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FISCAL IMPACT REPORT

ORIGINAL DATE 2/19/19
 SPONSOR Cadena/Madrid LAST UPDATED 3/11/19 HB 500/aSPAC
 SHORT TITLE CYFD Regulation of At-Risk Youth Programs SB _____
 ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Undetermined	Undetermined	Undetermined	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to 2016 House Memorial 52.

SOURCES OF INFORMATION

LFC Files

Response Received From

Children, Youth and Families Department (CYFD)

Response Not Received From

Department of Health (DOH)

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to House Bill 500 changes the description of the locations that would be regulated by CYFD from “programs for at risk youth” to “residential wilderness or boot camp programs” in twelve locations where the former term is found in the bill. In addition, the definition of “programs for at-risk youth” is changed to reflect a duration of stay in that program of at least fourteen days and that “serves or purports to serve” children with behavioral health disorders or involvement in the juvenile justice system.

Synopsis of Original Bill

House Bill 500 amends two sections of the Public Health Act (Sections 24-1-2 and 24-1-5 NMSA 1978) to add “programs for at-risk youth” alongside “childcare facilities” as locations to be regulated by CYFD in each of the locations in the Public Health Act currently mentioning only childcare facilities. In section 1 of the bill, “programs for at-risk youth” are defined as

residential, wilderness or boot camp programs that serve children or teens with behavioral or emotional disturbances, or history of involvement with the juvenile justice system or both. Among the other definitions in Section 1 of HB 500, “health facility” is newly redefined as “institutions of higher learning, child care center, shelter care home, programs for at-risk youth...”, making CYFD responsible for regulation of those, like the at-risk youth programs, that care for those up to 21 years of age.

CYFD would be empowered to conduct inspections of all such facilities, to collect fees for their licensure and to sanction those facilities found deficient in meeting the regulations CYFD would have established previously. A procedure for notice and for appeal through a hearing in situations where a child or children are thought to be in imminent danger of abuse or neglect at a child care facility or, now also, a program for at-risk children and youth is already established in the Public Health Act, to be applied newly to programs for at-risk children and youth.

FISCAL IMPLICATIONS

There is no appropriation. CYFD’s analysis indicates a considerable but undetermined cost to regulating this industry:

There is no existing regulatory structure or statute governing programs for “at risk youth” as defined by this bill; and development of appropriate regulations will require significant research and coordination across three CYFD divisions (juvenile justice, protective services, and behavioral health), as licensure of this type of program has not previously been contemplated within the existing statutory or regulatory frameworks. Subsequent fiscal impact of licensure and oversight, and consequent legal and other challenges, will require fiscal resources which CYFD may not be able to absorb.

It is uncertain how many programs for at-risk youth there are in New Mexico to be regulated, but at least twelve are identified through a rapid search on the term “New Mexico at-risk youth program.”

SIGNIFICANT ISSUES

The so-called “troubled-teen industry” and boot camps for teens with problems have been controversial for many years. Concern in New Mexico spiked with a teenager’s death in a southern New Mexico boot camp in 2013. Attempts to regulate the industry have taken place at a federal level since at least 2005, when a federal Government Accountability Office (GAO) report indicated that 1,619 employees of such programs, in 33 states, had been implicated in abuse incidents. According to one advocacy group, there have been over 300 deaths in programs such as these.

Maia Szalavitz, a senior fellow at the Statistical Assessment Service, in her book, *Help at Any Cost: How the Troubled-Teen Industry Cons Parents and Hurts Kids*, details her research into the industry done through interviews and court records. She gives advice to parents on finding responsible and safe programs.

The American Bar Association issued a white paper on camps and residential facilities for troubled teens in 2007. They concluded that “both proponents and critics have agreed that some of these private facilities have the potential to produce substantial gains for participants, especially academically. Though recidivism rates are high, and the majority of juveniles do re-

offend within the first year after leaving the boot camps, many participants enter with below-grade-level skills and advance academically and even progress up to several grade levels. Furthermore, a 2003 National Institute of Justice report found that juveniles in boot camps ‘reported decreased anxiety and depression, better impulse control, and better social attitudes than their counterparts in other types of juvenile facilities.’” However, they also noted the GAO report indicating findings of “youths forced to eat their own vomit, denied adequate food, beaten and thrown to the ground, and forced to endure the humiliation of lying in their own urine or feces.” (<http://www.gao.gov/new.items/d08713t.pdf>)

In response to this sort of reported abuse, bills have been introduced into Congress on a number of occasions over the past ten years. The most recent, H.R.3024, the Stop Child Abuse in Residential Programs for Teens Act of 2017, was introduced into the House of Representatives on June 22, 2017. It would have required the federal Health and Human Services Department to regulate the “industry”, specifically to prevent abusive and neglectful practices. In New Mexico’s 2016 House Memorial 52 expressed the sense of our House of Representative that legislation of this sort should be supported. Each year since 2007 a bill of this sort was introduced into the Congress and was not passed; thus House Bill 500 is being introduced into the New Mexico Legislature.

CYFD points out that programs of the sort included among those for at-risk youth are highly variable in structure:

The regulatory nature of licensure of a facility operating within New Mexico is based upon the premise that the program's services are provided in a facility or building which meets physical plant licensing requirements. Programs for “at risk youth” which employ a wilderness or boot camp model will have considerable variation in physical plant utilization requiring national review of standards for comparable program types.

Because the program models for “at risk youth” defined within this bill deliver unique services unlike other, more standard behavioral or substance abuse services, they will require the development of specialized regulations and assessment protocols; and protocols would need to be developed between HSD, CYFD, and other stakeholders to address proposed investigation requirements.

Currently, the CYFD Licensing and Certification Authority (LCA) certifies six [other types of] child/youth Medicaid behavioral health services...

CYFD/LCA also performs statewide facility licensing surveys of all Children’s Crisis Shelters, New or Innovative Programs, Multi Service Homes, Group Homes, RTCs and ARTCs operating in New Mexico. This bill will significantly expand the range of programs under CYFD supervision.

There are varying degrees of oversight required for different program types, and a wide range of resource intensities would apply depending on the size of a program, remoteness of the program’s location, and how intensively CYFD/LCA would need to survey and supervise the administration of programming.

This bill also encompasses a broad range of youth. The phrase “at-risk for having involvement in the juvenile justice system” is overly vague, in that it can apply to a youth who had a single referral to CYFD/JJS that was handled informally (e.g., a parent

contacting CYFD under the Family In Need of Services Act; or law enforcement referring a child for a speeding ticket). The behaviors addressed by the juvenile justice system in these and related scenarios would fall far short of admission into a wilderness program.

LAC/sb/gb