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FISCAL IMPACT REPORT

SPONSOR <u>Block/Montoya/Duncan</u>	LAST UPDATED _____
	ORIGINAL DATE <u>02/24/2023</u>
SHORT TITLE <u>No Gender Reassignment Teaching In Schools</u>	BILL NUMBER <u>House Bill 394</u>
	ANALYST <u>Chilton</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			
Total						

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent version of this legislation.

Conflicts with House Bill 7
Relates to House Bill 490

Sources of Information

LFC Files

Responses Received From

Early Childhood Education and Care Department (ECECD)
Office of the Attorney General (NMAG)
Children, Youth and Families Department (CYFD)

No Response Received

Public Education Department (PED)
Regional Education Cooperative (REC)
Albuquerque Public Schools (APS)
Human Services Department (HSD)

SUMMARY

Synopsis of House Bill 394

House Bill 394 would enact a new section of the Public School Code prohibiting teaching of gender reassignment and hormone-blocking medications in New Mexico public schools. If a school nurse, counselor or teacher discusses gender reassignment and hormone-blocking medication, a parent of a concerned person shall be present. Public schools cannot use or purchase instructional materials on these subjects.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

There is no appropriation in House Bill 394. No fiscal impacts are anticipated.

SIGNIFICANT ISSUES

CYFD comments as follows:

This bill contradicts the state statutory rights of unemancipated children aged 14 years and older to consent to, and access, counseling and medical care without parental consent or notice (NMSA 1978 §24-7A-6.2), and prevents them from being accompanied by legal guardians, fictive kin, legal custodians, resource families, educational decision makers, or other adults involved in a parental role in the child's life. The diagnosis of gender dysphoria and the related gender affirming care have widely adopted and established standards of care in the broader national medical and mental health communities. For a child 14 and over, a school nurse or school counselor may be their only point of access to begin accessing information.

This bill also interferes with the ability of public schools to address transgender issues comprehensively in an educationally appropriate setting. This bill is particularly troubling given the fact that LGBTQ+ children have a higher rate of suicide, and this risk could be reduced if they have access to medically accurate information and counseling. The percentage of LGBTQ+ children in child welfare custody is higher than the percentage in the general population.

The bill also lacks specificity in some areas and enforcement mechanisms. It would effectively stifle school personnel from discussing gender reassignment and hormone blocking medication with students without a parent present. This could discourage school personnel from addressing these concerns with LGBTQ+ children and youth, and their allies. Many students seek information from school because such information is not available at home, or their home is not a safe space for such inquiries. Prohibiting schools from teaching or discussing these issues would limit students' access to important information and potentially prevent them from making informed decisions about their own health. Banning conversations about gender reassignment and hormone-blocking medication sends a clear message to transgender and gender-nonconforming students that their identities are not accepted or valued, potentially leading to feelings of isolation and discrimination.

Free and reliable access to education is a fundamental right of all individuals. Students should be provided with accurate and comprehensive information about different aspects of their health, including gender identity and gender dysphoria.

ECECD notes:

National organizations including the American Medical Association and the American Academy of Pediatrics [AAP] agree that sex education that is comprehensive, inclusive, and medically accurate is critical for young people. Sex education that is culturally responsive and inclusive helps young people develop the social and emotional skills they need to become caring and empathetic human beings, leads to lower sexually transmitted infection (STI) rates, fewer unintended pregnancies, better self-esteem, and healthier

relationships.

The president of the AAP wrote the following in August 2022:

However, we don't need a formal resolution to look at the evidence around the care of transgender young people. Evaluating the evidence behind our recommendations, which the unsponsored resolution called for, is a routine part of the Academy's policy-writing process. Critics of our gender-affirming care policy mischaracterize it as pushing medical or surgical treatments on youth; in fact, the policy calls for the opposite: a holistic, collaborative, compassionate approach to care with no end goal or agenda. The AAP Section on LGBTQ Health and Wellness, as well as other groups within AAP's membership, are engaged in numerous conversations about transgender care and we expect those discussions to continue...

Yet outside of our organization, there is a dangerous movement taking place, led by extremists, targeting youth who are receiving gender-affirming care, and vilifying the pediatricians providing their care. The result has been rampant disinformation about what this care is and real threats of violence against some of our members.

CONFLICT, RELATIONSHIP

HB394 conflicts in part with House Bill 7, which prohibits discrimination against persons seeking (or not seeking) gender-affirming care; and relates to House Bill 490, which requires parental consent for gender procedures..

TECHNICAL ISSUES

The bill's first sentence prohibits the teaching; the second sentence says that if these matters are discussed, a "parent of a concerned person" must be present. These sentences seem to contradict one another; if there is a difference between "teaching" and "discussing" these subjects, then how is the parent to be chosen, and is it intended to mean the parent or the child who has to be concerned.

In addition, CYFD points out that "The introductory language of the section refers to prohibiting instructional materials containing 'Transgender Issues.' This differs from the language of the section itself, which refers to materials on 'gender reassignment and hormone blocking medication.'"

NMAG raises two issues:

HB394 may run afoul of federal law, specifically Title IX. As a result, public schools that receive federal funding may encounter legal conflicts related to Title IX.

Title IX of the Education Amendments of 1972 provides that no person shall "be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education program or activity" receiving federal assistance "on the basis of sex." U.S.C. § 1681(a). Several federal courts have concluded that discrimination against transgender individuals constitutes discrimination "on the basis of sex" under Title VII and analogous statutes. *See Price Waterhouse v. Hopkins*, 490 U.S. 288, 250-51 (1989).