LFC Requester:	RubyAnn Esquibel

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: 2/12/26 **Bill Number:** SB0189CS **Original** _ **Amendment** **Substitute X**
Short Title: INSURANCE COVERAGE FOR SEXUAL, REPRODUCTIVE & GENDER-AFFIRMING HEALTH CARE
Sponsor: Sen. Berghmans
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	-	-

(Parenthesis ( ) indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	**FY27**	**FY28**		
$0	**$0**	**$0**	-	-

(Parenthesis ( ) indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
MAD	$0	$2,858.8	$2,858.8	$5,717.6	Recurring	General Fund
MAD Total	$0	$2,858.8	$2,858.8	$5,717.6	Recurring	General Fund
State Health Benefits	$0	$10.0	$20.0	$30.0	Recurring	General Fund (through State Health Benefits Fund)
State Health Benefits TOTAL	$0	$10.0	$20.0	$30.0	Recurring	General Fund (through State Health Benefits Fund)

(Parenthesis ( ) Indicate Expenditure Decreases)

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Sections 1 through 4 of SB189 propose new portions of the Health Care Purchasing Act which is the law that applies to publicly financed health insurance purchased by the state health benefits division if the HCA, the retiree health care authority, the public school insurance authority, and the publicly funding health care programs of any public school district with student enrollment in excess of sixty thousand students.

Section 1 of the bill requires no cost sharing for preventive benefits rated A and B in by the United States Preventive Services Task Force (USPTF); immunizations recommended by the Advisory Committee on Immunization Practices (ACIP); preventive services for infants, children and adolescents; and preventive care for women unless the plan is a high deductible health plan or a short term or limited plan.

Section 2 requires no cost sharing for abortion care, unless the plan is a high-deductible health plan or a short term or limited plan.

Section 3 requires plans to include a special enrollment period for people with a pregnancy diagnosis, requiring coverage to be effective before the end of the first month the person receives certification of the pregnancy.

Section 4 requires all group health coverage to cover the total cost of Gender Affirming Health Care services without being subject to cost-sharing provisions, unless the plan is a high-deductible health plan or a short term or limited plan.

Section 5 requires group health coverage of at least one product in each of the contraceptive method categories, without cost sharing, utilization review, prior authorization or step therapy, quantity or fill limits less than twelve-months' duration, unless the plan is a high-deductible health plan or a short term or limited plan.

Sections 6 through 9 apply to the state Medicaid program and require that family planning services be covered without limitation or prior authorization, and that recipient's choices of health care provider shall not be restricted by a managed care organization (MCO). Coverage for single-use lactation supplies and equipment, lactation care services, and access to multi-user loaned breast pumps for persons with premature, medically fragile, low birth weight infants or with lactation complications is required as is gender affirming health care.

Sections 10-13 apply to individual health insurance contracts. Section 10 requires that abortion services shall be reimbursed as non-bundled procedural services, allowing for modifiers to reflect increased time and training by providers. Section 11 amends Section 59A-22-42, requiring a full twelve months of contraception coverage. The section allowing religious entities to elect to exclude prescription contraceptive drugs or devices from health coverage purchased has been moved from subsection (K) to subsection (H) but remains in the existing law. Section 12 requires health insurance policies to include a special enrollment period for people with a pregnancy diagnosis, requiring coverage to be effective before the end of the first month the person receives certification of the pregnancy. Section 13 requires coverage for gender affirming health care.

These provisions related to abortion, contraception, special enrollment period for pregnancy, and Gender Affirming Care are repeated for group and blanket health insurance contracts (Sections 14-17), health maintenance organizations (Sections 18-21), and nonprofit health care plans (Sections 22-25).

The Committee Substitute (CS) would amend the Health Insurance Exchange Act, Chapter 59A, Article 23F NMSA 1978 (NMSA 59A-23F) to create a Reproductive Health Care Access Fund (RHCAF) consisting of distributions, appropriations, gifts, grants, donations, investment income, and any other revenue. This fund would be administered by the HCA subject to legislative appropriation to provide access to affordable reproductive health care.

The CS provides for funding of the RHCAF by directing the Superintendent of Insurance (OSI) to assess a surcharge on health insurers offering plans that cover abortion services through the exchange. The surcharge amount would be calculated by requiring such insurer to submit a report by March 31 of each year regarding the segregated accounts created pursuant to Section 1303 of the Affordable Care Act (42 U.S.C. § 18023). The newly required report would document all money added to the segregated accounts in the previous calendar year (and related documentation required by OSI), including receipts, disbursements, interest accrued, and ending balance. OSI would then assess a surcharge on each account in an amount equal to the account balance reported.

The CS defines "gender-affirming health care" as "psychological, behavioral, surgical, pharmaceutical and medical care, services and supplies provided to support a person's gender identity".

If passed, this bill would apply to policies issued, renewed, extended or amended on or after January 1, 2027.

FISCAL IMPLICATIONS

Medicaid

Gender Affirming Care services are currently in the CY2026 capitation rates that are paid to MCOs. No explicit rating adjustment was made for Gender Affirming Care in 2026, but the CY2024 base rates do include spend related to Gender Affirming Care. There could be a fiscal impact from federal policies that eliminate federal support for some or all of these services. Medicaid spent $4,000,000.00 in 2024 for services to people with a ICD-10 diagnosis of Gender dysphoria but only $8,000.00 on the procedures associated with Gender Affirming Care. If New Mexico loses the federal support for Gender Affirming Care services, the fiscal impact to New Mexico will be $2,858,800.00 per year that will need to be covered out of the State General Fund by MAD.

Abortion care is currently not paid for by federal dollars. Currently these services are paid for with a bundled rate. In 2024, the bundled rate in NM for a medication abortion was $570.00. Unbundled, the cost for mifepristone, misoprostol, an office visit, and a transvaginal ultrasound would have been $320.00. If a patient required Rhogam in an unbundled reimbursement, it would cost an additional $25.36. Medicaid changed to bundling abortion codes due to requests by abortion providers to make the change for better reimbursement rates.

The bundled cost for a dilation and curettage (D&C) in NM in 2024 ranged from $205-$704. Unbundled, the cost would have been $496.99, including the D&C procedure, insertion of cervical dilator, transvaginal ultrasound, methergine, lidocaine nerve block, the surgical tray, and specimen handling.

The bundled cost for a dilation and extraction procedure (D&E), which typically occurs in the second trimester, ranged between $350 and $1143 in NM in 2024. Unbundled, a D&E procedure would have cost approximately $599.72, including the D&E procedure, insertion of cervical dilator, transvaginal ultrasound, methergine, lidocaine nerve block, surgical tray and specimen handling.

https://www.kff.org/medicaid/variability-in-payment-rates-for-abortion-services-under-medicaid/

State Health Benefits

The preventive care aspects of this bill would be expected to have a limited financial impact on State Health Benefits since many preventive services are covered at no cost sharing today, including high-deductible health plans. The removal of cost sharing, prior authorization, and utilization review for certain contraception, abortion care, and pregnancy-related services, and gender-affirming care services would be expected to marginally increase SHB costs based on historical claims data, and prior authorization requests (estimated 3-year total cost beginning in FY26 being $30,000.00).

No fiscal implications for ITD.

SIGNIFICANT ISSUES

Medicaid

SB189 requires coverage of abortion services and gender affirming care. Federal Medicaid policies are inhibiting use of federal dollars for abortion and potentially for gender affirming care. State requirements of commercial insurers that conflict with federal policy may cause confusion among providers and patients.

If the U.S. Congress changes federal law to prohibit federal funding for Gender Affirming Care services, then Medicaid compliance with this proposed state mandate will require additional state funding to cover the lost federal financial participation.

State Health Benefits

The creation of a special enrollment period based on pregnancy could put the tax status of the State Health Benefits at risk because it conflicts with the exclusive regulatory exceptions associated with IRS Section 125. Internal Revenue Code, Sec. 125 provides for employer-sponsored benefit programs that allow employees to choose to pay for qualified benefits, including health insurance premiums, on a pre-tax basis but only through a written cafeteria plan. If the employees choose qualified benefits, the amount used to pay for the benefits is excluded from their W-2 income. But cafeteria plan regulations require employee elections to be irrevocable for the period of coverage/plan year with only a limited list of exceptions. 26 C.F.R Sec. 1.125-4(c)-(g). Change in number of dependents is part of that list and covers birth, death, adoption, and placement for adoption but not pregnancy. 26 C.F.R Sec. 1.125-4(c). This tax issue would also affect the section 125 cafeteria plans of private employers.

This committee substitute does not address HCA's concerns above regarding the threat to the tax status of both the State Health Benefits and every other section 125 employer cafeteria plan in the state of New Mexico. HCA recommends amending the bill to remove pregnancy as a qualifying event for section 125 cafeteria plans.

SB 189 would create a pregnancy-based special enrollment period requiring mid-year enrollment upon provider certification of pregnancy. However, SHB premiums are paid through a Section 125 cafeteria plan, under which employee elections are generally irrevocable except for limited permitted election change events under Treasury Regulation 26 C.F.R Sec. §1.125-4. That regulation ties health plan mid-year changes largely to:

- HIPAA special enrollment rights (marriage, birth, adoption, loss of coverage, etc.)
- Change in employment status
- Change in cost or coverage
- Other specifically enumerated events

Pregnancy is not a recognized HIPAA special enrollment right and is not listed as a permitted mid-year election change event under federal cafeteria plan rules - birth/adoption are included, but not pregnancy itself.

Because federal tax law governs cafeteria plan qualification, implementing a pregnancy-based mid-year election could place SHB at risk of operating outside Section 125 requirements,

potentially jeopardizing the tax-favored status of salary reduction contributions and creating payroll, reporting, and compliance exposure. State law cannot override federal cafeteria plan qualification standards.

There is an important distinction - SB 189 creates a state-law special enrollment period (SEP). however, federal tax law governs whether that SEP can be implemented within a cafeteria plan on a pre-tax basis. State law cannot override federal tax qualification rules.

If SHB were found to operate outside Section 125 rules:

- The plan could lose cafeteria plan status.
- Salary reduction amounts could become taxable wages.
- FICA/FUTA exclusion could be impacted.
- W-2 corrections could be required.
- Employer payroll tax exposure increases.

Additional Information

SB189 calls for following ACIP immunization recommendations. Currently the State of New Mexico Department of Health is following professional organization recommendations for vaccine schedules, such as the American Academy of Pediatrics and the American Academy of Family Physicians.

No significant issues for ITD.

PERFORMANCE IMPLICATIONS

None

ADMINISTRATIVE IMPLICATIONS

Pharmacy regulations may limit the number of packs of birth control pills to twelve a year, even though this does not cover 365 days. In addition, when oral contraceptives are prescribed for continuous use, the patient will require 16 packs to take an active pill daily for continuous use, allowing for seven placebo days every four months. Pharmacists may not be able to provide 16 packs when they consider a full year of pills to be twelve packs.

This legislation requires the coverage of the "total cost of gender-affirming health care". Currently Medicaid covers services related to gender affirming care as outlined in Supplement 24-15 Services not defined within this supplement for gender affirming health care would not be covered.

No administrative implications for ITD.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None

TECHNICAL ISSUES

None

OTHER SUBSTANTIVE ISSUES

None

ALTERNATIVES

To avoid the risk of state health benefits plans and other employer-sponsored Section 125 cafeteria plans losing the ability to have health benefits excluded from taxable income, consider removing the sections mandating pregnancy be treated as a qualifying event.

A savings clause added to the sections including the pregnancy SEP could protect cafeteria plans from violating Section 125 requirements. Effective language might be "Nothing in this section shall be construed to require a mid-year change to an employee's section 125 cafeteria plan election except to the extent permitted under 26 U.S.C. § 125 and applicable federal regulations."

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

None