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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/28/07  
 LAST UPDATED 03/12/07      HB \_\_\_\_\_

SPONSOR Jennings

SHORT TITLE Contraceptive Injections for Certain Mothers      SB 1166/aSfI

ANALYST Geisler

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Indeterminate, see narrative				

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to: HB 141, SB 1175, SB 954, and HB 523.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General (AG)  
 Department of Health (DOH)  
 Children, Youth, & Families Department (CYFD)  
 Health Policy Commission (HPC)

### SUMMARY

#### Synopsis of SFI Amendment

Senate Floor Amendment to Senate Bill 1166 broadens the scope of contraceptives that can be used by replacing Depo-Provera contraceptive injections with other contraceptive medications prescribed by a physician.

#### Synopsis of Original Bill

Senate Bill 1166 proposes that the Department of Health (DOH) design and implement procedures for the purpose of identifying and initiating Depo-Provera contraceptive injections for women who give birth to drug- or alcohol-addicted babies for a second time.

### FISCAL IMPLICATIONS

The costs to implement SB 1166 are indeterminate. DOH will be responsible for additional program administration costs as well as costs of contraception. There would also be additional costs to the courts.

## **SIGNIFICANT ISSUES**

Senate Bill 1166 seeks to address the serious problem of drug abuse and Fetal Alcohol Syndrome (FAS), which is a the manifestation of specific growth, mental and physical birth defects associated with the mother's high levels of alcohol use. DOH reports the incidence of alcohol related birth defects in NM is 1 in 100 births.

### DOH provides:

This bill is an attempt to reduce the occurrence of births of drug- or alcohol addicted babies. DOH actively seeks to reduce these births; however, DOH has not found evidence that the proposed measure would be effective toward this end.

Ascertaining the occurrence of addicted births is not always straightforward. DOH staff or facilities do not provide obstetric or newborn care and do not attend to women who deliver. Drug or alcohol use by a woman during pregnancy would be known to the mother and only possibly to her health care provider, even if she receives appropriate prenatal care. Intra-uterine exposure to alcohol may not be detected until the child is 4-6 years of age, and only a few infants with severe birth defects may be identified early. Intra-uterine exposure to drugs has a range of problems for a newborn; symptoms of withdrawal would become more readily apparent than in the case of an infant exposed to alcohol.

One of the definitions of "abused child" is a child who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent (32A-4-2 NMSA 1978). When a woman gives birth to a drug- or alcohol-addicted baby, the infant is considered to be at risk and providers are obligated to report to the Children Youth and Families Department (not DOH).

While Depo-Provera is an extremely effective contraceptive option, it would not be appropriate to legislate its use. All drugs have contra-indications and prescriptions are based on a health care provider's assessment of the patient. Depo-Provera is contraindicated in women who have liver disease or dysfunction, complications of alcohol and/or drug abuse, and may not be medically appropriate for other women.

In NM, only 30% of women who had a live birth met all criteria for the Healthy Birth Index of the NM Children's Cabinet ([www.ltgovernor.state.nm.us](http://www.ltgovernor.state.nm.us)): they did not smoke before or during pregnancy; they did not drink frequently or binge drink just before the pregnancy and didn't drink during the pregnancy; they were not physically abused by their husband or partner during pregnancy; their pregnancy was intended; and they entered prenatal care during the first three months of pregnancy. These characteristics are associated with better birth outcomes as well as infant health indicators.

## **ADMINISTRATIVE IMPLICATIONS**

DOH notes that the department would have to monitor every birth in the state and have a reliable means of proving a second occurrence that a woman had given birth for the second time to a drug- or alcohol-addicted baby. Significant data collection and tracking would be required.

## **RELATIONSHIP**

HB 141, which is an act relating to crimes against children and establishes the offense of giving

birth to a child who has fetal alcohol syndrome. SB 1175, which requires the Department of Health to implement a program for court-ordered contraceptive treatment (Depo-Provera treatment for first occurrences, request for sterilization after second occurrence) for the biological parents of a baby born with Fetal Alcohol Syndrome or Drug Addiction. Senate Bill 954 would appropriate \$350,000 from the General Fund to the Department of Health (DOH) for expenditure in Fiscal Year 2008 to support and strengthen a fetal alcohol syndrome prevention program at the University of New Mexico (UNM) that delivers programs in English and Spanish and initiates collaborations statewide. House Bill 523 appropriates three hundred fifty thousand dollars (\$350,000) from the general fund to Children, Youth and Families Department for expenditure in 2008 to contract with a nonprofit organization for a fetal alcohol syndrome awareness pilot project. The project shall use the media and associated awareness initiatives in public schools and target health areas throughout the state

### **TECHNICAL ISSUES**

Title X funds are for voluntary contraceptive services. NM DOH is a grantee of the Title X Federal grant, which mandates voluntary participation of clients [Title X Law and Implementing Regulations 59.5(a) (2)].

### **OTHER SUBSTANTIVE ISSUES**

#### AG provided background on legal issues:

This bill would give district courts the discretion to order the administration of long-term contraceptives to a woman who gives birth to drug or alcohol addicted baby for a second time. Depo-Provera is a contraceptive or birth control product which is injected every 3 months. It is the brand name for a formulation manufactured by Pfizer Inc. It is a hormonal birth control and is administered to women in the form of an intramuscular injection once every 11 to 13 weeks. Depo-Provera causes the ovaries to stop releasing eggs.

[http://en.wikipedia.org/wiki/Depo\\_Provera](http://en.wikipedia.org/wiki/Depo_Provera).

The bill raises constitutional equal protection and due process issues. See *Washington v. Glucksberg*, 117 S.Ct. 2258 (1998). The courts will determine whether the states interest in preventing future contraception in women who have given birth to “drug or alcohol addicted babies” is legitimate. The courts will then determine whether the administration of Depo-Provera is a rational means of advancing that interest and whether there are no other less drastic alternatives. *Washington v. Harper*, 494 U.S. 210 (1990). The courts will also examine whether the method of advancing the alleged state interest would result in a disparate impact on certain classes of individuals based upon their gender, economic status, or race. In addition, the bill most likely be subject to legal challenge as an intrusion upon the constitutional right to procreate, discussed in the United States Supreme Court decision of *Skinner v. Oklahoma*, 316 U.S. 535 (1942).

The bill does not state who will administer the Depo-Provera. It has been shown that Depo-Provera causes harmful side effects, including the loss of bone density. This has caused the Food and Drug Administration to require Pfizer to add a “black box warning” to the product.

<http://www.fda.gov/bbs/topics/ANSWERS/2004/ANS01325.html>. Involuntary administration of the drug by government entities, or by their agents, could result in liability for any damages caused by those side effects.

**ALTERNATIVES**

Preconception health has been identified as a priority need for states and for the nation by the Centers for Disease Control and Prevention and by the Association of State and Territorial Health Officers. Policies and evidence-based services are proposed to assist couples – women and men – to achieve optimal health before beginning a pregnancy. Case management is a proven approach to helping women who have had an infant to get off drugs or alcohol.

GG/nt