

LFC Requester:

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AGENCY BILL ANALYSIS - 2026 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to 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: 2-12-2026

Check all that apply:

Bill Number: SB189Original Correction Amendment Substitute Sponsor: Berghmans/Hamblen/Stewart/
StefanicsAgency Name
and CodeOffice of Superintendent of
Insurance-440

Number:

Person Writing

Viara IanakievaShort Title: REPRODUCTIVE HEALTH
CARE COVERAGEEmail Viara.Ianakieva@osi.nPhone: 505-508-9073 : m.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		

(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						

(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

The Senate Tax, Business and Transportation Committee Substitute for Senate Bill 189 (SB189CS) add three new sections to the original bill.

Section 9 adds a new section to the Public Assistance Act, Chapter 27 Article 2 NMSA 1978. This new section allows exclusive state funding for reimbursement of certain entities that provide abortions.

Section 19 adds a new section to the New Mexico Health Insurance Exchange Act in the Insurance Code that creates the “reproductive health care access fund” in the state treasury. The fund will be administered by the Health Care Authority (HCA) and money in the fund is subject to appropriations by the legislature for purpose of funding programs and initiatives that provide access to affordable reproductive health care.

Section 20 adds a new section to the New Mexico Health Insurance Exchange Act in the Insurance Code, Chapter 59A-Article 23F NMSA 1978. Subsection A of Section 20 requires a health insurance issuer offering abortion services in a health benefits plan on the BeWell New Mexico health insurance exchange, to: (1) no later than July 1, 2026, submit a report to the superintendent that details the amount of money present in a segregated account created pursuant to 42 U.S.C. Section 18023; and (2) by March 31, 2027 and each March 31 thereafter, report to the superintendent the receipts, disbursements, interest accrued and ending balance for a segregated account created pursuant to 42 U.S.C. Section 18023. The report shall document all money added to segregated accounts during the previous calendar year and shall include any related documentation required by the superintendent.

Subsection B of Section 20 requires the Superintendent of Insurance (OSI) to assess a surcharge on each segregated account in an amount equal to the segregated account’s balance. The balance is to be paid on or before the twenty-fifth of the month following the month in which the surcharge is assessed. All funds collected by the Superintendent shall be deposited into the reproductive health care access fund.

In Sections 4, 10, 14, 18, 24, and 28 of SB189CS the definition of “gender-affirming care” has been changed to “gender affirming health care.” This definition is much broader in scope and is not tied to medical necessity.

FISCAL IMPLICATIONS

Expanded access to reproductive, gender-affirming, and preventive health services, along with the elimination of cost sharing, will have varying fiscal impacts. The cumulative effect will be a significant increase in premiums and state costs due to cost defrayal requirements.

The amended bill expands access to reproductive, gender-affirming, and preventive services without cost-sharing, which will have significant fiscal impacts. The cumulative effect of these provisions is expected to increase overall costs and trigger Affordable Care Act (ACA) defrayal obligations for the state. SB189CS broadens cost-sharing-free benefit requirements and introduces new administrative responsibilities for OSI.

Both gender-affirming care and elective abortion coverage are non-EHB (Essential Health Benefits) services. Expanding these non-EHB benefits will reduce federal subsidies available to consumers, increasing their out-of-pocket costs. The revised definition of gender-affirming care is broad and inclusive. Eliminating cost-sharing for abortion services means that costs currently borne by consumers for medically necessary services will shift to insurers, resulting in higher premiums.

Additional actuarial analysis is necessary to accurately estimate rate impacts and fiscal exposure associated with the revised language. Due to the timing of the amendments and complexity of the provisions, OSI cannot complete a comprehensive actuarial assessment at this time but anticipates significant premium increases and defrayal costs for the state.

Sections 19 and 20 establish the Reproductive Health Care Access Fund, administered by the Health Care Authority (HCA), and assign OSI responsibility for assessing and collecting a surcharge equal to the balance of ACA segregated accounts for abortion services.

This surcharge requirement introduces a new administrative function for OSI. While OSI regulates health insurance carriers and oversees BeWell health insurance exchange plans, it does not currently manage surcharge assessments. For comparison, existing insurer surtaxes, such as those for the Health Care Affordability Fund, are administered by the Taxation and Revenue Department. The bill does not specify the mechanics for transferring surcharge revenue to the HCA-administered fund. It is unclear whether deposits will go directly to HCA or be processed as transfers from OSI through normal monthly distribution procedures. OSI will need access to the fund for deposit purposes and must establish workflows with HCA and the State Treasurer to ensure compliance. Although the surcharge amount is straightforward (equal to the reported account balance), administrative coordination and rulemaking will be required to define reporting standards, payment timelines, and transfer protocols. OSI estimates the need for two additional FTEs at a total cost of approximately \$206,562 for salary and benefits.

Additionally, surcharge costs imposed on insurers will likely be passed on to consumers, further increasing already high premiums.

SIGNIFICANT ISSUES

Under the ACA, each state selects an EHB benchmark plan. States may mandate coverage for benefits beyond this benchmark; however, mandates enacted after December 31, 2011, are considered “additional required benefits” and trigger federal cost defrayal obligations, requiring the state to pay for these services. The coverage mandates and cost-sharing eliminations in SB189 will impact premiums and require the state to defray costs.

The bill’s definition of “gender-affirming health care” is not tied to medical necessity, diagnosis, or recognized clinical standards of care. Unlike other mandates that incorporate medically necessary criteria or reference established treatment frameworks, the current language broadly includes services provided to support a person’s gender identity without specifying clinical parameters. The absence of defined guardrails may create ambiguity regarding coverage scope, hinder consistent application of utilization standards, and complicate actuarial modeling. Clarifying whether coverage is limited to medically necessary services consistent with accepted clinical guidelines could reduce regulatory uncertainty while preserving access to care.

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consumers, increasing their out-of-pocket costs. The revised definition of gender-affirming care is broad and inclusive. Eliminating cost-sharing for abortion services means that costs currently borne by consumers for medically necessary services will shift to insurers, resulting in higher premiums.

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PERFORMANCE IMPLICATIONS

The surcharge provision introduces ongoing administrative, fiscal, and enforcement responsibilities for OSI beyond traditional form and rate review functions. Implementation will require rulemaking, financial oversight procedures, and dedicated compliance monitoring.

ADMINISTRATIVE IMPLICATIONS

Implementing the segregated account reporting and surcharge provisions will require OSI to:

- Develop standardized reporting and documentation requirements.
- Review and verify issuer-submitted segregated account balances.
- Calculate and assess surcharges.
- Issue formal assessment notices and track payments.
- Adopt rules or guidance to ensure uniform compliance.
- Monitor annual reporting and enforce compliance.

These new and recurring financial oversight responsibilities extend beyond OSI's traditional functions and will require additional staffing, as well as legal and administrative support.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB279, Healthcare Info Privacy Protections.

TECHNICAL ISSUES

Mandated coverage for abortions and gender-affirming care, as well as pregnancy as a special enrollment trigger, lacks specificity needed to determine additional coverage requirements and calculate defrayal costs. OSI recommends clarifying the scope of mandated coverage and tying any services, treatments, or medications that are available without cost sharing, to medical necessity determinations.

OTHER SUBSTANTIVE ISSUES

The HHS Notice of Benefit and Payment Parameters (NBPP) sets ACA Marketplace operational and compliance standards annually. The 2027 Proposed Rule, released February 11, 2026, includes changes to EHB definitions that may affect state defrayal obligations for mandated benefits beyond EHB. The final NBPP could increase compliance complexity for states with broader mandates, such as New Mexico. Comments are open through March 13, 2026; impacts will remain uncertain until finalized.

ALTERNATIVES

Clarify definitions to reduce ambiguity and premium impact:

- Gender-Affirming Health Care: Limit to medical, surgical, and behavioral health services provided for treatment of gender dysphoria or for affirming gender identity, documented in a treatment plan consistent with recognized clinical guidelines.
- Abortion Care: Specify whether coverage includes medication abortion, procedural abortion, ancillary services (labs, ultrasound, anesthesia), complication management,

follow-up care, and clarify whether “total cost” includes copays, coinsurance, deductibles, and related fees.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If SB189 is not enacted, current coverage standards will remain unchanged. Carriers on the Exchange will continue to cover medically necessary gender-affirming care services, excluding surgical procedures and prescription drugs, and therapeutic abortions will remain covered, while elective abortions will not be uniformly covered across carriers. Currently, only one carrier offers elective abortion coverage and gender-affirming care services, including surgery and prescription drugs. Consumers will continue to pay cost-sharing for gender-affirming care and abortion services where covered, and preventive and reproductive health services will remain subject to existing cost-sharing and prior authorization requirements

AMENDMENTS

None.