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FISCAL IMPACT REPORT

SPONSOR Martinez, R/Martinez, J/ Trujillo, L/Lente **ORIGINAL DATE** 02/23/17 **LAST UPDATED** 03/08/17 **HB** 394/a HJC

SHORT TITLE Guardianship Affidavit and Pre-School Care **SB** _____

ANALYST Klundt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY17 | FY18 | FY19 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|------|------|----------------------|------------------------------|------------------|
| Total | | NFI | | | | |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Children, Youth and Families Department (CYFD)
 Public Education Department (PED)

SUMMARY

Synopsis of HJC Amendment

The HJC amendment of HB 394 makes a technical correction by striking all reference to “daycare” and inserts in lieu thereof “child development programs”.

Synopsis of Original Bill

This bill amends Section 40-10B-15 NMSA 1978 (being Laws 2001, Chapter 167, Section 15) to include Early Intervention services, Child Care, Head Start, preschool services or kindergarten through grade twelve school, medical or dental under the current Caregiver's Authorization Affidavit process.

FISCAL IMPLICATIONS

No fiscal impact has been identified at this time.

SIGNIFICANT ISSUES

CYFD provided the following:

Parents have many important rights that allow them to make crucial decisions for their children. They decide where the family will live and where the child will attend school. They also decide what religion the children will practice and make decisions regarding education and medical treatment for their children. In addition to these rights, parenthood also comes with many responsibilities. Parents are legally responsible to support their children and provide the basic necessities—food, clothing and shelter—until the child reaches the age of 18. Unless a court order suspends or terminates the mother’s or father’s parental rights, the mother and father have the ability to make decisions regarding their child, even if they had not previously lived with or cared for the child.

Informal Caregivers are those caregivers who simply have assumed responsibility for a child in need without involvement from the court system, child protective services or other authorities. Informal caregivers may have physical custody of the child, but have limited rights to make decisions regarding a child in their care because they do not have legal custody.

This bill removes the requirement that a caregiver who wishes to obtain medical care for a child beyond school-related medical care be a qualified relative of the child. The bill also removes the definition of qualified relative. A Guardianship Affidavit enables a caregiver, whether related or unrelated, to enroll a child in school, and if unrelated to the child, make school-related medical decisions, such as obtaining vaccinations and medical examinations required for school enrollment.

Currently, for the New Mexico Child Care Assistance, CYFD PreK, and Home Visiting programs, the form does not require the signature of a parent, but does require that the caregiver make an effort, and provide written documentation of the attempts to contact the child’s parent to get consent, including for non-school related medical care.

For Homeless Children, the McKinney-Vento Act is a federal law which provides certain education rights to children who are “homeless”. The definition of “homeless” includes children who are awaiting a permanent foster care placement or who are doubled up with friends or relatives because they cannot find or afford housing. Many children in informal caregiver situations would qualify for help under the McKinney-Vento Act. Such children are entitled to be immediately enrolled in school, and participate in the Child Care Subsidy, Home Visiting and PreK programs, even if they do not have any documentation of residence, school records, or immunizations. CYFD ECS staff will assist families in obtaining the necessary documentation.

However, the bill already expands the basic authorization to include “medical care”. The language lists medical care that is included, but contains no exclusionary language. Therefore at the basic level of the affidavit, without the certification that the legal guardian either gave consent or was unable to be contacted, the caregiver has authorization to access medical care for the child without limitation. Therefore the additional certification would never be needed.

Allowing any adult who a child happens to be living with to consent to any medical care without any assurance that this adult is an appropriate person to be granting consent medical and mental health care could lead to that child being placed in dangerous situations.

PED provided the following:

The proposed amendment to Section 1(A)(1) would allow a non-relative caregiver who provides the name and birthdate of the child as well as their own name and home address, via affidavit, to enroll the named child in early intervention services, daycare, headstart, preschool or a kindergarten through grade twelve school, whereas previously, such a caregiver was authorized only to enroll the named child in “school”. This expansion of services to such children may further, in some respects, compliance with ESSA requirements towards homeless children by possibly enabling early identification. It is unclear, however, what the term “early intervention services” includes.

Section 1(A)(2) of the proposed amendment would be a new provision that would expand the types of care, i.e. medical care, dental care and mental health care, that a non-relative caregiver who provides the limited information discussed above, may consent to. Without this amendment, a non-relative caregiver could enroll the named child in school and could consent to “school related medical care” which was defined as “medical care required by the state or a local government authority as a condition for school enrollment.” This amendment would further at least one purpose of the Act, that being to “provide a child with a stable and consistent relationship with a [kinship] caregiver that will enable the child to develop physically, mentally and emotionally to the maximum extent possible when the child’s parents are not willing or able to do so.” Education and well-being are essential components of a child’s development, which may be furthered by the proposed amendment.

Section 1(A)(3) would add a new provision authorizing the non-relative caregiver who provides the minimal information to be the “contact person for school-related purposes.” This provision should be modified to ensure that this is authorized only to the extent that it is consistent with the Family Education Rights and Privacy Act.

KK/al/sb