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FISCAL IMPACT REPORT

SPONSOR: Komadina DATE TYPED: 3/11/03 HB _____

SHORT TITLE: Genetic Testing for Paternity SB 824

ANALYST: Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			Indeterminate See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates: SB 851

SOURCES OF INFORMATION

Responses Received From

Department of Health (DOH)
 Administrative Office of the Courts (AOC)
 Attorney General Office (AGO)
 Human Services Department (HSD)

SUMMARY

Synopsis of Bill

Senate Bill 824 amends the Uniform Parentage Act by adding a new section to require genetic testing for named fathers of children born out of wedlock, provide for a genetic testing waiver, and provide exceptions to the right to genetic testing. SB 824 also would make critical amendments to Article 14 of the Vital Statistics Act.

SB 824 would direct unmarried putative fathers to submit to genetic testing prior to submission of an Acknowledgement of Paternity statement. SB 824 would direct married presumed fathers to submit an Acknowledgement of Paternity statement and sign a “genetic testing waiver”. When a waiver is submitted, an acknowledgment paternity could not be challenged in court after two years of submission of waiver.

Significant Issues

Section 1: The Act amends Section 24-14-13 NMSA to provide that if the mother of a child born alive is not married at the time of birth, the named father shall submit to a genetic test to determine paternity. The Act provides further that at or before the birth of a child to an unmarried woman, the person in charge of the institution, a designated representative, the attending physician or midwife shall provide written information to the mother and father or named father regarding the requirement of having the child's paternity established by genetic testing.

Section 3: The Act amends Section 40-11-5 NMSA to provide that a man shall be presumed to be the natural father of a child if certain conditions are met. Exceptions are made to this presumption when the child is born out of wedlock and genetic testing is performed.

Section 4: The Act provides that when a genetic test is performed when a child is born out of wedlock, the named father's genetic test results shall be compared to the child's genetic test results to confirm paternity. The Act further provides that an acknowledgment of paternity form or a signed voluntary acknowledgment of paternity shall have no legal effect if the genetic testing results prove that the named father of a child born out of wedlock is not the natural father of the child.

Section 5: The Act provides that an acknowledgment of paternity form shall contain a separate genetic testing waiver attachment that shall be presented to all presumed fathers of children born in wedlock. A presumed father who signs both the paternity form and the testing waiver shall, after two years from the date of signing both forms, forfeit his right to challenge paternity. These provisions shall not apply when a child born in wedlock has been conceived as result of artificial insemination or when the woman, upon written and signed consent of her husband, is impregnated with semen donated by a man not her husband.

Section 6: The Act provides that prior to the issuance of a child support order against a named father of a child born out of wedlock who has not signed an acknowledgment of paternity form, the court shall order the named father to submit to genetic testing to determine paternity. The right to have genetic testing performed shall not apply if:

- the presumed father's child was born prior to the effective date of the provisions of this Act and the presumed father has signed, within the last two years, an acknowledgment of paternity form; or
- the presumed father's child was born after the effective date of the provisions of this act and the presumed father has signed both an acknowledgment of paternity form and a genetic testing waiver attachment and two years have passed since the date the presumed father signed the genetic testing waiver attachment.

Section 7: The Act provides that that the department of health shall work with the appropriate federal agencies to determine how much of the genetic testing provided for in this Act may be reimbursed pursuant to the existing federal government testing reimbursement rules.

HSD is concerned that if SB 824 is enacted, it would place the Human Services Department (HSD) in jeopardy of losing federal funds for both the child support program and the Temporary Assistance For Needy Families (TANF) program by placing the state out of compliance with its IV-D State Plan and the provisions of federal law requiring procedures for

the voluntary acknowledgement of paternity found in 42 USC Sec. 454(20)(A) implemented by 42 USC 666(a)(5)(C).

PERFORMANCE IMPLICATIONS

HSD states that the department's ability to meet the federal paternity establishment performance measure, upon which both federal incentives and penalties are based, would be jeopardized by making it more difficult to obtain a paternity when the parents have voluntarily acknowledged paternity.

FISCAL IMPLICATIONS

HSD expresses concern that the federal government would impose penalties on the TANF and/or Child Support programs. NM receives \$117,000.0 for the TANF program and \$22,000.0 for the Child Support programs.

The costs associated with genetic testing range from \$400.00 per test. SB 824 would require the putative father to pay for the genetic testing. New Mexico Statistics show that fathers of 12.5% of births to unwed mothers are 18 years of age and under. So potentially 293 fathers per year 18 years of age and under would have to pay for this testing. The DOH indicates that the bill will jeopardize the collection of some of the most requested vital statistics data, those relating to teen births. A father's decision to incur these costs will impact their decision to complete an acknowledgment of paternity for their child and would decrease the number of father's assuming responsibility. DOH says that SB 824 may also have the unintended consequence of increasing the number of abortions to this age group.

SB 824 has fiscal implications to NMVRHS, DOH and the Human Services Department. Current Acknowledgment of Paternity statements would have to be drafted to incorporate information on genetic testing and also, include a new form for "genetic testing waiver". These forms would have to be prepared both in English and in Spanish. New Mexico Vital Records spends about \$25,000 annually with the current form. Under these amendments to Article 11 and Article 14, potentially may escalate spending to over \$100,000 annually. Additional funds will be required as a result of changes to operating system and electronic birth registration databases to capture the additional information.

This new type of reporting may also seriously impact funding for Medicaid paid births.

ADMINISTRATIVE IMPLICATIONS

The AOC notes that because a named father of a child born out of wedlock is required to submit to a genetic test to determine paternity, there may be fewer actions to enforce the rights of custody and visitation, thus freeing up judicial resources.

SB 824 significantly would change the manner in which the Bureau of Vital Records, Hospital Facilities and midwives have been reporting Acknowledgment of Paternity.

DOH would need two additional FTE to process follow-up in obtaining acknowledgment affidavits, provide additional training to internal and external staff, registration sites and midwives. General Services may be required to construct a "private" screening area for explaining

“waiver”.

Another layer of effort would be required to obtain a paternity where both parents acknowledge paternity. This would impose an additional burden on the hospitals, DOH’s Bureau of Vital Records, the courts, and the HSD’s Child Support Enforcement Division.

TECHNICAL ISSUES

Section 1 Item G directs that if a married mother and her husband agree that he is not the father, a putative father may file an acknowledgment of paternity affidavit. However, this section does not give mention of a waiver of genetic testing requirements. This section is inconsistent with 40-11-25, Page 10 Section A, “The acknowledgment of paternity shall contain a separate genetic testing waiver attachment that shall be presented to all presumed fathers of child born in wedlock”. These items are not mentioned in Section G, providing inconsistencies with the testing requirements imposed to an unmarried mother.

SB 824 would require a husband (of a woman with a child born in wedlock) to complete an Acknowledgment of Paternity form and complete a “genetic testing waiver”. This matter is of concern to DOH in that it has serious consequences as it would direct the medical records clerk or vital records clerk to take the presumed father aside in private and explain the meaning of the form. DOH states that this may imply to the husband that he may or may not be the biological father. Such an implication may cause a disturbance, which the clerk is not trained to handle. Vital Records does not have a private screening area for customers. Requirements of a “genetic testing waiver” may put staff at risk of harm.

OTHER SUBSTANTIVE ISSUES

Births must be reported to the State of New Mexico within 10 days from the date of birth, and genetic testing can take up to 9 days or more for genetic analysis. If an Acknowledgment of paternity cannot be completed until the genetic test results are in, the result is an untimely delay in reporting the birth to the State of New Mexico, causing hardships on parents who depend on the birth certificate to obtain Medicaid, tax deductions and other benefits. The delays, according to DOH, would also impact reporting of New Mexico data and National Health Statistics timelines. In addition, DOH, states that the registration site and/or New Mexico Vital Records (NMVRHS) would then be left with the burden of locating these fathers to provide or obtain test results and encourage genetic fathers to return with the mother to the registration site or NMVRHS office to complete the Acknowledgment of Paternity Form. New Mexico has a high volume of paternities submitted by unmarried immigrant parents. These parents often are unable to provide a substantial physical or mailing address. Locating these parents to prepare an Acknowledgment of Paternity may be difficult or impossible.

DOH, explains that an average of 10,000 Acknowledgment of Paternity affidavits are filed annually. SB 824 assumes that acknowledgment of paternity is only determined at the hospital when in fact 1/3 of acknowledgments of paternities are submitted directly to the NMVRHS. Furthermore, New Mexico has a very high percentage of people taking responsibility for their children at present. Enactment of SB 824 could seriously impact the welfare system because, if required to obtain genetic testing, fathers would be less likely to take responsibility for the children they fathered.

BD/njw