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FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/14
 SPONSOR Beffort LAST UPDATED 02/14/14 HB _____
 SHORT TITLE Health Act Child Placement Definitions SB 174/aSPAC
 ANALYST Klundt

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 SPAC Amendment

The Senate Public Affairs Committee amendment to Senate Bill 174 clarifies the authority vested in CYFD by the bill by adding wilderness youth programs and defining them as:

a business or organization that provides residence to and accepts custody, care or control, including temporary guardianship of children for the purposes of behavior modification, that:

- charges a fee or accepts donations or scholarships for its services;
- may or may not limit or censor access to parents or guardians; or
- prohibits or restricts a youth's ability to leave the program at any time of the youth's free will.

A wilderness youth program does not include

- seasonal programs with recreation as the primary purpose
- programs with a Department approved national accreditation that ensures the health, safety or welfare of children
- programs that are otherwise governed by specific state law; or
- programs that are defined by the State Constitution as State Educational Institutions.

Synopsis of Original Bill

Senate Bill 174 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 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

Significant Issues SPAC Amendment

CYFD reported the agency has not had the authority to regulate these types of programs in the past allowing these types of programs to operate above the law and without any type of oversight. This can lead to a multitude of health and safety concerns for the children living in isolated conditions with very limited communication with the outside world to let anyone know what is occurring in these programs.

Further the agency believes that as more and more states begin to provide oversight and regulation of programs using abusive practices, those programs begin to seek States without regulatory authority to continue operating. The State of New Mexico is currently one of those states. This bill would close this loop hole and allow for these programs to have oversight to ensure the health and safety of the children attending the programs.

Significant Issues of Bill

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.

According to DOH, if this bill is enacted, it is arguable that 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.

According to 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

Administrative Implications of SPAC Amendment

Any new program type, not currently regulated by CYFD, will require development of applicable licensing regulations to address the new program type for children and youth under the age of 21. Currently, CYFD’s Licensing & Certification Authority (LCA) licenses residential treatment centers and children’s crisis shelters. It is anticipated that the LCA would be CYFD’s regulatory licensing body of any new program for children and youth under the age of 21, as defined in this bill.

As such, additional personnel resources may be required for LCA to ensure adequate licensing monitoring and oversight of any newly regulated programs. As the number of newly regulated programs is unknown at this time, CYFD cannot estimate the number of new FTE that would be required. In addition, due to the nature of wilderness programs in NM, LCA will need a 4-wheel drive vehicle to access remote locations where children and youth are being served.

Finally, because this bill expands the scope of program definitions impacting both CYFD and DOH, it will be imperative that the two departments work collaboratively on the development of comparable licensing regulations for any program type that straddles both the children’s and adult’s worlds and was not heretofore covered by existing regulations.

DUPLICATION

This bill is a duplicate of HB 342.

TECHNICAL ISSUES

Page 3 section (d) of the amendment should specify constitution of New Mexico rather than just Constitution.

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