligible for reappointment. In the event that a vacancy occurs among the members of the council, the governor shall appoint another person to serve the unexpired portion of the term.
- D. Council members shall receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978]; provided that, if a different provision of that act applies to a specific member, that member shall be paid pursuant to that applicable provision. Members shall receive no other compensation, perquisite or allowance.
- E. The council shall select a chairperson, a vice chairperson and other officers as it deems necessary.
- F. The council shall meet no less than quarterly and more frequently upon the call of the chairperson.
- G. The council shall hire its own personnel in accordance with the Personnel Act [Chapter 10, Article 9 NMSA 1978], contract for services, establish work groups, and enter into contracts, memorandums of understanding and joint powers agreements to carry out the purposes of the Citizen Substitute Care Review Act.
- H. The council shall adopt reasonable rules relating to the functions and procedures of the council. These rules shall establish:
 - (1) procedures to comply with the New Mexico open meetings act;
 - (2) requirements for citizen participation, to include selection of participation on work groups and substitute care review boards;
 - (3) criteria for council designation of cases for review;
 - (4) procedures for review of designated cases;
 - (5) procedures for receipt and processing of grievances;
 - (6) procedures to provide for public outreach and comment in order to assess the impact of current child protection procedures and practices upon children and families in the community; and
 - (7) other procedures as needed to ensure the requirements of the Citizen Substitute Care Review Act and the Child Abuse Prevention and Treatment Act.
- I. The council shall provide periodic reports on the work of the council, including but not limited to an annual written report for the governor, legislature, department, courts and other persons, agencies and organizations deemed appropriate. The annual report shall be distributed electronically on or before November 1 of each year. The annual report shall at a minimum include, a summary of the activities of the council and recommendations to improve the child protection services system at the state and local levels. Other reports on trends or specific topics are provided at the request of the governor, legislature or the administrative office of the courts.

New Material: Administration-Staffing

- A. The council shall hire a Director who shall:
 - 1) oversee, manage and direct activities;
 - 2) act impartially and refrain from engaging in partisan political activity;
 - 3) promote public awareness of the purpose and services of the council and the methods for submitting grievances or requests for case reviews;
 - 4) employ and fix the compensation of council staff;
 - 5) prepare a budget and if appropriate, apply for and accept grants, gifts and bequests of funds from other states, federal and interstate agencies, independent authorities, private firms, individuals and foundations for the purpose of carrying out the responsibilities of the council.
- B. Qualifications of the Director shall include:
 - 1) a master social worker licensed pursuant to the Social Work Practice Act; or
 - 2) an attorney licensed to practice law in New Mexico; and
 - 3) At least five years of experience in child welfare with an emphasis on child abuse and neglect.
- C. The office of the attorney general shall designate an attorney to provide legal representation and advice to the council.

32A-8-5. to read: Citizen Participation

- A. When establishing rules for citizen participation, the council shall include:
 - 1) efforts to recruit and retain citizens who are broadly representative of the community in which they serve to include citizens with expertise in the prevention and treatment of child abuse and neglect and adult former victims of child abuse or neglect but does not include a current employee of the department;
 - 2) membership process, to include but is not limited to background checks and orientation training;
 - 3) protocol to address any real, perceived or potential conflict of interest of a citizen participating in any activity where a conflict of interest exists or may exist;
 - 4) ongoing training requirements;
 - 5) code of conduct; and
 - 6) confidentiality of information.
- B. Members meeting the established requirements shall participate at least once quarterly in case reviews or other activities deemed appropriate by council staff.
- C. Members meeting the established requirements may receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978]; provided that, if a different provision of that act applies to a specific participating citizen, that participating citizen shall be paid pursuant to that applicable provision. Members shall receive no other compensation, perquisite or allowance.

32A-8-6. to read: Review of cases.

- A. When a case has been designated for review, council staff will convene a substitute care review board in accordance with council rules.
- B. When the case is a children's court case, council staff shall give the parties notice of the review and afford the parties an opportunity to provide input to the review.
- C. Following the review of a children's court case, council staff shall submit a report to the court, the department and other known parties regarding strengths, concerns and recommendations;
- D. If the department does not agree with a recommendation in the report, the county office manager, or their designee shall provide a written response to council staff within 10 business days of receipt of the report detailing the specifics of the disagreement;
- E. Within 30 calendar days of the receipt of the department's timely written disagreement, the department and council staff shall meet with the purpose of reconciling said disagreement.

New Material: Grievances

- A. When establishing rules regarding grievances, the council shall include:
 - a. criteria for grievances to be accepted for resolution by council staff;
 - b. referral of grievances involving allegations of abuse and neglect of children to the department or law enforcement;
 - c. referral of grievances not accepted to the appropriate regulatory agency;
 - d. timelines to respond to grievances.
- B. Following the assessment of a grievance, council staff shall submit a report to the department regarding the strengths, concerns and recommendations;
- C. If the department does not agree with the recommendations, the department secretary, or their designee, shall provide a written response to council staff within 10 business days of receipt of the report detailing the specifics of the disagreement;
- D. Within 30 calendar days of the receipt of the department's timely written disagreement, the department and council staff shall meet for the purpose of reconciling said disagreement.
- E. An individual who requests remedy pursuant to the Citizen Substitute Care Review Act is not precluded other legal or equitable remedies.
- F. A state agency or municipal agency shall not discharge, or in any manner discriminate or retaliate against any employee, volunteer or contractor, who in good faith makes a grievance to the council.

New Material: Access to Information

- A. Council staff shall have access to, including the right to inspect and copy, any records necessary to carry out their responsibilities. Such information includes but is not limited to:
 - 1) Social records, diagnostic evaluations, psychiatric or psychologic reports, videotapes, transcripts and audio records of a child's statement of abuse or medical reports incident to or obtained as a result of a neglect or abuse proceeding or that were produced or obtained during an investigation in anticipation of an incident to a neglect or abuse proceeding;
 - 2) Any agency, hospital, organization, school, person or office, including the Clerk of the Court, the department, CASA programs or agencies providing services to families and children, public and private health care facilities, medical and mental health care professionals including doctors, nurses, psychiatrists, counselors, and staff, expressly authorizing access to protected health information, and law enforcement agencies;
 - 3) Administrative hearings conducted by the department and any findings, conclusions resulting from such hearings.
 - 4) Private meetings with any child in protective custody in the child's placement or elsewhere and/or any individual with knowledge of a case or grievance.
- B. The department shall establish procedures to provide requested information timely and to ensure staff availability to provide input to case reviews and processing of grievances;
- C. The department shall ensure any entity providing services to an identified child or adult provides requested information timely and to ensure said entity staff availability to provide input to case reviews and processing of grievances;
- D. A state agency or municipal agency shall not discharge, or in any manner discriminate or retaliate against any employee, volunteer or contractor, who cooperates with the council or council staff in case reviews and processing of grievances.

New Material: Confidentiality of Information

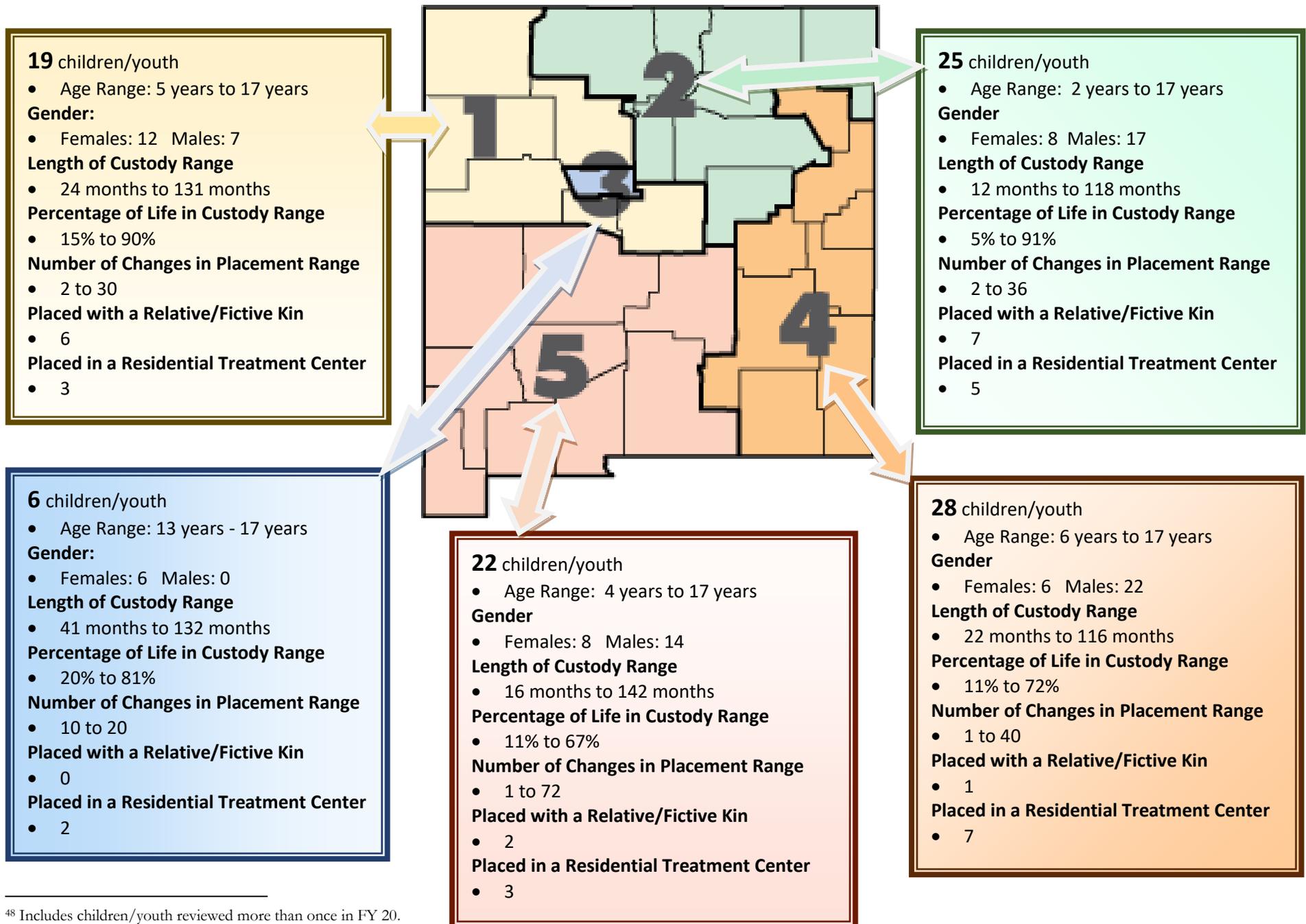
- A. Section 32A-4-33 NMSA 1978 shall not apply to prevent the Council or Council Staff from obtaining, in the course of fulfilling responsibilities towards case reviews and grievances, information concerning a party to a neglect or abuse proceeding.
- B. All information obtained or generated by council staff in the course of fulfilling their responsibilities towards case reviews and grievances are confidential records and not subject to the provisions of the Inspection of Public Records Act or the federal Freedom of Information Act.
- C. The name, address and other personally identifiable information of a person whose records are released to council staff or who files a grievance shall be confidential and not subject to the provisions of the Inspection of Public Records Act or the federal Freedom of Information Act;
- D. Council, council staff or participating citizens with knowledge of cases or grievances shall not disclose information unless:
 - 1) the person or persons filing a grievance, the identified child or adult consents in writing to the disclosure;
 - 2) the person or persons filing a grievance, the identified child or adult gives oral consent that is documented immediately in writing by council staff;
 - 3) disclosure is ordered by the court; or
 - 4) disclosure is necessary to another agency responsible for the welfare of a child.

32A-8-7. Transfer provisions; funds; contracts; references in law to read:

On the effective date of this 2021 act:

- A. The legislative finance committee shall establish a line item of state general appropriation of the council in HB 2.
- B. The legislative finance committee shall include in HB 2 interagency transfer of funds from CYFD to the council.

Appendix VI CYFD Children & Youth Reviewed⁴⁸ by CYFD Region



⁴⁸ Includes children/youth reviewed more than once in FY 20.