SENATE BILL

58TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2027

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CHILDREN; CREATING THE CHILDREN'S BEHAVIORAL HEALTH SERVICES DIVISION OF THE HEALTH CARE AUTHORITY; TRANSFERRING THE OPERATIONS OF THE BEHAVIORAL HEALTH SERVICES DIVISION OF THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT TO THE CHILDREN'S BEHAVIORAL HEALTH SERVICES DIVISION OF THE HEALTH CARE AUTHORITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 9-2A-8 NMSA 1978 (being Laws 1992, Chapter 57, Section 8, as amended) is amended to read:

"9-2A-8. DEPARTMENT--ADDITIONAL DUTIES.--In addition to other duties provided by law or assigned to the department by the governor, the department shall:

A. develop priorities for department services and

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resources based on state policy and national best-practice standards and local considerations and priorities;

B. strengthen collaboration and coordination in state and local services for children, youth and families by integrating critical functions as appropriate, including service delivery, and contracting for services across divisions and related agencies;

C. develop and maintain a statewide database, including client tracking of services for children, youth and families;

D. develop standards of service within the department that focus on prevention, monitoring and outcomes;

E. analyze policies of other departments that affect children, youth and families to encourage common contracting procedures, common service definitions and a uniform system of access;

F. adopt rules to control disposition and placement of children under the Children's Code, including rules to limit or prohibit the out-of-state placement of children, including those who have developmental disabilities or emotional, neurobiological or behavioral disorders, when in-state alternatives are available;

G. develop reimbursement criteria for licensed child care centers and licensed home providers establishing that accreditation by a department-approved national

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accrediting body is sufficient qualification for the child care center or home provider to receive the highest reimbursement rate paid by the department;

H. assume and implement responsibility for [~~children's~~] mental health and substance abuse services [~~in the state~~] for children in department custody, coordinating with the health care authority, the public education department, the early childhood education and care department and the department of health;

I. assume and implement the lead responsibility among all departments for domestic violence services;

J. implement prevention and early intervention as a departmental focus;

K. conduct biennial assessments of service gaps and needs and establish outcome measurements to address those service gaps and needs, including recommendations from the governor's children's cabinet and the children, youth and families advisory committee;

[~~L. ensure that behavioral health services provided, including mental health and substance abuse services for children, adolescents and their families, shall be in compliance with requirements of Section 24A-3-1 NMSA 1978 and any rules adopted pursuant to that section;~~

~~M.~~] L. develop and implement the families first strategic plan for the delivery of services and access to

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programs as required pursuant to the Families First Act; and

[~~N.~~] M. fingerprint and conduct nationwide criminal history record searches on all department employees, staff members and volunteers whose jobs involve direct contact with department clients, including prospective employees and employees who are promoted, transferred or hired into new positions, and the superiors of all department employees, staff members and volunteers who have direct unsupervised contact with department clients."

SECTION 2. Section 9-8-4 NMSA 1978 (being Laws 1977, Chapter 252, Section 4, as amended) is amended to read:

"9-8-4. AUTHORITY ESTABLISHED.--The "health care authority" is created in the executive branch. The authority is a cabinet department and consists of:

A. the office of the secretary of health care authority;

B. the administrative services division;

C. the information technology division;

D. the behavioral health services division;

E. the children's behavioral health services division;

[~~E.~~] F. the developmental disabilities division;

[~~F.~~] G. the health improvement division;

[~~G.~~] H. the medical assistance division;

[~~H.~~] I. the state health benefits division;

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[~~I.~~] J. the child support enforcement division; and

[~~J.~~] K. the income support division."

SECTION 3. Section 9-8-6 NMSA 1978 (being Laws 1977, Chapter 252, Section 7, as amended) is amended to read:

"9-8-6. SECRETARY--DUTIES AND GENERAL POWERS.--

A. The secretary is responsible to the governor for the operation of the authority. It is the secretary's duty to manage all operations of the authority and to administer and enforce the laws with which the secretary or the authority is charged.

B. To perform duties of office, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or the authority or any division of the authority, except where authority conferred upon any division is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Health Care Authority Act, exercise general supervisory and appointing authority over all authority employees, subject to any applicable personnel laws and rules;

(2) delegate authority to subordinates as the secretary deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the authority into those

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organizational units the secretary deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge the secretary's duties;

(5) conduct background checks on authority employees and prospective authority employees that have or will have access to federal tax information; provided that:

(a) local law enforcement agency criminal history record checks shall be conducted on all employees, prospective employees, contractors, prospective contractors, subcontractors and prospective subcontractors with access to federal tax information;

(b) record checks for any identified arrests shall be conducted through local law enforcement agencies in jurisdictions where the subject has lived, worked or attended school within the last five years preceding the record check;

(c) federal bureau of investigation fingerprinting shall be conducted on all employees, prospective employees, contractors, prospective contractors, subcontractors and prospective subcontractors with access to federal tax information;

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(d) for the purpose of conducting a national agency background check, the authority shall submit to the department of public safety and the federal bureau of investigation a fingerprint card for each of the following personnel who have or will have access to federal tax information: 1) employees; 2) prospective employees; 3) contractors; 4) prospective contractors; 5) subcontractors; and 6) prospective subcontractors;

(e) the authority shall conduct a check for eligibility to legally work as a citizen or legal resident of the United States on all employees, prospective employees, contractors, prospective contractors, subcontractors and prospective subcontractors with access to federal tax information. The authority shall complete a citizenship or residency check for each new employee and any employee with expiring employment eligibility and shall document and monitor the employee's citizenship or residency status for continued compliance;

(f) criminal history records obtained by the authority pursuant to the provisions of this paragraph and the information contained in those records are confidential, shall not be used for any purpose other than conducting background checks for the purpose of determining eligibility for employment and shall not be released or disclosed to any other person or agency except pursuant to a court order or with

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the written consent of the person who is the subject of the records;

(g) a person who releases or discloses criminal history records or information contained in those records in violation of the provisions of this paragraph is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;

(h) the secretary shall adopt and promulgate rules to establish procedures to provide for background checks; provided that background checks shall not be evaluated for any purpose other than a person's authority-related activities, and criteria according to which background checks are evaluated, for all present and prospective personnel identified in the provisions of this paragraph;

(i) contractors, prospective contractors, subcontractors and prospective subcontractors shall bear any costs associated with ordering or conducting background checks pursuant to this paragraph; and

(j) an authority employee or prospective authority employee who is denied employment or whose employment is terminated based on information obtained in a background check shall be entitled to review the information obtained pursuant to this paragraph and to appeal the decision;

(6) take administrative action by issuing

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orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law for whose administration or execution the secretary is responsible and to enforce those orders and instructions by appropriate administrative action in the courts;

(7) conduct research and studies that will improve the operations of the authority and the provision of services to the citizens of the state;

(8) provide courses of instruction and practical training for employees of the authority and other persons involved in the administration of programs with the objective of improving the operations and efficiency of administration;

(9) prepare an annual budget of the authority;

(10) provide cooperation, at the request of heads of administratively attached agencies, in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the authority shall provide budgeting, recordkeeping and related clerical assistance to administratively attached agencies; and

(11) appoint, with the governor's consent, a

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"director" for each division. These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary, except as provided in Section 9-8-9 NMSA 1978.

C. The secretary may apply for and receive, with the governor's approval, in the name of the authority, any public or private funds, including United States government funds, available to the authority to carry out its programs, duties or services.

D. Where functions of departments overlap or a function assigned to one department could better be performed by another department, the secretary may recommend appropriate legislation to the next session of the legislature for its approval.

E. The secretary may make and adopt such reasonable procedural rules as may be necessary to carry out the duties of the authority and its divisions. No rule promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary unless otherwise provided by statute. Unless otherwise provided by statute, no rule affecting any person or agency outside the authority shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise

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permitted by statute. Notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule or proposed amendment or repeal of an existing rule may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing.

F. In the event the secretary anticipates that adoption, amendment or repeal of a rule will be required by a cancellation, reduction or suspension of federal funds or order by a court of competent jurisdiction:

(1) if the secretary is notified by appropriate federal authorities at least sixty days prior to the effective date of such cancellation, reduction or termination of federal funds, the authority is required to promulgate rules through the public hearing process to be effective on the date mandated by the appropriate federal authority; or

(2) if the secretary is notified by appropriate federal authorities or court less than sixty days prior to the effective date of such cancellation, reduction or suspension of federal funds or court order, the authority is

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authorized without a public hearing to promulgate interim rules effective for a period not to exceed ninety days. Interim rules shall not be promulgated without first providing a written notice twenty days in advance to providers of medical or behavioral health services and beneficiaries of authority programs. At the time of the promulgation of the interim rules, the authority shall give notice of the public hearing on the final rules in accordance with Subsection E of this section.

G. If the secretary certifies to the secretary of finance and administration and gives contemporaneous notice of such certification through the human services register that the authority has insufficient state funds to operate any of the programs it administers and that reductions in services or benefit levels are necessary, the secretary may engage in interim rulemaking. Notwithstanding any provision to the contrary in the State Rules Act, interim rulemaking shall be conducted pursuant to Subsection E of this section, except:

(1) the period of notice of public hearing shall be fifteen days;

(2) the authority shall also send individual notices of the interim rulemaking and of the public hearing to affected providers and beneficiaries;

(3) rules promulgated pursuant to the provisions of this subsection shall be in effect not less than

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five days after the public hearing;

(4) rules promulgated pursuant to the provisions of this subsection shall not be in effect for more than ninety days; and

(5) if final rules are necessary to replace the interim rules, the authority shall give notice of intent to promulgate final rules at the time of notice. The final rules shall be promulgated not more than forty-five days after the public hearing and filed in accordance with the State Rules Act.

H. At the time of the promulgation of the interim rules, the authority shall give notice of the public hearing on the final rules in accordance with Subsection E of this section.

I. The [~~secretary shall ensure that any behavioral health services, including mental health and substance abuse services, provided, contracted for or approved are in compliance with the requirements of Section 24A-3-1 NMSA 1978~~] authority shall assume and implement responsibility for children's mental health and substance abuse services in the state, coordinating with the children, youth and families department, the public education department, the early childhood education and care department and the department of health.

J. All rules shall be filed in accordance with the

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State Rules Act."

SECTION 4. A new section of the Health Care Authority Act, Section 9-8-7.5 NMSA 1978, is enacted to read:

"9-8-7.5. [NEW MATERIAL] CHILDREN'S BEHAVIORAL HEALTH SERVICES DIVISION CREATED--DIRECTOR DUTIES.--

A. The "children's behavioral health services division" is created in the authority. The division shall be responsible for planning, overseeing and providing behavioral health services for children across the state.

B. The children's behavioral health services division shall be led by a director, who shall be appointed by the secretary and shall:

(1) oversee operations of the division;

(2) have the power to hire and fire staff, with approval of the secretary, as necessary to carry out the division's duties;

(3) coordinate with the behavioral health services division of the authority, the children, youth and families department, the public education department, the early childhood education and care department and the department of health on developing and implementing a comprehensive statewide children's behavioral health services plan;

(4) contract for and partner with children's behavioral health service providers across the state to expand the availability of children's behavioral health services; and

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(5) prepare an annual report for the legislature that:

(a) identifies the behavioral health service needs for children in the state, the gaps in behavioral health services for children and the funding needed to fill those gaps;

(b) summarizes the behavioral health services provided to children by the authority and the authority's contractors; and

(c) provides an overview of the activities of the division."

SECTION 5. TEMPORARY PROVISION--TRANSFER.--On July 1, 2027, the secretary of children, youth and families and the secretary of health care authority shall jointly identify the following to be transferred:

A. up to ninety percent of the personnel of the behavioral health services division of the children, youth and families department are transferred to the children's behavioral health services division of the health care authority;

B. all functions, appropriations, money, records, furniture, equipment, supplies and other property belonging to the behavioral health services division of the children, youth and families department that are primarily associated with the personnel transferred pursuant to Subsection A of this section

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are transferred to the children's behavioral health services division of the health care authority; and

C. all contracts and agreements of the behavioral health services division of the children, youth and families department relating to the activities of the personnel transferred pursuant to Subsection A of this section are transferred to and are binding on the children's behavioral health services division of the health care authority.

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