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F I S C A L   I M P A C T   R E P O R T

SPONSOR	Block/Montoya/Vincent/Martinez A./ Townsend	**LAST UPDATED**	03/14/2023
		ORIGINAL DATE	02/20/2023
SHORT TITLE	Parental Consent for Gender Procedures	**BILL NUMBER**	House Bill 490
		ANALYST	Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		$50.0-$200.0	$50.0-$200.0	$100.0-$200.0	Recurring	General Fund
Total						

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

Relates to House Bills 7, 394, and 492

Sources of Information

LFC Files

Responses Received From
Administrative Office of the Courts (AOC)
Office of the Attorney General (NMAG)
Children, Youth and Families Department (CYFD)
Department of Health (DOH)

SUMMARY

Synopsis of House Bill 490

HB490 would require signed permission from parents before any unemancipated minor could be subjected to surgical or nonsurgical (including hormonal) gender-affirming care. Both parents would be required to sign unless one of the parents cannot be found or has had parental rights terminated. If neither parent could be found or both have had parental rights terminated, the minor's legal custodian or custodians could consent. A healthcare provider that provides gender affirming procedures to a minor without written parental consent would be subject to civil liability and discipline from the respective licensing board.

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 490.

AOC points out, "This legislation could result in litigation under the Affordable Care Act Section 1557's, which prohibits sex discrimination including gender identity in health programs and activities receiving federal financial assistance; Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act. *See* https://www.hhs.gov/sites/default/files/hhs-ocr-notice-and-guidance-gender-affirming-care.pdf .

"It may also increase litigation in the family court should one parent seek to negate the other parent's ability to consent to treatment as the legislation requires both parents written consent."

NMAG notes its workload may increase if forced to prosecute healthcare providers under this bill's provisions, or if the bill's provisions were challenged in court as unconstitutional.

SIGNIFICANT ISSUES

According to DOH:

> Research demonstrates that gender-affirming care improves the mental health and overall well-being of gender diverse children and adolescents. Because gender-affirming care encompasses many facets of healthcare needs and support, it has been shown to increase positive outcomes for transgender and nonbinary children and adolescents. Gender-affirming care is patient-centered and treats individuals holistically. Gender diverse adolescents, in particular, face significant health disparities compared with their cisgender peers. Transgender and gender nonbinary adolescents are at increased risk for mental health issues, substance use, and suicide.

Risk Factor	Lesbian Gay and Bisexual (%)	Straight (%)	Trans-gender (%)	Cisgender (%)
Unemployed/Unable to Work	18.3	13.5	29.8	13.9
Binge Drinking	21.2	13.5	22.6	13.9
Current Smoking	20.1	14.8	20.8	15.1
Suicidal Ideation	16.0	3.1	16.5	7.0
Depression	38.7	16.7	31.5	17.9

Source: New Mexico Behavioral Risk Factor Surveillance System, 2019-2021

DOH goes on to write, "Familial and peer support is also crucial in fostering similarly positive outcomes for these populations. Presence of affirming support networks is critical for facilitating and arranging gender affirming care for children and adolescents. Lack of such support can result in rejection, depression and suicide, homelessness, and other negative outcomes."

This might appear to support the utility of involving parents in a decision as to whether or not to undergo gender-affirming care. However, as evidenced by the markedly increased proportion of transgender children lacking homes, some parents are unable to support children in such quandaries and end up throwing children out on the street. To add to that already high number a group whose parents are not ready to support the child through the changes would be to magnify the risk of homelessness and mental health issues, including substance abuse and suicide.

CYFD offers a comprehensive review of the subject of this bill:

This bill could make it difficult for minors to access gender-affirming procedures. Requiring written consent from parents or legal guardians can create a barrier for minors who do not have supportive parents or whose parents do not understand or accept their gender identity. This could lead to delays in treatment and potentially negative health outcomes for the minor.

This bill places significant power in the hands of parents or legal guardians. In some cases, parents or legal guardians may be motivated by their own perspectives, rather than the minor's, of the minor's well-being, which could result in the minor being denied access to gender-affirming procedures.

This bill also prohibits healthcare providers from providing gender-affirming procedures to minors who do not qualify for the exceptions stated in the bill. This would restrict access to the procedures for minors who lack written parental consent.

Research has found that transgender and gender nonconforming youth are overrepresented in the foster care system and may face unique challenges in accessing appropriate healthcare. It is important that policies related to gender-affirming care take into account the specific needs and experiences of children in foster care to ensure that they have access to necessary healthcare services.

National studies have shown that LGBTQ+ youth have an increased rate of psychiatric conditions such as depression, substance abuse, self-injury and suicide. Multiple studies have concluded that when a transgender human being is able to align their appearance with their gender identity, they are able to better achieve personal comfort with themselves and experience a significant decrease in psychological distress. The risks to their safety and wellbeing are greatly reduced when they have access to medically accurate information, counseling, and medical care. According to research, gender affirming care is demonstrated to save the lives of transgender people. Additionally, the percentage of LGBTQ+ children in child welfare custody is disproportionally higher than the percentage of LGBTQ+ children/youth in the general population. This may stem from familial/parental discord around their gender identity, resulting in heightened risk and increased exposure to abuse and/or neglect that requires child welfare involvement.

It is unclear how a provider's requirement to obtain parental consent will be affected by disagreement between parents where parental rights are intact; when parental controls are restricted by court decree; or parents are not available. It is similarly unclear whether CYFD would need to take biological, resource, or prospective adoptive parents' consent, or lack thereof, into consideration with respect to children who are in CYFD custody and for whom CYFD would, in the usual course of medical matters, be responsible for consenting to treatment.

Adolescents in foster care may be subject to particular restrictions that specify which adult—parents, the court, their social worker, or another—may consent to their medical treatment. These laws differ in New Mexico depending on certain conditions. A "caregiver's authorization affidavit," for instance, enables caregivers other than parents to obtain medical care for the young kid in specific circumstances. Nonetheless, qualifying foster children aged 14 years or older should be able to consent to their own medical care.

Generally, youth consent laws and individual confidentiality protections match.

Specifically, this bill will likely conflict with *24-7A-6.2 NMSA 1978* … consent for certain minors 14 years or older (homeless youth or parent of a child). An unemancipated minor 14 years of age or older has the right to consent to and receive medically necessary healthcare—clinical and rehabilitative, physical, mental, or behavioral health services that are essential to prevent, diagnose or treat medical conditions. The minor must be living apart from the minor's parents/ legal guardian or the parent of a child. Healthcare must be provided within professionally accepted standards of practice and national guidelines.

Confidentiality protection is typically provided when minors give their consent for their own medical care, although there are several exceptions. The same rules in New Mexico that permit children to consent to medical treatment also give them access rights to information and records relevant to that care, as well as the right to have those rights disclosed. According to New Mexico law, even though parents are typically their minor children's personal representatives with regard to protected health information, they only have that position if the minor has requested that they be the personal representative.

Additionally, a number of regulations in New Mexico either permit adolescents to obtain specified services without prior parental consent or give them the authority to agree for certain medical services, including some preventive services. These rules cover emergency care, family planning and contraception services, prenatal, postpartum, STD care, HIV testing, substance abuse treatment, and mental health services other than aversive interventions like psychotropics. It is unclear if "gender affirming procedures" would fall into these categories. Medical professionals are not held accountable if they rely on minors' claims that they are emancipated, married, or parents of a child or are otherwise qualified to consent. *See N.M. Stat. Ann. § 24-7A-6.2.*

Under NMSA 1978, §32A-6A-15, a child 14 years of age or older is presumed to have capacity to consent to mental health treatment without the consent of the child's legal custodian, including administering psychotropic medications. However, this same law states that when psychotropic medications are administered to a child 14 years of age or older, the child's legal custodian shall be notified by the clinician. A clinician or other mental health and developmental disabilities professional shall promote the healthy involvement of a child's legal custodians and family members in developing and implementing the child's treatment plan, including appropriate participation in treatment for children fourteen years of age or older. Gender dysphoria might be considered a mental health issue because it can lead to depression, anxiety, and have a harmful effect on the child's emotional development and daily life. These issues intersect with a child or youth's physical health.

RELATIONSHIP

Relates to House Bill 7, which prohibits discrimination against those choosing or not choosing to have gender-affirming care; House Bill 394, which prohibits teaching regarding gender affirmation in schools; and House Bill 492, which prohibits trans-gender females from participating in girls'/women's sports.

TECHNICAL ISSUES

NMAG points out the following concerns:

- This bill may run afoul of both the U.S. Constitution and the New Mexico Constitution and their assurances of a right of privacy and right to equal treatment. NMAG states, "To survive a challenge to the constitutionality of this law, the state would have to show that there is a compelling justification for restricting provision of healthcare within the medical standard of care in a way that is not restricted for other types of medical care for minors."
- The proposed legislation does not specify which article or chapter of the New Mexico would be amended. The courts rely on contextual statutes for guidance in interpretation.

LAC/al/hg/rl