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## FISCAL IMPACT REPORT

SPONSOR: Komadina DATE TYPED: 3/6/03 HB \_\_\_\_\_  
 SHORT TITLE: Informed Consent for HIV Testing SB 805/aSPAC  
 ANALYST: Dunbar

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

#### Responses Received From

Department of Health (DOH)  
 Health Policy Commission (HPC)

### SUMMARY

#### Synopsis of SPAC Amendment

The Senate Public Affairs Committee Amendment amends the bill to provide for the “opt out” strategy for HIV testing of pregnant women as opposed to “involuntary testing or mandatory testing” strategy. The “opt out” strategy has been demonstrated to be equally effective as “involuntary testing”. (See Narrative below)

#### Synopsis of Original Bill

Senate Bill 805 amends Section 24-2B-5 NMSA 1978 to add to the exemptions for informed consent. SB 805 proposes that informed consent is not required during the performance of a prenatal test to determine if the human immunodeficiency virus or its antigen is present in a pregnant woman.

#### Significant Issues

Early HIV testing of pregnant women is an important preventive strategy. Approximately one-quarter of babies born to HIV-infected women will acquire HIV infection if no medical intervention is provided during pregnancy. If an HIV-infected woman takes anti-HIV medications dur-

ing her pregnancy, the probability that her baby will acquire HIV infection is reduced to approximately one percent. It is recommended that HIV treatment should begin during the second trimester of pregnancy and continue through the time of labor and delivery. In order to provide an effective medical intervention that could reduce the transmission of HIV infection from an infected woman to her newborn child, it is necessary to know the HIV status of the pregnant woman. The American Association of Pediatrics (AAP) and the American College of Obstetricians & Gynecologists (ACOG) support universal HIV testing of pregnant women in order to reduce the incidence of HIV infections among newborn infants. SB 805 would allow an attending health care professional to determine the HIV status of a pregnant woman without first obtaining her informed consent.

DOH reports that no HIV-infected babies have been born to a New Mexico woman since U.S. Public Health Service (USPHS) Guidelines for the prevention of perinatal transmission of HIV were implemented in 1996. These USPHS guidelines mandated that all pregnant women should be offered voluntary HIV testing. New Mexico-specific data indicate that more than 80% of pregnant women accept voluntary HIV testing, the highest rate of any state participating in U.S. Centers for Disease Control and Prevention's (CDC's) Pregnancy Risk Assessment Monitoring System (PRAMS). Therefore, the extent of the benefit that would be derived from the imposition of involuntary HIV testing of pregnant women in New Mexico is unclear.

CDC data indicate, according to DOH, that a testing strategy that allows a pregnant woman to "opt out" of prenatal HIV testing is as effective as a strategy that imposes involuntary or mandatory testing (*Morbidity & Mortality Weekly Report* 51: 1013-1016; November 15, 2002). New Mexico currently follows the "opt in" strategy that offers a pregnant woman the option of accepting HIV testing, as opposed to the "opt out" strategy that allows for routine HIV testing of a pregnant woman unless she declines HIV testing after the option has been offered to her. Because of the concerns that involuntary testing raises with regard to personal privacy, an HIV testing strategy that allows a pregnant woman to "opt out" of HIV testing in New Mexico should be considered as an alternative to the imposition of involuntary testing that would be permitted under SB 805, since the "opt out" and involuntary testing strategies have been demonstrated to be equally effective.

## **ADMINISTRATIVE IMPLICATIONS**

It is unlikely that the imposition of involuntary HIV testing of pregnant women would significantly increase testing rates over those that have been achieved through a strategy of voluntary testing. Therefore, the fiscal impact of SB 805 would not be significant.

## **OTHER SUBSTANTIVE ISSUES**

Three major prenatal HIV counseling and testing strategies have been endorsed by different public health and public policy officials, all with a goal of universal testing: 1) voluntary testing with counseling regarding risks and benefits (with or without signed consent); 2) testing with patient notification and right of refusal; and 3) mandatory testing with no right of refusal. The strategy that is most appropriate should be judged upon the effectiveness of that strategy in balancing individual rights with achieving high rates of HIV testing, and the extent to which HIV infections among newborns have been reduced as a result of adoption of that strategy.

In 1996, the New Mexico Department of Health adopted the "opt in" strategy for promoting HIV

testing of pregnant women. Since the implementation of that strategy, no HIV-infected babies have been born to women who were residents of New Mexico during their pregnancy. New Mexico-specific data from the CDC "Pregnancy Risk Assessment Monitoring System" (PRAMS) indicate that greater than 80 percent of pregnant women in New Mexico were offered voluntary HIV testing. High rates of acceptance of HIV testing among pregnant women in New Mexico are likely due to the high percentage of women who receive prenatal care through managed care organizations, which effectively promote HIV testing of pregnant women.

DOH reports that studies recently published by the CDC indicate that "opt out" strategies for HIV testing of pregnant women are as effective as mandatory testing strategies, and that neither strategy significantly exceeds the efficacy of the "opt in" strategy as implemented in New Mexico (*Morbidity & Mortality Weekly Report* 51: 1013-1016; November 15, 2002).

Low rates of HIV infection among pregnant women in New Mexico were documented by New Mexico's participation in the CDC "Survey of Childbearing Women". In New Mexico, there are approximately 28,000 live births per year. During the Survey of Childbearing Women study period from 1989 to 1994, the incidence of deliveries to HIV-infected women was 18.7 per 100,000 live births, which is substantially lower than the U.S. average of 170 per 100,000 live births for that same period. Because New Mexico has a very low rate of HIV infection among women of childbearing age, and because voluntary HIV testing has resulted in high rates of HIV testing, it is unlikely that the imposition of involuntary testing will have a significant impact upon the number of newborn children who would acquire HIV infection in New Mexico.

HPC states that:

The New Mexico Governor's Task Force on HIV/AIDS Position Statement: HIV Counseling & Testing of Pregnant Women Originally Adopted October 3, 1996, Reviewed May 13, 1999 recommends:

- Voluntary HIV testing to pregnant women in New Mexico.
- Enacting a cooperative, statewide effort between DOH and representative women's groups to develop strategies and educational materials regarding HIV testing that are culturally and linguistically appropriate.
- Establishing a resources to train healthcare practitioners to provide HIV counseling and voluntary testing (including referral information to anonymous testing sites) to pregnant women and women considering pregnancy.
- Providing educational materials about HIV testing to healthcare providers who serve pregnant women.
- Encouraging private providers to offer voluntary HIV testing to their pregnant clients.
- Appropriating adequate funding to support healthcare provider education in: HIV pre- and post-test prevention counseling and testing and the policy and procedure for obtaining informed consent to test for HIV.
- Creating a consumer/provider task force to investigate and prepare a recommendation to the New Mexico Legislature regarding adopting legislation to require healthcare practitioners in New Mexico to provide HIV education and voluntary testing to all

pregnant patients.

There are 259 reported cases of female adults and adolescents with HIV/AIDS in New Mexico.

- 83 were infected by injection drug use.
- 135 were infected by heterosexual contact.
- 14 were infected by transfusion with blood/products.
- 27 are under investigation/other.

HPC says that individuals with HIV/AIDS generally have significant concerns about privacy and confidentiality, and about the treatment they often receive from society. SB805 risks combining these concerns with the State's documented difficulty getting women prenatal care: if a woman is already concerned about seeking care, she is likely to be even more reluctant if she knows that she will be tested for HIV/AIDS without her informed consent. This reluctance could result in more women simply not seeking prenatal care, which is not likely to lead to a positive health outcome for New Mexico.

BD/sb/njw