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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>House Judiciary Committee</u>	<b>LAST UPDATED</b> _____
	<b>ORIGINAL DATE</b> <u>3/2/2025</u>
	<b>BILL</b> <u>CS/House Bill</u>
<b>SHORT TITLE</b> <u>CYFD Nominating Committee</u>	<b>NUMBER</b> <u>205/HJCS</u>
	<b>ANALYST</b> <u>Garcia/Hernandez</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	FY28	FY29	5 Year Total Cost (Savings)	Recurring or Nonrecurring	Fund Affected
Prevention Services Costs (CYFD)	**	**	**	Up to \$8,800.0	Up to \$8,800.0	Up to \$17,600.0	Recurring	General Fund and Title IV-E
Foster Care Program Savings from Prevention (CYFD)				Up to (\$2,000.0)	Up to (\$2,000.0)	Up to (\$4,000.0)	Recurring	General Fund and Title IV-E
Plans of Safe Care Costs (CYFD and HCA)	**	\$12,494.0	\$12,494.0	\$12,494.0	\$12,494.0	\$49,976.0	Recurring	General Fund and Medicaid
ECECD (Home Visiting Referrals)	No fiscal impact	\$3,500.0	\$3,500.0	\$3,500.0	\$3,500.0	\$14,000.0	Recurring	General Fund, Medicaid and Title IV-E
Multilevel Response Costs (CYFD)	**	**	**	\$800	\$800	\$1,600	Recurring	General Fund
Multilevel Response Savings (CYFD)				Up to (\$10,800.0)	Up to (\$10,800.0)	Up to (\$21,600.0)	Recurring	General Fund and Title IV-E
SCAC Costs (AOC)	**	\$550.0	\$550.0	\$550.0	\$550.0	\$2,200.0	Recurring	General Fund and Title IV-E
CYFD Nominating Committee (CYFD)	Less than \$10.0	Less than \$10.0	Less than \$10.0	Less than \$10.0	Less than \$10.0	Up to \$50.0	Recurring	General Fund
<b>Net Total</b>	Less than \$10.0	\$16,554.0	\$16,554.0	\$13,354.0	\$13,354.0	\$59,826.0	Recurring	

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

\*\*GRO funding appropriated in 2024 session should cover the cost

Relates to an appropriation in the General Appropriation Act

Relates to Senate Bill 458

Conflicts with House Bill 173 and 343

Conflicts with House Joint Resolution 5

Conflicts with Senate Bill 42

Conflicts with House Bill 500

## Sources of Information

LFC Files  
Child Welfare Information Gateway  
Congressional Budget Office  
Pew Results First Model  
Washington State Institute for Public Policy  
Kempe Center for the Prevention and Treatment of Child Abuse and Neglect, University of Colorado Medical Center  
National Conference of State Legislatures  
U.S. Administration for Children and Families

Agency Analysis for the Introduced Bill Received From  
Children, Youth and Families Department (CYFD)  
New Mexico Attorney General (NMAG)  
Regulation and Licensing Department (RLD)  
Early Childhood Care and Education Department (ECECD)  
Department of Health (DOH)  
Administrative Office of the Courts (AOC)  
Health Care Authority (HCA)

Because of the short timeframe between the introduction of the committee substitute and its hearing on the House Floor, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

## SUMMARY

The House Judiciary Committee for House Bill 205 (CS/HB205) implements a series of reforms within 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. The bill outlines the following timelines related to implementing the state's FFPSA plan:

- By August 1, 2025, CYFD must finalize and post online the state's strategic federal FFPSA plan.
- By September 1, 2025, CYFD must submit the state's plan to the federal Administration for Children and Families.
- By July 1, 2026, and each July 1 thereafter, CYFD must post the annual report.
- By June 30, 2027, CYFD must provide Families First prevention services through a pilot program.
- By August 1, 2027, CYFD must adopt rules to carry out the act.
- By June 30, 2032, CYFD must plan for statewide implementation of services, informed by pilot results.

The bill would update the state's multi-level response statute to remove language regarding piloting the statute and requiring statewide implementation.

The bill would update sections of the state statute related to plans of safe care for substance-exposed newborns, including:

- Replacing the term “plan of care” with “plan of safe care” throughout Section 32-3A and other sections of the Children’s Code to align with federal statute;
- 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. The bill would require HCA oversee all plans of care, regardless of insurance status of source;.
- Making HCA responsible for ensuring the completion of federally required reporting related to plans of safe care and require the agency be responsible for training;
- Allowing for the creation of plans of safe care prenatally and perinatally and directing all hospitals to use an evidence-based screening tool (SBIRT—for screening, brief intervention, and referral to treatment) at prenatal and perinatal appointments;
- Requiring plans of safe care include a referral to home visiting and substance use treatment;
- Removing statutory language that provided CYFD with a copy of a plan of safe care on creation;
- Requiring CYFD be notified in the event of noncompliance with a plan of care and requiring CYFD to conduct a family assessment in all cases. CYFD shall then refer families to the services recommended by the family assessment;
- Requiring CYFD to proceed with an investigation in the event the family refuses referred services, resulting in imminent risk to the child.

The bill would move the Substitute Care Advisory Council from the Regulation and Licensing Department to the New Mexico Attorney General, increase the minimum number of cases the council must review annually, and require CYFD provide agency responses to council reports within specified timelines. The bill would also update the composition of the council, allow SCAC to hire professional staff to conduct case reviews and allow SCAC access to confidential information to enable case reviews, while clarifying its responsibilities related to this confidential information.

Finally, the bill would establish a nominating committee for the CYFD secretary position.

The effective date of this bill is July 1, 2025.

## **FISCAL IMPLICATIONS**

The bill does not make an appropriation, though the bill relates to appropriations in the 2024 General Appropriation Act and the LFC recommendation for the 2025 General Appropriation Act.

### **Families First Prevention Services**

Because CS/HB205 mirrors the requirements of the federal Family First Prevention Services Act (FFPSA) and directs CYFD to implement evidence-based services identified by the federal government, it is likely to result in similar savings. In 2016, the Congressional Budget Office

fiscal note for the estimated FFPSA would, on net, reduce direct federal spending by \$66 million within the first decade of implementation. New Mexico may also reasonably predict net savings because of implementing these services if the state implements program models with fidelity.

The federal government allows states to be reimbursed for eligible prevention services at the state’s Medicaid match (FMAP) rate, which is roughly 77 percent in New Mexico, if that state has an approved FFPSA plan in place. While CYFD will need to determine the actual services included in the FFPSA plan, the analysis below includes cost estimates for two programs eligible for federal Title IV-E (foster care) reimbursement that CYFD could choose to implement: Homebuilders, an intensive in-home family preservation program, and SafeCare, a home visiting program proven to improve parenting skills and reduce child abuse and neglect. These two sample programs have different average per-client costs used to assume potential costs. The per-client cost to implement evidence-based programs in New Mexico could be higher than the average estimates, given the rurality of the state.

The federal FFPSA requires states to deliver services to children and families at risk of foster care involvement but allows states to define eligibility broadly. The number of children who ultimately receive services in New Mexico will depend on how CYFD defines the eligible population in the state’s plan. States that appear to be taking greater advantage of federal Title IV-E prevention services funding and serving larger numbers of children, including Oklahoma, Kentucky, Indiana, and the District of Columbia, which each serve between 0.1 percent and 0.4 percent of the state’s total child population. However, the demographics of these states vary considerably, as do rates of child maltreatment. Given the state’s high rate of child maltreatment, New Mexico could potentially serve a larger share of its child population. If New Mexico were to serve 0.5 percent of the state’s total child population, the state could assume costs of at least \$8.8 million annually to serve roughly 2,200 children, assuming the average cost to implement Homebuilders, with a potential general fund of impact upwards of \$2.5 million annually.

	Average Cost per Client	Benefit to Cost Ratio	Cost to Implement to 0.5% of NM's Child Population	Assumed Federal Title IV-E Reimbursement	Assumed General Fund Impact
SafeCare	\$226	\$24.05	\$510,022	\$367,216	\$142,806
Intensive Family Preservation Services (Homebuilders)	\$3,913	\$5.14	\$8,830,604	\$6,358,035	\$2,472,569

Source: LFC Analysis

New Mexico is currently implementing a very limited number of programs eligible for Title IV-E prevention funding reimbursement, meaning CYFD would likely need to invest in capacity building, start-up costs, and implementation support for programs included in its FFPSA plan. The bill would allow CYFD to pilot programs included in its FFPSA plan through FY27, and the General Appropriation Act of 2024 included \$3 million in general fund appropriations annually in fiscal years 2025 through 2027 for CYFD to pilot and evaluate evidence-based prevention programs that could be used for start-up costs.

If the state implements programs eligible for federal FFPSA funding, New Mexico should experience significant cost savings. For example, the Washington State Institute for Public Policy estimates a state can experience a savings of \$24 for every \$1 invested in SafeCare or a savings of \$5 for every \$1 invested in Homebuilders. According to LFC analysis, evidence-based

home visiting programs may result in a reduction in child maltreatment rates ranging between 1 and 3 percent, depending on the model selected.

FFPSA programs may reduce the utilization of New Mexico's foster care system. The federal Administration for Children and Families attributed an 18 percent reduction in foster care utilization between 2018 and 2023 nationally in part to state implementation of the federal Family First Prevention Services Act. Assuming an estimated cost of \$21 thousand per year for a foster care placement, if New Mexico were to reduce entries into foster care by between 1 and 10 percent by implementing evidence-based prevention programs, CYFD could experience savings between \$205 thousand and \$2 million annually. However, total potential savings and benefits are likely much greater, since this estimate only includes foster care cost savings. This estimate does not account for cost savings and benefits to the individual and society included in the ROI estimates in the table above beyond direct foster care involvement, such as increased individual earnings, reductions in health care utilization, and involvement with the criminal justice system.

### **Plans of Safe Care**

The bill would require HCA to ensure all birthing hospitals in the state have dedicated care coordinators available and in-person. The state has 25 birthing hospitals, and the 2023 LFC program evaluation of the CARA program noted that some hospitals experience higher volumes of plans of safe care and may require multiple care coordinators. At an average cost of roughly \$100 thousand, the state could assume a minimum cost of at least \$2.5 million for in-person care coordinators placed at birthing hospitals. HCA estimates a higher cost, assuming multiple care coordinators at 35 hospitals at all times, for a total cost of \$15.8 million, with 78 percent covered by federal Medicaid funds. The committee substitute struck language that would have required in-person coverage at all times. The analysis below assumes \$10 million, with 78 percent covered by Medicaid.

HCA provisions of care coordination for families with plans of safe care following discharge will also impact HCA's budget. Within the state's Medicaid program, high fidelity wraparound is an evidence-based, Medicaid eligible program for intensive case management. HCA could employ high fidelity wraparound to deliver care coordination for families with plans of safe care and then seek federal reimbursement at the state's FMAP rate (roughly 78 percent). According to a letter of direction HCA issued in 2024, the Medicaid billing rate for high fidelity wraparound is \$1,995 per case. Delivering this form of case management to roughly 1,200 New Mexicans would cost roughly \$2.4 million annually in total.

Providing follow-up care coordination is already a component of the state's Medicaid managed care plan, and HCA may be able to absorb some of the costs associated with in-person care coordination with existing funding. In total, LFC estimates the cost to HCA to deliver in-person care coordinators in the state's birthing hospitals and intensive care coordination to families upon discharge to be at least \$4.9 million, with an assumed general potential general fund cost of roughly \$1.8 million. The state may experience cost savings resulting from improved health outcomes and reductions in subsequent child welfare involvement that are not accounted for in the analysis below.

The LFC recommendation for the General Appropriation Act includes \$1.8 million for HCA to implement plans of safe care, and HCA can use this allocation to fund care coordination services for families who are not enrolled in Medicaid.

The bill would also increase referrals to the state’s home visiting programs. ECECD notes the Plans of Safe Care referrals to home visiting providers could result in cost increases to home visiting programs, estimating an increase of up to 2,279 families annually at a projected cost of \$8.1 million. If the enrolled in programs eligible for Medicaid and Title IV-E, the state would be able to receive roughly 75 percent in federal reimbursement, resulting in a cost of roughly \$2 million. ECECD currently prioritizes higher-risk families and could likely absorb some influx of home visiting referrals. However, the state would need to build capacity for specific home visiting models designed to serve higher-risk families. LFC assumes an estimated increase of 1,000 children, resulting in a potential cost increase of \$3.6 million, with a general fund impact of \$898 thousand.

Finally, the bill would require CYFD implement a family assessment in instances of noncompliance with plans of safe care. The 2023 LFC Program Evaluation found 40 percent of families with a safe care plan were referred to CYFD, 27 percent of referrals were ultimately screened in as an accepted report, and 18 percent of accepted reports ultimately resulted in cases of substantiated abuse or neglect. If HCA were to implement intensive case management, subsequent referrals to CYFD should decrease. Nevertheless, the bill could allow for an increase in cases which result in a family assessment (multilevel or differential response) and investigation. For example, if half of all plans of care were ultimately referred to CYFD, the cost to implement differential response in all those cases could range between \$50 thousand and \$100 thousand annually, using the costs estimates described in the differential response fiscal impact section. However, if implemented with fidelity to evidence-based models, the state could experience the ultimate cost-benefits.

HCA reports the agency would require an additional 4 coordinator FTE and 2 supervisor FTE to implement provisions of the bill and could potentially reimburse 50 percent of the costs under the Medicaid program, resulting in a potential total cost of \$606 thousand, with a general fund impact of \$303 thousand.

<b>Plans of Safe Care</b>	<b>Assumed Cost (in thousands)</b>	<b>Assumed Federal Medicaid Reimbursement (in thousands)</b>	<b>Assumed Potential General Fund Impact (in thousands)</b>
Care Coordinators in Birthing Hospitals	\$10,000	\$7,800	\$2,200
Care Coordination after Discharge (HFW)	\$2,394.0	\$1,659.0	\$734.9
<b>Total HCA Cost Estimates</b>	<b>\$12,394</b>	<b>\$9,459</b>	<b>\$2,934</b>
Increased differential response costs	\$50 to 100		\$50-\$100
<b>Total CYFD Cost Estimates</b>	<b>\$50 to 100</b>		<b>\$50-\$100</b>

HCA notes no appropriation is included in the bill, though the HAFC substitute for for the General Appropriation Act includes \$1.8 million to HCA to implement plans of safe care. HCA received a similar appropriation in FY25.

DOH notes the bill does not contain an appropriation to DOH, and DOH continues to play a role in data collection and reporting.

## Multilevel or Differential Response

The bill amends the enactment of Laws 2019, Chapter 137, which created within the Children’s Code a multilevel, or differential, response system for child abuse and neglect cases in three key areas.

The bill also strikes language that allowed CYFD to implement a pilot program of multilevel response and instead directs CYFD to implement a full multilevel response system as currently articulated in statute statewide by July 1, 2027.

The existing multilevel response statute (Section 32A-4-4.1 NMSA 1978) requires CYFD report on the implementation and outcomes of a multilevel response system to LFC and Department of Finance and Administration (DFA) annually with the agency’s budget submission. HB205 updates the recipients of the annual report to the interim Legislative Health and Human Services Committee and the interim Courts, Corrections, and Justice Committee.

LFC fiscal impact report analysis from Laws 2019, Chapter 137 indicated “an alternative response pathway to improve outcomes for at-risk families may result in a return on investment of up to \$15.64 for every \$1 spent per participant.” Further analysis found that “alternative response [is estimated] to cost \$98 per family; [while] current family support service program costs approximately \$2,000 per family” and that “long term costs are reduced because fewer children are brought into the child welfare system.” Moreover, a study completed in Minnesota estimating the costs of implementing differential response found that “a decreased cost incurred over three to five years for differential response families of \$1,279 compared to the control group.”

LFC analysis suggests the state may experience cost-savings ranging from \$4.9 million to \$10.8 million because of implementing a multilevel response system, if implemented with fidelity to evidence-based models. National data demonstrates that 14 percent of cases screened by child protective service agencies use differential response. In 2022, CYFD accepted 20 thousand reported cases of abuse or neglect in 2022. If New Mexico were to refer 14 percent of 20 thousand to an alternative response, instead of an investigation, roughly 2,800 cases would receive an alternative response. Projected costs from an alternative response range between \$98 and \$286 per family, according to previous LFC reports and the Washington State Institute for Public Policy. Meanwhile, LFC estimates a child welfare investigation costs New Mexico roughly \$1,000. If New Mexico were to divert roughly 2,800 cases to an alternative response, the state could bear \$274 thousand and \$800 thousand in referral costs annually, while reducing investigation costs by roughly \$2.8 million, resulting in a potential net savings of up to \$2 million annually.

In addition to the \$2 million in savings from shifting cases from investigation to alternative response, a 2023 study published in *Child Maltreatment* suggested states that have implemented an alternative response model experience roughly a 17 percent reduction in foster care placement. According to previous LFC reports, the annual cost of a child in foster care is estimated at \$21 thousand. If New Mexico were to experience a reduction in foster care placement between 5 and 15 percent, the state could experience a savings of roughly \$2.9 million to \$8.8 million.

If New Mexico were to implement multilevel response, the state could see a total costs savings

of upwards of \$10.8 million annually. However, these estimates would require the state to implement multilevel response with fidelity to evidence-based models and at a cost roughly close to nationally reported averages. CYFD would likely assume start-up costs associated with differential response over the next three years but should begin to experience savings in outyears.

Potential Alternative Response Savings	Assumed Cost (in thousands)	Assumed Federal Reimbursement	Assumed Potential General Fund Impact
Savings on investigations and implementing differential response	(\$2,000.00)		(\$2,000.00)
Savings from reduced foster care placements	(\$2,900 - \$8,800)	(\$2,200- \$6,676)	(\$667 -\$2,024)
<b>Total</b>	<b>(\$4,900-\$10,800)</b>	<b>(\$2,200- \$6,676)</b>	<b>(\$2,667-\$4,024)</b>

The General Appropriation Act of 2024 provided \$1.4 million in general fund appropriations annually in FY25 through FY27 to pilot and evaluate the implementation of differential response through the government results and opportunity (GRO) fund.

### Substitute Care Advisory Council

Data from the federal Adoption and Foster Care Analysis and Reporting System indicates, in 2022, the median length of stay in foster care in was 18 months, and the bill will require the Substitute Care Advisory Council (SCAC) to review each case that has been in care longer than six months. In 2022, roughly 1,800 children were in foster care; 20 percent of these children were in care less than six months, and roughly 30 percent of the cases included a child who was less than 6 years old. Following a persistent declining trend, the number of children in foster care increased in FY24 to roughly 2,100 children in any given month. On the high end, SCAC might need to review upwards of 1,800 cases per year, though the number is likely much smaller as individual cases often involve multiple children. Currently, SCAC is staffed by three full-time employees and may need additional staff to complete more case reviews.

While SCAC has been administratively attached to the Regulation and Licensing Department (RLD), for the last three years the General Appropriations Act has included an appropriation for SCAC within the Administrative Office of the Courts, contingent on enactment of legislation to move SCAC to the courts. As no legislation has passed, these appropriations have been vetoed. RLD has funded the salaries of three existing SCAC employees with fee revenue collected by the department.

RLD reports the agency received \$31 thousand for the operations of SCAC in FY25, while current total operating costs, including 4 FTE, total roughly \$350 thousand, and the agency has been funding the SCAC function with other agency revenue in recent years. RLD provides administrative support functions to SCAC, and RLD notes these functions would transfer to the Administrative Office of the Courts (AOC). In addition, the bill would transfer all equipment, furniture, and office supplies to AOC. RLD reports no performance implications with shifting items to AOC.

The LFC recommendation for the General Appropriation Act includes a \$550 thousand special appropriation to AOC, with \$450 thousand from the general fund and \$100 thousand in federal Title IV-E revenue transferred from CYFD. The appropriation would allow for the staffing of up

to five full-time employees. The appropriation should allow SCAC to significantly increase the number of cases reviewed annually; however, it may not provide sufficient resources to fully meet the number of case reviews outlined in the bill if the number of cases trends at the high end of the estimates presented above. Contingent on the enactment of this bill, the Legislature would need to consider recurring funding in future years. The House Judiciary Committee substitute for House Bill 205 would move the SCAC function to the Attorney General. The Legislature could consider an amendment to the General Appropriation Act to the Attorney General's office to allow this agency to receive funding for the function.

In analysis for the original bill, the Office of the Attorney General (NMAG) notes the bill requires it to provide advice and render legal services on the council's request, which may require additional resources.

### **CYFD Secretary Nominating Committee**

The bill makes nominating committee members eligible for mileage and per diem reimbursement, which may result in operating costs to CYFD estimated to be less than \$10 thousand annually.

### **Overall Costs**

Overall, CYFD reports:

Implementation of HB205 would require 84 additional FTE to support Statewide Central Intake, administrative support, CARA and Family Preservation services, Multilevel Response FTE, Epidemiologists, and data analysts. Total salary, benefits for additional FTE and curriculum and training is estimated to be \$8,926,583.

However, CYFD did not provide details about these estimates or information about whether any of these potential costs are already covered by nonrecurring GRO appropriations received by the agency, nor did the department outline assumptions about federal revenue sources to cover these estimated costs. CYFD also did not assume any cost savings resulting from prevention and early intervention programs.

OFRA reports some elements of the bill could result in increased need for OFRA legal services, while others could result in a decrease in case filings and the need for legal representation among children and respondents.

## **SIGNIFICANT ISSUES**

### **Families First Prevention Services**

The federal Bipartisan Budget Act of 2018 (Public Law 115-123) included the Family First Prevention Services Act (FFPSA), which amended the federal Title IV-E foster care program to allow states to seek federal reimbursement if delivering specific support services for children and families to prevent entrances into foster care. The law specifies eligible populations include those "who are candidates for child welfare but can safely remain at home" and allows states to define who is "a candidate for foster care" within certain parameters. To be eligible for federal funding, states must submit a detailed plan to the federal Administration for Children and Families for approval. In addition, the FFPSA requires states implement evidence-based programs proven through rigorous research to have positive child welfare programs; the federal

government maintains a list of these services within the federal Title IV-E prevention services clearinghouse. To be eligible for federal funding, these services must be rated as “well-supported,” “supported,” or “promising” in the federal Title IV-E prevention services clearinghouse.

This section of HB205 is similar to legislation implemented in other states following the federal FFPSA, including Texas, Colorado, and Maine.

The bill requires CYFD to develop and implement a strategic plan, subject to the approval of the federal Administration for Children and Families, to provide evidence-based prevention services for children and families at imminent-risk of foster care involvement. Services articulated in the plan must meet the requirements of the federal FFPSA.

The bill requires CYFD’s plan to articulate service eligibility according to federal definitions, and CYFD must outline policies and procedures to monitor the safety of children receiving services, as required by the federal FFPSA.

In addition, the bill requires CYFD to establish performance outcome measures associated with implementing evidence-based prevention services, including subsequent substantiated reports of maltreatment and entrances into foster care.

The bill directs CYFD to monitor and evaluate program implementation and to publish an annual report, to be provided to LFC, the Legislative Health and Human Services Committee (LHHS), and the governor that includes an inventory of all services available, data about service uptake and completion, and program outcomes, including data about subsequent entrances into foster care among service recipients, and program expenditure information.

Finally, the bill amends an existing section of the children’s code to add the provision of evidence-based services articulated in the federal FFPSA to the responsibilities of CYFD, and the bill adds language to section of the existing children’s code which requires CYFD to provide a description of the services offered to a child, child’s family and the child’s foster care family in abuse and neglect predisposition studies. The added language notes the services offered may include families first prevention services or referrals to income support or other services as appropriate and available.

CYFD has submitted multiple draft plans to the federal Administration for Children and Families but is one of only four states to have a plan unapproved. To date, 47 states and tribal governments have approved plans. Without an approved plan, New Mexico is missing out on federal revenue that could be used to implement evidence-based prevention and early intervention programs. For FY25, the General Appropriation Act of 2024 provided a special appropriation of \$200 thousand to CYFD to pay for technical assistance in revising and resubmitting the state's prevention program plan and to ensure the maximum draw down of federal funds within Protective Services. CYFD received technical assistance through Casey Family Programs, supported philanthropically, and has not used the special appropriation to date.

CYFD notes in their bill analysis:

“CYFD has submitted their Family First Prevention Services Act (FFPSA) Title IV-E Prevention Plan for federal approval. The plan identifies a continuum of prevention services to support families. Each program utilizes evidence-based or evidence-informed programming. These

programs are not in the Title IV-E clearinghouse at this time, however that does not mean they will not be in the future.”

CYFD also reports the bill would require the agency to exclusively deliver prevention programs listed in the Family First Prevention Services Act Clearinghouse, and CYFD currently implements a variety of culturally appropriate programs and potentially use curriculums not aligned with nations, pueblos, and tribes. However, the bill does not prohibit CYFD from implementing other programs, and CYFD is currently implementing a variety of programs that are not evidence-based using general and TANF funds.

ECECD notes related to the federal Family First Prevention Services Act:

Relating to the proposed Families First Act, home visiting programs may qualify as a family first service, but it is important to emphasize that participation in these services should not be mandated or required. Home visiting’s foundational values focus on a philosophy of support and respecting family autonomy, ensuring they have the right to decline services.

### **Multilevel/Alternative Response**

An alternative or multilevel response model provides child welfare systems with an alternative to traditional investigations. In an alternative response to a lower-risk case, protective services workers conduct an assessment of a family’s needs, connect the family to resources or in-home services if appropriate, and continue to monitor the family directly and consistently. According to the Kempe Center at the University of Colorado, states that use alternative responses do so for low-to moderate-risk accepted reports, with an approach that focuses on partnering with families to provide services that meet their needs, while removing the need for determination or substantiation of abuse and neglect.

In 2019, New Mexico enacted legislation to create a multilevel or alternative response model. In a traditional alternative response model, reports of maltreatment are split into two tracks: investigation and family assessment. Existing statute (Section 32A-4-4.1 NMSA 1978) requires a family assessment to include an assessment of:

1. Imminent danger to a child’s well-being;
2. the child becoming an abused or neglected child;
3. the strengths and needs of the child’s family members, relatives, and caregivers, with respect to providing for the health and safety of a child.

Existing statute articulates the state shall not conduct a family assessment in the event of immediate concern for a child’s safety, and an investigation shall be conducted for specific types of suspected abuse or neglect. Existing statute also notes the department may remove a case from the multilevel response system and conduct an investigation if imminent danger of serious harm to a child become evident.

CYFD has not implemented the program in an evidence-based way as required by statute. Instead, CYFD has been implementing a pilot model of alternative response that refers some families for external services and only serves families who are screened out for investigation.

In 2024, the Legislature appropriated \$4.2 million through the government results and opportunity fund to pilot and evaluate implementation of differential response over three years,

in accordance with statute. CYFD is now receiving technical assistance from Casey Family Programs to prepare to expand alternative response statewide and to deliver the approach to low-to medium-risk cases, as research recommends. CYFD's analysis does not include a timeline for implementation.

The existing multilevel response statute requires CYFD to submit an annual report about the implementation of the multilevel response system, including outcomes, to LFC and the DFA annually as part of the agency's budget submission. CYFD has not submitted the statutorily required report in at least the last two years. The bill would expand the required annual recipients to include additional interim legislative committees, which may increase oversight and accountability associated with this requirement.

## **Plans of Safe Care**

According to LFC analysis, New Mexico has a higher rate of newborns who have been exposed to substances than the national average. The federal Comprehensive Addiction and Recovery Act (CARA) amended the federal Child Abuse Prevention and Treatment Act (CAPTA) to require states to develop plans and monitor the implementation of plans of safe care. Under CAPTA, a plan of safe care is a collaborative plan designed to ensure the safety and well-being of infants affected by prenatal substance exposure, by addressing the health and substance use treatment needs of the infant and their caregivers and aiming to prevent child safety risks.

States which receive CAPTA grants must report the following to the federal government:

- The number of infants born and identified as being substance-exposed,
- The number of such infants for whom a Plan of Safe Care was developed,
- The number of infants for whom referrals were made for services.

States can place CARA responsibilities within child welfare or public health agencies. According to the National Center on Substance Abuse and Child Welfare, state child welfare agencies oversee plans of safe care for families with open child welfare cases in most states. However, 18 states employ strategies for monitoring plans of safe care that do not have an open child welfare case.

In 2019, New Mexico passed legislation requiring staff in hospitals and birthing centers develop plans of care for substance-exposed newborns, which refer families to voluntary support and treatment services. New Mexico's CARA law changed reporting requirements to CYFD such that a finding that a woman is using or abusing drugs would not alone be a sufficient basis to report child abuse or neglect. New Mexico's CARA law takes a public health approach by treating drug and alcohol use during pregnancy as a disorder requiring services rather than as a reason for reporting suspected child maltreatment to CYFD. After New Mexico enacted its CARA law in 2019, CYFD's removal of infants from families fell below the national rate.

However, the CARA law spread the responsibility for developing and monitoring voluntary plans of care across multiple state agencies and healthcare organizations, including the Health Care Authority (HCA), the Department of Health (DOH), birthing hospitals, Medicaid managed care organizations, and CYFD. A 2023 LFC evaluation found that the state's implementation of its CARA policy has substantive gaps and recommended many of the statutory and program changes reflected in this bill.

In 2023, the Legislature made appropriations from opioid settlement revenue, including \$1 million to implement plans of safe care for substance-exposed newborns and \$1 million to establish SafeCare Home Visiting, which is eligible for federal reimbursement. Both appropriations went unused and reverted. For FY25, the Legislature appropriated nearly \$2 million for plans of safe care to HCA based on a recommendation from the 2023 LFC program evaluation. However, during 2024, CYFD posted 17 CARA-related positions and moved forward with hiring. As of December 1, 2024, the agency had filled 16 CARA positions; CYFD reported the agency was using Temporary Assistance for Needy Families (TANF) funding for the positions.

As written, CS/House Bill 205 would clarify HCA holds responsibility to support families in accessing services to which they are referred through plans of safe care. However, CYFD would be responsible for addressing cases of noncompliance or refusal, initiating a response similar to the multilevel response already articulated in statute when appropriate.

CYFD reports the agency is in the process of transferring the CARA program to DOH. CYFD notes the bill requires HCA or care coordinators to notify CYFD in instances of noncompliance, but noncompliance is not defined in the bill. CYFD also notes the bill does not outline what happens if a family declines a service and also notes there may be instances where an immediate report and investigation are necessary, and suggested the bill clarify mandated reporters are still responsible for fulfilling their duty to report suspected abuse of neglect. However, this clarification already exists in Section 32A-4-3 (G).

HCA notes questions about the transition of responsibility for plans of safe care from CYFD, including lack of clarity about what responsibility remains at CYFD and if any FTE will be transferred from CYFD.

DOH and OFRA highlighted concerns about a referral to substance use treatment as a required component of plans of safe care.

DOH also reported standardized screening tools, as proposed in HB205, are “recommended to reduce bias in identification and referral” and “addressing substance use among mothers who have recently given birth is also critical.

OFRA notes, while the intention of the bill is to expand plans of care to allow for prenatal support, this expansion could unintentionally result in bringing families to the attention of CYFD before a child is born, resulting in family intrusion and legal intervention. OFRA also noted the state may have insufficient numbers of care coordinators to implement the program.

OFRA reports the requirement for care coordinators to “actively work” with families with plans of safe care and to use an intensive care coordination model listed in a federal clearinghouse for child welfare may lead to positive results re-engaging families, preventing the need for CYFD involvement and unnecessary legal action. However, OFRA notes concerns that families may fear failure to comply will result in mandatory action against them, decreasing their willing engagement in post-partum care.

## Substitute Care Advisory Council

In New Mexico, the federally mandated CAPTA citizen review panel function was codified in the 2016 Citizen Substitute Care Review Act, and its duties are performed by the Substitute Care Advisory Council (SCAC). SCAC is administratively attached to the New Mexico Regulation and Licensing Department in accordance with Section 9-1-7 NMSA 1978 and conducts its evaluations through oversight of the regional substitute care review boards' monitoring of children placed in CYFD's custody and identification of systemic policy issues related to substitute care. LFC reports have highlighted gaps in the existing function. SCAC is mandated through state statute to produce an annual report; however, due to issues maintaining sufficient Council membership, reports have not always been filed. In addition, the number of cases reviewed annually by SCAC does not provide a representative sample. For example, SCAC reviewed 242 cases reviewed from July 2020 through December 2022, and SCAC reviewed 54 cases which involved 101 children in FY24, less than 5 percent of children in foster care in a single month in New Mexico in 2024. Previous iterations of the SCAC reviewed all cases annually.

SCAC is required by existing statute to establish priority case criteria for case review each year. Within the most recent report, their priority case review criteria focused on: (1) placements in institutional or congregate care settings, (2) number of children in placement, (3) youth aged 13-18, (4) sibling groups, (5) three or more 48-hour holds, (6) requested by an interested party, (7) follow-up on previous case reviews. These criteria led to most of the reviewed cases focusing on teenagers in care; while these may be high-risk cases, the reviewed cases and annual report do not reflect the overall distribution of children in care. For example, CYFD reported to the Senate Memorial 5 taskforce during the 2024 interim that around 50 percent of children in care are five years old or younger. Outcomes for children in foster care, such as time to permanency, could improve if more cases are reviewed on an annual basis.

Prior to 2016, SCAC was situated within the DFA and every child abuse and neglect case was reviewed by SCAC through a contractual function. Following its move to the Regulation and Licensing Department, SCAC has not always published annual reports or had sufficient membership, despite requirements within statute. SCAC's most recent report, published in October 2024, reviewed 54 cases impacting 101 children. In the same year, roughly 2000 children were in care.

According to analysis compiled by the National Conference of State Legislatures, states generally house the federally required function in a health and human services agency, in a stand-alone agency, or within the courts. New Mexico is the only state that houses the function in a regulatory agency.

This bill moves SCAC from RLD to the New Mexico Attorney General. The bill strengthens oversight and reporting functions by requiring SCAC to review a representative sample of cases, review any case involving a stay in foster care longer than six months, and prioritize cases among young children.

Additionally, the bill requires SCAC to enter into a data sharing agreement with CYFD to enable case reviews. This data sharing agreement would include access to the Comprehensive Child Welfare Information System (CCWIS). Currently, there is no statutory mandate that requires CYFD to share case data with SCAC.

Federal requirements mandate that the Children, Youth, and Families Department (CYFD) provides an administrative response to SCAC’s annual report within six months. However, House Bill 205 would require a formal response within 30 days.

OFRA notes several concerns with provisions of the sections of the bill related to confidentiality of information SCAC may access when engaging in their work.

### **CYFD Secretary Nominating Committee**

The bill establishes a nominating committee as part of the selection process for the secretary of the Children, Youth and Families Department. The bill would require the governor to select a secretary from a list of qualified nominees submitted to the governor by the nominating committee. The nominating committee shall be comprised of six members appointed by leaders within the Legislature, two members appointed by the governor, and one member appointed by the Chief Justice of the Supreme Court. The bill directs CYFD staff to provide administrative support to the nominating committee.

Members of the nominating committee must also be residents of New Mexico, serve a four-year term, and serve without compensation. The bill allows members of the nominating committee to receive per diem and mileage.

Existing statute grants the governor appointment power for the secretary of CYFD, subject to Senate confirmation. Over the last decade CYFD has experienced significant leadership turnover, and three different secretaries have led the agency since 2019. This lack of consistent leadership may have negatively impacted CYFD operations. For example, employee exit survey data collected in 2023 highlighted perceptions of a lack of agency leadership. The creation of the nominating committee may improve the quality of potential candidates considered by the governor for secretary of CYFD, strengthening department leadership, potentially enhancing the list of candidates with child welfare expertise, and reducing the negative effects associated with leadership turnover. The bill would not change the governance of the department, maintaining CYFD as a cabinet agency.

In 2020, legislation created the New Mexico Public Regulating Commission Nominating Commission, which services a similar function for the Public Regulatory Commission (PRC), intended to enhance the expertise and experience of appointed commissioners within a technical field.

CYFD analysis reports the Executive Reorganization Act aims to allow for efficient management of government through the creation of an executive cabinet, and the proposed CYFD nominating function would undermine this intent and diminish the authority of the governor by limiting the candidate pool. CYFD reports the Senate confirmation process already ensures the selection of a qualified candidate. RLD analysis notes the proposed nominating structure could extend the amount of time needed to select a secretary candidate and raises additional logistical considerations.

OFRA analysis the bill does not define “knowledgeable about child welfare” as criteria for appointment to the nominating committee and a variety of other concerns.

## PERFORMANCE IMPLICATIONS

CYFD noted the need for additional FTE should the bill be implemented.

HCA reports there will need to be extensive coordination between HCA, CYFD, DOH, and stakeholders on all responsibilities outlined in this bill. Further:

HB205 will impact the Comprehensive Addiction and Recovery Act (CARA) by enhancing the support services, such as care coordination for families affected by substance use disorders. The bill supports a non-punitive approach to substance use in pregnancy, which is a key aspect of CARA.

## ADMINISTRATIVE IMPLICATIONS

HCA reports the need for rule-making processes and the development of training materials to implement the bill. In addition, the agency will need to evaluate existing IT systems to determine impacts for implementation.

Both CYFD and DOH reported the agencies are currently working together to “move the CARA program from CYFD to DOH,” though such a structure conflicts with existing statute.

OFRA notes the provisions of the bill would likely result in significant training needs across departments.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 205 is a companion to Senate Bill 458 and contains some duplicate language. However, the Senate Rules Committee substitute for Senate Bill 458 removed sections of the bill related to plans of safe care, SCAC, and the nominating committee.

The sections of the bill related to the establishment and implementation of Plans of Safe Care conflict with House Bill 173, House Bill 343.

Committee substitutes for House Bill 343 and Senate Bill 42 make changes to Plans of Safe Care but would place responsibility at the Department of Health.

The sections of the bill related to the creation of the nominating commission for the secretary of CYFD conflict with House Joint Resolution 5, a constitutional amendment that would remove CYFD from the governor’s cabinet and establish a governing commission. Should both bills pass and voters approve the governing commission, the nominating committee would likely be in place until the commission is in place.

The sections of the bill that move SCAC conflict with House Bill 500, which makes some of the changes proposed for SCAC but maintains the function within the Regulation and Licensing Department. House Bill 205 may also conflict with Senate Bill 363, which would create an oversight body for CYFD within the Regulation and Licensing Department.

The HAFC substitute for the General Appropriation Act contains the following appropriations that may fund components of the policies proposed in this bill:

- \$550 thousand for the Substitute Care Advisory Council, contingent upon legislation which moves the Council to the AOC, in a non-recurring special appropriation. The General Appropriations Act could be amended to direct funding to the New Mexico Attorney General instead.
- \$1.8 million to the HCA to implement and oversee Plans of Safe Care from Opioid Settlement Revenue
- \$7.7 million to the CYFD to match federal Title-IV E prevention revenue in the agency’s recurring operating budget.

The 2024 General Appropriation Act included the following government results and opportunity Fund appropriations that may fund the implementation of portions of this bill:

- \$15 million to the Health Care Authority over three years that can be used to train providers using the evidence-based screening tool SBIRT;
- \$4.2 million to CYFD to pilot and evaluate the implementation of multilevel response, in alignment with statute;
- \$9 million to pilot and evaluate evidence-based prevention and intervention programs, eligible for federal Title IV-E funding.

## TECHNICAL ISSUES

NMAG notes Section 23 may contain duplicative language in subsections B and C and section B may be struck.

NMAG also notes the bill references required federal reporting in several places but does not articulate specific federal requirements.

HCA proposes amendments to existing statute not included in this bill to use the term “substance use disorder” rather than “substance abuse.” However, some of the language related to “substance abuse” references and mirrors specific language in federal law, including the programs eligible for federal Family First Prevention Services.

RMG/AH/hg