F I S C A L I M P A C T R E P O R T

SPONSOR SPAC **ORIGINAL DATE** 3/4/19 **LAST UPDATED** 3/7/19 **HB**

SHORT TITLE Monitor Certain Foster Care Medications **SB** 583/SPACS

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		~$44.0	`$44.0	~$88.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Senate Bill 629.

SOURCES OF INFORMATION
LFC Files

Responses Received From (Regarding Original Bill)
Administrative Office of the Courts (AOC)
Human Services Department (HSD)
Children, Youth and Families Department (CYFD)

SUMMARY

Synopsis of Bill

The Senate Public Affairs Committee Substitute for Senate Bill 583 would require the CYFD to establish rules relating to the use of psychotropic medications for children in CYFD custody, adding to the Children's Code (Section 32A NMSA 1978).

Psychotropic medications (also called "psychotropics") are defined in the bill as being prescribed with the intent of affecting behavior, mood or thought processes, to include antipsychotic, antidepressant, anti-anxiety, and behavior-modifying medications. "Medically accepted indication" is defined as a use supported by one of several listed compendia or in peer-reviewed medical literature.

The rules would include the following points:

1) A mental health professional with child expertise would provide a second opinion on the risks of the proposed medication and a review of the relevant medical literature,
2) Foster parents would have to notify CYFD within one working day of new psychotropic

medication prescriptions for their foster child,

3) CYFD would be required to notify the child, if over 14 years of age, and the child's parent, the parent's attorney and the guardian ad litem or special advocate for the child (given the child's permission if over 14 years of age) of the medication and its possible benefits and risks and side-effects, the dose as compared with the usual accepted dose, the reason for the prescription, and a list of all the medications a child has had prescribed, and
4) CYFD's plans for monitoring the child's well-being while on the medication, with at least an annual second opinion as to the risks and benefits of continuing the medication.

Court reports regarding the child will list information on any psychotropic drugs being used for the child. The child, if over 14 years of age, the child's parent, attorney or guardian ad litem could petition the court for a review of the use of the drug and/or its dosage. The court could then order another opinion on use of the drug or the dosage, possibly to include a team treatment meeting involving those working with or consulting on use of medication for the given child, or it could order discontinuation or change in dosage. The child's caseworker and foster parent cannot approve a child taking a psychotropic medication without approval of a child's licensed clinician, mental health professional, and parent.

HSD would coordinate with CYFD in training on use of psychotropic medications; HSD's medical assistance division would report to CYFD on each individual child in custody using psychotropics. CYFD, in turn, would be required to consult with a certified child/adolescent psychiatrist on any child under age five taking a psychotropic medication or any child five or older taking more than three such medications.

HSD and CYFD would be required to develop trainings for prescribers on best practices in mental health care for children, especially medication use.

Medicaid managed care organizations (MCOs) would be required through HSD to create a registry of children receiving psychotropics within residential treatment centers, group homes, and treatment foster care facilities. MCOs would also be required to work with HSD's behavioral health services division on reviewing trends regarding psychotropic use in children and in reviewing individual children whose psychotropic prescriptions might appear to be in need of oversight.

FISCAL IMPLICATIONS

The bill makes no appropriation.

HSD notes the need for an additional staff person to carry out its part of the mandates of this bill:

> SB 583 contains no appropriation. BHSD would need one FTE at pay band 70 to develop and implement prescriber training with CYFD. Midpoint of pay band 70 is $67,653. The General Fund impact of this staff member would be $33,826.
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> In addition, HSD would require 3 FTEs to spend 5 percent of their time working on this. Staff would include the Medical Director, a Pharmacist, and a data analyst. The cost of this would be $20,200, with a General Fund impact of $10,100.

CYFD did not indicate a need for additional personnel or personnel time to carry out its duties under the bill.

There would also be minimal personnel time required to update regulations; the additional court referrals regarding psychotropic use might add to the courts' burden of cases.

SIGNIFICANT ISSUES

The child's "licensed clinician" is not defined; perhaps the use of the term "primary health care provider" might make that clear. The requirement that this person in addition to the parent and the child's mental health practitioner must all approve use of a psychotropic may be more restrictive than beneficial, and there is no allowance for a child's emergency need for medication, especially antipsychotic medications.

AOC points out that

> The U.S. Dep't of Health & Human Services has noted that "Recent research has shown the disproportionality of psychotropic medication prescriptions for children and youth in foster care compared to their peers not in care." See *Psychotropic Medications: Research and Reports*, https://www.childwelfare.gov/topics/systemwide/bhw/casework/medications/reports/.
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> Tufts University researchers studying psychotropic medication use in children and teens in 47 states over a 10-year period reported in 2010 that they found that while its use in the general population hovered at 4 percent, in the foster system it was as high as 52 percent. See *Prescription for disaster: New Mexico's lax oversight puts kids in danger*, Searchlight New Mexico, Amy Linn, October 25, 2018, https://searchlightnm.com/2018/10/25/prescription-for-disaster-new-mexicos-lax-oversight-puts-kids-in-danger/. See also *Mental Health and Foster Care*, National Conference of State Legislatures, 5/9/16, tracking legislation related to psychotropic medications and foster youth, etc., http://www.ncsl.org/research/human-services/mental-health-and-foster-care.aspx.

CYFD discusses the drafting of this bill:

> To inform the drafting of this bill, CYFD's Psychotropic Committee researched multiple states' child/adolescent psychotropic prescribing guidelines and completed the New Mexico-specific Child/Adolescent Psychotropic Prescribing Guideline documents. The CYFD Psychotropic Committee membership included CYFD/Behavioral Health, CYFD/Protective Services, multiple board-certified psychiatrists, a licensed pharmacist, and a parent advocate as active participants on this project. The intent of the CYFD Psychotropic Committee was that both internal and external state government stakeholders working with and/or interfacing in the field of child/adolescent behavioral health will carefully review and support the principles and guidelines defined in these Child/Adolescent Psychotropic Prescribing Guidelines, components of which are reflected in this bill.
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> The bill does need to finish being aligned with NMSA 1978 §32A-6A-15, the children's mental health and developmental disabilities act, as 6A-15 establishes that psychotropic medications may be administered to a child fourteen years of age or older *with the informed consent of the child*. There is a requirement that the child's legal custodian be

notified by the clinician. This applies to children in custody for whom the issue of capacity to supply informed consent is not at issue. 32A-6A-16 (C) states that a refusal on the child's part to consent to treatment shall not be the sole reason for a finding of lack of capacity. As set forth under Amendments, CYFD has worked with Senator Tallman to address issues surrounding the rights of children over fourteen years of age.

HSD notes that the bill "would require HSD to collaborate with CYFD to provide information, training, data and support to monitor psychotropic medication trends and outliers. Representatives from the Behavioral Health Services Division and the Medical Assistance Division of HSD participate with CYFD and Dr. Caroline Bonham (UNM) in the Behavioral Health Clinical Policy Workgroup. This workgroup could be the basic mechanism for the bill's collaborative efforts on quality improvement."

RELATIONSHIP with Senate Bill 629, which would require evaluation of the reason for the high rate of children being released from CYFD custody within the first thirty days after having been taken into custody.

TECHNICAL ISSUES

AOC points out that the bill does not establish who bears the burden of proof for use or denying the use of a psychotropic; it also does not specify a standard of proof or what sort of court hearing is to be held. AOC also notes that parents would have no direct access to a court with an objection to use of a psychotropic; AOC suggests that a parent's representative should also be empowered to request a hearing.

CYFD reports that it has worked with the bill's sponsor on the following possible changes it believes are needed:

- Page 2, Section A (3), lines 20-21: Deleting "or the court-appointed special advocate"
- Because there are only twenty-four board-certified child and adolescent psychiatrists in New Mexico, replacing the requirement that CYFD, in specified circumstances, consult with a board-certified child and adolescent psychiatrist to the requirement that CYFD, in specified circumstances, consult with a "licensed mental health professional."
- Changing the professional who must assess the child before the child is prescribed a psychotropic medication from a licensed health professional and a qualified mental health professional" to a "licensed practitioner with experience in mental health."
- Page 4, Section E, lines 14-17: Deleting section E "The assigned caseworker or foster parent shall not approve of a child taking any psychotropic medication without the approval of the child's licensed clinician, mental health provider and parent or guardian", *(as it will instead be included in CYFD policy or procedure).*
- Adding language to Page 4, Section (D)(1) regarding the court's authority to order an independent evaluation of the need for or the prescribed dosage of a psychotropic medication to include that the evaluation may include a team treatment meeting.
- Including language affirming the rights of a child aged 14 years or older concerning consent to treatment as established in §32A-6A

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