LFC Requestor: LFC Contractor

2025 LEGISLATIVE SESSION
AGENCY BILL ANALYSIS

Section I: General

Chamber: House

Category: Bill

Number: 205

Type: Introduced

Date (of **THIS** analysis)**:** 01-30-25

Sponsor(s): Meredith A. Dixon and Gail Armstrong

Short Title: CYFD Nominating Committee

Reviewing Agency: Agency 665 - Department of Health

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Section II: Fiscal Impact

APPROPRIATION (dollars in thousands)

Appropriation Contained		Recurring or Nonrecurring	Fund Affected
FY 25	FY 26		
$	$		

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY 25	FY 26	FY 27		
$	$	$		

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY 25	FY 26	FY 27	3 Year Total Cost	Recurring or Non-recurring	Fund Affected
Total	$	$	$	$		

Section III: Relationship to other legislation

Duplicates: None

Conflicts with: None

Companion to: None

Relates to: HB173

Duplicates/Relates to an Appropriation in the General Appropriation Act: None

Section IV: Narrative

1. BILL SUMMARY

a) Synopsis

House Bill 205 (HB205) proposes the creation of a Secretary of Children, Youth and Families (CYFD) Nominating Committee; requires the Secretary of Children, Youth and Families to be selected from a list of qualified nominees created by the nominating committee; moves rulemaking authority for the Plan of Care process from CYFD to the Health Care Authority (HCA); updates requirements for Plans of Care; requires CYFD to implement the multilevel response system statewide; enacts the Families First Act within the Children's Code; requires CYFD to develop and implement a strategic plan for approval by the federal administration for children and families; requires provisions of the strategic plan to identify and provide foster care prevention services that meet the requirements of the Family First Act; provides for CYFD consultation with the Early Childhood Education and Care Department (ECECD), the HCA and the Department of Health (DOH); provides strategic plan requirements; transfers the Substitute Care Advisory Council from the Regulation and Licensing Department (RLD) to the Administrative Office of the Courts (AOC); defines terms in the Citizen Substitute Care Review Act; provides for staffing of the Substitute Care Advisory Council; establishes criteria for case review; provides for rules pertaining to volunteer members; provides access to and requirements for confidentiality of certain records and information; change reporting requirements; require the Substitute Care Advisory Council to provide CYFD with case reports; require CYFD to respond to case reports; require the Substitute Care Advisory Council staff and CYFD to meet quarterly; transfer employees, property and contractual obligations; and amend, repeal and enact sections of the NMSA 1978.

Is this an amendment or substitution? ☐ Yes ☒ No

Is there an emergency clause? ☐ Yes ☒ No

b) Significant Issues

The Department of Health (DOH) has been involved in the Plan of Care process for the Comprehensive Addiction and Recovery Act (CARA) since 2019 when the Children's Code was amended to require hospitals to create Plans of Care. DOH has had a role in data

collection and evaluation, has conducted trainings with hospital personnel and other clinical professionals, and has provided care coordination for families who are uninsured or fee for service Medicaid through the Children's Medical Services (CMS) program, which employs licensed social workers and is housed within DOH. HB205 would require HCA to contract with care coordinators to ensure that uninsured substance-exposed children receive care coordination but does not specify the credentials of the care coordinators. This would be an expansion of HCA's authority as they currently serve only Medicaid clients. HB205 does not address how HCA would provide care coordination for the privately insured or uninsured .

CARA plans of care are described in both federal and NM state law, but the named agencies have had no resources to establish a program. The NM legislature appropriated funding to HCA during the 2024 legislative session for this purpose, but without amending the statute that names CYFD as the lead agency responsible for CARA. Before the 2024 session there were no resources allocated for responsibilities associated with the law, and no official programmatic (administrative) staff devoted exclusively to implementing the law at either CYFD or DOH.

The Federal Comprehensive Addiction and Recovery Act (CARA) passed in 2016 and mandates that all substance exposed infants receive a plan of care upon discharge from the hospital. It also requires reporting of the number of infants born exposed to substances, including alcohol, and the number of infants and families referred to various types of services. States have passed their own laws interpreting the federal statute and have in large part chosen to designate a lead agency that is either child protective services focused (like CYFD), or an agency that has a public health focus (like DOH). These are two very different approaches and balance the need to treat SUD with evidence-based treatment with infant safety, and whole family supports. New Mexico passed HB 230 in 2019, which outlines the process within the state for creating these federally required plans of care and providing wraparound services to infants and families. HB 230 and the NMAC section that correlates to the statute (8.10.5) indicate that substance exposure alone does not require mandatory reporting. However, the law also clarifies that mandatory reporters are required to report to CYFD child protective services if they have concerns about the safety of a child. So, all infants born substance exposed should receive a mandatory plan of care in the hospital intended to connect the family to supportive services. This does not preclude the obligation of hospital staff, as mandatory reporters, to also issue a report to CYFD if they determine the infant is at risk.

HCA oversees the administration of Medicaid and contracts with Managed Care Organizations (MCOs) to provide services. Although the majority of families with a Plan of Care are covered by Medicaid, the relationship between substance use and family income is nuanced and is not limited to lower income populations. In a 2012 study of socioeconomic status (SES) and substance use among young adults, smoking was associated with lower childhood family SES and alcohol use and marijuana use were associated with higher childhood family SES, even after controlling for covariates. (Socioeconomic Status and Substance Use Among Young Adults: A Comparison Across Constructs and Drugs - PMC). Opioid misuse is more common among lower-income groups; however, opioids have been shown to be prescribed more frequently at visits from patients of the highest SES quartile compared to patients in the lowest quartile(The Impact of Neighborhood Socioeconomic Status and Race on the Prescribing of Opioids in Emergency Departments Throughout the United States - PMC), and alcohol use is more

prevalent among those with higher income levels (Impact of Socioeconomic Status on Addiction Rates: Statistics - Addiction Group).

The 2019 statute mandates Plans of Care be created in the hospital or birthing center after a baby is born, which is in line with the federal CARA statute. HB205 would allow Plans of Care to also be created at prenatal medical visits. Plans would still be mandatory after birth and would be optional during the prenatal period. It also requires all hospitals, birthing centers, and prenatal care providers use the screening, brief intervention, and referral to treatment program (SBIRT) at all prenatal medical visits and live births. SBIRT is a helpful tool to help identify substance use issues but will require training to utilize in medical setting consistently.

HB205 would mandate referrals to home visitation programs and substance use disorder prevention and treatment providers and leave optional referrals to other providers such as public health agencies, mental health providers, infant mental health providers, and early intervention services. This is problematic because the Plans of Care encompass a wide variety of substances that a baby might be exposed to, not all of which require substance use disorder referrals. Also, while referrals to home visiting programs can be mandated, participation in home visiting or early intervention cannot, so the families would still have a choice to participate or not unless changes are made to law providing for compulsory participation.

HB205 also states that if the parents or caretakers of a child with a Plan of Care fail to comply with that plan, HCA or a care coordinator contracted with the HCA shall notify CYD and CYFD shall conduct a family assessment. If the parents decline services or programs that the family assessment determines are necessary to address the concerns of potential imminent harm to the child, CYFD shall proceed with an investigation. This is a change from the 2019 legislation in that the family assessments and investigations were previously not mandatory for these groups ("may" not "shall"). DOH and CYFD have been collaborating to provide family assessments to all families with a Plan of Care and to clarify triage criteria for navigators and care coordinators to use for determining need to refer to CYFD for intensive family support and/or investigation. At all times, mandatory reporters should report concerns of possible abuse or neglect to CYFD child protective services; this has always been the case and is part of the training provided to clinicians.

2. PERFORMANCE IMPLICATIONS

- Does this bill impact the current delivery of NMDOH services or operations?

  ☐ Yes ☒ No

  If yes, describe how.

- Is this proposal related to the NMDOH Strategic Plan? ☒ Yes ☐ No

  ☐ **Goal 1**: We expand equitable access to services for all New Mexicans

  ☐ **Goal 2**: We ensure safety in New Mexico healthcare environments

  ☒ **Goal 3**: We improve health status for all New Mexicans

☐ **Goal 4**: We support each other by promoting an environment of mutual respect, trust, open communication, and needed resources for staff to serve New Mexicans and to grow and reach their professional goals

3. FISCAL IMPLICATIONS

- If there is an appropriation, is it included in the Executive Budget Request?

  ☐ Yes ☐ No ☒ N/A

- If there is an appropriation, is it included in the LFC Budget Request?

  ☐ Yes ☐ No ☒ N/A

- Does this bill have a fiscal impact on NMDOH? ☐ Yes ☒ No

4. ADMINISTRATIVE IMPLICATIONS

Will this bill have an administrative impact on NMDOH? ☒ Yes ☐ No

Currently DOH and CYFD are working together to move the CARA program from CYFD to DOH. Enacting this bill would conflict with the ongoing process and counteract the work that has been done to move staff into public health offices around the state. HB205 also includes adding Plans of Care that can occur prenatally, which would require more training so prenatal providers understand the requirements and how to complete and submit the Plan of Care. Currently Plans of Care are only completed upon the birth of a baby.

5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

This bill is related to HB173 which changes some of the language in the Children's Code to make family assessments mandatory for families with a Plan of Care who are not complaint with the Plan and to make CYFD investigation mandatory for families who refuse services after the Family Assessment is completed.

6. TECHNICAL ISSUES

Are there technical issues with the bill? ☐ Yes ☒ No

7. LEGAL/REGULATORY ISSUES (OTHER SUBSTANTIVE ISSUES)

- Will administrative rules need to be updated or new rules written? ☒ Yes ☐ No
- Have there been changes in federal/state/local laws and regulations that make this legislation necessary (or unnecessary)? ☐ Yes ☒ No
- Does this bill conflict with federal grant requirements or associated regulations? ☐ Yes ☒ No
- Are there any legal problems or conflicts with existing laws, regulations, policies, or programs? ☐ Yes ☒ No

8. DISPARITIES ISSUES

Standardized screening tools for substance use disorder are recommended to reduce bias in identification and referral. Universal prenatal screening with a standardized screening tool is recommended by the American College of Obstetrics and Gynecology, the American Academy of Pediatrics, and others to allow for early identification, education, and referral to treatment. Without universal, standardized screening, identification of substance-exposed infants and substance use in pregnancy is subject to bias and targeting of certain demographic groups.

9. HEALTH IMPACT(S)

Behavioral health conditions in pregnant women are often associated with negative health outcomes, including pregnancy related deaths. Furthermore, infants with a history of substance exposure may have short and long term health effects. By mandating family assessments for families that are not compliant with the Plan of Care, HB205 provides another chance to encourage families to accept services and could improve the health of mothers and infants whose families would otherwise decline all services and supports. A mandatory family assessment provides another opportunity to explain the benefits of programs such as Home Visiting and Early Intervention. Early Intervention, for example, is a program that is proven to improve the developmental trajectory of infants with substance exposure.

Addressing substance use among mothers who have recently given birth is also critical. According to research on maternal health in New Mexico, mothers with substance use disorder were more likely to die 43-365 days postpartum, and are more likely to have experienced social stressors than mothers without a substance use disorder(Substance Use Disorder-Related Deaths and Maternal Mortality in New Mexico, 2015-2019 - PubMed).

10. ALTERNATIVES

11. WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

If HB205 is not enacted, the following changes will not occur: create a Secretary of Children, Youth and Families (CYFD) Nominating Committee; require the Secretary of Children, Youth and Families to be selected from a list of qualified nominees created by the nominating committee; move rulemaking authority for the Plan of Care process from CYFD to the Health Care Authority (HCA); update requirements for Plans of Care; CYFD to implement the multilevel response system statewide; enact the Families First Act within the Children's Code; require CYFD to develop and implement a strategic plan for approval by the federal administration for children and families; require provisions of the strategic plan to identify and provide foster care prevention services that meet the requirements of the Family First Act; provide for CYFD consultation with the Early Childhood Education and Care Department (ECECD), the HCA and the Department of Health (DOH); provide strategic plan requirements; transfer the Substitute Care Advisory Council from the Regulation and Licensing Department (RLD) to the Administrative Office of the Courts; define terms in the Citizen Substitute Care Review Act; provide for staffing of the Substitute Care Advisory Council; establish criteria for case review; provide for rules pertaining to volunteer members; provide access to and requirements for confidentiality of certain records and information; change reporting requirements; require the Substitute Care Advisory Council to provide CYFD with case reports; require CYFD to respond to case reports; require the Substitute Care Advisory Council staff and CYFD to meet quarterly; transfer employees, property and contractual obligations; and amend, repeal and enact sections of the NMSA 1978.

12. AMENDMENTS

None