

LFC Requester:

Kelly Klundt

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: Feb. 20, 2025

Check all that apply:

Bill Number: HB 466

Original X Correction
Amendment Substitute

Sponsor: Rep. Rod Montoya, Rep. Rebecca Dow, Rep. Harlan Vincent, Rep. Mark Duncan, Rep. Andrea Reeb

Agency Name and Code Number: 305 – New Mexico Department of Justice

Short Title: HORMONE THERAPY & PUBERTY BLOCKER PROTECTION

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: This bill proposes to except unemancipated minors from protection under the current Reproductive and Gender-Affirming Health Care Freedom Act. The bill provides new definitions, notice and notification requirements, and penalties for violations.

Section 1: Proposes to create a new section of Chapter 24 NMSA 1978. The short title of the chapter is Hormone Therapy and Puberty Blocker Child Protection Act (the Act).

Section 2: Proposes to create a new section of Chapter 24 NMSA 1978. This section includes definitions, including a definition of “sex” as “an individual’s immutable characteristics of the human reproductive system that define the individual as male or female, as determined by anatomy and genetics existing in that individual at the time of birth.” The Section also includes definitions for congenital defect, gender-affirming action, health care provider, hormone, medical procedure, minor, parent, parental notification, precocious puberty, puberty blocker, and public body.

Section 3: Proposes to create a new section of Chapter 24 NMSA 1978. This section is titled Prohibited Conduct – Medical Procedures Conducted on Minors. It makes it a violation of the Act for a health care provider or public body to knowingly perform or offer to administer medical treatment to a minor for the purpose of enabling the minor “to identify with, or live or present as, a purported identity inconsistent with that minor’s sex” or the purpose of “treat[ing] the minor’s discomfort or distress from a discordance between the minor’s sex and the minor’s asserted or perceived identity.” Such performance or offering to administer is prohibited even where the minor or the minor’s parent consents. The Section expressly supersedes any common law rule regarding a minor’s ability to consent to a medical procedure involving gender identity. The Section states that a minor upon whom one of the identified medical procedures is performed or administered is not liable for violating the Act. The Section also expressly states that the Act does not prohibit or restrict licensed psychology, psychiatry, counseling, or social work.

Section 4: Proposes to create a new section of Chapter 24 NMSA 1978, titled Prohibition – Distribution of Hormones or Puberty Blockers to a Minor. This section makes it a violation of the Act to “knowingly provide a hormone or a puberty blocker to a minor of the provision of the hormone or puberty blocker is not lawfully permitted pursuant to” the Act. This

Section includes health care providers, public bodies, and “individual[s].”

Section 5: Proposes to create a new section of Chapter 24 NMSA 1978 titled Gender-Affirming Action by Minor – Health Care Provider or Public Body – Parental Notification Requirement. This section requires health care providers and public bodies to “provide parental notification to at least one parent of a minor no later than seven calendar days after the health care provider or public body observes or has reasonable cause to believe that the parent’s minor has taken a gender-affirming action while in the presence of the health care provider or while on the premises of the public body or while interacting with individuals employed by or representing the health care provider or public body.”

Section 6: Proposes to create a new section of Chapter 24 NMSA 1978 detailing a Private Right of Action. This section allows a minor or their parent to bring a civil action against a health care provider “or other person alleged to have violated” the Act for “temporary, preliminary or permanent injunctive relief, compensatory or punitive damages and reasonable attorney fees, court costs and expenses,” except a parent of a minor may not bring such an action if the parent consented on behalf of the minor to the action. The Section also permits a wrongful death action in certain circumstances, including if a minor dies as a result of the “emotional harm inflicted upon the minor as a result of the violation.” It also provides a procedure for revoking the medical license of health care providers shown to have violated the act. The Section sets forth the time frames within which such actions must be commenced.

Section 7: Proposes to create a new section of Chapter 24 NMSA 1978 to include enforcement and penalties for violations of the Act. This section authorizes the attorney general or a district attorney to bring a civil action in district court for any violation of the Act, or to prevent a violation of the Act. The Section also provides for a civil penalty in such actions of \$5,000 or actual damages, whichever is greater, for each violation.

Section 8: Proposes to create a new section of Chapter 24 NMSA 1978. This section allows for the severability of any invalid part or application of the Act.

Section 9: Proposes to amend Section 24-34-2 NMSA, which provides definitions under the Reproductive and Gender-Affirming Health Care Freedom Act (the Freedom Act). The bill proposes to add language excepting unemancipated minors from protection under the current statute. It also provides definitions and exempts gender-affirming health care from the category of reproductive health care.

Section 10: Proposes to amend Section 24-34-3 NMSA, which proscribes actions taken by public bodies related to reproductive health care or gender affirming health care services. The section exempts unemancipated minors from protection under the Freedom Act and sets requirements such as that health care providers and public bodies “provide parental notification to at least one parent of a minor before engaging or meeting with, contacting or speaking to or providing information to the minor regarding the use of or access to” reproductive health care or gender-affirming health care. It also requires the health care provider or public body to “obtain parental consent at least fourteen days prior to engaging or meeting with, or contacting or speaking to or providing information to the minor regarding the use of or access to reproductive health care.”

Section 11: Proposes to amend Section 24-34-4 NMSA related to enforcement and penalties for violations of the Freedom Act. This section authorizes the attorney general or a district

attorney to institute civil actions for violations of the Freedom Act, and authorizes a penalty of \$5,000 or actual damages. The amendment removes language allowing for a claim to be brought against “entities acting in the course and scope and authority of a public body,” and adds language that permits a parent of a minor to bring a claim against any health care provider.

Section 12: Proposes to amend Section 24-34-5 NMSA related to private rights of action for violations of the Freedom Act. This section includes adding parents of a minor to the description of people who can bring an action under the Freedom Act. This Section includes the same modification described above in Section 11. This section also adds a procedure for the revocation or suspension of a health care provider’s license due to a violation.

Section 13: Proposes to amend Section 24-35-2 NMSA which provides definitions under the Reproductive and Gender-Affirming Health Care Protection Act (the Protection Act). Section 13 would add definitions for adult, emancipated minor, health-care provider, minor, minor with parental consent, parent, and sex, and modify the existing definitions of protected health care activity, public body, and reproductive health care.

Section 14: Proposes to amend Section 24-35-3 NMSA related to the prohibited release of information related to a protected health care activity within the Protection Act. This section proposes to except unemancipated minors from those protected from having their health care information released. However, the section then proposes a special procedure where a public body receives a request for information related to the reproductive health care activities of a minor with parental consent. It also requires that when any public body receives a request for information related to the reproductive health care activities of a minor, that public body must “notify in writing within seven calendar days of receiving the request” at least one parent of the minor.

Section 15: Proposes to amend Section 24-35-4 NMSA regarding foreign subpoenas and summonses in the Protection Act. The proposed language changes the word “individual” to the phrase “adult, an emancipated minor, a minor with parental consent or the parent of a minor with parental consent[.]” It also changes the word “entity” to “a health care provider[.]”

Section 16: Proposes to amend Section 24-35-5 NMSA related to abusive civil litigation in the area of protected healthcare in the Protection Act. This section proposes the same linguistic changes as in Section 15. It also deletes a reference to “Section 8 of the . . . Protection Act” and replaces it with explicit reference to Section 24-35-8 NMSA 1978.

Section 17: Proposes to amend Section 24-35-6 NMSA, which provides heightened protection for electronically transmitted information related to protected health care activity in the Protection Act. The proposed language changes the word “individual” to the phrase “adult, an emancipated minor, a minor with parental consent or the parent of a minor with parental consent[.]” It also changes the word “entity” to “a health care provider[.]” Section 17 also expands whose safety may be implicated in Subsection (B)(3) to include the adult or their family, the emancipated minor or their family, the minor with parental consent or their family, or the health care provider or their family, and expands the violations to include a request of certain information with the intent to “deter, prevent, sanction or penalize a minor with parental consent or the parent of that minor for the minor engaging in a reproductive health care activity.”

Section 18: Proposes to amend Section 24-35-8 NMSA, which authorizes a private right of action for violations of the Protection Act. The proposed language changes the word “individual” to the phrase “adult, an emancipated minor, a minor with parental consent or the parent of a minor with parental consent[.]” It also changes the word “entity” to “a health care provider[.]” This section provides a procedure for the revocation or suspension of a health care provider’s medical license for a violation of this section.

Section 19 sets an effective date of July 1, 2025.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

Section 7 of the bill provides for the New Mexico Department of Justice (NMDOJ) to bring certain actions, but does not provide for appropriations to allow for the increased obligations.

SIGNIFICANT ISSUES

Several sections of the proposed Act appear to regulate / suppress speech. Governmental regulation / suppression of speech may implicate the First Amendment of the U.S. Constitution.

For instance, in Section 2 of the Act, a minor’s “gender affirming action” is defined to include “using pronouns inconsistent with [a] minor’s sex.” This may be subject to a First Amendment challenge. “[t]he First Amendment, applicable to the States through the Fourteenth Amendment, provides that ‘Congress shall make no law ... abridging the freedom of speech.’ The hallmark of the protection of free speech is to allow ‘free trade in ideas’ – even ideas that the overwhelming majority of people might find distasteful or discomforting.” *Virginia v. Black*, 538 U.S. 343, 358 (2003) (internal citations omitted).

Additionally, the prohibitions on speech are very broad. For instance, the Act prohibits a minor’s “asking to be called by a name other than the minor’s given name that, based on generally accepted norms, is inconsistent with that minor’s sex[.]” First of all, it is unclear what “generally accepted norms” of children’s names are and who would decide whether a child’s name is generally acceptable for his or her sex. For instance, the names Leslie and Beverly may be considered acceptable boys’ names to some people, but not to others. And what about girls who prefer to be called by a “boy’s” nickname such as called “Chris” or “Bobbi”? Under the proposed Act, if a little girl named Charlotte was nicknamed Charlie, a school teacher or doctor would violate the Act in calling the child “Charlie” without giving the child’s parents written notification before doing so. Such regulation may be subject to challenge under the First Amendment as being overbroad. “According to our First Amendment overbreadth doctrine, a statute is facially invalid if it prohibits a substantial amount of protected speech.” *United States v. Williams*, 553 U.S. 285, 292; see also *Village of Ruidoso v. Warner*, 2012-NMCA-035, ¶ 6.

The Act provides definitions in multiple sections and the definitions are not consistent throughout. For instance, there is a definition provided for “gender-affirming action” in Section 2 on page 2 and a definition for “gender-affirming health care” in Section 9 on page 12. These definitions cover different material and it is unclear how they correlate. In another example, the word “minor” is defined one way in Section 2 on page 3, and another way in Section 9 on page

13.

Ultimately, the bill proposes to restrict medical care for minors whose gender identity does not match their assigned biological sex. This may have the effect of restricting medical care in a discriminatory way. The U.S. Supreme Court has held that discrimination against transgender individuals may violate prohibitions against sex-based discrimination, *See Bostock v. Clayton County, Georgia.*, 590 U.S. 644 (2020).

The proposed bill may also be open to challenge under the New Mexico Constitution, which states that “[e]quality of rights under law shall not be denied on account of the sex of any person.” N.M. Const. art. II, § 18. Our Supreme Court has held that, in examining gender-based classifications and discrimination, courts “must begin from the premise that such classifications are presumably unconstitutional, and it is the [government’s] burden to rebut this presumption” by a showing of a “compelling justification.” *Id.* ¶ 36; *cf. N.M. Right to Choose/NARAL v. Johnson*, 1995-NMSC-005, ¶¶ 43, 47, 126 N.M. 788.

The bill either creates or inserts language through existing Acts that allows for the revocation or suspension of a health care provider’s medical license. This language is likely to discourage health care providers from coming to or staying in New Mexico, which is particularly problematic when we already struggle with keeping health care practitioners in our state.

Some of the violations are incredibly broad and the consequences are significant. For example, Section 4 makes it a violation of the Act to “knowingly provide a hormone or a puberty blocker to a minor,” including by health care providers, public bodies, and “individual[s],” and Section 5 makes it a violation of the Act if a health care provider or a public body does not provide parental notification within 7 days after the health care provider or public body observes or has reasonable cause to believe that a minor has taken a gender-affirming action while in the presence of the health care provider or on the premises of a public body or while interacting with individuals employed by or representing the provider or body.

Because a gender-affirming action includes a minor using certain pronouns or asking to be called by a different name, a violation could include, for example, failure to notify a parent within 7 days of a minor referring to themselves in a way “prohibited” by the Act at school, or “anyone” providing a hormone to a minor. The consequences of such actions could include, for example, under Sections 6 and 7, a civil penalty of \$5,000 or actual damages, whichever is greater, for *each* such violation, *and* compensatory or punitive damages and related attorney fees, or even being subject to a wrongful death action if a minor dies as a result of the “emotional harm inflicted upon the minor as a result of the violation.”

PERFORMANCE IMPLICATIONS

Section 7 proposes to authorize the attorney general or a district attorney to bring a civil action in district court for any violation of the Act, but does not require that the attorney general or a district attorney do so. To the extent the NMDNJ is expected to bring additional civil actions in district court for violations of the Act, no additional appropriations have been identified.

ADMINISTRATIVE IMPLICATIONS

None identified.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill does not appear to conflict with or duplicate any other bills proposed this session.

TECHNICAL ISSUES

As discussed above, the bill provides definitions in multiple sections that are not internally consistent. For example, the definitions included in Section 13 are not identical to or necessarily consistent with definitions provided in Section 2 and Section 9.

Section 11 would add language to a section that discusses the attorney general or district attorney's enforcement of the act, language that permits a parent of a minor to bring a claim against any health care provider. This provision may be out of place or may require additional clarification.

OTHER SUBSTANTIVE ISSUES

None identified

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A