

LFC Requester:

Carlie Malone

**AGENCY BILL ANALYSIS - 2026 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**  
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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:** 1/21/26 **Bill Number:** HB84 **Original**  **Amendment**  **Substitute**   
**Short Title:** EXPOSURE OF NEWBORN TO CONTROLLED SUBSTANCES, PLANS OF SAFE CARE

**Sponsor:** Rep. Gail Armstrong

**Name and Code Number:** HCA 630

**Person Writing:** Jennifer Williams

**Phone:** 505-618-0712 **Email:** jennifer.williams@hca.nm.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		
\$0.0	\$0.0	-	-

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		
\$0.0	\$0.0	\$0.0	-	-

(Parenthesis ( ) indicate revenue decreases)

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

	<b>FY26</b>	<b>FY27</b>	<b>FY28</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Admin</b>	\$29.3	\$58.6	\$58.6	\$146.5	Recurring	General Fund
<b>Admin</b>	\$29.3	\$58.6	\$58.6	\$146.5	Recurring	Federal Fund
<b>Total</b>	\$58.6	\$117.2	\$117.2	\$293	-	-

(Parenthesis ( ) Indicate Expenditure Decreases)

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: HB84 states exposure during pregnancy and identified in a neonatal drug screen of fentanyl, methamphetamines, cocaine or heroin is felony child abuse. Evidence that a child has been knowingly and intentionally exposed to the use of methamphetamine or fentanyl is deemed prima facie evidence of child abuse.

HB 84 also creates a new statutory section governing taking newborns into temporary protective custody, including the circumstance where a newborn may be held in a hospital by law enforcement without a court order while an order is pursued, upon the recommendation of the Health Care Authority, or specified clinicians (and the newborn must be released if the court order is denied). It also requires healthcare professionals to report use of substances listed above during pregnancy which the baby tests positive for at birth as child abuse. It duplicates plan of safe care requirements already present in NM's CARA requirements.

**FISCAL IMPLICATIONS**

House Bill 84 would increase administrative workload for the Health Care Authority due to new responsibilities related to rulemaking, oversight of care coordination, provider training, interagency coordination, data collection, and required annual reporting to the Legislative Finance Committee, the interim Legislative Health and Human Services Committee, and the Department of Finance and Administration. These duties may require additional staffing or contractual resources. No appropriation is provided to support these activities.

The bill may also result in increased Medicaid expenditures to the extent that additional substance exposed newborns and families are identified and connected to Medicaid covered services, including care coordination, behavioral health, substance use disorder treatment, and early intervention services. The magnitude of the impact would depend on caseload growth and service utilization. HCA is currently building its CARA service unit. Some of this work may be absorbed by that unit but HCA estimates it will need at least on additional staff to complete this work representing \$58.6 thousands in federal funds and \$58.6 thousands in general funds annually.

## **SIGNIFICANT ISSUES**

HB84 is similar to the Governor's Executive Order but goes farther by rendering prenatal exposure felony child abuse. State laws that criminalize substance use during pregnancy result in pregnant people having later entry to prenatal care. Pregnant women engage in postpartum care approximately 10% less often than people in states with nonpunitive laws. Addressing substance use and pregnancy from a public health perspective which recognizes substance use as a medical condition, results in better care and outcomes. The CARA program currently being developed by the HCA in collaboration with DOH, ECECD and CYFD applies evidence-based care as prescribed by SB42.

The newly proposed Section 30-6-1(D)(2) attempts to criminalize gestational drug exposure to as child abuse. However, the New Mexico Court of Appeals has repeatedly found that without express reference to an unborn, viable fetus in the criminal statute, the State cannot prosecute a mother for child abuse based on gestational drug exposure alone. *See State v. Martinez*, 2006-NMCA-068, ¶ 11-12; see also *State v. Mondragon*, 2008-NMCA-157, ¶ 13.

Austin, A. E., Naumann, R. B., & Simmons, E. (2022). Association of state child abuse policies and mandated reporting policies with prenatal and postpartum care among women who engaged in substance use during pregnancy. *JAMA Pediatrics*, 176(11), 1123. <https://doi.org/10.1001/jamapediatrics.2022.3396>

Patrick, S. W., Schiff, D. M., Ryan, S. A., Quigley, J., Gonzalez, P. K., & Walker, L. R. (2017). A public health response to opioid use in pregnancy. *Pediatrics*, 139(3). <https://doi.org/10.1542/peds.2016-4070>

*Substance use disorder in pregnancy*. (n.d.). ACOG. <https://www.acog.org/advocacy/policy-priorities/substance-use-disorder-in-pregnancy>

Substance use disorders in pregnancy: clinical, ethical, and research imperatives of the opioid epidemic: a report of a joint workshop of the Society for Maternal-Fetal Medicine, American College of Obstetricians and Gynecologists, and American Society of Addiction Medicine Ecker, Jeffrey et al. *American Journal of Obstetrics & Gynecology*, Volume 221, Issue 1, B5 - B28

HB 84 proposes a new Section 7(A) of the Abuse and Neglect Act that would allow a newborn to be held in the hospital by law enforcement without a court order while a court order is pursued, upon the recommendation of the Health Care Authority. This creates a potential role-conflict: HCA is a health and human services agency, not the state's child protective services agency, and the bill could be interpreted as pulling HCA into case-specific child protection investigations and custody decision-making traditionally associated with CYFD and the courts.

## **PERFORMANCE IMPLICATIONS**

HCA would be accountable for parts of this bill which are already in line with HCA's role under SB42.

**ADMINISTRATIVE IMPLICATIONS**

None for MAD.

None for ITD

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None

**TECHNICAL ISSUES**

HB 84 uses “the department” in several provisions. Clarity is needed to clearly specify the agency (e.g., HCA) to avoid operational ambiguity.

**OTHER SUBSTANTIVE ISSUES**

CYFD contact and investigation volume may increase depending on how “noncompliance” is defined and operationalized.

**ALTERNATIVES**

Clarify that any “hold in hospital” recommendation authority is limited to CYFD rather than HCA.

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

Status quo

**AMENDMENT**

None