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## FISCAL IMPACT REPORT

SPONSOR Lopez ORIGINAL DATE 03/06/17  
 LAST UPDATED 03/08/17 HB \_\_\_\_\_

SHORT TITLE Guardianship Affidavit and Pre-School Care SB 447/aSPAC

ANALYST Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with HB 394

### 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 SPAC Amendments

The Senate Public Affairs Committee amendments to Senate Bill 447 restore existing statutory language governing the additional certification that a qualified relative may give to authorize any other medical care beyond the medical care, which expressly includes certain itemized services, that may be authorized pursuant to the new subparagraph A(2) of Section 1(J) of the bill.

It is still unclear that that additional certification ever will be needed, in light of the broad nature of the term “medical care” in subparagraph A(2).

#### Synopsis of Original Bill

Senate Bill 447 amends the Kinship Guardianship Act (Section 40-10B-15 NMSA 1978) to expand coverage of a caregiver’s authorization affidavit to include Early Intervention services, Child Care, Head Start, preschool services and a kindergarten through grade twelve school. The bill expands the medical care that a caregiver can authorize and establishes the caregiver as the authorized contact person

for school-related purposes.

## **FISCAL IMPLICATIONS**

No fiscal impact has been identified at this time.

## **SIGNIFICANT ISSUES**

CYFD advises:

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.

CYFD notes the bill expands the basic authorization to include “medical care”. The language lists medical care that is included, and contains no exclusionary language. Therefore the affidavit alone--without the certification in paragraph B of Section 1(J) that the legal guardian either did not object or was unable to be contacted-- is sufficient to grant the caregiver authorization to access medical care for the child without limitation. Under SB 447, the additional certification would never be needed.

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

PED expressed concern as to a similar provision in a related bill (HB 394) that 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.

PED provided this additional analysis:

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.

PED noted that the bill permits caregivers to enroll a child in preschool and Kindergarten through 12 schools and allows the caregiver to consent to medical care, including school related medical care, sports physicals and to serve as the contract person for school-related purposes.

Further, as to students with disabilities under the Individuals with Disabilities Education Act (IDEA), PED advises that a parent is specifically defined under 34 CFR § 300.30. A partial definition of parent includes a biological or adoptive parent, a foster parent, and a surrogate parent. It also includes a guardian generally authorized to act as the child’s parent, or authorized

to make educational decisions for the child or an individual acting in the place of a biological parent or adoptive parent (including a grandparent, stepparent or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare. That regulation also requires parental informed and written consent before an initial evaluation for special education and related services and for the initial provision of a Free Appropriate Public Education.

PED also comments that according to the Pegasus Legal Services for Children's website at <http://pegasuslaw.org/guardianship-of-a-child/>, the individual seeking guardianship of the child must Petition for Kinship Guardianship in the district court where the individual seeking guardianship and the child live. With that requirement and the requirements under the IDEA regarding the definition of a parent and parental consent, it is unclear if this bill can allow educational decision making for students with disabilities through a signed affidavit.

Further, PED points out that the IDEA, at 34 CFR § 300.520, requires the transfer of rights for a student with a disability at the age of majority, except for a student with a disability who has been determined to be incompetent under State law. This transfer of rights or emancipation allows students with a disabilities, 18 years of age or older, to make educational decisions on their own behalf and are afforded all procedural safeguards as an adult. Again, it is unclear if this bill will be sufficient to allow individuals seeking guardianship to have rights transferred to them for a student with a disability 18 years old or older through the affidavit process.

## **PERFORMANCE IMPLICATIONS**

CYFD reports that its Early Childhood Services Division is working to provide a notary public at each office to assist families in submitting the notarized affidavits for school enrollment and school-related medical needs that are the subject of SB 447.

## **CONFLICT**

This bill is a virtual duplicate of HB 394, except that HB 394 deletes the definition of qualified relative discussed in Technical Issues below, which creates a conflict between the two bills.

## **TECHNICAL ISSUES**

On page 5, lines 10-12, this bill strikes the existing provision governing qualified relative in the Caregiver's Authorization Affidavit ( existing paragraph B(5) in Section 1). In light of that change, the existing definition of qualified relative that begins on page 6 at line 22 through line 4 on page 7 should also be stricken.

MD/sb/jle