LFC Requester:	Rachel Mercer-Garcia

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
AgencyAnalysis.nmlegis.gov and email to **billanalysis@dfa.nm.gov**
(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: *02/02/2025* *Check all that apply:*
Bill Number: *HB 205* Original _x_ Correction __
Amendment __ Substitute _x_

Sponsor: Meredith Dixon, Gail Armstrong, Eleanor Chavez, Rebecca Dow, Linda Trujillo
Short Title: CYFD Nominating Committee
Agency Name and Code Number: NM Office of Family Representation and Advocacy (68000)
Person Writing Leslie Jones + Farra R. Fong
Phone: 505-549-3905 **Email** Leslie.Jones@ofra.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	**FY26**		

(Parenthesis ( ) indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	**FY26**	**FY27**		

(Parenthesis ( ) indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:
Establishes a CYFD nominating committee; attaches the Substitute Care Advisory Council to the State Department of Justice; integrates the Family First Act into State Law; and more. This substitution bill makes numerous clean-up changes and a few substantive additions to the Children's Code. Details about the changes are noted below in the Significant Issues section.

FISCAL IMPLICATIONS

There are numerous significant unfunded mandates that will likely have administrative and programmatic impact on multiple state agencies.

SIGNIFICANT ISSUES

This bill proposes substitution to Section 32A-1.4(Y) to change the term "plan of care" to "plan of safe care". This language may help to clarify for staff the type of plan being developed with families. Typically, any time you are seen by a medical professional for a medical condition a "plan of care" is developed.

Section 6(A) updates the implementation deadline to develop rules to guide medical providers from January 1, 2020 to July 1, 2026 and cleans up language regarding who the plan of safe care must be sent to after its creation. Although rules were developed and implemented previously under this Act, this new implementation date provides a target for the amendments to be implemented fully.

Proposed substitution to Section 32A-3A-13 moves information from other areas of the bill to a new inserted section titled "requirements for the health care authority to," adding language to ensure all substance exposed children with a plan of safe care receive *care coordination* to implement the plan. It also requires the health care authority to train staff and providers on the use of screenings, brief intervention, and referrals. It is unclear if the *care coordination* is provided directly by the hospitals and/or birthing centers, contractors or staff of the health care authority, or staff from the managed care organizations. This should be clarified.

Additionally, relating to "plans of safe care," the substitution bill:

- Section 6(E) adds information required in the annual report to include the availability of services to which infants and families are referred. If the current data management system includes a method to capture this element, this change will provide much needed information regarding gaps in services throughout our state. If not, it may be challenging to track this information systematically across the state.
- Section 6(G) removes the requirement of the health care authority to work with the department of health to create and distribute training material, leaving it to the sole responsibility of the health care authority.
- Section 6(I) cleans up language regarding the health care authority's responsibility for

ensuring compliance with federal abuse/neglect reporting requirements.

Under section 32A-8-4 related to the Substitute Care Advisory Council (SCAC), the substitution bill moves SCAC to the state department of justice (SDOJ) instead of the administrative office of the courts, and includes language to retain its independence from the control of the attorney general. Putting SCAC under the SDOJ may give the impression that the SDOJ is directly involved in the ongoing evaluation of the department and that it has access to records and information it could use to file a lawsuit against CYFD, giving an impression that SCAC is not fully independent.

The substitution bill also re-inserts that at least one member of the council have expertise in the Indian Family Protection Act and federal Indian Child Welfare Act of 1978. This is very important to ensure understanding of the unique needs of indigenous children and families in New Mexico.

The following is from OFRA's original analysis and our analysis of the substantive issues remains the same.

Proposed new section of the Children, Youth and Families Department Act creating a Secretary of Children, Youth and Families Nominating Committee: The new section creates a nominating committee consisting of nine members who will submit proposed nominees for appointment as the secretary of the department to the governor. Significant issues are:

- The members are required to be "knowledgeable about child welfare" but there is no definition or guidance about what that means. Someone who has done their own research on child welfare but never had any formal training or actual experience in the development or delivery of child welfare services could be considered "knowledgeable."
- All but one member of the nominating committee are political appointments. The remaining member is appointed by the chief justice of the supreme court. There is no requirement that any member of the committee have training or experience in social work, social services delivery systems, or child welfare law. Even more notable is the absence of any requirement that the committee contain any persons with lived expertise, specifically who was on the receiving end of the services or programs administered by the department. As such, the composition of the nominating committee would appear to do little to ensure that the secretary is not simply a political appointee but is an experienced administrator with direct experience in child welfare.
- All initial appointments to the nominating committee are to be made at the same time, with all committee members serving four-year terms. The lack of staggered appointments or terms means that the entire committee must be reconstituted every four years, potentially resulting in a loss of continuity and institutional knowledge with each new committee.
- New section J. provides that the committee may "require that an applicant submit any information the nominating committee deems relevant to the consideration of the individual's application." This provision needs to make clear that information requested cannot violate state or federal privacy or equal employment opportunity laws.

Proposed new Section 9-2A-8(M) statutorily codifies the requirement that the department develop and implement a families first strategic plan, something it is already required to do in order for the state to receive funding under Families First Act but would now also be required by state law.

Proposed amendment to Section 32A-1-4(L) adds a person authorized to care for the child by a parental power of attorney as permitted by law to the definition of "guardian." This is an appropriate recognition of the less formal but equally valid arrangements made by parents for the temporary care of their children.

Proposed amendment to Section 32A-1.4(Y) expands the definition of "plan of care" to include a plan created to provide prenatal support to a pregnant person dealing with a substance use disorder. While the intent may be positive (to provide services to the parents and family to help address concerns around the impact of the parent's substance use disorder before the child is born), it may also have the effect of bringing families who have created their own plans to ensure the safety and well-being of the child after it is born to the attention of the department, causing unwarranted intrusion into the family and unnecessary expenditure of department resources. This could also result in additional abuse or neglect case filings, which would directly impact OFRA's need for staffing and contract attorneys and interdisciplinary staff to handle the increase in legal cases.

Proposed amendment to Section 32A-3A-13(A) moves the responsibility for creating rules to guide providers in the care of newborns who exhibit symptoms consistent with prenatal drug exposure or fetal alcohol spectrum disorder. This move appropriately recognizes the expertise of the health care authority in this area.

Proposed amendment to Section 32A-3A-13(B)(1) changes "discharge planning" to "plan of care development" and expands the time frame to include planning "which *may* (emphasis added) occur at a prenatal medical visit and *shall* (emphasis added) occur prior to a substance-exposed child's discharge from a hospital. As above, while the intent to provide services to the parents and family prior to birth may be positive, it may also have the effect of bringing unwarranted intrusion into the family and unnecessary legal intervention.

Proposed amendments to Section 32A-3A-13(B)(1)(b) further clarify that monitoring of the family will occur after the plan of care is created, even if that is prior to the child's birth. It also requires that "(t)he health care authority shall ensure that there is at least one care coordinator available in each birthing hospital in the state at all times and shall contract with care coordinators to ensure that uninsured substance-exposed children receive care coordination." This addition appropriately addresses the current lack of available care coordinators state-wide. The requirement that care coordinators (who are trained to know what services are available to assist the family and to work with families in these circumstances, and who could be readily available to the family during the post-partum period), be in each birthing hospital has the potential to decrease unnecessary legal interventions in families. The requirement that there be at least one care coordinator available in each birthing hospital in the state at all times would cause additional expense for the birthing hospitals. The proposed legislation does not address the availability of trained care coordinators to fill these positions or the expense of training and hiring additional care coordinators.

Proposed amendment to Section 32A-3A-13(B)(2) adds the requirement that "(t)he rules shall include a requirement that all hospitals, birthing centers and prenatal care providers use the screening, brief intervention and referral to treatment program at all prenatal medical visits and live births." This would provide important consistency in the information and support provided to expecting and new parents around the state. However, the inclusion of prenatal care providers, which can range from sole general practitioners to large hospitals,

could present significant challenges for training and monitoring compliance with this requirement. It could also create significant additional expense, and there is no appropriation associated with this legislation to cover this cost.

Proposed amendments to Section 32A-3A-13(B)(4) seek to clarify which supports and services "shall" be included in a plan of care (i.e. home visitation programs and substance use disorder prevention and treatment) and which "may" be included (i.e. public heath agencies, maternal and child health agencies, mental health providers, public and private children and youth agencies, early intervention and developmental services, courts, local education agencies, managed care organizations, or hospitals and medical providers). While there may be some benefit to requiring that all families be offered home visitation and substance use disorder interventions, requiring that those services be included in every plan of care does not take into account the professional judgment of the care coordinator or the unique needs of each family. A family whose own plan for keeping a substance exposed child safe and healthy did not include those elements could find themselves accused of failing to comply with the plan of care even when there was no demonstrated increased risk of harm to the child when the family followed its own plan.

Proposed addition Section 32A-3A-13(B)(6) requires that the rules developed by the health care authority regarding plans of care include specific requirements for care coordinators. These include that the care coordinators "actively work" with the pregnant persons or family of the substance-exposed child, and that they use an evidence-based intensive care coordination model that is listed in the federal Title IV-E prevention services clearinghouse or another nationally recognized evidence-based clearinghouse. It further requires that if a pregnant person or family of the substance-exposed child are not following the plan of care, the care coordinator is to make attempts to contact the persons not following the plan of care "in person, by mail, by phone call and by text message." These are positive requirements that have the potential to positively re-engage families before the department becomes involved with the family. These requirements have the potential to decrease unwarranted department involvement or unnecessary legal action.

Proposed amendments to Section 32A-3A-13(E) clarify and make explicit the information the health care authority must report annually to various legislative committees and the department of finance administration (DFA) on the plan of care system. The requirements appear designed to provide the legislature and DFA with data that can be used to identify areas of need and assess the efficacy of and possible needed changes to the program.

Proposed amendments to Section 32A-3A-14(A) clarifies who is responsible for notifying the department when the parents, relatives, guardians or caretakers of a child released from a hospital or freestanding birthing center pursuant to a plan of care fail to comply with that plan. The amendment further requires (changes "may" to "shall") CYFD to conduct a "family assessment" when a parent, guardian, or custodian allegedly fails to comply with a voluntary plan of care. This does not allow the department to discern whether an assessment is actually necessary. For example, CYFD would no longer be able to determine whether the alleged failure to comply with the plan of care was substantive (resulting in immediate concern for the infant's safety) or temporary or whether an alternative but equally safe plan was put in place. Additional language added to subsection (A) seeks to minimize the risk that a "family assessment" will result in unwarranted action by the department by requiring that the department determine that the declined services and programs "are necessary to address the concerns of potential imminent harm to the child" before proceeding to an investigation.

Unfortunately, the term "potential" expands, rather than limits, any alleged need for investigation and intervention. This could result in unwarranted intrusion into the family and unnecessary expenditure of department resources. This could also result in additional abuse or neglect case filings, which would directly impact OFRA's need for staffing and contract attorneys and interdisciplinary staff to handle the increase in legal cases.

Furthermore, if families fear that the slightest failure to comply with a plan of care could result in mandatory action against them, they may be less willing to voluntarily seek the services and support of a plan of care, increasing rather than decreasing the risk of harm to the children. Moreover, they may be less likely to seek post-partum care and newborn care/well-child care from a pediatrician.

Proposed amendments to Section 32A-4-3(H) expands the requirement to report plans of care to the department to clinics that provide prenatal care when a pregnant person agrees to creating a plan of care and their child is subsequently born substance-exposed. The reporting requirement is distinct from the requirement that a plan of care be offered to the pregnant person. Requiring that the provider *report* the plan of care for a pregnant person to the department could make the pregnant person less willing to seek pre-natal care and less willing to enter into a plan of care, increasing rather than decreasing the risk of harm to the child. This could result in a greater need for investigation and legal intervention, which would directly impact OFRA's need for staffing and contract attorneys and interdisciplinary staff to handle the increase in legal cases.

Proposed amendments to Section 32A-4-4.1 clarify and make more specific the department's reporting requirements regarding its multilevel response system. It also removes the department's option of first instituting a multilevel response system as a pilot project and requires that a statewide system be implemented no later than July 1, 2027. While it is hoped that a statewide multilevel response system would result in greater consistency and increased use of supportive and preventive interventions in the department's response to at risk children and families, it is unknown if this would result in a reduction in investigations that become legal cases. Its impact on OFRA's need for staffing and contract attorneys and interdisciplinary staff is unknown.

Proposed new Sections 10 through 13, to be cited as the "Families First Act" provides the statutory framework for implementing proposed new Section 9-2A-8(M.), requiring that the department develop and implement a families first strategic plan. It is significant that the focus of "families first services" is on foster care prevention services. If implemented, the availability and use of funds for evidence-based services specifically designed to assist families at risk of having their children placed in foster care could decrease the number of children entering foster care through abuse and neglect petitions. This could decrease OFRA's need for staffing and contract attorneys and interdisciplinary staff to handle abuse and neglect cases.

Proposed amendment to Section 32A-4-21(B)(5) provides that predisposition studies may include "services provided pursuant to the Families First Act, as well as referrals to income support or other services or programs" in the report's description of services offered to the child, the child's family and the child's foster family.

Proposed amendment to Section 32A-4-33(B)(6) regarding who may have access to records in a neglect or abuse proceeding deletes "any local substitute care review board or any

agency contracted to implement local substitute care review boards" and replaces it with "a staff member of the substitute care advisory council, if the records are requested for the purpose of carrying out the provisions of the Citizen Substitute Care Review Act." This is to make the provision consistent with the proposed amendments to Section 32A-8-2. This change would require training of OFRA staff and contract attorneys and interdisciplinary staff regarding the sharing of neglect or abuse case information with the substitute care advisory council.

Proposed amendments to Section 32A-8-2, the Citizen Substitute Care Review Act are extensive and foundational. The proposed amendments change the purpose of the act and cite the need to meet federal requirements for citizen review panels under the federal Child Abuse Prevention and Treatment Act. The proposed amendments: 1) add a new definitions section; 2) move the substitute care advisory council from the regulation and licensing department to the administrative office of the courts; 3) change the composition of the council; 4) increases the requirement that the council meet from twice annually to quarterly; 5) adds provisions for the council to designate cases that involve children in substitute care for review; 6) changes the rules the council is required to establish to include compliance with the Open Meetings Act, procedures to provide for public outreach and comment, and other procedures to provide for compliance with the federal Child Abuse Prevention and Treatment Act as it relates to citizen review panels; 7) changes the council's reporting requirements.

A new section is proposed: Council Administration—Staffing, providing for the hiring of a director to oversee, manage and direct the review of cases, provide support to the council, employ staff, prepare budgetary requests and apply for grants and other sources of funding. This new section includes the qualifications of the director and council staff providing professional services.

A new section is proposed: Attorney General Representation and Consultation, providing for the attorney general to advise and consult with the council.

A new section is proposed: Volunteer Member Participation—Rules, providing for the council to promulgate rules relating to volunteer member participation, including recruitment, background checks, training, conflicts of interest, a code of conduct, and procedures to maintain confidentiality.

A new section is proposed: Substitute Care Review Board Establishment—Case Review, providing for council to establish boards of volunteer members to review cases designated in accordance with council rules and proscribing the process for case reviews.

A new section is proposed: Access to Records, providing for access to the records necessary to carry out the council responsibilities, including case reviews, and the process for obtaining records from the department. A notable provision is that "(t)he department or its agent or contractor shall not discharge, discriminate against in any manner or retaliate against an employee, volunteer or contractor who, in good faith, communicates with the council about a case review or provision of records pursuant to this section."

A new section is proposed: Confidentiality of Information, providing that information obtained or generated by a member of the council, a staff member, or member of a board for the purpose of performing duties in compliance with the Act is not subject to the provisions of the Public Records Act. This provision is overly broad and likely subject to challenge,

given that the information obtained or generated would not only contain confidential case information, not subject to disclosure, but also department staffing, caseload, and compliance information that would be subject to disclosure pursuant to a Public Records Act request.

Another concerning provision of this section allows a member of the council, staff, or board member to disclose otherwise confidential information if the identified child or adult who is the subject of the case either consents in writing or provides oral consent for the disclosure to another person that is immediately documented in writing by council staff. This is concerning because the bill does not require the consenting child or adult to be counseled before agreeing to the disclosure, nor that the consent to disclosure be knowing and voluntary, nor that the disclosure be limited only to information about the consenting child or adult and will not identify or disclose information about any other party to the case.

A new section is proposed: Temporary Provision, which provides for the transfer of all functions, employees, money, appropriations, records, equipment and other property of the regulation and licensing department pertaining to the substitute advisory care council to be transferred to the administrative office of the courts. It further provides or the transfer of all contractual obligations to the administrative office of the courts. While this section may mitigate much of the expense of moving the council from the regulation and licensing department to the administrative office of the courts, there will doubtless be other expenses, including employee IDs, business cards, letterhead and other branding materials, as well as the need for education of the public and other child welfare system stakeholders about the change in administration. The proposed legislation contains no appropriation for these expenses.

The possible impact on OFRA of the transfer of the Substitute Advisory Care Council to the administrative office of the courts or to the state department of justice and the changes to its functions are not clear. OFRA would need to provide training for its staff and contract attorneys and interdisciplinary staff regarding the new case review process, including training regarding the sharing of confidential case information with the council. It is unlikely that the restructuring of the Substitute Advisory Care Council would impact OFRA's staffing needs.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS