

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

SECTION I: GENERAL INFORMATION

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date Prepared: 2024-01-18

Bill No: SB83

Sponsor(s) Crystal R. Diamond
:

Agency Name ECECD 611
and Code
Number:

Person Writing Dr. Janis Gonzales

Analysis:

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Short CYFD PLAN OF CARE
Title: FAILURE ASSESSMENTS

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
NFI	NFI		NFI
NFI	NFI		NFI

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
NFI	NFI	NFI		NFINFI
NFI	NFI	NFI		NFI

ESTIMATED ADDITIONAL OPERATION BUDGET (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI		NFI

Duplicates/Conflicts with/Companion to/Relates to: Related to HB121

Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

BILL SUMMARY

Senate Bill 83 (SB83) amends the Children's Code (Laws 2019, Chapter 190, Section 4) to say that if the caretakers of a child with a plan of care "fail to comply" with that plan, the department (CYFD) shall be notified and "shall" conduct a family assessment. Currently the law says the department "may" conduct a family assessment in this instance. SB83 also says the department "shall" provide referrals for counseling, training or other services aimed at addressing the underlying causative factors that may jeopardize the safety or well-being of the child "and may proceed with an investigation." It also removes language stating the parents or caretakers of the child can accept or decline any service or program offered. Currently the law says the department "may" provide such referrals; that the parents or caretakers of the child may choose to accept or decline any service or program; and that if the services or programs are declined, the department may proceed with an investigation.

In summary, these changes would mandate family assessments for those families who fail to comply with a plan of care, mandate the department refer those families to programs and services, and remove the language stating that the families can choose to accept or decline any service or program offered. While the family assessment would be mandatory, an investigation by the department remains an option but is not mandatory. Family assessment is defined in the 2019 law and that definition is not changed in this bill.

FISCAL IMPLICATIONS

There is no funding associated with the bill. CYFD would need to significantly increase staffing to conduct all the family assessments required by this bill, and it is not clear how this could be done without dedicated funding. If the assessments are to be done in person, which would be best practice, CYFD would need to have staff around the state trained to do these.

SIGNIFICANT ISSUES

Under this bill, CYFD would be required to do a family assessment on and provide referrals to any and all of those families who "fail to comply" with the plan of care. Importantly, non-compliance is not defined either in this bill or in the 2019 statute. Thus, it is unclear how long a time period a family would have in which to engage in services before the family assessment would be performed or what criteria would be used to determine a family had failed to comply with their plan of care. It is also unspecified who would make this determination of non-compliance and then notify the department.

The changes in this bill would also likely cause parents who use substances to be less likely to seek treatment and be identified early, which would be counter to the preventive approach that CYFD is developing.

The Comprehensive Addiction and Recovery Act (CARA) was a federal amendment to the Child Abuse Prevention and Treatment Act (CAPTA) that required states to develop plans of care for infants born affected by substance use in pregnancy. The changes to the NM Children's Code made in 2019 were New Mexico's response to the federal CARA law and were based on recommendations from the CARA work group, an interdisciplinary group convened by CYFD that met regularly for two years to review evidence and best practices and hear from those with lived experience with prenatal substance use. The conclusion of that group was that New Mexico should take a non-punitive approach to implementing the federal CARA law because non-punitive (e.g., voluntary) approaches to substance use in pregnancy had been shown to increase prenatal engagement with the health system and have better health outcomes.

A meta-analysis of data from 2000-2014 examined the effect of state-level policies and found evidence that punitive prenatal substance use policies may deter women from seeking substance use treatment during pregnancy (Health Affairs, May 2020). Further, the authors found that "there is no evidence that state punitive prenatal substance use policies reduce rates of [Neonatal Abstinence Syndrome] or maternal narcotic exposure at birth." Similarly, a RAND corporation study released in November of 2019 concluded that "state policies that impose punitive action against pregnant women who use illicit substances are associated with higher rates of infants being born with opioid withdrawal."

PERFORMANCE IMPLICATIONS

None for ECECD.

ADMINISTRATIVE IMPLICATIONS

None for ECECD.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB121

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If SB83 is not enacted, the Children's Code will not be amended to require CYFD to provide family assessments and referrals for all families who fail to comply with their plan of care, and family assessments will remain optional at the discretion of the department.

AMENDMENTS

None.