

January 10, 2014 Advisory Letter — Opinion Request – Citizen Substitute Care Review Act

Ms. Bonnie J. Geer
Chair, State Advisory Committee
NM Child Abuse and Neglect Citizen Review Board
13208 Slateridge Place NE
Albuquerque, NM 87111

Re: Opinion Request – Citizen Substitute Care Review Act

Dear Ms. Geer:

You contacted our office for a legal opinion regarding questions related to the Citizen Substitute Care Review Act, NMSA 1978, Sections 32A-8-1 to -7 (1993) (the “Act”). Specifically, you asked what the law provides for in terms of the contractor’s role and the role of the State Advisory Committee (herein after “SAC”). We apologize for the delay in responding to your letter, due mainly to employee turnover in our office. As discussed in more detail below, a nonprofit contractor generally may make localized decisions regarding the regular operation of local substitute care review boards so long as the decisions do not conflict with rules or directives enacted by SAC.

The purpose of the Act is to provide a system for the objective monitoring of children placed in the custody of the Children, Youth and Families Department (“CYFD”). See NMSA 1978, § 32A-8-3. The Act established SAC, which is composed of three members appointed by the Secretary of Finance and Administration and one representative from each local review board. To carry out its objectives, the Act provides responsibilities to SAC:

The [SAC] is authorized to adopt reasonable rules relating to the functions and procedures of the local substitute care review boards. These rules shall include guidelines for the determination of the appropriate type of review and the information needed for all cases to be monitored by the local substitute care review boards. The [SAC] shall review and coordinate the activities of the local substitute care review boards and make recommendations to [CYFD], the courts and the legislature . . . regarding statutes, policies and procedures relating to substitute care.

Section 32A-8-4(D).

The local substitute care review boards are operated by a nonprofit organization under a contract with the Department of Finance and Administration (“DFA”). See NMSA 1978, §§ 32A-8-3 and 32A-8-5. The Act mandates that a qualified contractor “establish and maintain local substitute care review boards to review . . . the disposition of children in the custody of [CYFD] prior to judicial review.” Section 32A-8-5(A). See also Section

32A-8-6 (requiring a local substitute care review board to review any dispositional order and CYFD's progress report on a child and report to the court).

To clarify the relationship between SAC and the contractor we must understand and follow the legislative intent of the statute. We analyze and interpret the Act to accord with common sense and reason and look to the plain language of the statute as a primary indicator of legislative intent. See Padilla v. Montano, 1993-NMCA-127, 116 N.M. 398; State v. Willie, 2009-NMSC-037, 146 N.M. 481.

The Act gives the contractor broad authority to establish, maintain and operate a statewide system of local substitute care review boards. See Sections 32A-8-3, 32-8-5(A). SAC has no role in the selection of the contractor, which is selected and funded by DFA. Id.

Although SAC has no direct authority over the day-to-day operations of the local substitute care review boards, it is responsible for establishing regulations that govern those operations. Specifically, as discussed above, the Act charges SAC with adopting rules that govern the functions and procedures of the local review boards and with reviewing the boards' activities. See Section 32A-8-4(D). SAC also determines the criteria for membership and tenure on local substitute care review boards, after consultation with DFA and the contractor. See Section 32A-8-5(A).

In summary, under Section 32A-8-4, SAC is authorized to enact rules to govern the functioning of the local substitute care review boards and is responsible for reviewing and reporting on the activities of the boards. The contractor is responsible for overseeing and directing the regular operation of local review boards, but must do so in a manner that is consistent with any rule adopted by SAC. Thus, SAC retains control over the contractor by establishing rules relating to the functions and procedures of the local substitute care review boards that the contractor must follow in order to maintain and operate the local boards.

You have requested an opinion on the matter discussed above. We are providing you with our response in the form of an advisory letter. Although it is not an official Attorney General's Opinion, we believe that this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the general public. If we may be of further assistance, or if you have questions regarding this letter, please let us know.

Sincerely,

JOSEPH M. DWORAK
Assistant Attorney General