

LFC Requester:

Ruby Ann Esquibel

### 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: January 23, 2025

Check all that apply:

Bill Number: HB 95

Original  Correction   
Amendment  Substitute

Sponsor: Rep. Herndon, Sen. Duhigg,  
Rep. Gurrola

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

Person Writing

Short Title: Coverage for Fertility  
Preservation Services

Analysis: AAG Nicolas Cordova

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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
<b>Total</b>						

(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 seeks to amend several acts regulating health insurance (Health Care Purchasing Act, 13-7-1, NMSA, Insurance Code, 59A-1-1, and Chapter 59, Articles 23, 46 and 47, NMSA), to require the coverage of “fertility preservation” services (e.g., procuring, cryopreserving, and storing oocytes, embryos, or gonadal tissue). In so doing, the bill would require such coverage by health plans covering public employees, public school employees, and retirees of public employment and public schools; individual health plans; group and blanket health plans; health maintenance organization health plans; and plans offered by nonprofit organizations.

**FISCAL IMPLICATIONS**

None noted.

**SIGNIFICANT ISSUES**

Religious Objections. To the extent the bill’s mandated coverage of fertility preservation services conflicts with the religious beliefs of an employer or other entity purchasing individual or group health insurance, the bill’s mandated coverage may give rise to challenges under the New Mexico Religious Freedom Restoration Act (RFRA), NMSA 1978, §§ 28-22-1 to -5, and the First Amendment of the United States Constitution.

The RFRA prohibits government agencies from “restrict[ing] a person’s free exercise of religion unless” two conditions are met. First, the restriction must be generally-applicable and must not directly discriminate against or among religions. Second, the restriction’s application must be “essential to further a compelling governmental interest” and must be “the least restrictive means of furthering that compelling governmental interest.” Section 28-22-3. HB 95’s coverage mandate is generally-applicable for all group or individual health plans and does not discriminate against or among religions. *See Fulton v. City of Philadelphia*, 593 U.S. 522, 533-534 (2021) (explaining that a “law is not generally applicable if it invites the government to consider the particular reasons for a person’s conduct by providing a mechanism for individualized exemptions,” and “if it prohibits religious conduct while permitting secular conduct that undermines the government’s asserted interests in a similar way”). However, an entity may argue that in the absence of a religious exemption, HB 95 does not provide for the least restrictive means of furthering the state’s interest of covering fertility preservation services. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 730-731 (2014) (concluding that a federal law’s

mandating closely-held corporations to provide coverage for contraception was not the least restrictive means of furthering the government's interest, given the availability of religious exemptions already in use for nonprofit organizations).

The bill may also implicate the First Amendment of the United States Constitution. Generally, however, neutral and generally-applicable laws that incidentally burden religion are not subject to strict scrutiny under the First Amendment. *See Employment Div., Dep't of Human Resources of Oregon v. Smith*, 494 U.S. 872, 878-882 (1990).

Other states that passed similar legislation incorporated religious exemption provisions. *See, e.g.*, Colo. Rev. Stat. § 10-16-104(23)(e); Del. Code tit. 18 § 3556(i)(5). Similarly, prior New Mexico legislation that required coverage of contraception within the several acts impacted by this bill, also incorporated a religious exemption provision. *See* NMSA 1978, §§ 59A-22-42(K), § 59A-23-7.14(K), § 59A-46-44(K), § 59A-47-45.5(K).

#### **PERFORMANCE IMPLICATIONS**

None noted.

#### **ADMINISTRATIVE IMPLICATIONS**

None noted.

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

None noted.

#### **TECHNICAL ISSUES**

None noted.

#### **OTHER SUBSTANTIVE ISSUES**

None noted.

#### **ALTERNATIVES**

N/A

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

Status quo.

#### **AMENDMENTS**

N/A