F I S C A L I M P A C T R E P O R T

SPONSOR SPAC **ORIGINAL DATE** 03/12/11 **LAST UPDATED** **HB**

SHORT TITLE Drug Screening & Treatment for Certain Women **SB** 451/SPACS

ANALYST Esquibel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	**FY12**		
N/A	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		$2,430.0	$2,430.0	$4,860.0	Recurring	GF/Federal Matching Funds—Medicaid Program

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB353, SB354, and HM14

SOURCES OF INFORMATION
LFC Files

Responses Received From
Medical Board (MB)
Human Services Department (HSD)
Department of Health (DOH)
Health Policy Commission (HPC)

SUMMARY

Synopsis of Bill

The Senate Public Affairs Committee substitute for Senate Bill 451 (SB451/SPACS) would require a health care provider to:

- Be trained in how to determine when a pregnant or postpartum woman may be using illegal substances and how to assist a pregnant or postpartum woman who admits use of illegal substances;

- Perform a substance abuse consultation by interview, self-report and clinical observation as part of the care of every pregnant or postpartum woman, including screening for alcohol, illicit drugs, prescription drugs, tobacco and other substances and risky behaviors; and
- Advise a pregnant or postpartum woman with a positive drug testing of the benefits of specialized substance abuse treatment services and, with her consent, refer the pregnant or postpartum woman for substance abuse treatment services, except in the case of a drug testing performed pursuant to a court order or search warrant.

FISCAL IMPLICATIONS

The Human Services Department indicates the Medicaid program pays for approximately 30,000 deliveries each year, so approximately this number of recipients would fall under the requirements outlined by SB451/SPACS. If approximately 70% of the women consented to drug testing, and the average cost of tests for each recipient was about $30, the annual increase in Medicaid payments would be approximately $630,000 for 21,000 tests, assuming there were no additional practitioner office visits solely because of the screening and testing.

If approximately 3% of the women entered substance abuse treatment programs, and the average cost of treatment to the Medicaid program was $2,000, the annual increase in Medicaid payments for treatment would be an additional $1,800,000. The 3% percent assumption comes from some studies in another state on the percent of drug use within the Medicaid population.

So the total estimated fiscal impact to the Medicaid Program is estimated at $2,430,000.

Per the SM19 2010 Taskforce, the cost effects would potentially result in cost savings of less frequent testing through more targeted screening and testing when using workplace standards for drug testing. (http://nmwellwoman.com/attachments/article/63/FinalReportSM19%5b1%5d.pdf)

SIGNIFICANT ISSUES

According to the HSD Behavioral Health Services Division, SB451/SPACS would require a person licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession (health care provider) to be trained in determining whether a pregnant or postpartum woman is using illegal substances and how to assist a pregnant or postpartum woman who admits use of illegal substances. It requires them to perform a "substance abuse consultation," or screening for the use of alcohol, illicit drugs, prescription medications, tobacco and other substances and risky behaviors. It also outlines a process by which women would be offered drug testing and, if found to test positive, would be counseled on and referred to specialized substance abuse treatment.

SB451/SPACS does not address where health providers would be trained, who would do the training, and how this training would be funded. It also does not address what criteria a health care provider would use to determine when a pregnant or postpartum woman would be referred to drug testing.

According to the Behavioral Health Services Division, the bill's intent from the SM19 2010 taskforce is to follow *workplace standards* for drug testing. It would require an informed consent form to be signed prior to obtaining a toxicology screen (a drug test) on pregnant or postpartum women.

Nothing in the bill would require insurance plans to cover the costs of drug testing or treatment. Insurance plans may not cover the cost of substance abuse treatment except as required under the federal Mental Health Parity and Addiction Equity Act of 2008.

The bill states that test results will be confidential per NMSA 1978, Section 14-6-1. However, that section does allow information to be released upon request to a government agency or its agent, a state educational institution, and other entities. So confidentiality from government sources may still be an issue for patients. Health care, particularly substance abuse treatment, come under the stringent privacy requirements of the federal Health Insurance Portability and Accountability Act and 42 CFR § 2.11 covering alcohol or drug abuse diagnosis, treatment or referral for treatment.

It would always be good practice on the part of a practitioner to inquire about every pregnant woman's drug and other substance use. Many practitioners likely already do this.

Experience with SBIRT (Screening, Brief assessment, Intervention and Referral to Treatment) has shown that individuals who are screened have a higher rate of seeking and participating in intervention services.

Women most likely will not participate in drug testing if they are abusing substances. Women may want specific safeguards to guarantee disclosing substance abuse or dependency behaviors to their health care provider will not result in a referral to CYFD's Child Protective Services for child endangerment.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB451/SPACS relates to:

- SB353 which proposes a new section to the Family Planning Act which would require any publicly funded health care facility that provides substance abuse treatment to assess whether a patient is in need of family planning services and provide these services or refer the patient for family planning services if they are not available at the health care facility;
- SB354 which proposes to add a new section of the Public Health Act to include a requirement that the Department of Health issue a license to health facilities that offer substance abuse treatment programs to women if the facility agrees to give preference in admission to a pregnant woman and offer the same services to a pregnant woman as would be offered to any woman;
- HM14, which proposes that the University of New Mexico Health Sciences Center be requested to create a task force to oversee and implement the recommendations of the Senate Memorial 19 Task Force convened for the purpose of improving access to substance abuse treatment and prenatal care for pregnant women with substance abuse problems.

TECHNICAL ISSUES

The New Mexico Health Policy Commission suggests the following changes to SB451/SPACs:

- On page 1, line 23, after the word "trained" insert the word "in".
- On page 1, line 24, strike "maybe" and replace with "may be".

The bill would require health care providers to be trained in how to determine when a pregnant or postpartum woman may be using illegal substances and how to assist a pregnant or postpartum woman who admits to use of illegal substances. However, the bill does not address criteria or guidelines for such training.

The bill would require that substance abuse consultation be based on specific criteria and medical indicators; however, this criteria is not specified in the bill.

In addition, it is important to note that the bill does not address educating a pregnant or postpartum woman who admits use of illegal substances about the dangers of substance abuse during pregnancy or while breastfeeding. Such education is necessary for prevention. An education campaign to educate pregnant and postpartum women about the dangers of substance abuse could significantly help to prevent such behavior.

The Department of Health writes "the bill could be strengthened by identifying which health care providers would be trained to conduct required substance abuse consultations, who would conduct the training, how the training would be done, what the content of the substance abuse consultations would be, and if a standard tool would be used to conduct the consultations."

OTHER SUBSTANTIVE ISSUES

The Department of Health indicates SB451/SPACS is related to the 2009 Senate Memorial 19 Task Force on prenatal care for pregnant women with substance abuse problems and accessing substance abuse treatment. The U.S. Preventive Services Task Force (USPSTF) recommends screening and behavioral counseling interventions to reduce alcohol misuse by adults, including pregnant women, in primary care settings. The Department of Health (DOH) implements this recommendation in its public health offices (PHOs) through Screening for Violence, Alcohol, Substance use and Tobacco (VAST) as a required part of the Family Planning visit. In 2009, 8,055 VAST screenings were done in PHOs; in 2010, 10,126. (Billing and Electronic Health Record data, DOH)

SB451/SPACS would necessitate an unbiased protocol for screening and drug testing. It would require that the provider confidentially screen pregnant and postpartum substance-abusing women and test them for drugs, if indicated, in a non-discriminatory manner. If screening and tests indicate substance abuse, women would be informed about treatment options and provided treatment referral, excluding women who are being tested pursuant to court order or search warrant. Except in cases where drug testing was conducted pursuant to court order or search warrant, positive test results would be confidential pursuant to Section 14-6-1 NMSA 1978. It appears that the provider guidelines proposed by SB451/SPACS could promote a trusting relationship between patient and provider and dispel some of the common barriers for women seeking prenatal and postpartum care and/or substance abuse treatment, thereby improving health outcomes for mother and child.

A number of states have opted for non-punitive approaches designed to improve both short- and long-term outcomes for the mother and her baby through drug treatment and other support services. For example, 25 states have responded to the traditional lack of drug treatment slots available to pregnant women by creating and funding treatment programs for this population or by giving pregnant women priority access to treatment.

The Health Policy Commission writes, according to the Substance Abuse and Mental Health Services Administration:

- Data from SAMHSA's National Surveys on Drug Use & Health conducted in 2002 through 2007 were used to compare alcohol drinking rates, frequency, and quantity among women aged 15 to 44 divided into three groups: (1) pregnant, (2) recent mother (i.e., had a child within the past 12 months), and (3) all other women in this age group. A stable pattern of drinking was found for all three groups during this period.
- Combined data from SAMHSA's 2006-2007 National Surveys on Drug Use & Health examined drinking patterns among women aged 15 to 44. Pregnant women (11.6%) were significantly *less* likely to have used alcohol in the past month than recent mothers (42.1%) or all other women (54.0%). Among current alcohol drinkers, both pregnant women and recent mothers drank alcohol on fewer days than other women (4.9 days for pregnant women, 4.4 days for recent mothers, and 6.1 days for all other women). Pregnant and recent mothers also drank fewer drinks on their drinking days (2.4 drinks for pregnant women, 2.5 drinks for recent mothers, and 3.0 drinks for all other women).
- Of concern is the fact that pregnant women aged 15 to 17 were more likely to drink alcohol in the past month than pregnant women in other age groups and they were likely to consume over 3 drinks on the days they drank.

(Source: Substance Abuse and Mental Health Services Administration. http://oas.samhsa.gov/2k8/pregnantAlc/pregnantAlc.cfm)

There is no known safe amount of alcohol to drink while pregnant. There is also no safe time during pregnancy to drink and no safe kind of alcohol. When a pregnant woman drinks alcohol, so does her unborn baby. Alcohol in the mother's blood passes through the placenta to the baby through the umbilical cord. Drinking alcohol during pregnancy can cause miscarriage, stillbirth, and a range of lifelong disorders, known as fetal alcohol spectrum disorders (FASDs). FASDs are a group of conditions that can occur in a person whose mother drank alcohol during pregnancy. These effects can include physical problems and problems with behavior and learning. Often, a person with an FASD has a mix of these problems.
(Source: Centers for Disease Control and Prevention. http://www.cdc.gov/ncbddd/fasd/alcohol-use.html)

According to the 2010 Racial and Ethnic Health Disparities Report Card:

- The New Mexico rate of women receiving late (after first trimester) or no prenatal care is much higher than the national rate.
- American Indian women continue to have the highest rate with 1 of 2 receiving no prenatal care or prenatal care after the first trimester.
- The latest national report indicates that timely prenatal care is not improving across the nation.

(Source: New Mexico Department of Health. http://www.health.state.nm.us/plans/2010%20Racial%20and%20Ethnic%20Health%20Disparities%20Report%20Card.pdf)

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