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: SB458

Relates to: HB173

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

Section IV: Narrative

1. BILL SUMMARY

Synopsis

House Bill 205 (HB205) proposes a series of changes to the state's child welfare system. The bill would codify the federal Family First Prevention Services Act (FFPSA), directing the Children, Youth and Families Department (CYFD) to implement evidence-based prevention services eligible for federal reimbursement.

HB205 proposes to update the state's multi-level response statute to require statewide implementation, and would update sections of the state statute related to plans of safe care for substance-exposed newborns, including:

- Making the Health Care Authority (HCA) the lead agency, with more specific expectations about the roles and responsibilities of care coordination, including in-person and active support and follow-up with families to engage them in referred services;
- Allowing for the creation of plans of safe care prenatally and directing all hospitals to use an evidence-based screening tool (SBIRT—for screening, brief intervention, and referral to treatment) at prenatal appointments;
- Mandating that plans of safe care include a referral to home visiting and substance use treatment;
- Requiring CYFD be notified in the event of noncompliance with a plan of care and requiring CYFD to conduct a family assessment;
- Requiring CYFD to proceed with an investigation in the event the family refuses referred services, resulting in potential imminent risk to the child.

HB205 would move the Substitute Care Advisory Council from the Regulation and Licensing Department to the Administrative Office of the Courts, increase the minimum number of cases the council must review annually, and require CYFD to provide agency responses to council reports within specified timelines.

HB205 would establish a nominating committee for the selection of the CYFD secretary position.

Is this an amendment or substitution? ☐ Yes ☒ No

Is there an emergency clause? ☐ Yes ☒ No

a) Significant Issues

The 2016 Federal Comprehensive Addiction and Recovery Act (CARA) mandates that all substance exposed infants receive a "plan of safe care" upon discharge from a hospital. It also requires states to report 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 (state legislation) to designate a lead agency that is either child protective services oriented (like CYFD), or an agency that is public health focused (like DOH). The choice of lead agency significantly informs programmatic development and balances the need to provide evidence-based treatment for substance use disorder (SUD) with infant safety and whole family supports.

In 2019, New Mexico passed HB230 to implement the federal law, outlining the process within the state for creating federally required plans of care and providing supports and services to infants and families. New Mexico has received national recognition for its non-punitive approach in distinguishing between the treatment and support of substances-exposed infants (and their caregivers) and their caretakers from mandatory child abuse and neglect reporting. ONDCP_Report-Substance-Use-Disorder-and-Pregnancy.pdf (page 7).

NM law currently states that mandatory reporters are still required to report to CYFD child protective services if they have concerns about the safety of a child. Previous to the current epidemic of drug related morbidity and mortality related mostly to opioids and now methamphetamine, consensus had shifted regarding the best policy response to drug-exposed newborns. Non-punitive interventions were determined to be most beneficial to children and families. This included interventions that emphasized treatment and preserved attachment and bonding between mother and baby whenever *safe* and possible to do so Substance use during pregnancy: time for policy to catch up with research - PMC. The NM statute, passed in 2019, was in line with this non-punitive approach in stating that substance use alone was not sufficient for a report of child abuse or neglect and that the plan of care was not sufficient to prompt a report to protective services; rather, a separate report needed to be filed with the Children, Youth and Family Department protective services division if there were additional reasons to suspect a child was not safe in the home. Again, it should be emphasized that taking a public health approach aimed at treatment and bonding may be more beneficial to the family *unless* there is evidence suggesting that the infant's safety is an immediate concern, in which case, an immediate SCI report to CYFD protective services should be required. Public concern over the safety of substance-exposed infants has prompted consideration of a somewhat different response when more harmful substances, like cocaine, methamphetamine, fentanyl, or heroin are involved.

The Department of Health (DOH) has been involved in the Plan of Care process for the Comprehensive Addiction and Recovery Act (CARA) since HB230 was passed in 2019, amending the Children's Code and requiring 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 proposes codifying the federal Family First Prevention Services Act (FFPSA) and directs the Children, Youth and Families Department (CYFD) to implement evidence-based prevention services eligible for federal reimbursement. CYFD has already submitted a Family First Prevention

Services Plan for federal approval, which identifies a continuum of prevention services to support families.

HB205 proposes designating the Health Care Authority as the lead agency for Plans of Care, a sharp departure from the approach already being implemented by the executive at the recommendation of DOH, CYFD, HCA, and ECECD. HB205 appears to take direction from a Legislative Finance Committee report published on October 7, 2023 (Program Evaluation_Implementation and Outcomes of CARA FINAL (1).pdf, which recommended HCA as the appropriate lead agency for establishing a CARA program presumably based on the conclusion that HCA could direct care coordinators to monitor the completion of plans of care, however, care coordinators working for MCOs are poorly suited for managing clients requiring more intensive navigation services and oversight, which are at the crux of the problem this bill and many others are looking to solve. DOH is currently finalizing the transfer of all CYFD CARA navigators to DOH. DOH CARA navigators will provide intensive case management to higher risk families needing resources and more involved support to ensure the health and safety within a family.

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, which is problematic given the need for intensive care navigation for some clients. Additionally, requiring HCA to provide care coordination to uninsured clients is a significant expansion of HCA's authority as they currently serve only Medicaid clients. This expansion would necessitate a state general fund increase to HCA because these clients would not be covered by Medicaid. There is no reference to care navigation or home visiting, which cannot be accomplished by MCO care coordinators.

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, which is intended to expand the program to include prevention. Plans would still be mandatory after birth but would be optional during the prenatal period. The bill also requires that 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 settings with consistency.

HB205 would mandate referrals to home visitation programs and to substance use disorder prevention and treatment providers. The bill would allow for optional referrals to other providers such as public health agencies, mental health providers, infant mental health providers, and early intervention services. This is a notable departure from the current practice for Plans of Care. There is a broad variety of substances that a baby might be exposed to, not all of which require substance use disorder referrals. 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 states that if the parents or caretakers of a child with a Plan of Care fail to comply with their plan, the HCA or a care coordinator contracted with the HCA shall notify CYFD 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 the need for referrals to CYFD for intensive family support and/or investigation. There has been a heightened interest in requiring compliance with Plans of Care to ensure the safety of infants, but under HB205, there is no specification for what constitutes non-compliance, or the risk level associated with identifying non-compliance. This type of determination will be difficult for an MCO care coordinator to make even if the criteria were listed in the bill.

HB205 specifically amends the Executive Reorganization Act which was enacted to allow for efficient management of the Executive Branch through the creation of an executive cabinet staffed by Secretaries, appointed by the Governor, with the consent of the Senate. The proposed nominating committee undermines the intent of 9-2A-3 through the proposed creation of an external process for selecting a pool of candidates outside the control of the Governor, undermining the ability of the executive to ensure qualified candidates are selected and submitted to the Senate for consideration and confirmation.

2. PERFORMANCE IMPLICATIONS

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

☒ Yes ☐ No

CYFD and DOH have current statutory responsibilities related to Plans of Care. DOH is assuming responsibility for building a robust IT system to manage cases and the private health information of clients. CYFD has transferred all care navigators to DOH for the implantation of a program. Epidemiologists at DOH will continue to manage data for ongoing evaluation of critical performance metrics related to the program to ensure the program's performance and the health improvement of infants and families being supported by Plans of Care.

- 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

Since this bill does not move the CARA program to DOH, the impacts of the changes would fiscally apply to CYFD and HCA.

4. ADMINISTRATIVE IMPLICATIONS

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

5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

HB205 and SB458 are duplicates.
HB205 conflicts with HB173 and HB343.

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. 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 https://pubmed.ncbi.nlm.nih.gov/37306823/).

10. ALTERNATIVES

None

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