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FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/11

SPONSOR Herrell LAST UPDATED _____ HB 85

SHORT TITLE CYFD Rule Waiver for Certain Programs SB _____

ANALYST Peery-Galon

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Public Safety (DPS)
Children, Youth and Families Department (CYFD)

No Responses Received From

Department of Health
New Mexico Environment Department
Municipal League

SUMMARY

Synopsis of Bill

House Bill 85 amends Section 9-2A-7 NMSA 1978 adding language that child care providers that do not receive any state or federal funds may apply for and, upon application, are to receive from the secretary of Children, Youth and Families Department waivers of department rules and regulations, except for the following:

- Rules and regulations regarding screening of a child care center’s personnel; and
- The minimum requirements of applicable local governing bodies as to health, sanitation and safety.

SIGNIFICANT ISSUES

Current, CYFD rules (8.16.2 NMAC) governing child care centers, out of school time programs, family child care homes, another early care and education programs already provide a mechanism by which any licensed child care provider may request and obtain a waiver.

The first sentence of subsection E refers to “child care providers” which is a term that generally encompasses licensed childcare centers as well as licensed homes and registered homes. CYFD noted that paragraph 1 of subsection E makes reference only to the personnel of a “child care center” which is but one type of “child care provider” among the various types of childcare providers that CYFD regulates. CYFD stated it is unclear whether or not the proposed legislation intends the exception stated in paragraph 1 of subsection E to apply only to childcare centers and not to licensed homes or other providers. Reading this exception to exclude providers who might otherwise fall within the definition of “child care provider,” but not coming within the term “child care center” could have an unintended discriminatory effect against childcare centers.

CYFD reported the second exception provided by paragraph 2 of subsection E is ambiguous. It is unclear what minimum standards the paragraph is referring to are the minimum standards for health, sanitation and safety as established by CYFD, or some other standard, such as the standards of a local governing body (county ordinances or regulations, and city ordinances). With regard to health and safety requirements, eligible providers would be subject only to local governing bodies’ regulations, including local fire marshals and city zoning, and in some cities – food preparation. Therefore, if a parent had a complaint about a provider that was not related to background checks, fire, zoning, or sometimes food preparation, CYFD would have no authority to investigate the complaint. CYFD noted the proposed legislation’s language does not address the requirements of the New Mexico Environment Department, Department of Health, the State Fire Marshal, or Regulation and Licensing Department’s Construction Industries, all of which have jurisdiction over childcare providers.

CYFD reported that childcare providers should be held to a uniform set of minimum standards which in turn benefit equality among providers. For example, and with specific concern for paragraph 2 of subsection E, the “minimum requirements of applicable local governing bodies as to health, sanitation and safety” can significantly vary from one area of the state to another. By way of illustration, the applicable minimum standards will vary between an urban area such as Albuquerque and a rural area such as Willard. By enabling CYFD to establish the minimum standards, and providing that child care providers be required to maintain those minimum standards, childcare providers are held to the same quality threshold.

CYFD reported the proposed legislation may conflict with the Public Health Act which states “a health facility shall not be operated without license issued by the department.” Section 24-1-2 NMSA 1978 includes in the definition of “health facility” a “child care center.” Section 24-1-2 goes on to state that “the department is authorized to make inspections and investigations and to prescribe rules it deems necessary or desirable to promote the health, safety and welfare of persons using health facilities.” Licensed childcare providers are subject to regulations governing child care centers, out of school time programs, family childcare homes and other early care and education programs. Registered providers are subject to non-licensed childcare requirements.

The proposed legislation states providers eligible for a waiver would include any licensed or registered childcare provider not receiving state or federal funds. CYFD reported state and federal funds include, but are not limited to, childcare assistance, Child and Adult Care Food Program, New Mexico pre-kindergarten, and Head Start. Section 8.16.2.14 of the child care licensing regulations outlines a process for requesting waivers to any of the licensing requirements. Waiver requests must identify the regulatory requirement for which a waiver is

requested, the reason for the waiver, and any action proposed to meet the intent of the regulation. Section 8.16.2.15 and Section 8.16.2.16 outline a process for requesting variances to any building requirements contained within the licensing regulations. The waiver application process outlined in the proposed legislation does not provide for a review of the waiver request.

CYFD reported there are 1,080 licensed child care facilities. Of these, 13.5 percent do not receive childcare subsidy reimbursements or Head Start funding. Some of these may be receiving reimbursement for meals from the Child and Adult Care Food Program, but CYFD does not track through its database the number of licensed providers receiving Child and Adult Care Food Program assistance. There are 4,583 registered childcare homes. Of these 2.1 percent do not receive childcare subsidy or Child and Adult Care Food Program reimbursements. The proposed legislation might discourage providers from caring for children who receive subsidy. CYFD noted that if given the option to care for children receiving subsidy or not being subject to most licensing regulations, providers may choose the latter.

CYFD reported the STAR 1 licensed childcare providers who do not receive childcare subsidy are not required to meet specific sections of the rules, relating primarily to the program's environment.

PERFORMANCE IMPLICATIONS

CYFD reported the department's strategic plan has the following initiatives: improve the quality, accessibility and affordability of early care and education programs statewide; and to help these programs achieve and maintain high quality standards. CYFD stated the proposed legislation would prevent the department from helping eligible programs achieve and maintain high quality standards.

ADMINISTRATIVE IMPLICATIONS

CYFD reported any additional administrative oversight necessary to comply with the proposed legislation will be absorbed by existing resources.

RPG/bym