

LFC Requester:

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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

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SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared 3/12/25

Check all that apply:

Bill Number: HB0011

Original Correction

Amendment Substitute

Agency Name

and Code

Dept. of Workforce Solutions-631

Number:

Sponsor: Chandler, Christine

Person Writing

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Short Title: Welcome Child and Family

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Wellness Leave Act

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---|
| FY26 | FY27 | | |
| \$35,000 | TBD | TBD | General Fund in early years; new funds created by the Act in future years |
| | | | |

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|-----------------------------|---------------------------|------------------------------|
| FY26 | FY27 | FY28 | | |
| 0 | 0 | Concur with LFC calculation | Recurring | New funds created by the Act |

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY26 | FY27 | FY28 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|-------------|-------------|--------------|------------------------------|--------------------------------------|----------------------------------|
| Total | \$25,286.75 | \$21,018.75 | \$30,097.872 | \$76,303.373 | Recurring | Family Wellness Leave Fund |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: The HCEDC Committee Substitute House Bill 11 (2025) renames the Paid Family Medical Leave Act as the Welcome Child and Family Wellness Leave Act (the “Act”), which would establish a paid family and medical leave program in New Mexico, to be administered by the workforce solutions department (WSD). Employees and self-employed individuals can take up to 12 weeks of leave per year for “welcome child leave,” which is defined as leave for new parents within 12 months of the child’s birth or adoption. Employees would receive 6 weeks of leave for the employee’s own medical reasons or those of their family members (collectively “medical leave”), seeking protection from domestic violence, stalking, or sexual assault (“safe leave”), grieving the loss of a child under 18 (“bereavement leave”), and for a need arising out of an applicant’s family member’s active duty service (“exigency leave”). Medical, safe, bereavement and exigency leave duration is not subject to adjustment.

The committee substitute also creates a “welcome child benefit” that consists of 12 weeks of unpaid leave for each parent of a child within 12 months of birth or adoption (“welcome child leave”), and a payment of \$3,000 per month for one parent for the first three months after birth or adoption of a new child (“welcome child rebate”).

The STBTC amendment removed the phrase that the Welcome Child payment was to be paid to “one of” the child’s parents. This suggests, that multiple parents could receive the benefit, but the amendment also stated, “If more than one parent of a child applies to receive the welcome child refund, the welcome child refund may be divided evenly between the parents. No child's family shall be entitled to receive more than three thousand dollars (\$3,000) each month for the three months immediately following the birth or adoption of the child.” This suggests that any number of parents could apply for the benefit, but the total benefit would only be \$3,000 per month per child.

If the committee substitute passes this year, then the roll-out would be:

| | | |
|-----------------|---|-------|
| October 1, 2025 | Deadline to appoint advisory committee | 16(E) |
| January 1, 2026 | Contract with actuarial consultant for evaluation of Family Wellness Leave Fund | 3(D) |
| January 1, 2027 | End of advisory committee | 16(E) |
| July 1, 2026 | Rules must be completed | 15(A) |

| | | |
|-----------------|---|----------------|
| July 1, 2027 | Premium collection begins | 4(B), (C), (D) |
| January 1, 2028 | Family Wellness Benefits begin | 5(A) |
| January 1, 2028 | Welcome Child Leave begins | 7(A) |
| January 1, 2029 | Annual solvency analysis begins | 3(E) |
| January 1, 2029 | First adjustment to welcome child leave refund possible | 7(E) |
| October 1, 2029 | First annual solvency analysis must be complete | 3(E) |
| January 1, 2030 | First premium adjustment and first welcome child refund adjustment possible | 3(E) and 7(E) |

How it works. Eligible individuals may take time off from work as described above, which does not need to be used consecutively. Individuals receive leave compensation while on family wellness leave. Welcome Child Leave is uncompensated, and the Welcome Child Rebate is available to one parent regardless of whether the receiving parent takes leave.

Claimants are limited to a total of 12 weeks of Welcome Child and/or Family Wellness Leave in an “application year,” which begins when an employee files their first claim. This addresses concerns about the possibility that an employee may have multiple qualifying events in the course of one year. The Act details the documentation that claimants must submit to substantiate a claim.

How much is leave compensation? An employee’s weekly leave compensation payment for Family Wellness Leave is calculated by first determining their average weekly wage in the 12 months leading up to the application for leave. Next, multiply the current state minimum wage by the number of hours per week the employee works. To that figure, add 67% of the employee’s average weekly wage to determine the amount of their weekly leave compensation payment.

For the self-employed, multiply the current state minimum wage by the number of weekly hours a person working full time (presumably in the self-employed individual’s position) would work. To that figure, add 67% of the self-employed person’s annual net income divided by 52.

For both employees and self-employed persons, weekly payments are capped and may not exceed the annual mean wage of all occupations in New Mexico as calculated by the United States bureau of labor statistics state occupational employment and wage estimates for the most recent year available divided by fifty-two.

Welcome Child Payments are fixed at \$3,000 per month for 3 months until 2030, at which time they become subject to annual CPI adjustment.

Who is eligible? To be eligible for Family Wellness Leave, an applicant must have:

- filed a claim for leave compensation, and
- contributed to the PFML fund for at least six months in the 12-month period before applying.

Welcome Child Leave applicants must have worked for at least 6 months in the 12-month period before applying. SBTBC amendments clarify that self-employed individuals are also eligible for Welcome Child benefits.

An individual may become ineligible by willfully or knowingly filing a fraudulent claim, receiving unemployment insurance for the period of the claim, not using the leave for the purpose intended, is receiving duplicate payments from workers' comp, or is earning wages for the same time period.

STBTC amendments removed the exclusion for employees under Title II of the federal Railway Labor Act. Under 45 USC Section 151, "employee" means "every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Surface Transportation Board now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Board pursuant to the authority which is conferred upon it to enter orders amending or interpreting such existing orders..." By eliminating this phrase but maintaining the exclusion for employees covered by the Federal Unemployment Insurance Act, the amendment essentially brings airline workers back into the coverage of the bill.

How is the program funded? The Family Wellness program is funded by quarterly contributions by employees, certain employers, and self-employed individuals starting July 1, 2027. STBTC amendments fixed a typo to make all contributions start July 1, 2027. These contributions go into the Family Wellness fund. Money from the fund will then be appropriated to pay for leave compensation payments, administrative costs of the entire Act, and outreach activity required by the Act.

No later than January 1, 2026, the WSD secretary shall contract the services of a "qualified independent actuarial consultant" to determine an actuarially sound premium rate as well as a "future premium rate-setting mechanism" for the Family Wellness program.

Beginning January 1, 2029, the WSD secretary shall ensure and maintain the self-sufficiency and solvency of the Family Wellness Fund, perform annual financial analysis, and set premium rates for the upcoming calendar year. Essentially, the secretary shall set the premium at the rate necessary to obtain total contributions (for the next year) equal to 140 percent of Family Wellness benefits paid and administrative costs incurred during the previous fiscal year, minus the amount of net assets remaining in the fund as of June 30 of the current calendar year. HB 11/cs caps premium increases and decreases to the rate at one-tenth percent of wages per employee per year. (Section 3(E))

How are Family Wellness contributions determined?

For employees. From July 1, 2027 to January 1, 2030, each employee will be assessed 0.2% of their quarterly wages as contributions, up to the earnings cap set by the federal social security program. Starting January 1, 2030, each employee will have an assessment on their wages at 55 percent of the premium set by WSD for the current year. (Section 4(B))

For employers. From July 1, 2027 to January 1, 2030, employers with five or more employees will be assessed an amount equal to 0.15% of each participating employee's quarterly wages as contributions, up to the earnings cap set by the federal social security program. Then starting January 1, 2030, employers with five or more employees will be assessed an amount equal to each

participating employee's wages at 45 percent of the premium set by WSD for the current year. (Section 4(C))

For the self-employed. From July 1, 2027, to January 1, 2030, self-employed persons will be assessed one-half percent of their net income. The self-employed calculation does not include the social security cap. From January 1, 2030, forward, self-employed persons will have an assessment on their net income at 55 percent of the premium set by WSD for the current year.

Who must pay contributions?

- All public and private employees subject to state jurisdiction, except employees of the United States.
- All employers of public and private employees, regardless of whether they are physically located in the state, except those with fewer than five employees.
- Self-employed individuals subject to state jurisdiction who opt into the program.
- Indian nations, tribes and pueblos that elect to be covered in the program for their employees.
- Employers and their employees unless they are granted a waiver from participation by WSD (see below).

Exemptions authorized. Employers with leave plans or programs for the benefit of their employees that provide leave and leave compensation “substantially similar to or greater than the leave and leave compensation offered” under HB 11/cs may apply for a waiver to exempt the employer and its employees from participating in the Welcome Child and Family Wellness programs. HB 11/cs sets forth a number of requirements with regard to exclusions and waivers, including, for example, the right of employers and employees to appeal WSD’s grant or denial of a waiver of participating in the program.

Claims processing. WSD shall process and claims according to the timelines and protocols expressly stated in HB 11. For example, WSD must protect the confidentiality of information received, provide employers and claimants notice of approval of their claim within 20 business days (Section 5(J)).

Appeals. An applicant, authorized representative of an applicant, or employer may appeal an adverse determination of a claim. WSD must hold a hearing within 10 business days after an appeal is properly made, due notice is given and mediation is refused, and must rule on the appeal within 20 business days of the hearing.

Administrative Actions. Individuals or WSD on its own motion can bring “administrative actions” for alleged violations of the Act by an employer, including an employer who received a waiver, by filing a complaint with WSD. WSD’s secretary or designee must then afford the parties a due process, on-the-record hearing and issue a ruling on the complaint within 20 business days of the hearing. HB 11/cs grants the WSD secretary or designee authority to take disciplinary action against parties, such as fines, censure or revocation of a waivers of participation in the state PFML program. Appeals or judicial review of the agency’s final decision on an appeal or administrative action would be pursuant to Section 39-3-1.1.

Preemption. HB 11/cs continues to preempt cities, counties, and other political subdivisions from

having their own laws governing paid family and medical leave, with the exception of paid-time-off or paid-sick-leave ordinances, policies, or resolutions, or leave policies for its employees.

Collective bargaining. Nothing in the bill shall be construed to diminish the rights, privileges or remedies of any employee under any collective bargaining agreement.

Promulgation of Rules. WSD is obligated to promulgate rules and regulations necessary to carry out the purposes of the Act. The deadline to promulgate rules to implement Sections 3, 4 and 5 of the Act is July 1, 2026.

Advisory Committee. The Act creates an 8-member “paid family and medical leave implementation advisory committee” whose purpose is to provide input regarding best practices for the efficient and timely development, implementation and promulgation of rules and educational materials to carry out the provisions of the Act. The WSD secretary shall consult with the committee at least quarterly and provide staff for it. The deadline to appoint the committee is October 1, 2025, and the committee’s work ends on January 1, 2027. Half of committee members must represent employers and the other half represent employees.

FISCAL IMPLICATIONS

The following is the WSD estimate of costs in dollars (not thousands of dollars).

| Program Year | Year 1 | Year 2 | Year 3 | Ongoing |
|--------------|---|---|--|-------------------------------------|
| Fiscal Year | State Fiscal Year 2026 7/1/25 to 6/30/26 | State Fiscal Year 2027 7/1/26 - 6/30/27 | State Fiscal Year 2028 7/1/27 to 6/30/28 | State Fiscal Year 2029+ 7/1/28 + |
| Activities | Planning/Rule Making/ Initial Contract Awards/ Start IT build | Operational Builds and IT and Facilities, Half Operations | Full implementation, O&M, post-implementation improvements | Running Full Program |
| Milestones | Rulemaking Complete | | Premium Collections Begin 7/1/2027; Benefits begin 1/1/28 | |
| IT | \$17,510,000 | \$10,815,000 | \$ 9,527,500 | \$ 4,120,000 |
| Ops | \$ 2,639,400 | \$ 6,000,000 | \$14,550,798 | \$14,550,798 |
| Totals | \$20,149,400 | \$16,815,000 | \$24,078,298 | \$18,670,798 |
| With AS&T | \$25,186,750 | \$21,018,750 | \$30,097,873 | \$23,338,498 |

WSD used a variety of methods to compute staffing, including receiving data from states with existing programs, evaluating the bill for program requirements and modeling staffing based on the UI staffing structure. Direct comparables to other states were difficult to obtain because we could find no other state in which the contributions, benefit administration, appeals and enforcement were all in one agency.

WSD reduced the operational cost estimate for year 2, based on the committee substitute change in dates of premium collections. The remaining changes to the bill are not anticipated to result in cost savings because the number of claims is unlikely to change. The IT system will still need to include “accounts” to track contributions of all employees and all employers in the state, plus the

flat rate Welcome Child Rebate.

Part of the basis of WSD's staffing analysis is the estimated number of annual claims. Estimates of the number of annual claims vary quite widely. Applying Washington State's claim numbers proportionally to New Mexico's population yields an estimate of 52,800 annual claims. Direct comparisons are challenging because each state has its own definitions of covered conditions, and each state has unique population characteristics. WSD believes estimating based on UI staffing levels with certain adjustments is the best method of approximation.

- Using the UI staffing base as a comparator, WSD projects an increase for the Act's processing staff to reflect the statutory timelines for processing claims and hearings that we do not have in UI.
- In comparison to certain other states with lower relative staffing levels, WSD allows filing by phone and in person for UI and would anticipate the same for this program. New Mexicans require phone and in-person service because of broadband access, computer literacy, and lack of familiarity with government services. WA, RI and CA do not do in person claims, while NJ started in 2022. DC does not allow filing by phone or in person.
- Comparison to other states' staffing levels is also challenging because states with lower relative staffing levels have different roles and less administrative burden. For example, CA appeals from their paid family & medical leave plans go to a different agency. Job protection is not available (so doesn't need to be enforced) in CA, in the initial NJ law, or for an employee's own health issues in RI and DC. RI and DC do not have waiver programs.

As stated in previous FIRs, the mandated timelines for resolution of claims and hearings on appeals drives some of the costs. Making government agencies subject to the Act means WSD (like all agencies) will need to staff in anticipation of coverage issues. Many states do not mandate that public agencies are covered (RI, CA, NJ, DC).

WSD concurs with LFC's estimates and calculations regarding leave utilization, estimated benefits to be paid, and fund solvency.

We note that an employee's time with an opt-out employer counts towards the 6-month contribution requirement. Employees in this situation will be drawing from the fund without having contributed to it.

SIGNIFICANT ISSUES

The Welcome Child payment is funded by appropriations. Although it is not included in the bill, comments made subsequent to the last FIR, in committee and in the media, suggest that the benefit will be funded by taking money from the Early Childhood Education and Care Department (ECECD) and/or Early Childhood Education and Care Fund.

As drafted, the Welcome Child program has no protection against failure to fund the program in the first year or subsequent de-funding, whether by any future legislature or through a line-item veto by any future governor. DWS has significant concerns about the possibility of spending two years and \$35 million to prepare for a program that has no sustainable source of funding. This

approach is contrary to the legislature's other efforts to ensure long-term funding for key programs like Medicaid.

HB11/cs as amended also contains no provision regarding what happens if Welcome Child funds are insufficient. For example, the Secretary does not have the authority to reduce the Welcome Child payment if funds are insufficient to sustain the fixed benefit. Instead, the Welcome Child payment includes only an upwards CPI adjustment, without the ability to adjust downwards (Section 7E).

The Welcome Child program is excluded from the actuarial study required in Section 3(D), which is to be completed before the program commences. Committee discussion has suggested that any concerns about the premium rate or other features of the Family Wellness leave program could be fixed in the 2026 legislative session because the actuarial study will be completed by then. However, this would not be the case with the Welcome Child program, because it is omitted from the actuarial study.

There are no ongoing solvency calculation provisions applicable to the Welcome Child Fund. With an average of 22,000 births per year, even assuming that only half of the parents would be eligible, the annual cost of the Welcome Child benefit would be \$99,000,000. It is unclear why the legislation does not provide for annual solvency calculations and a report from DWS to the legislature and governor to inform their funding decisions. Since, as written, the bill will require new appropriations to be made every year, DWS has a significant concern that there is no mechanism for the Department to communicate with the legislature on this issue.

DWS has concerns about funding the Welcome Child program through ECECD or the Early Childhood Education and Care Fund. Pursuant to NMSA 9-29A-2, "Money in the [Early Childhood Education and Care] fund is subject to appropriation by the legislature for early childhood education and care services and programs." However, there are no requirements in HB11/cs as amended that the "rebates" given to families be used for education or care. In fact, there is no requirement that the parent receiving the Welcome Child "rebate" has any financial relationship with the child. This may have been an acceptable risk when the benefit was funded with contributions from the person receiving the benefit, but seems quite different in the context of other funding sources, especially any source that specifies usage for care and education. The "rebates" are de-coupled from leave, so a parent may get the rebate while still working, and could still qualify for child care assistance payments while working and receiving the "rebate." If the intent is to divert general fund or land grant permanent fund appropriations away from or through ECECD, other legal concerns may arise. DWS recommends that Legislative Council conduct a legal analysis of the intended funding approach.

DWS has concerns about the amendment that provides for the split of the Welcome Child money. DWS is concerned that a non-custodial parent, even one who is giving no support to the other parent or child, could receive a share of this payment simply by applying for the benefit. DWS does not believe that the current language allows the Department to add criteria in rulemaking that would determine the propriety of a split benefit. While the potential for a non-contributing parent to take parental leave has existed in all forms of the bill, the concern becomes more acute when it

affects the availability of a fixed sum payment.

DWS is also concerned about transparency regarding the tax treatment of the Welcome Child payment. In Internal Revenue Service Rev. Rul. 25-04, the Biden administration tax authorities stated that the scenarios presented in the request for ruling constituted a tax. It is unclear whether the current version of Family Wellness Leave contributions are similar enough to the revenue ruling to conclude that the ruling clearly applies. Also, the changes to the source of funding for the Welcome Child payment may change the tax treatment of the benefit (favorably or unfavorably). It is also unclear whether there is a different section of the tax code that would apply to the Welcome Child payment. DWS recommends that TRD perform an analysis of the likely tax treatment of the Welcome Child payment and the Family Wellness Leave contributions and benefits.

The Welcome Child program includes anyone who has worked for 6 of the last 12 months, independent of whether they ever paid into the Family Wellness Leave program. The STBTC amendment brings self-employed individuals into the Welcome Child program, again if they have been employed/self-employed for 6 of the last 12 months. DWS is unsure how it will determine employment status of individuals outside of Family Wellness Leave contributions. While using unemployment records is a possibility, there are some obstacles to this approach. First, it may be necessary to pass legislation to allow the use of unemployment records for this purpose. Other states use UI records to administer other benefit programs pursuant to state statutes. This legislation would need to be approved in advance by the US Department of Labor. Second, many employers, like nonprofits and governmental agencies, do not submit regular wage records because they pay into the unemployment insurance fund on a reimbursement basis. Third, the method for verification is especially unclear with regard to determinations of whether self-employed individuals have been self-employed for 6 of the last 12 months. Self-employed individuals do not pay unemployment tax, so DWS has no records to confirm self-employment. Self-employed individuals may or may not pay other taxes in the state, and data sharing with TRD could be complex. The bill allows the Department to make rules to this end, and we anticipate DWS would attempt to resolve this issue in that context. Unfortunately, because no other state has this unusual component to their PFML program, we cannot look to other states for solutions.

The committee substitute has addressed WSD's concern that the first day of tax collection would be the first day of a new administration. This is no longer a concern, with premium collection starting in July 2027.

The Department is tasked with substantial rulemaking efforts to clarify every aspect of the bill. This would include topics related to eligibility, documentation of claims, how or whether WSD is to investigate, prosecute, or adjudicate fraudulent claims, or recoup leave compensation obtained fraudulently.

WSD assumes that, as in past years, an appropriation would be made if the bill passes. WSD would prefer authority to spend up to that amount so that if work progresses more quickly than anticipated, the project is not stalled. If initial cost projections hold, more money would be

required in the following year. We note that an appropriation from the fund to the operating budget of WSD would also be necessary, and we would recommend a new P-Code for the program given its size.

In discussions with other states, the cost of processing applications to opt-out of the fund and program and address related claims is substantial. Because opt-out programs do not pay into the fund, this is an unfair burden on participating employers. Other states have imposed fees on the opt-out application and related appeals and claims in order to address this issue. We read the bill to allow this to occur by rulemaking.

PERFORMANCE IMPLICATIONS

The bill states specific timeline requirements that will directly impact the requirements on operational staffing and system automation. Appropriate funding is required to ensure effective implementation to meet these performance standards. The volume of claims will also impact performance levels and operational support requirements. We note that in Washington State, which has a similarly structured program, the current processing time for applications and requests for review is 3-4 weeks (<https://paidleave.wa.gov/about-the-program/>).

ADMINISTRATIVE IMPLICATIONS

The Act would create a program about equal in size to the Unemployment Insurance program, effectively increasing the size of WSD by about one-third. This will necessitate new facilities under current personnel policies of the State.

Nothing in the bill appears to prohibit WSD from outsourcing components of the program. For example, Colorado outsources the call center for its PFML program.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

A related but conflicting bill, HB 446, was tabled in committee. Bills related to Early Childhood Education and Care Funding may conflict with how the Welcome Child Fund is ultimately funded, but since funding for the Welcome Child program is not articulated anywhere, this is unclear.

TECHNICAL ISSUES

We note the LFC budget's non-reverting appropriation of \$35 million would need to be adjusted to go into the "Family Wellness Leave Fund."

WSD is required to coordinate with the Department of Information Technology concerning this project effort. This will impact the timeline and require consideration in increased cost for IVV. Target and existing technology solutions are cloud-based and technical architectural plans will need to be approved through exception which could impact timelines.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

The original HB 11 structure is an alternative.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The types of leave contemplated by this bill will not be a legal requirement.

AMENDMENTS