

<b>LFC Requester:</b>	<b>Kelly Klundt</b>
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**AGENCY BILL ANALYSIS  
2017 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply: Date 3/6/2017  
**Original**     **Amendment**     **Bill No:** HB394  
**Correction**  **Substitute**   

**Sponsor:** Rep. Rodolpho S. Martinez  
Rep. Javier Martínez  
Rep. Linda M. Trujillo  
Rep. Derrick J. Lente  
**Agency Code:** 924

**Short Title:** GUARDIANSHIP AFFIDAVIT & PRE-SCHOOL CARE **Person Writing:** Aguilar/Pahl/Mastalir  
**Phone:** 505-827-6519 **Email:** Paulj.aguilar@state.nm.us

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
	None Noted		

(Parenthesis ( ) Indicate Expenditure Decreases)

**SECTION III: NARRATIVE**

**BILL SUMMARY**

**Synopsis:** HB394 amends § 40 – 10B- 15 NMSA, the “Kinship Guardianship Act” thereby amending the caregiver’s authorization affidavit to include pre-school care, other intervention services, daycare, headstart and a kindergarten through grade twelve school. . HB394 also amends the statute by expanding the medical care that a caregiver can authorize and establishes the caregiver as the authorized contact person for school-related purposes.

## **FISCAL IMPLICATIONS**

None Noted

## **SIGNIFICANT ISSUES**

The proposed amendment to Section 1(A)(1) would allow a non-relative caregiver who provides the name and birthdate of the child as well as their own name and home address, via affidavit, to enroll the named child in early intervention services, daycare, headstart, preschool or a kindergarten through grade twelve school, whereas previously, such a caregiver was authorized only to enroll the named child in “school”. This expansion of services to such children may further, in some respects, compliance with ESSA requirements towards homeless children by possibly enabling early identification. It is unclear, however, what the term “early intervention services” includes.

Section 1(A)(2) of the proposed amendment would be a new provision that would expand the types of care, i.e. medical care, dental care and mental health care, that a non-relative caregiver who provides the limited information discussed above, may consent to. Without this amendment, a non-relative caregiver could enroll the named child in school and could consent to “school related medical care” which was defined as “medical care required by the state or a local government authority as a condition for school enrollment.” This amendment would further at least one purpose of the Act, that being to “provide a child with a stable and consistent relationship with a [kinship] caregiver that will enable the child to develop physically, mentally and emotionally to the maximum extent possible when the child’s parents are not willing or able to do so.” Education and well-being are essential components of a child’s development, which may be furthered by the proposed amendment.

Section 1(A)(3) would add a new provision authorizing the non-relative caregiver who provides the minimal information to be the “contact person for school-related purposes.” This provision should be modified to ensure that this is authorized only to the extent that it is consistent with the Family Education Rights and Privacy Act.

**HB 394 permits caregivers to enroll a child in preschool and Kindergarten through 12 schools and allows the caregiver to consent to medical care, including school related medical care, sports physicals and to serve as the contract person for school-related purposes.**

**For students with disabilities under the Individuals with Disabilities Education Act (IDEA) a parent is specifically defined under 34 CFR § 300.30. A partial definition of parent includes a biological or adoptive parent, a foster parent, and a surrogate parent. Also a guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child or and individual acting in the place of a biological parent or adoptive parent (including a grandparent, stepparent or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare. 34 CFR § 300.300 requires parental informed and written consent before an initial evaluation for special education and related services and for the initial provision of a Free Appropriate Public Education.**

**According to the Pegasus Legal Services for Children’s website at <http://pegasuslaw.org/guardianship-of-a-child/>, the individual seeking guardianship of the child must Petition for Kinship Guardianship in the district court where the individual seeking guardianship and the child live. With that requirement and the requirements under the IDEA**

regarding the definition of a parent and parental consent, it is unclear if HB 394 can allow educational decision making for students with disabilities through a signed affidavit.

The IDEA at 34 CFR § 300.520 requires the transfer of rights for a student with a disability at the age of majority, except for a student with a disability who has been determined to be incompetent under State law. This transfer of rights or emancipation allows students with a disabilities, 18 years of age or older, to make educational decisions on their own behalf and are afforded all procedural safeguards as an adult. It is unclear if HB 394 will allow individuals seeking guardianship to have rights transferred to them for a student with a disability 18 years old or older through the affidavit process.