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FISCAL IMPACT REPORT

ORIGINAL DATE 02/08/14

SPONSOR Martinez, R. **LAST UPDATED** _____ **HB** 342/aHHGIC

SHORT TITLE Health Act Child Placement Definitions **SB** _____

ANALYST Klundt/Chabot

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Children, Youth and Families Department (CYFD)
- Department of Health (DOH)
- Administrative Office of the District Attorney (AODA)
- Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Amendment

Health, Government and Indian Affairs Committee amendment to House Bill 342 makes grammatical changes to improve readability, and adds “wilderness youth programs” to list of programs. Wilderness youth programs means a business or organization charging a fee or accepting donations and providing residence to and accepts custody, care or control for purposes of behavior modification of children that limits communications between a child and the parents or guardians and restricts the child’s ability to leave. It also lists exclusions of programs that are seasonal, national accredited and approved by the department, governed by state law or those defined by the Constitution as state educational institutions.

Synopsis of Original Bill

House Bill 342 revises the definitions in the Public Health Act, Section 24-1-2 NMSA 1978 to (1) expand the definition of department or division to include divisions within Children, Youth and Families Department (CYFD) when reference is made to CYFD's service populations, and divisions within Department of Health (DOH) when reference is made to DOH's service populations, and to include within the list of facilities covered by CYFD any other program

which, for a fee, donation, or scholarship, accepts children and provides them residence for any period more than sixty days in a twelve month period. The bill also adds this type of facility to the definitions of "health facility" and "secretary", and links them to CYFD in those sections as well.

FISCAL IMPLICATIONS

There is no appropriation attached to this bill. CYFD reports that the number of facilities affected by this bill is sufficiently small that any additional fiscal burden on CYFD can be absorbed by existing resources.

SIGNIFICANT ISSUES

This bill expands the type of facilities that are regulated under the Public Health Act, and expands the type of facilities that are regulated by CYFD, resulting in enhanced health and safety of children currently placed in facilities which were previously unregulated. According to the CYFD this is of critical importance, as facilities which fall into this definition have been the source of multiple allegations of abuse and neglect, but have fallen outside of the regulations available to CYFD, PED, and DOH for enforcement of health, safety, and other standards designed to protect children placed in residential facilities.

DOH, if this bill is enacted, some of the entities that are expected to be regulated by CYFD do not fall within the commonly understood meaning of a health facility, such as a treatment center, behavioral health facility or hospital. Therefore, some possibly unmanageable programs intended to be covered under this bill's revisions to the Public Health Act might be able to avoid enforcement of CYFD rules. DOH is unaware of any other law conferring licensing or regulatory authority upon CYFD where a provision such as this might properly be placed.

AODA expanding the definition of "health facility" to include "any other program" including specifically programs that accept custody, care or control of children and that provides residence for children for a period that exceeds sixty days in a twelve-month period is making a very inclusive statement, such as "any other program," and then following that general statement with a specific example or examples may result in an interpretation that limits the statement to the specific example or examples, or to situations very similar to the example or examples. See *State v Strauch*, 2013-NMCA - ___, (No. 32,425, Oct. 28, 2013), *cert granted*, 2014-NMCERT- ___ (No. 34,435, Jan. 10, 2014), interpreting a provision of the Abuse and Neglect Act requiring "every person, including" certain named professionals to report abuse to require reporting only by the professionals identified in the statute and others like them.

AODA reports that if "any other program" means only a person, place or program that, for a fee, donation or scholarship, accepts custody, care or control, including temporary guardianship, of children and that provides residence for children for a period that exceeds sixty days in a twelve-month period, then there is no need to have the "any other program" language. The description of the specific type of facility is enough. Additionally, if "any other program" is meant to have a broader reach, then the "any other program" language should be placed in front of the list of facilities similar to the ones meant to be included.

PERFORMANCE IMPLICATIONS

CYFD has performance measures related to the health and safety of children in alternative placements which will be affected by this bill.

ADMINISTRATIVE IMPLICATIONS

CYFD reports that any additional administrative resources necessary to develop and promulgate licensing regulations, and inspect and license affected facilities, will be absorbed by existing resources.

DUPLICATION

This bill is a duplicate of SB 174.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the DOH, if this bill is not enacted, then the definitions of “department” or “division” would not be amended in the Public Health Act, and CYFD’s regulatory authority would not be expanded to include any program, person or place that, for the specified consideration, accepts custody, care or control including temporary guardianship of children, and includes providing their residence for a period that exceed sixty days in a twelve-month period.

KK/ds:jl