

LFC Requester:

Joseph Simon

**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO****[AgencyAnalysis.nmlegis.gov](https://agencyanalysis.nmlegis.gov) and email to [billanalysis@dfa.nm.gov](mailto:billanalysis@dfa.nm.gov)****(Analysis must be uploaded as a PDF)****SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}***Date Prepared:** 1/29/25*Check all that apply:***Bill Number:** SB36Original ☒ Correction ☐Amendment ☐ Substitute ☐**Sponsor:** Sen Sedillo Lopez**Agency Name****and Code**HCA-630**Number:****Short** Nondisclosure of Sensitive**Person Writing**Chris Foster**Title:** Personal Info Act**Phone:****Email** Christopher.foster@hc**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
NA	NA		

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
NA	NA	NA		

(Parenthesis ( ) indicate revenue decreases)

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

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NA					

(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:

This Bill modifies the duties of Public Officers and Employees in Chapter 10 of the New Mexico Statutes Annotated. Certain elements of Personal Information collected in the course of business would be precluded from disclosure pursuant to Federal Immigration statutes, rules and efforts. Civil penalties and fines would be enforced. Changes are made to the Motor Vehicle Code in a similar manner.

#### **FISCAL IMPLICATIONS**

None

#### **SIGNIFICANT ISSUES**

The area of Immigration is preempted to Federal Law under both Area and Conflict analysis wherein an area of jurisprudence by practice and by direct disagreement is carved out by the Federal government. Enactment of the measures proposed in the bill could expose state employees and officers to federal prosecution for failure to comply with 18 USC 2721, Ch. 123, (B) 1 and 4 (addressing directly Motor Vehicle Records) as well as 18 USC 1510 and 1511 (Obstruction of Justice, generally.)

#### **PERFORMANCE IMPLICATIONS**

Protection of state employees will require indemnification and legal representation.

7 CFR 272.1 provides policy on the use or disclosure of information obtained from SNAP applicant or recipient households shall be restricted to those individuals that are recipients of the benefits. HCA is bound by federal law to keep information secure and confidential. Additionally, 7 CFR 273.4 (b) provides guidance on how state agencies may meet the reporting requirements by conforming to interagency notice with guidance in the PRWORA section 404 published on September 28, 2000 (65 FR 58301). This section outlines the following, "This notice is not meant to suggest that a benefit granting agency is required to make a determination as to an applicant's lawful presence if that determination is not otherwise necessary in order to determine whether the applicant is eligible for the benefit. Nor is it meant to suggest that a finding or conclusion as to immigration status made by a benefit granting agency has any weight outside the context of the alien's eligibility for that particular benefit. Determinations of status for purposes of the Immigration and Nationality Act are the responsibility of the Department of Justice, not of any other agency."

#### **ADMINISTRATIVE IMPLICATIONS**

SB36 states that an entity that receives or has access to records or information from the department or division, including through a database or automated network, shall certify in writing to the department or division, before receipt of or access to the information, and as a condition of renewal of any agreement for such receipt or access, that the entity shall not use or disclose the records or information for the purpose of enforcing federal immigration law.

HCA could attempt to ensure that entities with which HCA shares data acknowledge the provisions in this bill prior to gaining access to any systems via Memoranda of Understanding (MOUs). However, this could introduce legal conflicts that other entities would not be able to

agree to.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

The proposed statutes at 10-3(D) requiring cooperation with Federal laws are in direct internal conflict with the later stated purposes and penalties of the bill as to cooperation denial.

## **TECHNICAL ISSUES**

HCA IT systems containing Personally Identifiable Information (PHI) and Protected Health Information (PHI) are covered by the Health Insurance Portability and Accountability Act (HIPAA); specifically, the Privacy Rule. The Privacy Rule protects all "individually identifiable health information" held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral.

"Individually identifiable health information" is information, including demographic data, that relates to:

- the individual's past, present or future physical or mental health or condition,
- the provision of health care to the individual, or
- the past, present, or future payment for the provision of health care to the individual,

and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual. Individually identifiable health information includes many common identifiers (such as, name, address, birth date, Social Security Number).

A major purpose of the Privacy Rule is to define and limit the circumstances in which an individual's protected health information may be used or disclosed by covered entities. A covered entity may not use or disclose protected health information, except either: (1) as the Privacy Rule permits or requires; or (2) as the individual who is the subject of the information (or the individual's personal representative) authorizes in writing.

A covered entity is permitted, but not required, to use and disclose protected health information, without an individual's authorization, for the following purposes or situations: (1) To the Individual (unless required for access or accounting of disclosures); (2) Treatment, Payment, and Health Care Operations; (3) Opportunity to Agree or Object; (4) Incident to an otherwise permitted use and disclosure; (5) Public Interest and Benefit Activities; and (6) Limited Data Set for the purposes of research, public health or health care operations. Covered entities may rely on professional ethics and best judgments in deciding which of these permissive uses and disclosures to make.

Covered entities may disclose protected health information to law enforcement officials for law enforcement purposes under the following six circumstances, and subject to specified conditions: (1) as required by law (including court orders, court-ordered warrants, subpoenas) and administrative requests; (2) to identify or locate a suspect, fugitive, material witness, or missing person; (3) in response to a law enforcement official's request for information about a victim or suspected victim of a crime; (4) to alert law enforcement of a person's death, if the covered entity suspects that criminal activity caused the death; (5) when a covered entity believes that protected health information is evidence of a crime that occurred on its premises; and (6) by a covered health care provider in a medical emergency not occurring on its premises, when necessary to inform law enforcement about the commission and nature of a crime, the location of the crime or crime victims, and the perpetrator of the crime.

The Privacy Rule permits use and disclosure of protected health information, without an

individual's authorization or permission, for 12 national priority purposes. These disclosures are permitted, although not required, by the Rule in recognition of the important uses made of health information outside of the health care context. Specific conditions or limitations apply to each public interest purpose, striking the balance between the individual privacy interest and the public interest need for this information. More information about the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule can be found at [Summary of the HIPAA Privacy Rule | HHS.gov](https://www.hhs.gov/hipaa/for-professionals/summary-of-the-hipaa-privacy-rule/).

## OTHER SUBSTANTIVE ISSUES

Previously with the Public Charge rule there were notable impacts on public assistance participation. Many immigrants were deterred from applying for or receiving benefit for the eligible members in their household. This caused a 35.6% decrease in SNAP participation among immigrant families. [SNAP-Participation-Among-U.S.-Citizen-Children.pdf](#)

**TABLE 1: National Change in SNAP Participation Among U.S. Citizen Children Living With a Non-Citizen and U.S. Citizen Children Living With Only Citizens in an Average Month, Fiscal Years 2016–2019**

Fiscal Year	U.S. Citizen Children Living With Only Citizens		U.S. Citizen Children Living With Any Non-citizen*	
	Number	Percent Change From Previous Fiscal Year	Number	Percent Change From Previous Fiscal Year
2016	14,942,489		3,836,729	
2017	14,295,253	-4.3	3,418,499	-10.9
2018	13,706,843	-4.1	3,188,012	-6.7
2019	13,099,824	-4.4	2,469,652	-22.5
<b>Net Change (2016–2019)</b>	-1,842,665	-12.3	-1,367,077	-35.6

\*Non-citizen may be inside or outside of the SNAP household.

**Source:** FRAC's analysis of U.S. Department of Agriculture SNAP Quality Control data

During this time as a result of the decline in SNAP participation among eligible immigrant populations, many individuals and families faced increased food insecurity. Those who stopped using SNAP were often left to seek assistance from local food banks or other charitable sources, which may not be as reliable or sufficient for meeting long-term food security needs.

## ALTERNATIVES

### WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

## AMENDMENTS