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FISCAL IMPACT REPORT

SPONSOR Fajardo ORIGINAL DATE 2/23/19
LAST UPDATED _____ HB 560

SHORT TITLE Child Guardianship & Kinship Giver Requirements SB _____

ANALYST Klundt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY19 | FY20 | FY21 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|--------------------------------------|--------------------------------------|----------------------|------------------------------|---------------------|
| Total | | Significant, See Fiscal Impact | Significant, See Fiscal Impact | | Recurring | General, Federal |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Children, Youth and Families Department (CYFD)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

House Bill 560 requires the Children, Youth and Families Department (CYFD) to adopt and promulgate rules to provide guardians of children placed in their care by CYFD and kinship caregivers with the same level of assistance that foster parents receive from the department.

FISCAL IMPLICATIONS

There is no appropriation contained in this bill. The House Appropriations and Finance Committee (HAFC) substitute for House Bill 2 contains increases of \$250 thousand for kinship care services and \$2 million for at-risk childcare assistance. Childcare assistance spending in recent years has significantly increased; additional enrollment as a result of this bill is not currently contained in HB2. CYFD reported this bill's fiscal impact would exceed available resources and could not be absorbed with existing resources.

CYFD reported, "In order for CYFD to provide financial assistance such as care and maintenance reimbursements, clothing vouchers, no-cost child care, and other types of assistance to foster parents, CYFD currently uses primarily federal funding provided by Title IV-E of the

Social Security Act. No such reimbursement exists for children not in the custody of CYFD, and the cost for providing the same level of assistance as required by this bill will therefore have to be absorbed entirely by state general funds.”

AOC reported there would be a minimal administrative cost for a statewide update, distribution, and documentation of statutory changes. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

AOC also reported this bill does not appear to have a significant impact on the judiciary as it does not on its face require additional hearings, court action, or use of judicial resources. However, as noted in the Significant Issues section, the current language raises a number of points that need clarification. This lack of clarity could lead to litigation if not resolved in any rules promulgated by CYFD.

SIGNIFICANT ISSUES

The federal Family First Prevention Services Act (FFPSA) signed into law in 2018 sought to change the way federal Title IV-E funds can be spent by states. Title IV-E funds previously could be used only to help with the costs of foster care maintenance for eligible children; administrative expenses to manage the program; and training for staff, foster parents, and certain private agency staff; adoption assistance; and kinship guardianship assistance. Now territories and tribes with an approved Title IV-E plan have the option to use these funds for prevention services that would allow “candidates for foster care” to stay with their parents or relatives. States will be reimbursed for prevention services for up to 12 months. A written, trauma-informed prevention plan must be created by states and federally approved, and services in state plans must be evidence-based.

Once federally approved, the FFPSA may allow Title IV-E funds for in-home parent skill-based programs and mental health services and substance abuse prevention and treatment services to prevent the placement of children and youth into the foster care system. In addition, Title IV-E funds can only be used in this capacity for 12 months for children who are “candidates for foster care” and for pregnant or parenting foster youth. The act further clarifies that children and youth under the guardianship of a kin caregiver may also be eligible for these funds. However, the services must be described as part of a state’s plan, the state must create a manual outlining the components of the services, services must have a clear benefit, and be a promising-practice, supported-practice, or well-supported treatment. New Mexico would also have to meet a maintenance of effort of state spending to receive Title IV-E funds for these purposes.

CYFD reported the agency does not place children with “guardians.” The agency states CYFD may only legally place children who are in their legal custody pursuant to an abuse or neglect proceeding. If the child is not in CYFD custody, any out-of-home placement that may be made pursuant to a CYFD investigation is made voluntarily by the parents.

Relative foster care parents receive the same level of care and support as all other foster care parents. Placement in the foster care allows CYFD to use federal Title IV-E funds to support foster care parents and children.

However, children in guardianships, and those in voluntary kinship care placements, were not

placed there by CYFD through an abuse or neglect proceeding process and are not CYFD foster care clients. Consequently, CYFD stated the agency is currently unable to use the same federal funds for support and, as such the entire cost for providing a level of assistance equivalent to that provided to foster parents will be born entirely by state general funds.

The Human Services Department provides Temporary Assistance for Needy Families (TANF) funding to relative care providers and Medicaid for children. In addition, CYFD Early Childhood Services has an at-risk program for at-risk children referred to CYFD for investigation and, consequently, placed voluntarily with a relative by their parents.

Administered by the Children, Youth and Families Department (CYFD), childcare assistance average monthly enrollment was 20,488 in FY18, an increase of 9.5 percent over FY17. The average monthly cost per child was \$550, \$53 more per child per month than FY17. At \$550 per child per month, it will cost an additional \$6 million for every 1,000 additional children served. Total direct spending for childcare assistance in FY18 reached \$135.2 million, nearly \$19 million above anticipated spending in CYFD's FY18 operating budget. In FY19, childcare assistance received an additional \$22 million from the general fund and \$3 million from TANF.

AOC provided:

“This bill would potentially require CYFD to provide a significant level of assistance to a wide number of caregivers, and as written now, the parameters to qualify for this assistance are unclear. The bill applies to “guardians of children placed in their care by the department” and to kinship caregivers. The definition of kinship caregiver references that these caregivers have had children placed in their care but does not require that the placement be by CYFD. It is not clear why there is a distinction between these two categories of caregivers or if this was intended.

This bill also requires that CYFD provide guardians and kinship caregivers the same level of assistance that the department provides to foster parents but does not specify whether this is financial assistance, training, or provide any other parameters besides the requirement that CYFD provide cost-free child care. Presumably, this would be addressed in any rules CYFD would promulgate.

The bill also does not lay out any process by which CYFD would identify eligible guardians and caregivers. Again, presumably, this would be addressed in rule.

This bill appears to be an attempt to address the number of family caregivers, particularly grandparent caregivers in New Mexico, who are caring for children due to parental inability where the family is not the subject of an abuse and neglect case pursuant to Sections 32A-4-1 through 32A-4-35 NMSA 1978. A study by the Con Alma Foundation [found](#) that in 2015, 26,241 grandparents in New Mexico were caring for grandchildren, and that these individuals had higher rates of poverty than the general population and experienced difficulty accessing resources for the children in their care.”

TECHNICAL ISSUES

The definition of kinship caregiver in this bill is in potential conflict with other definitions of kin and kinship caregiver in New Mexico statutes. The definition in this bill only recognizes

caregivers related to the child by biology or marriage. Other definitions in the Abuse and Neglect Act and the Kinship Guardianship Act include fictive kin, a person with whom the child has a significant bond or an emotionally significant relationship, to recognize customs in many New Mexico communities, including tribal communities, of kinship bonds not based on biology or marriage. See, Sections 32A-4-2(E) (definition of fictive kin), 40-10B-3(A) (definition of caregiver), 40-10-B-3(C) (definition of kinship) NMSA 1978.

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