FISCAL IMPACT REPORT

SPONSOR Senate Judiciary Committee **LAST UPDATED** 3/21/2025
ORIGINAL DATE 3/11/2025

SHORT TITLE Comprehensive Addiction and Recovery Pgm **BILL NUMBER** CS/CS Senate Bill 42/SRCS/SJCS/aHJC/aHFl#1

ANALYST Garcia/Hernandez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	FY28	FY29	5 Year Total Cost	Recurring or Nonrecurring	Fund Affected
CARA* (DOH, CYFD, and ECECD)**	No fiscal impact	$12,494.0	$12,494.0	$12,494.0	$12,494.0	$49,976.0	Recurring	General Fund and Federal Funds
Multilevel Response (CYFD)	**	**	**	Up to ($10,000)	Up to ($10,000)	Up to ($20,000)	Recurring	General Fund
FFPSA Prevention Services (CYFD)	**	**	**	Up to $7,340	Up to $7,340	Up to $14,680	Recurring	General Fund and Federal Funds
Confidentiality Clause (CYFD)	No fiscal impact	$460.0-$2,605.0	$460.0-$2,605.0	$460.0-$2,605.0	$460.0-$2,605.0	$1,840.0 to $10,420.0	Recurring	General Fund
CYFD Devices (CYFD and DoIT)	No fiscal impact	$6,800.0 to $7,300.0	$6,800.0 to $7,300.0	$6,800.0 to $7,300.0	$6,800.0 to $7,300.0	$27,200 to $29,200	Recurring	General Fund
Total	No fiscal impact	$19,754.0 to $22,399.0	$19,754.0 to $22,399.0	$17,094.0 to $19,739.0	$17,094.0 to $19,739.0	$73,696.0 to $84,276.0	Recurring	General Fund and Federal Funds

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.
**GRO funding appropriated in 2024 should cover the cost
***See fiscal analysis for detail.

Relates to an appropriation in the General Appropriation Act
Conflicts with House Bill 173
Conflicts with House Bill 343 but contains some duplicate language
Duplicates language in Senate Bill 84
Duplicates language in Senate Bill 284
Duplicates language in House Bill 203
Duplicates some language in House Bill 205 and Senate Bill 458

Sources of Information

LFC Files
Child Welfare Information Gateway
Congressional Budget Office
Pew Results First Model
Washington State Institute for Public Policy

Kempe Center for the Prevention and Treatment of Child Abuse and Neglect, University of Colorado Medical Center
National Conference of State Legislatures
U.S. Administration for Children and Families

Agency Analysis Received From Agencies for CS/Senate Bill 42
Health Care Authority (HCA)
New Mexico Attorney General (NMAG)

Agency Analysis Received From Agencies for Similar Bills
Children, Youth and Families Department (CYFD)
Early Childhood Care and Education Department (ECECD)
Department of Health (DOH)
Administrative Office of the Courts (AOC)
Department of Public Safety (DPS)
Office of Family Representation and Advocacy (OFRA)
State Personnel Office (SPO)
State Records Center and Archives (SRCA)
Department of Information Technology (DoIT)

Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from state, education, or judicial agencies for the most recent amendment. This analysis could be updated if that analysis is received.

SUMMARY

Synopsis of HFl#1 for the SJC Substitute for Senate Bill 42

House Floor amendment #1 to the Senate Judiciary Committee substitute for Senate Bill 42 updates the section of the bill related to the use of state electronic devices by the Children, Youth and Families Department (CYFD) employees to align with amendments made in the House Judiciary Committee to House Bill 203. The amendment:

- Clarifies information must be retained for the term of an employee's employment by CYFD and for a period of at least seven years afterward;
- Requires the department to back-up retained records daily, monthly, and annually; and
- Specifies electronic devices issued by CYFD shall only include software and applications that are compliant with federal data retention and protection laws.

The amendment also adds to the section of in the committee substitute related to CARA to:

- Require plans of safe care be sent to the respective Indian tribe, pueblo, or nation within 24 hours of discharge if the child's parent, relative, guardian, custodian, or caretaker resides on tribal land;
- Require the Health Care Authority communicate, collaborate, and consult with an Indian child's tribe to ensure that plans of safe care are developed in a culturally responsive manner for each child.

Within the confidentiality clause section, the amendment clarifies information that should not be publicly released to including diagnostic evaluations, psychiatric or psychological reports, and

other information collected through forensic interviews and clarifies redacted information may be released to an entity conducting bona fide research or investigations, the result of which would be useful to the department in developing policy or practice.

Synopsis of HJC Amendment for Senate Bill 42

The amendment adopted in the House Judiciary Committee for the Senate Judiciary Substitute of the Senate Rules Committee Substitute of Senate Bill 42:

1. Removes the section of the bill related to homeowners insurance for foster parents

2. Adds a section related to records retention and Children, Youth and Families Department (CYFD) devices that would:
   - Require that CYFD employees only use their department issued devices for communication related to their assigned duties and specify that non-compliance would be considered grounds for termination;
   - Require that software and applications CYFD may use must be compliant with federal, state, local, territorial, and tribal data retention and protection laws; and
   - Require the department to create a system approved by the Department of Information and Technology that backs up all electronic records generated and received by employees on an hourly basis. This data must be saved for at least seven years prior to the termination of an employee's employment.

3. Changes the section of the bill related to Plans of Safe Care to:
   - Make the Health Care Authority (HCA) the lead agency, requiring HCA be responsible for ensuring a care coordinator is placed in early hospital and making the agency responsible for intensive care coordination for newborns and families with plans of safe care, removing the role of Department of Health (DOH) CARA Navigators;
   - Require that HCA use an evidence-based intensive care coordination model;
   - Require that HCA be responsible for training related to plans of safe care, removing the role of DOH;
   - Require each plan of safe care include a referral to substance use treatment;
   - Strike language that would have provided CYFD with a copy of the plan of safe care such that CYFD only receives a copy of the plan of safe care if a family disengages from the plan of safe care;
   - Require CYFD to conduct a family assessment upon referrals from HCA of non-compliance or disengagement from plans of safe care and that CYFD proceed with an investigation if the family refused services deemed by the department to be needed to avoid imminent risk of harm to the newborn;
   - Add language that HCA shall require that screening, brief intervention, and referral to treatment (SBIRT) be the screening tool used to identify substance-exposed newborns

Synopsis of SJC Substitute for SRC Substitute for Senate Bill 42

The Senate Judiciary Committee substitute for the Senate Rules Committee substitute for Senate Bill 42 (CS/SB42) makes a variety of changes within the state's child welfare system, including:

1. Enhancing the state's implementation of the Comprehensive Addiction and Recovery Act (CARA).

- Replacing the term "plan of care" with "plan of safe care" throughout Section 32-3A and other sections of the Children's Code to align with federal statute.
- Making the Department of Health (DOH) the lead agency with more specific expectations about the roles and responsibilities of care coordination. The bill provides separate definitions for "CARA navigators, who would be employed by DOH to provide case management, and "care coordinators" who are employed by insurance companies or DOH and "assigned to the newborn or family."
- Making DOH responsible for ensuring the completion of federally required reporting related to plans of safe care, developing an annual report related to the creation and implementation of plans of safe care for the Legislature, and delivering training. The bill also provides DOH with rule-making authority.
- Requiring someone at a birthing facility to create a plan of safe care for each substance-exposed newborn.
- Making DOH responsible for all training for hospitals and providers related to plans of safe care.
- Allowing for the creation of plans of safe care perinatally and directing all hospitals to use an evidence-based screening tool to screen and identify a substance-exposed newborn. The bill also outlines specific information that must be included in plans of safe care.
- Requiring plans of safe care to include a referral to home visiting or the Family, Infant, Toddler (FIT) program or home visiting and include other specific information, such as who would be caring for the infant.
- Requiring a CARA navigator, employed by DOH, to conduct a home visit and family assessment following the infant's discharge from the birthing facility and perform an assessment of risks and potential service referrals and make active efforts to connect the family with referred services.
- Requiring HCA to ensure a care coordinator is placed at every birthing facility and provide training to hospitals about the use of screening, brief intervention, and referral to treatment (SBIRT).
- Amending the section of the statute that deals with the duty to report abuse and neglect to note CYFD shall be notified about the creation of each plan of care "in the form and manner prescribed by the department," and clarify DOH shall receive a copy of each plan. CYFD continues to receive a copy of each plan.
- Requiring CYFD to be notified by DOH within 24 hours in the event a family disengages from the plan of safe care. CYFD shall then conduct an evaluation of the infant's immediate needs and the family's ability to "keep the infant safe."
- Amend statute to notes "nothing in the [statute related to CARA] shall apply to the Indian Family Protection Act."

2. Codify the federal Family First Prevention Services Act in statute and establish timelines for implementation. The bill would direct the Children, Youth and Families Department (CYFD) to implement evidence-based prevention services eligible for federal

reimbursement. The bill outlines the following timelines related to implementing the state's FFPSA plan:

- By August 1, 2025, CYFD must finalize and post online the state's strategic federal FFPSA plan.
- By September 1, 2025, CYFD must submit the state's plan to the federal Administration for Children and Families.
- By July 1, 2026, and each July 1 thereafter, CYFD must post the annual report.
- By June 30, 2027, CYFD must provide Families First prevention services through a pilot program.
- By August 1, 2027, CYFD must adopt rules to carry out the act.
- By June 30, 2032, CYFD must plan for statewide implementation of services, informed by pilot results.

3. The bill would update the state's multi-level response statute to remove language regarding piloting the statute and requiring statewide implementation by 2027.

4. Updating the state's confidentiality clause related to the handling of child welfare information.

- The bill revises the Children's Code so that the Children, Youth and Families Department (CYFD) has broader ability to share personally identifiable information under specific circumstances, including when the child's family has been publicly identified through new reports. However, the department is not required to disclose department information if the district attorney successfully petitions the court that disclosure would cause specific, material harm to a criminal investigation or prosecution.
- The bill defines personal identifier information.
- Additionally, CYFD is required to provide a summary report to any person who reports a potential child abuse and neglect case within 20 days of an investigation's closure.
- The bill adds a definition of "near fatality" and requires that CYFD release information about the near child fatality, which adds to the section of law that already details information CYFD must release in cases of fatalities (34A-4-33.1 NMSA 1978). The bill requires that the department create a dashboard and annual report to the legislature and governor, which includes information about all fatalities and near-fatalities.
- The bill notes nothing in the section about the Confidentiality Clause applies to the Indian Family Protection Act or individuals subject to the Act.

5. Declaring that foster children are not residents of foster homes, for the purposes of homeowners insurance.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

Comprehensive Addiction and Recovery Act (CARA) Implementation

The 2023 LFC CARA Program Evaluation found between 2020 and 2022, the state established plans of safe care for 3,770 infants. Throughout the analysis below, LFC assumes the plans of safe care would be established for roughly 1,200 newborns annually, or roughly 6 percent of all births in New Mexico.

The bill would require HCA to ensure all birthing hospitals in the state have dedicated care coordinators available and in-person. At an average cost of roughly $100 thousand, the state could assume a minimum cost of at least $2.5 million for in-person care coordinators placed at birthing hospitals. HCA estimates a higher cost, assuming multiple care coordinators at 35 hospitals at all times, for a total cost of $15.8 million, with roughly 75 percent covered by federal Medicaid funds. However, the bill does not require 24-hour coverage at all times. In 2023, HCA ordered all MCOs to place a care coordinator at all birthing hospitals through a letter of direction. In addition, the state is currently spending more than $115 million annually on care coordination, and currently MCO care coordinators provide some level of care for eligible infants. Thus, some costs may be absorbed in HCA's existing budget.

HCA provisions of care coordination for families with plans of safe care following discharge will also impact HCA's budget. Within the state's Medicaid program, high fidelity wraparound is an evidence-based, Medicaid eligible program for intensive case management. HCA could employ high fidelity wraparound to deliver care coordination for families with plans of safe care and then seek federal reimbursement at the state's FMAP rate (roughly 78 percent). According to a letter of direction HCA issued in 2024, the Medicaid billing rate for high fidelity wraparound is $1,995 per case. Delivering this form of case management to roughly 1,200 New Mexicans would cost roughly $2.4 million annually in total. Providing follow-up care coordination is already a component of the state's Medicaid managed care plan, and HCA may be able to absorb some of the costs associated with in-person care coordination with existing funding. In total, LFC estimates the cost to HCA to deliver in-person care coordinators in the state's birthing hospitals and intensive care coordination to families upon discharge to be at least $4.9 million, with an assumed general potential general fund cost of roughly $1.8 million. The state may experience cost savings resulting from improved health outcomes and reductions in subsequent child welfare involvement that are not accounted for in the analysis below.

HCA cost analysis for House Bill 205, which includes similar requirements for HCA care coordination, estimates care coordination costs of up to $12 million annually, while assuming Medicaid reimbursement totaling $9.5 million. As such, LFC estimates the total cost to provide care coordination for families with plans of safe care to be between $2.2 million and $12 million.

In analysis for the committee substitute for Senate Bill 42, HCA provides several analysis related to costs to administer and provide training for SBIRT, ranging between $428 thousand and $8.2 million. However, SBIRT is already a Medicaid-eligible service, and the state's Medicaid program is largely delivered through managed care. Thus, MCOs may be able to absorb increased utilization of SBIRT within the existing per-member-per-month payments made to MCOs. Additionally, HCA has received GRO appropriations in fiscal years 25-27 to support the delivery of SBIRT training, and the agency could use some of these resources to provide SBIRT training to hospitals.

LFC analysis assumes HCA can absorb the costs associated with SBIRT and care coordination within existing appropriations to the Medicaid program and does not include the amount in the cost estimates detailed below and at the top of this FIR. However, costs to the FIT program and

home visiting programs are included below. The General Appropriation Act, as amended by the Senate Finance Committee, includes $1.8 million for HCA to implement plans of safe care and does not contain an appropriation to DOH related to the implementation of plans of safe care.

The bill would also increase referrals to the state's home visiting programs or the Family Infant Toddler (FIT) program. ECECD notes the Plans of Safe Care referrals to home visiting providers could result in cost increases to home visiting programs, estimating an increase of up to 2,279 families annually at a projected cost of $8.1 million. If families are enrolled in programs eligible for Medicaid and Title IV-E, the state would be able to receive roughly 75 percent in federal reimbursement, resulting in a cost of roughly $2 million. ECECD currently prioritizes higher-risk families and could likely absorb some influx of home visiting referrals. However, the state would need to build capacity for specific home visiting models designed to serve higher-risk families. LFC assumes an estimated increase of 1,000 children, resulting in a potential cost increase of $3.6 million, with a general fund impact of $898 thousand. LFC estimates the state currently spends $5,257 per child for the FIT program. Providing FIT services to all newborns with plans of safe care could cost at least $6.3 million annually. Children may be enrolled in the program for up to three years, so this is likely a conservative estimate of total annual costs to the FIT program. Roughly 52 percent of New Mexico's FIT expenditures are covered by federal funds, according to FY21 program expenditure data. The bill allows referral to either program. The analysis below assumes a cost to ECECD of at least $3.6 million. The agency would receive $10 million in home visiting expansion funding in FY26 and, thus, could likely absorb an increase in home visiting referrals without the need for additional funding.

Estimated Cost CARA Enhancements
(in thousands)

Agency	Estimated Total Cost	Estimated Federal Funds Portion	Estimated General Fund Portion
HCA	$12,394	$9,459	$2,934
CYFD	At least $100	$0	$100
ECECD	At least $3,600	$2,702	$898
Total	**$16,094**	**$12,161**	**$3,932**

*DOH did not assume federal funds in analysis for similar bills. However, intensive care coordination services, if using Medicaid or Title IV-E eligible models, should be eligible for federal reimbursement.

Family First Prevention Services Act

Because CS/SB42 mirrors the requirements of the federal Family First Prevention Services Act (FFPSA) and directs CYFD to implement evidence-based services identified by the federal government, it is likely to result in similar savings. In 2016, the Congressional Budget Office fiscal note for the estimated FFPSA would, on net, reduce direct federal spending by $66 million within the first decade of implementation. New Mexico may also reasonably predict net savings because of implementing these services if the state implements program models with fidelity.

The federal government allows states to be reimbursed for eligible prevention services at the state's Medicaid match (FMAP) rate, which is roughly 75 percent in New Mexico, if that state has an approved FFPSA plan in place. While CYFD would need to determine the actual services included in the FFPSA plan, the analysis below includes cost estimates for two programs eligible for federal Title IV-E (foster care) reimbursement that CYFD could choose to implement: Homebuilders, an intensive in-home family preservation program, and SafeCare, a home visiting program proven to improve parenting skills and reduce child abuse and neglect. These two sample programs have different average per-client costs used to assume potential costs. The per-

client cost to implement evidence-based programs in New Mexico could be higher than the average estimates, given the rurality of the state.

The federal FFPSA requires states to deliver services to children and families at risk of foster care involvement but allows states to define eligibility broadly. The number of children who ultimately receive services in New Mexico would depend on how CYFD defines the eligible population in the state's plan. States that appear to be taking greater advantage of federal Title IV-E prevention services funding and serving larger numbers of children, including Oklahoma, Kentucky, Indiana, and the District of Columbia, which each serve between 0.1 percent and 0.4 percent of the state's total child population. However, the demographics of these states vary considerably, as do rates of child maltreatment. Given the state's high rate of child maltreatment, New Mexico could potentially serve a larger share of its child population. If New Mexico were to serve 0.5 percent of the state's total child population, the state could assume costs of at least $8.8 million annually to serve roughly 2,200 children, assuming the average cost to implement Homebuilders, with a potential general fund of impact upwards of $2.5 million annually.

	Average Cost per Client	Benefit to Cost Ratio	Cost to Implement to 0.5% of NM's Child Population	Assumed Federal Title IV-E Reimbursement	Assumed General Fund Impact
SafeCare	$226	$24.05	$510,022	$367,216	$142,806
Intensive Family Preservation Services (Homebuilders)	$3,913	$5.14	$8,830,604	$6,358,035	$2,472,569

Source: LFC Analysis

New Mexico is currently implementing a very limited number of programs eligible for Title IV-E prevention funding reimbursement, meaning CYFD would likely need to invest in capacity building, start-up costs, and implementation support for programs included in its FFPSA plan. The bill would allow CYFD to pilot programs included in its FFPSA plan through FY27, and the General Appropriation Act of 2024 included $3 million in general fund appropriations annually in fiscal years 2025 through 2027 for CYFD to pilot and evaluate evidence-based prevention programs that could be used for start-up costs.

If the state implements programs eligible for federal FFPSA funding, New Mexico should experience significant cost savings. For example, the Washington State Institute for Public Policy estimates a state can experience a savings of $24 for every $1 invested in SafeCare or a savings of $5 for every $1 invested in Homebuilders. According to LFC analysis, evidence-based home visiting programs may result in a reduction in child maltreatment rates ranging between 1 and 3 percent, depending on the model selected.

FFPSA programs may reduce the utilization of New Mexico's foster care system. The federal Administration for Children and Families attributed an 18 percent reduction in foster care utilization between 2018 and 2023 nationally in part to state implementation of the federal Family First Prevention Services Act. Assuming an estimated cost of $21 thousand per year for a foster care placement, if New Mexico were to reduce entries into foster care by between 1 and 10 percent by implementing evidence-based prevention programs, CYFD could experience savings between $205 thousand and $2 million annually. However, total potential savings and benefits are likely much greater, since this estimate only includes foster care cost savings. This estimate does not account for cost savings and benefits to the individual and society included in the ROI estimates in the table above beyond direct foster care involvement, such as increased individual

earnings, reductions in health care utilization, and involvement with the criminal justice system.

Estimated Cost to Implement Family First Prevention Services (in thousands)

Agency	Estimated Total Cost	Estimated Federal Funds Portion	Estimated General Fund Portion
CYFD- Prevention Services	Up to $9,340	Up to $7,286	$2,054
CYFD- Foster Care Savings	($205 to $2,000 annually)	Up to ($1,500)	Up to ($500)
Total	**Up to $7,340**	**Up to $5,786**	**Up to $1,554**

Multilevel or Differential Response

The bill amends the enactment of Laws 2019, Chapter 137, which created within the Children's Code a multilevel, or differential, response system for child abuse and neglect cases in three key areas.

The bill also strikes language that allowed CYFD to implement a pilot program of multilevel response and instead directs CYFD to implement a full multilevel response system as currently articulated in statute statewide by July 1, 2027.

The existing multilevel response statute (Section 32A-4-4.1 NMSA 1978) requires CYFD report on the implementation and outcomes of a multilevel response system to LFC and Department of Finance and Administration (DFA) annually with the agency's budget submission. CS/SB42 updates the recipients of the annual report to the interim Legislative Health and Human Services Committee and the interim Courts, Corrections, and Justice Committee.

LFC fiscal impact report analysis from Laws 2019, Chapter 137 indicated "an alternative response pathway to improve outcomes for at-risk families may result in a return on investment of up to $15.64 for every $1 spent per participant." Further analysis found that "alternative response [is estimated] to cost $98 per family; [while] current family support service program costs approximately $2,000 per family" and that "long term costs are reduced because fewer children are brought into the child welfare system." Moreover, a study completed in Minnesota estimating the costs of implementing differential response found that "a decreased cost incurred over three to five years for differential response families of $1,279 compared to the control group."

LFC analysis suggests the state may experience cost-savings ranging from $4.9 million to $10.8 million because of implementing a multilevel response system, if implemented with fidelity to evidence-based models. National data demonstrates that 14 percent of cases screened by child protective service agencies use differential response. In 2022, CYFD accepted 20 thousand reported cases of abuse or neglect in 2022. If New Mexico were to refer 14 percent of 20 thousand to an alternative response, instead of an investigation, roughly 2,800 cases would receive an alternative response. Projected costs from an alternative response range between $98 and $286 per family, according to previous LFC reports and the Washington State Institute for Public Policy. Meanwhile, LFC estimates a child welfare investigation costs New Mexico roughly $1,000. If New Mexico were to divert roughly 2,800 cases to an alternative response, the state could bear $274 thousand and $800 thousand in referral costs annually, while reducing investigation costs by roughly $2.8 million, resulting in a potential net savings of up to $2 million annually.

In addition to the $2 million in savings from shifting cases from investigation to alternative response, a 2023 study published in *Child Maltreatment* suggested states that have implemented an alternative response model experience roughly a 17 percent reduction in foster care placement. According to previous LFC reports, the annual cost of a child in foster care is estimated at $21 thousand. If New Mexico were to experience a reduction in foster care placement between 5 and 15 percent, the state could experience a savings of roughly $2.9 million to $8.8 million.

If New Mexico were to implement multilevel response, the state could see a total costs savings of upwards of $10.8 million annually. However, these estimates would require the state to implement multilevel response with fidelity to evidence-based models and at a cost roughly close to nationally reported averages. CYFD would likely assume start-up costs associated with differential response over the next three years but should begin to experience savings in outyears.

Potential Alternative Response Savings to CYFD	Assumed Cost (in thousands)	Assumed Federal Reimbursement	Assumed Potential General Fund Impact
Savings on investigations and implementing differential response	($2,000.00)		($2,000.00)
Savings from reduced foster care placements	($2,900 - $8,800)	($2,200- $6,676)	($667 -$2,024)
Total	**($4,900-$10,800)**	**($2,200- $6,676)**	**($2,667-$4,024)**

The General Appropriation Act of 2024 provided $1.4 million in general fund appropriations annually in FY25 through FY27 to pilot and evaluate the implementation of differential through the government results and opportunity (GRO) fund.

CYFD Devices

In analysis for a similar bill, CYFD states that they would need nine additional full-time equivalencies (FTEs) to meet the demands of the bill, which would cost approximately $1.9 million. CYFD also indicates that "the estimated fiscal impact for data storage, implementation and maintenance is an additional $2.1 million per year, with an initial planning and equipment estimate of non-recurring costs estimated at $1.0 million." The agency may be able to absorb a portion of the costs within the existing agency budget and use Government Results and Opportunity (GRO) appropriations included in the General Appropriation Act, as amended by the Senate Finance Committee, totaling $2.6 million in FY26 for the purpose of "implementing SB42".

Similarly, DoIT believes that there would be an additional estimated budgetary impact of $1.5 million annually in order to implement the technology needed for data storage. In addition to maintenance costs, DoIT also stated that they would need three additional FTE to implement, monitor, and manage the system, which would cost between $300 to $350 thousand per fiscal year.

Confidentiality Clause

In analysis for a similar bill, CYFD states that they would need three additional FTEs in order to

meet the reporting requirements related to near fatalities and fatalities ($460 thousand). CYFD did not report that they would need additional staff to provide a summary of each investigation to anyone who reported on a child abuse and neglect case. LFC analyses for similar bills introduced in previous years indicated a much larger estimated additional operating budget impact, particularly to provide follow-up to over 28 thousand reports annually. The table below reflects the range of CYFD estimate to LFC estimate of potential costs, which is what is reflected in the table above. CYFD may be able to automate some of the report follow-up, thus reducing recurring costs. The General Appropriation Act, as amended by the Senate Finance Committee, includes $2.6 million in FY26 for the purpose of "implementing SB42" which may be used to support some of the increased costs detailed above.

Estimated Annual Cost to Implement Confidentiality Clause Section

Agency	Estimated Cost
CYFD	$460.0 to $2,605.0

SIGNIFICANT ISSUES

CARA

According to LFC analysis, New Mexico has a higher rate of newborns who have been exposed to substances than the national average. The federal Comprehensive Addiction and Recovery Act (CARA) amended the federal Child Abuse Prevention and Treatment Act (CAPTA) to require states to develop plans and monitor the implementation of plans of safe care. Under CAPTA, a plan of safe care is a collaborative plan designed to ensure the safety and well-being of infants affected by prenatal substance exposure, by addressing the health and substance use treatment needs of the infant and the infant's caregivers and aiming to prevent child safety risks.

States which receive CAPTA grants must report the following to the federal government:

- The number of infants born and identified as being substance-exposed,
- The number of such infants for whom a Plan of Safe Care was developed,
- The number of infants for whom referrals were made for services.

States can place CARA responsibilities within child welfare or public health agencies. According to the National Center on Substance Abuse and Child Welfare, state child welfare agencies oversee plans of safe care for families with open child welfare cases in most states. However, 18 states employ strategies for monitoring plans of safe care that do not have an open child welfare case.

In 2019, New Mexico passed legislation requiring staff in hospitals and birthing centers develop plans of care for substance-exposed newborns, which refer families to voluntary support and treatment services. New Mexico's CARA law changed reporting requirements to the Children, Youth and Families Department (CYFD) such that a finding that a woman is using or abusing drugs would not alone be a sufficient basis to report child abuse or neglect. However, New Mexico's CARA law spread the responsibility for developing and monitoring voluntary plans of care across multiple state agencies and healthcare organizations, including the Health Care Authority, the Department of Health, birthing hospitals, Medicaid managed care organizations, and CYFD.

New Mexico's CARA law takes a public health approach by treating drug and alcohol use during pregnancy as a disorder requiring services rather than as a reason for reporting suspected child maltreatment to CYFD. After New Mexico enacted its CARA law in 2019, CYFD's removal of infants from families fell below the national rate. A 2023 LFC evaluation found that the state's implementation of its CARA policy has substantive gaps. The 2023 LFC program evaluation found New Mexico's implementation of CARA has substantive gaps, specifically noting most CARA families were not being referred or receiving support services or substance use treatment, and the state needed to improve CARA-related case management, screening, and identification. Specifically, the report highlighted roughly 1-in-7 CARA families were ultimately receiving substance use treatment, and families who accept services often were not participating in these services. Several bills introduced during the 2025 legislative session could make changes to sections of the Children's Code related to the state's implementation of plans of safe care (Section 32A-3A-13).

The 2023 LFC program evaluation recommended many of the statutory and program changes likely intended in CS/Senate Bill 42, including the recommendation the Health Care Authority be the lead agency responsible for the program and the state streamline CARA processes.

In analysis for a similar proposal related to CARA, DOH reports, "the prevalence of exposure to substances during pregnancy ranges from 10 percent to 40 percent for estimates across states" and "monitoring newborns identified with substance exposure is important because newborns incur risks of child abuse and neglect." The rate of newborn hospitalizations for Neonatal Abstinence Syndrome increased from under 4 hospitalizations in 2009 to nearly 15 per 1,000 in 2022.

In analysis for a similar bill, HCA reports SBIRT training is currently only available at one location in New Mexico. HCA also reports that extensive rule making would be required to implement the SBIRT requirements; this provision of the bill may also require an amendment to the state's Medicaid plan, be more than is clinically indicated, and may result in "assessment fatigue."

Families First Prevention Services

The federal Bipartisan Budget Act of 2018 (Public Law 115-123) included the Family First Prevention Services Act (FFPSA), which amended the federal Title IV-E foster care program to allow states to seek federal reimbursement if delivering specific support services for children and families to prevent entrances into foster care. The law specifies eligible populations include those "who are candidates for child welfare but can safely remain at home" and allows states to define who is "a candidate for foster care" within certain parameters. To be eligible for federal funding, states must submit a detailed plan to the federal Administration for Children and Families for approval. In addition, the FFPSA requires states implement evidence-based programs proven through rigorous research to have positive child welfare programs; the federal government maintains a list of these services within the federal Title IV-E prevention services clearinghouse. To be eligible for federal funding, these services must be rated as "well-supported," "supported," or "promising" in the federal Title IV-E prevention services clearinghouse. This section of CS/SB42 is similar to legislation implemented in other states following the federal FFPSA, including Texas, Colorado, and Maine.

The bill requires CYFD to develop and implement a strategic plan, subject to the approval of the federal Administration for Children and Families, to provide evidence-based prevention services for children and families at imminent-risk of foster care involvement. Services articulated in the plan must meet the requirements of the federal FFPSA.

The bill amends an existing section of the children's code to add the provision of evidence-based services articulated in the federal FFPSA to the responsibilities of CYFD, and the bill adds language to section of the existing children's code which requires CYFD to provide a description of the services offered to a child, child's family and the child's foster care family in abuse and neglect predisposition studies. The added language notes the services offered may include families first prevention services or referrals to income support or other services as appropriate and available.

CYFD has submitted multiple draft plans to the federal Administration for Children and Families but is one of only four states to have a plan unapproved. To date, 47 states and tribal governments have approved plans. Without an approved plan, New Mexico is missing out on federal revenue that could be used to implement evidence-based prevention and early intervention programs. For FY25, the General Appropriation Act of 2024 provided a special appropriation of $200 thousand to CYFD to pay for technical assistance in revising and resubmitting the state's prevention program plan and to ensure the maximum draw down of federal funds within Protective Services. CYFD received technical assistance through Casey Family Programs, supported philanthropically, and has not used the special appropriation to date.

CYFD noted in analysis for a similar statutory proposal:

> CYFD has submitted their Family First Prevention Services Act (FFPSA) Title IV-E Prevention Plan for federal approval. The plan identifies a continuum of prevention services to support families. Each program utilizes evidence-based or evidence-informed programming. These programs are not in the Title IV-E clearinghouse at this time, however that does not mean they will not be in the future.

CYFD also reported the bill would require the agency to exclusively deliver prevention programs listed in the Family First Prevention Services Act Clearinghouse, and CYFD currently implements a variety of culturally appropriate programs and potentially use curriculums not aligned with nations, pueblos, and tribes. However, the bill does not prohibit CYFD from implementing other programs, and CYFD is currently implementing a variety of programs that are not evidence-based.

Multilevel/Alternative Response

An alternative or multilevel response model provides child welfare systems with an alternative to traditional investigations. In an alternative response to a lower-risk case, protective services workers conduct an assessment of a family's needs, connect the family to resources or in-home services if appropriate, and continue to monitor the family directly and consistently. According to the Kempe Center at the University of Colorado, states that use alternative responses do so for low-to-moderate-risk accepted reports, with an approach that focuses on partnering with families to provide services that meet their needs, while removing the need for determination or substantiation of abuse and neglect.

In 2019, New Mexico enacted legislation to create a multilevel or alternative response model. In a traditional alternative response model, reports of maltreatment are split into two tracks: investigation and family assessment. Existing statute articulates the state shall not conduct a family assessment in the event of immediate concern for a child's safety, and an investigation shall be conducted for specific types of suspected abuse or neglect. Existing statute also notes the department may remove a case from the multilevel response system and conduct an investigation if imminent danger of serious harm to a child becomes evident.

CYFD has not implemented the program in an evidence-based way or as required by statute. Instead, CYFD has been implementing a pilot model of alternative response that refers to some families for external services and only serves families who are screened out for investigation.

In 2024, the Legislature appropriated $4.2 million through the government results and opportunity fund to pilot and evaluate implementation of differential response over three years, in accordance with statute. CYFD is now receiving technical assistance from Casey Family Programs to prepare to expand alternative response statewide and to deliver the approach to low- to medium-risk cases, as research recommends. CYFD's analysis does not include a timeline for implementation.

The existing multilevel response statute requires CYFD to submit an annual report about the implementation of the multilevel response system, including outcomes, to LFC and the DFA annually as part of the agency's budget submission. CYFD has not submitted the statutorily required report in at least the last two years. The bill would expand the required annual recipients to include additional interim legislative committees, which may increase oversight and accountability associated with this requirement.

CYFD Devices

The bill aims to protect and preserve communications regarding child welfare cases, exchanged by CYFD employees. Every child welfare case involving CYFD is a civil case, and this bill outlines how records should be preserved and the consequences of not doing so.

In analysis for a similar bill, the Attorney General raises potential concerns about an employee's right to due process:

> Public employees generally have due process protections under the New Mexico Constitution and Fourteenth Amendment of the U.S. Constitution, if tenured or classified. Immediate termination without an opportunity for a hearing—although termination is discretionary per the current language—may violate these protections.

In analysis for a similar bill, DoIT notes concerns about accessing cellular data and states:

> Access to cellular use data from the cellular carrier currently requires issuance of a subpoena to the carrier. Additionally, carriers have varying data retention schedules; all of which are shorter than this bill requires, so additional third-party retention software must be obtained for archiving the data. Additionally, due to technology changes and rapid adoption of new technologies, the state may not be able to use stored/archived in its current format and may add refactoring costs.

Confidentiality Clause

State child welfare agencies are required to maintain records of the reports of suspected child abuse and neglect which they receive, including identifying information about the child, the child's family, and other information about the child's environment. The bill aims to increase public access, and potentially accountability, to information related to child welfare cases.

In general, the federal Child Abuse Prevention and Treatment Act (CAPTA) requires states to preserve the confidentiality of all child abuse and neglect reports and records to protect the rights of the child and the child's parent or guardian. However, CAPTA allows states to release information to certain individuals and entities. States may release child abuse and neglect reports that are made in accordance with CAPTA to individuals who are the subject of the report, a grand jury or court, and entities or classes of people who are authorized by statute to receive information pursuant to a legitimate state purpose.

States must provide certain otherwise confidential child abuse and neglect information to any federal, state, or local government entity who needs the information to carry out its responsibilities related to child abuse and neglect cases and child abuse citizen review panels. Section 106(b)(2)(B)(x) of CAPTA requires the state to provide disclosure of findings or information about a case of child abuse or neglect that results in a child fatality or near fatality. Federal Administration of Children and Families guidance on state confidentiality requirements to publicly disclose "findings and information" related to child fatalities and near fatalities states, "The intent of this provision was to assure that the public is informed about cases of child abuse or neglect which result in the death or near death of a child." The ACF guidance specifically states:

> The state is required to provide the child's age and gender, when child abuse or neglect results in a child's death or near fatality; disclosure of the child's name, date of birth, death of death or other personal information is not a federal requirement. However, a state is not prohibited by CAPTA from having procedures or policies that release such information.[1]

According to the Child Welfare Information Gateway, roughly 38 states have statutes that allow for some public disclosure of information in cases involving a fatality or near fatality, most commonly the child's date of birth and gender; the cause of the fatality or near fatality; the data of the fatality or near fatality; the alleged offender's relationship with the child; and a summary of previous reports and investigations, along with information about the services offered or provided by the child welfare agency.

States have the option to allow public access to court proceedings that determine child abuse and neglect cases as long as state, at a minimum, ensure the safety and well-being of the child, parents, and families[2].

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[1]https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=68#:~:text=Section%20106(b)(2,child%20fatality%20or%20near%20fatality.

[2] Children Welfare Information Gateway. https://www.childwelfare.gov/resources/disclosure-confidential-child-abuse-and-neglect-records/

Analysis submitted for a similar bill suggests potential concerns for the privacy of the child and family. The bill would require CYFD to release information if there is reasonable suspicion of abuse and neglect in a fatality or near fatality. According to OFRA, this could be a concern for two reasons. First, it does not allow the district attorney and CYFD to investigate a case freely without intervention from the public, though the bill specifies CYFD is not required to disclose department information if the district attorney successfully petitions the children's court that the disclosure would cause specific, material harm to a criminal investigation. Second, it may cause further harm to a family that has not been convicted or found guilty of a crime.

LFC and Office of Family Representation and Advocacy (OFRA) analysis for a similar bill indicate that requiring the department to provide a summary of the outcome of a department investigation to the person who reported would likely require considerable department resources. In 2023, there were 28.6 thousand reports who CYFD investigated for instances of abuse and neglect.

However, the number of reports is likely smaller because some investigations involve multiple children or may involve multiple reports for a single case. In addition, the implementation of this provision may experience some challenges, as people may currently make reports to Statewide Central Intake (SCI) anonymously. To be able to follow-up with every report, CYFD would need the names and contact information for all reporters, and some may be reluctant to share.

NMAG highlights this section of the bill, "is ripe for abuse in custody cases, when [someone] may try to use allegations of child abuse to gain advantage…and this can be abused by others seeking to harass people with children by someone who disagrees their parenting style."

According to the Child Welfare Information Gateway, 23 states and Puerto Rico allow the person or agency that made the initial report of suspected child abuse or neglect to receive a summary of the outcome of the investigation. New Mexico does not maintain this practice. In 19 states, a prospective foster or adoptive parent is provided with information from the child's records in order to help the parent or caregiver meet the needs of the child. New Mexico allows for this practice in statute.

LFC and AOC analysis raises implementation concerns regarding the two sections of the bill that explicitly do not apply to the Indian Family Protection Act. AOC states that "although immediately identifying whether or not a child is an Indian child is essential; in some cases, a child may not be identified as an Indian child until a later stage of the case. In these instances where a child is not identified as an Indian child until after information about that child or family has been released, what is the remedy? Information previously published cannot be disgorged from the public eye."

OFRA also raises concerns about the new exception to confidentiality "in the case of the death or near death of a child", stating that it:

> Served no purpose other than to allow the public to know where the parent, guardian, or custodian of an injured or dead child lives or how they can be contacted, thereby broadening the public's ability to vilify and harass the parent, or perhaps worse. This would be the case even when a death or "near death" of a child is not the result of abuse, neglect, or other wrongful conduct. These concerns could be addressed by further restricting the definition of "identifier information."

Focusing on the fatalities and near fatalities section of a similar bill, OFRA stated that "reliance on a physician to determine the seriousness of the injury by statute rather than accepted best medical practices may create a conflict between the two standards. This definition is vague and subject to confusion and different interpretations. It should be reworked with the input of physicians."

CYFD already reports near fatalities to the LFC for its quarterly report cards. However, the near fatality measure is a rate, and the agency does not report raw numbers. Additionally, for the first quarter of FY25, CYFD did not report data for any agency performance measures.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

CS/SB42 contains language that duplicates sections of with House Bill 205 and Senate Bill 458, including duplicative language related to the Family First Prevention Services Act and Multilevel Response. CS/SB42, duplicates language in House Bill 205 related to the CARA program.

It also conflicts with House Bill 343 but contains some duplicative language related to implementing plans of safe care but makes different changes to the program. House Bill 343 would place responsibility for the program at DOH and would not require the use of an evidence-based care coordination model.

The bill duplicates language in Senate Bill 84, which would make the same changes to the Confidentiality Clause.

The bill duplicates language in House Bill 203, which requires the same provisions related to CYFD devices and records retention.

The General Appropriation Act, as amended by the Senate Finance Committee, contains the following appropriations that may fund components of the policies proposed in this bill:

- $1.8 million to the HCA to implement and oversee Plans of Safe Care from Opioid Settlement Revenue
- $7.7 million to the CYFD to match federal Title-IV E prevention revenue in the agency's recurring operating budget.
- $5.2 million to CYFD over two years to implement provisions of CSB42, contingent upon passage of this or similar legislation.

The 2024 General Appropriation Act included the following government results and opportunity Fund appropriations that may fund the implementation of portions of this bill:

- $15 million over three years to the Health Care Authority over three years that can be used to train providers using the evidence-based screening tool SBIRT;
- $4.2 million over three years to CYFD to pilot and evaluate the implementation of multilevel response, in alignment with statute;
- $9 million over three years to pilot and evaluate evidence-based prevention and intervention programs, eligible for federal Title IV-E funding.

TECHNICAL ISSUES

NMAG highlights a technical issue in the confidentiality section of the bill, which references "a child who is residing in the child's home," indicating this section may need to clarify the parties to which this section references.

RMG/hj/hg/rl/sgs/hg/sgs