LFC Requestor: GAUSSOIN, Helen

2025 LEGISLATIVE SESSION
AGENCY BILL ANALYSIS

Section I: General

Chamber: House

Category: Bill

Number: 424

Type: Introduced

Date (of **THIS** analysis)**:** 2/14/2025

Sponsor(s): Rebecca Dow and Gail Armstrong

Short Title: PREGNANCY & FAMILY CARE ACT

Reviewing Agency: Agency 665 - Department of Health

Analysis Contact Person: Arya Lamb

Phone Number: 505-470-4141

e-Mail: Arya.Lamb@doh.nm.gov

Section II: Fiscal Impact

APPROPRIATION (dollars in thousands)

Appropriation Contained		Recurring or Nonrecurring	Fund Affected
FY 25	FY 26		
$0	$0	N/A	N/A

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY 25	FY 26	FY 27		
$0	$0	$0	N/A	N/A

.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY 25	FY 26	FY 27	3 Year Total Cost	Recurring or Non-recurring	Fund Affected
Total	$2,095.96	$2,095.96	$2,095.96	$6,287.88	Recurring	GF

Detail	Salary	W/Benefits	# Positions	Annual Cost
Admin Ops II-85	$46.92	$64.28	1	$131,747.20
Social & Com III -70	$34.23	$46.90	3	$1,345,635.20
Social & Com Super-75	$38.46	$52.69	1	$323,980.80
Epi Advanced-75	$38.46	$52.69	1	$53,996.80
				$1,855,360.00
New IT system creation	$150,000.00			$150,000.00
Hardware	$1,700.00		6	$10,200.00
Software and fees	$700.00		6	$4,200.00
Phones	$700		6	$4,200
Office Space	10.00 per SF 120sf per office x 6 (12,000 per staff)			$72,000.00
			Annual Total	$2,095,960.00

Section III: Relationship to other legislation

Duplicates: None

Conflicts with: HB303
HB173
HB383

Companion to: None

Relates to: HB343
SB 42

Duplicates/Relates to an Appropriation in the General Appropriation Act: None

Section IV: Narrative

1. BILL SUMMARY

a) Synopsis

House Bill 424 (HB424) proposes to add a new section to the Children's Code, chapter 32A, to enact the Pregnancy and Family Care Act to provide screening of pregnant patients for substance use disorder and prioritizing treatment and referrals to a range of services through the development of a Family Plan of Care.

HB424 proposes to require the Department of Health (DOH) to develop a system distinct from the reporting of alleged child abuse and neglect and to require health care providers to notify the DOH regarding the birth of an infant exposed to substances. HB424 requires the DOH to develop training and educational materials on the development of the voluntary

Family Plan of Care for all health care providers and others providing services to pregnant and post-partum patients. It also requires the DOH to establish statewide and county advisory councils to provide recommendations to the DOH on the implementation of the Pregnancy and Family Care Act.

Section 2: Provides definitions as used in the Pregnancy and Family Care Act. Definitions include the "department" as the Department of Health. A Family Care Plan, an infant, a substance-exposed infant and substance use disorder are also defined.

Section 3: New language is added to the Children's Code to describe the process for a health care provider to screen a pregnant patient for substance use disorder at the first visit and subsequent visits. The screening occurs only with the consent of the pregnant patient. If through screening the health care provider determines a substance use disorder may be present, and with the consent of the pregnant patient, a family care plan will be developed to facilitate referral for treatment.

Section 4: New language is added to the Children's Code to require substance use treatment providers who receive a referral on a pregnant or post-partum patient to prioritize that patient for starting available treatment. Providers who receive state or federal funds shall not refuse treatment to a pregnant or post-partum patient. This includes maintaining substance use treatment for pregnant or post-partum patients who are incarcerated in a state or county facility or who are on parole. Providers shall not directly bill a pregnant or post-partum patient for services if they have insurance coverage, unless they receive rejection or denial of coverage.

Section 5: New language is added to the Children's Code to require the DOH to develop an on-line portal or a written form that health care providers can utilize to provide notification to the DOH. This is required in alignment with the federal Child Abuse Prevention and Treatment Act and the federal Comprehensive Addiction and Recovery Act of 2016.

- 5B: A family care plan will be developed by the discharging facility and provided to the family, caregiver or guardian with instructions on follow-up.
- 5C: Beginning January 1, 2026, hospitals, birth centers or facilities shall provide the DOH with quarterly reports on the number of patients who have been provided information on the development of a family care plan.

A substance use disorder diagnosis or a prenatal or postnatal toxicology test of the patient or infant is not itself sufficient basis to require a report of suspected child abuse or neglect, but that does not preclude a health care provider from making a report of potential abuse or neglect to CYFD if there are other factors present that may harmfully impact the health and safety of the infant.

Section 6: New language is added to the Children's Code to define the family care plan as a voluntary program; refusal to participate by the patient, caregiver or a patient's family member is not sufficient to require a report to CYFD or law enforcement. If the patient participates in the program they shall select a health care provider, substance use disorder treatment provider, community health worker or other person to manage the patient's family care plan. If the patient refuses to participate, they shall be able to begin or resume participation at any time up to twelve months from giving birth.

Section 7: There is new language added to the Children's Code to require the DOH to develop training and education materials in collaboration with other state agencies and stakeholders to support health care providers, substance use disorder providers, first responders, law enforcement, and others providing services to pregnant and post-partum patients and substance exposed infants on notification requirements of the Pregnancy and Family Care Act, and on distinguishing circumstances that require a report of alleged child abuse and neglect . Other training components include:

- Family plan of care
- Early Intervention
- Reducing stigma
- Trauma informed care
- Contraception
- Sexually transmitted diseases
- Harm reduction community programs

Educational materials will be posted on the DOH website and be available at no cost.

Section 8: There is new language added to the Children's Code requiring the DOH to develop a statewide perinatal advisory council to provide recommendations to the DOH on perinatal substance use disorder and address coordinated response, workforce issues, racial and ethnic disparities in treatment and care, and allocation of resources. The council members will be appointed by the Secretary of Health and members shall include the Secretaries (or designees) of Health, CYFD, Early Childhood Education and Care, and the Health Care Authority, along with representatives from the Administrative Office of the Courts, Law Enforcement, and nine members from diverse, linguistic and cultural backgrounds and various geographical regions of the State.

Section 9: There is new language added to the Children's Code that requires the DOH, in conjunction with each board of county commissioners or tribal leadership, to establish perinatal coordinating councils for each county. The county perinatal coordinating council will reflect the membership of the statewide perinatal coordinating council but will be made up of local community representatives. Each county's council shall provide an annual report to the statewide council regarding perinatal substance use problems in their respective communities with recommendations on solutions.

Section 10: There is new language added to the Children's Code that requires the DOH to provide a report to the legislative finance committee, the interim legislative health and human services committee, the interim legislative committee that studies courts, corrections and justice, and the Governor regarding information and recommendations on perinatal substance use disorder.

Is this an amendment or substitution? ☐ Yes ☒ No

Is there an emergency clause? ☐ Yes ☒ No

b) <u>Significant Issues</u>

Substance use in the perinatal and postpartum periods is a significant issue in New Mexico. A published analysis of New Mexico pregnancy-associated deaths occurring from 2015-2019 revealed that almost half of the deaths involved substance use disorder (SUD). The SUD-related mortality ratio varied from 2015 to 2018, with 31.1 (95% CI 13.4–61.3) deaths per 100,000 live births in 2015 increasing to 47.7 (95% CI 23.8–85.4) deaths per 100,000 in 2018. It decreased in 2019 to 30.5 (CI 12.3–62.8) deaths per

100,000 births (Fuchs et al. Matern Child Health J. 2023; Jun 12;27(Suppl 1):23–33. doi: 10.1007/s10995-023-03691-8).

Monitoring of newborns identified with substance exposure is important because such newborns incur risks of child abuse and neglect (Durrance C P J Child Abus Neg https://doi.org/10.1016/j.chiabu.2023.106629 Received 29 January 2023). Newborns who have been exposed to substances in utero, whether prescription or non-prescription, can go into withdrawal after birth. Neonatal abstinence syndrome (NAS) or neonatal opioid withdrawal syndrome (NOWS) can be diagnosed when a newborn exposed to opioids in utero demonstrates specific withdrawal symptoms after birth. The rate of newborn hospitalizations for NAS in New Mexico increased from under 4 per 1,000 hospitalizations in 2009 to nearly 15 per 1,000 in 2022 (The Health Care and Utilization Project https://datatools.ahrq.gov/hcup-fast-stats/).

In the last several decades, consensus shifted regarding the best policy response to drug-exposed newborns. Research indicates that non-punitive interventions such as the ones described in this bill are the most beneficial to children and families. This includes interventions that emphasize treatment and preserve attachment and bonding between mother and baby whenever safe and possible to do so (Substance use during pregnancy: time for policy to catch up with research - PMC.) The NM statute passed in 2019 (House Bill 230) was in line with this non-punitive approach in stating that substance use alone was not sufficient for a report of child abuse or neglect and that the plan of safe care did not constitute a report to protective services; rather, a separate report needed to be filed with the Children, Youth and Family Department protective services division if there were other reasons to suspect a child was not safe in the home. There have been observed limitations to the current statute, which requires plans of care, but does not require adherence to those plans of care by the mother. This issue has led to a shift in discussion among policy-makers, who have begun to consider allowing for punitive measures if the parent fails to accept, engage, or comply with provisions of plans of safe care to ensure the safety of the infant is the paramount concern.

According to the American Academy of Obstetricians and Gynecologists (ACOG), universal verbal screening for substance use should be part of comprehensive obstetric care and should be done at the first prenatal visit in partnership with the pregnant woman. Targeted screening that uses factors such as poor adherence to prenatal care or prior adverse pregnancy outcome can lead to missed cases and may add to stereotyping and stigma (https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2017/08/opioid-use-and-opioid-use-disorder-in-pregnancy).

Universal screening is used to identify people with or at risk for a substance use disorder so providers might provide brief intervention, educational information, treatment, compassionate care, and referrals, all of which can lead to improved outcomes. Universal screening may also reduce stigma, bias and fear. Additionally, informed consent is an ethical consideration for perinatal substance screening. Voluntary screening allows pregnant individuals to make a choice about sharing sensitive information while considering the benefits of receiving support and treatment for substance use (Screening Pregnant Women and Their Neonates for Illicit Drug Use: Consideration of the Integrated Technical, Medical, Ethical, Legal, and Social Issues (Front Pharmacol. 2018 Aug 28;9:961.doi: 10.3389/fphar.2018.00961).

The New Mexico Perinatal Collaborative has worked with health care providers to train them in implementing screening tools for perinatal depression and substance use and to operationalize recommendations for screening in clinical settings (https://nmperinatalcollaborative.com/).

Screening tools for substance use include:

- **NIDA Quick Screen/ASSIST:** A two-part screening tool that asks about alcohol, tobacco, prescription drugs, and illegal drugs.
- **4P's Plus:** A screening tool that asks about tobacco, alcohol, cannabis, and illicit drugs
- **SURP-P**: A screening tool that has been shown to be effective in identifying substance use in pregnant women

Additional screening tools can be utilized to screen for other conditions such as depression:

- **Edinburgh scale**: A validated screening tool for perinatal depression
- **PHQ-9**: A validated screening tool for perinatal depression
- **PASS**: A screening tool for perinatal anxiety
- **GAD-7**: A screening tool for generalized anxiety disorder
- **MDQ**: A screening tool for bipolar disorder

2. PERFORMANCE IMPLICATIONS

- Does this bill impact the current delivery of NMDOH services or operations?

  ☒ Yes ☐ No

  The development of the reporting system, the establishment of county-level councils, the development of training materials, the coordination with CYFD, and the reporting all would be within the responsibility of DOH.

- Is this proposal related to the NMDOH Strategic Plan? ☒ Yes ☐ No

  ☒ **Goal 1**: We expand equitable access to services for all New Mexicans

  ☐ **Goal 2**: We ensure safety in New Mexico healthcare environments

  ☒ **Goal 3**: We improve health status for all New Mexicans

  ☐ **Goal 4**: We support each other by promoting an environment of mutual respect, trust, open communication, and needed resources for staff to serve New Mexicans and to grow and reach their professional goals

3. FISCAL IMPLICATIONS

- If there is an appropriation, is it included in the Executive Budget Request?

  ☐ Yes ☐ No ☒ N/A

- If there is an appropriation, is it included in the LFC Budget Request?

  ☐ Yes ☐ No ☒ N/A

- Does this bill have a fiscal impact on NMDOH? ☒ Yes ☐ No

  The NMDOH would be required to develop and maintain a new program to support implementation of the Pregnancy and Family Care Act, the creation of county councils, and reporting. There is no appropriation in this bill.

  Costs for staff are $1,855,360.00

  IT system creation costs would be $150,000.00 at a minimum

  Phone, software, and Hardware costs would be $175,800.00

4. ADMINISTRATIVE IMPLICATIONS

Will this bill have an administrative impact on NMDOH? ☒ Yes ☐ No

Several staff would be needed, an Admin Operations Specialist II at a pay band 85, an epidemiologist-A at a pay band 75, a Social and Community Coordinator III at a pay band 70, and a social and community coordinator Supervisor at a pay band 75. Computer and telecom equipment will be needed, as well as offices.

5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

Conflicts with HB303 EXPOSURE TO CERTAIN DRUGS AS CHILD ABUSE. which introduces new language to modify the Abuse and Neglect Act. The bill would change Section 30-6-1 NMSA 1978, ABANDONMENT OR ABUSE OF A CHILD to clarify that faults and habits of the parent or caregiver constitute ‘criminal negligence’.

Conflicts with HB383 EXPOSURE TO FENTANYL USE AS CHILD ABUSE. House Bill 383 (HB383) amends Section 30-6-1 NMSA 1978, relating to the abandonment or abuse of a child, by adding exposure to the use of fentanyl as prima facie evidence of child abuse.

Relates to HB343 PLANS OF SAFE CARE FOR SUBSTANCE-EXPOSED NEWBORNS House Bill 343 (HB343) proposes additional requirements and amended language to the Children’s Code related to the creation of plans of safe care for substance-exposed newborns.

Relates to SB42 NEW CARA PROGRAM REQUIREMENTS. Senate Bill 42 (SB42) proposes changes to the NM Children’s Code which would guide the activities of the Comprehensive Addiction Recovery Act (CARA) program and the plans.

Relates to HB173 CYFD INVESTIGATION FOR PLAN OF CARE FAILURE. House Bill 173 (HB173) would amend Section 32A-3A-14 NMSA 1978 (being Laws 2019, Chapter 190, Section 4) to require the Children Youth and Families Department (CYFD) to conduct a family assessment with families who fail to comply with a plan of care, rather than have the option of conducting a family assessment for these families.

6. TECHNICAL ISSUES

Are there technical issues with the bill? ☐ Yes ☒ No

7. LEGAL/REGULATORY ISSUES (OTHER SUBSTANTIVE ISSUES)

- Will administrative rules need to be updated or new rules written? ☒ Yes ☐ No

  As stated in HB424, new rules will be promulgated in the Children’s Code.

- Have there been changes in federal/state/local laws and regulations that make this legislation necessary (or unnecessary)? ☐ Yes ☒ No
- Does this bill conflict with federal grant requirements or associated regulations? ☐ Yes ☒ No
- Are there any legal problems or conflicts with existing laws, regulations, policies, or programs? ☐ Yes ☒ No

8. DISPARITIES ISSUES

Disparities in families identified for a Plan of Safe Care and possibly with Family Plans of Care can arise due to implicit bias; specifically, conflating race and other sociodemographic variables with risk. Many studies have demonstrated racial bias in prenatal drug testing.

9. HEALTH IMPACT(S)

Early intervention services which mitigate potential developmental delays, increase access to necessary medical care, strengthen family support systems, improve parental engagement in treatment, could have a higher likelihood of safe and stable home environments for the child, and could promote better long-term outcomes for the infant and family

10. ALTERNATIVES

None

11. WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

If SB424 is not enacted, then the Pregnancy and Family Care Act will not be put into place as a program to address substance use during pregnancy.

12. AMENDMENTS

None