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## FISCAL IMPACT REPORT

SPONSOR SJC ORIGINAL DATE 3/5/19 LAST UPDATED 3/9/19 HB \_\_\_\_\_

SHORT TITLE Child and Family Databank Act SB 202/SJCS/aSFC

ANALYST Courtney/Kludt

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
	See Fiscal Implications	See Fiscal Implications		

(Parenthesis () Indicate Revenue Decreases)

Senate Bill 202 (SB202) originally duplicated House Bill 173 (HB173). Both bills have committee substitutes and no longer duplicate one another therefore the committee substitute for SB202 (CS202SJC) now conflicts with the committee substitute for HB173 (CS173HJC) as these two substitutes differ from one another.

CS202SJC relates to other bills calling for collection and use of integrated data across state agencies including House Bill 88 (Senate Bill 101 duplicate) and House Bill 267. LFC staff were recently asked to provide additional information on existing proposals for integrated data systems which is included as an attachment (Attachment A)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Health (DOH)  
Children, Youth, and Families Department (CYFD)  
Human Services Department (HSD)

#### Responses not received from

Office of the Governor  
Public Education Department (PED)  
Department of Information Technology (DoIT)  
Administrative Office of the Courts (AOC)

## SUMMARY

### Synopsis of SFC Amendment

The Senate Finance Committee Amendment to Senate Bill 202 removes the appropriation of \$3.738 million previously contained in this bill.

### Synopsis of Original Bill

The Senate Judiciary Committee Substitute for SB202 (CS202SJC) appropriates \$3.738 million from the general fund to the Department of Health in FY20 to establish a Child and Family Databank Commission (Commission) for the purposes of creating a commission, mandating data sharing across agencies, and developing a governance process to share and access administrative data for research and evaluation. Unspent money from the appropriation would not revert. CS202SJC creates a 15 member commission, administratively attached to the Department of Health, that would be responsible for selecting a database host, establishing a data management and governance process, managing the databank, and facilitating evaluation and analysis. The commission would consist of agency secretaries, members of the public, advocacy organizations for underserved communities, and others. In addition to establishing a commission, the bill calls for an executive director, staff, or a qualified nonprofit entity to carry out the charge of the committee. The bill provides guidelines for creation of the Commission and for hiring or contracting of staff and services by the Commission. The Commission would also be tasked with promulgating rules, selecting a databank host, charge reasonable fees for various tasks related to data management and analysis, and ensure data provided by agencies can be used and made available to agency staff, researchers, and other public and private partners.

The bill requires data sharing for seven agencies (Department of Health, Human Services Department, Children Youth and Families Department, Public Education Department, Corrections Department, the Administrative Office of the Courts, and the New Mexico Sentencing Commission) absent specific legal prohibitions. Provisions for sharing data would be put forth in memorandum of agreements with agencies that are being required to share data. The bill also identifies specific datasets or programs that must be shared with the databank. The bill also sets forth provisions for treatment of data and data protection. The bill also calls for databank policy officers to be hired by four of the seven aforementioned agencies (DOH, HSD, PED, and CYFD) for the purpose of coordinating with the Commission and adding with identification of datasets to include in the databank. The Commission would provide funding for these four officers.

The Commission would require that any researcher seeking to use Databank data provide a summary of its findings for publication on the Commissions website. Additionally, state agencies would not be able to prevent publication of findings in the case of disagreement. Agencies retain ownership of their original datasets. In the case sharing of data is prevented by law the bill requires agencies to work with the Commission to work toward supplying a dataset by making edits, deletions or adding additional protections. The bill also does not allow for redisclosure of information that conflicts with law, making such an occurrence a punishable misdemeanor.

## FISCAL IMPLICATIONS

### Amendment Impact

The SFC amendment removes the appropriation from the bill.

### Original analysis

The general fund FY20 appropriation of \$3.738 million would be made to the Department of Health, and any unexpended or unencumbered balance remaining at the end of FY21 would not revert. According to New Mexico Appleseed (see attached) the appropriation would be split evenly between FY20 and FY21. The appropriation contained in this bill is a recurring expense to the general fund assuming the proposed Commission would continue to operate past FY21. The ongoing budget past FY21 would likely be \$1.9 million a year from the general fund.

The executive FY20 budget recommendation includes a \$1.9 million special appropriation for a child services database to the Children, Youth and Families Department whereas the Legislative Finance Committee (LFC) recommendation does not include such an appropriation. Since the bill attaches the Commission to the Department of Health, the special appropriation should also reflect this and not the Children, Youth and Families Department.

The bill gives the Commission authority to charge “reasonable fees” for a number of tasks involving the development of research projects, conducting of research, and data management and analysis. Collection of these fees would likely result in some revenue, however without a fee schedule or assessment of likely use, a revenue estimate for these fees is currently incalculable. Note that entities contributing data to the databank would not be subject to fees. DOH notes that the committee substitute is an improvement over the original bill.

DOH states:

“SB202JUS reflects several changes from the original bill that were responsive to issues raised by NMDOH and other agencies.”

Some agencies express concerns with the need for additional resources, which is discussed in the next section “SIGNIFICANT ISSUES.”

## SIGNIFICANT ISSUES

Significant issues fall into three categories (although each agency does not voice every concern):

- **Concerns with duplication of efforts and coordination;**
- **Concerns with confidentiality and data sharing; and**
- **Concerns with existing resources;**

**Concerns with duplication of efforts and coordination.** Regarding duplication, the Databank would focus on the family unit and service usage throughout the system making this a unique effort apart from existing efforts cited by agencies. Other existing integrated data systems such as ECIDS focuses on early childhood data and MMIS focuses on updating the Medicaid system, and does not include all of the agencies proposed for inclusion in the Databank. Moreover, the

Databank would contain historic administrative data, which would not be subject to some of the necessary technical support that a live federated database would need. It is likely that work on these existing systems could be leveraged for the Databank effort as both the HSD secretary and CYFD secretary would serve on the council. Additionally, added value of the Databank and the Commission exists for entities who will use these data for analysis and evaluation to further promote evidence-based policymaking. These entities could potentially include LFC, LESC, university researchers, and other entities using data to make policy decisions.

DOH states:

“SB202JUS removes language that specifically identified NMDOH as a possible databank host under the Child and Family Databank Act. The bill also updates language regarding applicability of federal and state privacy laws, potential restrictions on data sharing, and allows for situations where agency data are unavailable. Some of the detail regarding specific data sets and how they can be shared will have to be negotiated as part of the contract process between state agencies and the Commission.”

However, HSD and CYFD identify concerns with duplication of efforts with existing data systems.

HSD states:

“SB202 CS mandates the creation of an integrated data system. Agencies are mandated to transfer data annually to the Child and Family Databank, including the Human Services Department (HSD), Department of Health (DOH), Public Education Department (PED) and Children, Youth, and Families Department (CYFD). All these agencies except PED are participating in the HHS2020 MMIS Replacement project.

At a minimum, the commission will require HSD to transfer the data below in a format yet to be defined no less than annually:

1. Demographics relating to recipients of medical assistance;
2. Medicaid data, including both fee-for-service and managed care organization data and children's health insurance program claims data; and
3. Data from the following programs:
  - a. the supplemental nutrition assistance program (SNAP)
  - b. cash assistance programs
  - c. utility payment assistance programs
  - d. child support enforcement
  - e. behavioral health services

The data must be protected from disclosure and inappropriate use, as much of the information requested is confidential or protected PHI. The substitute calls for data to be anonymized.

For the MMISR Project, a Data Governance Council, consisting of representatives from HSD, DOH, CYFD, and other participating agencies has been chartered and is responsible for establishing the processes by which the HHS2020 modules will link, store, maintain, receive, share and securely protect data. This may be a vehicle to support

the Child Data Bank.”

CYFD states:

“The Early Childhood Services Division of CYFD is already collaborating with the Public Education Department and the Department of Health to align, coordinate, and share early childhood data. The Early Childhood Integrated Data System (ECIDS) incorporates both a unique identifier and a data warehouse with de-identified data for reports, data visualization, and decision-making. This project started with Race to the Top federal funding, and is now in its final stages. Currently, the project is scheduled to be completed in 2019 using Preschool Development Grant Birth to age 5 funds.

The ECIDS duplicates components of the databank described in this bill. At this time, ECS does not have the resources available to develop new data processes or new data sets which may be called for as a result of this bill. There are additional issues about the potential for privacy violations which can lead to participants’ concerns for the privacy of their information, and result in families being reluctant to participate in state-funded programs that help keep their families safe, or enroll their children in programs that prepare them for later in life.”

**Concerns with confidentiality and data sharing.** Agency concerns with confidentiality should be taken in the context that some projects using these types of data have been successful in other states. Existing models within the state such as the New Mexico Sentencing Commission could also show promise for cooperation and data storage and use that complies with federal and state law.

However, all three agencies responding (DOH, HSD and CYFD) express concerns about confidentiality and data sharing.

DOH states:

“SB202 CS mandates the creation of an integrated data system, the composition of which significantly overlaps the agencies and data sets that are part of the HHS2020 initiative. Agencies are mandated to transfer data annually to the Child and Family Databank, including the Human Services Department (HSD), Department of Health (DOH), Public Education Department (PED) and Children, Youth, and Families Department (CYFD). All these agencies except PED are participating in the HHS2020 initiative.

In Section 6.C.(7) there is a requirement that “Family, Infant, Toddler program participation information” be shared by NMDOH. There is no description or definition of FIT program participation information. Data from other programs is stated as “data,” rather than “program participation information.” What is meant by “program participation information” requires further definition.

There are ongoing projects among state agencies that involve interoperability of data systems. It will be important to determine how and when data are to be anonymized to ensure protection from disclosure and inappropriate use.”

HSD states:

“The bill states that in cases where data sharing is prohibited, agencies will work with the commission to identify ways the data could be edited, redacted, or protected to allow the data to be provided to the commission in compliance with state and federal law.

HSD has worked with the sponsors and DOH and CYFD on proposed amendments. The changes made by the sponsors that are reflected in the substitute remove most of HSD’s previous concerns and much of the ambiguity found in the original bill. The changes also prevent the agencies from being charged for use of their own data and provide more direct authority for the Commission.”

CYFD states:

“While the bill does make modifications to the Children’s Mental Health and Developmental Disabilities Act, it does not make modifications to the NMSA 1978, Section 32A-2-26 statute governing the sealing of juvenile records. All Juvenile Justice cases are subject to automatic sealing either once the youth reaches age 18 or the expiration of disposition is reached, whichever occurs later. As data being submitted to the databank must include individual identifiers so that the data can be accurately linked to other datasets, modifications to 32A-2-26 or 32A-2-32 (Confidentiality), records may be required in order for sealed case data to either be submitted to, or to subsequently remain, in the databank.”

**Concerns with existing resources.** The bill recommends funding four positions at DOH and four databank officers, one each to selected agencies. The bill explicitly states that agencies retain ownership of their original dataset. DOH states the appropriation would be enough to address resources, however HSD and CYFD put forth concerns regarding a lack of specificity of tasks and lack of adequate resources respectively.

Regarding resources, DOH states:

“SB202JUS makes the Commission administratively attached to NMDOH. NMDOH has experience in hosting large integrated data systems. It will require a significant amount of resources to administer the Commission for NMDOH to provide data into the databank. NMDOH will have to execute cooperative agreements and privacy agreements related to the Healthcare Insurance Portability and Accountability Act of 1999 (HIPAA).

SB202JUS appropriates three million seven hundred thirty-eight thousand dollars (\$3,738,000) to NMDOH to establish the child and family databank commission, and a child and family databank, and to support implementation of the bill. This funding can be used for the administrative and technical tasks and FTE required to implement the databank.

There will also be a cost associated with paying vendors to create data extracts and reports. For example, FIT KIDS and Families FIRST have vendor-hosted systems that charge a fee for any enhancements, modification, and reporting that is requested.

A significant amount of staff resources would be needed to implement this bill, although the appropriation contained in the bill would cover those expenses for NMDOH.”

HSD states:

“The cost of reporting information to the commission is unknown at this time due to the lack of specificity as to what data are to be transmitted and in what format.”

CYFD states:

“The administrative impact on CYFD of providing datasets which are already provided to other entities can be absorbed by existing resources. The administrative costs associated with aligning datasets with other requirements, developing new datasets, and increasing the quality of the available data cannot all be absorbed by existing resources.”

## **ADMINISTRATIVE IMPLICATIONS**

DOH shared the potential value of the effort. DOH states:

“The databank proposed in this legislation has the potential to help NMDOH better serve children and families in New Mexico. It would expand the scope of multi-systems data available to NMDOH administrators, researchers, epidemiologists, program coordinators, and evaluators.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Senate Bill 202 originally duplicated House Bill 173. Both bills have committee substitutes and no longer duplicate one another therefore the committee substitute for Senate Bill 202 (CS202SJC) now conflicts with the committee substitute for House Bill 173 (CS173HJC) as these two substitutes are different from one another including the fact that CS173HJC administratively attaches the Commission to the Office of the Governor and CS202SJC administratively attaches the Commission to DOH. Additionally, the Commission is constructed differently in each bill.

CS202SJC relates to other bills calling for collection and use of integrated data across state agencies including House Bill 88 (Senate Bill 101 duplicate) and House Bill 267. LFC staff were recently asked to provide additional information on existing proposals for integrated data systems which is included as an attachment.

There are currently at least three bills proposing integrated data systems or elements of such systems (e.g. data sharing among multiple agencies)<sup>1</sup>:

- House Bill 88 (Senate Bill 101 Duplicate)-Health Care Value & Access Commission Act
- Senate Bill 202 (House Bill 173 Duplicate)-Child and Family Databank Act
- House Bill 267 Criminal Justice Reforms

LFC was recently asked to provide an analysis of collective efforts for data integration (See Attachment). Although each of these pieces of legislation are addressing different policy issues, agency responses to these proposals (for fiscal impact reports) show similar concerns for each effort including duplication with existing efforts, with other proposals being made through

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<sup>1</sup> Note other bills also have components of integrated data systems but do not represent integrated data system efforts. Senate Bill 370 would require data sharing from eight government entities. House Bill 168 would require PED to share data with CYFD.

legislation, concerns about data privacy and compliance with federal and state privacy laws, and agency resource concerns. Additionally, agencies have cited ongoing and future efforts within agencies that need to be considered. For example, New Mexico was recently awarded \$5.4 million from the U.S. Department of Health and Human Services for the Preschool Development Grant – Birth to Five (PDG B-5) to assist in efforts to build a high-quality early learning system for families and young children. The Children Youth and Families Department (CYFD) is designated as the lead agency for the grant, which was applied for collaboratively with the Department of Health (DOH) and the Public Education Department (PED). This initiative reflects another example with potential duplication.

In addition, the Human Services Department's (HSD) HHS2020 initiative is to provide a common technology platform, highly shared data, common tooling, and to implement reusable capabilities that will expand business capabilities and cross-program/cross-organizational sharing of data and results. HSD plans to leverage acquired service capacity for multiple business needs across programs and across population servicing agencies within the State of New Mexico, beginning with the Medicaid Management Information System Replacement (MMISR) project. The MMISR project is primarily federally funded (90/10) and other state agencies such as DOH are also leveraging federal funds for associated projects currently underway. For example, two DOH projects to be integrated with the MMISR project, include the Family First Medicaid Eligibility System, and Children's Medical Services Medicaid Provider Enrollment System.

JRC/KK/al/sb