

LFC Requester:

Kelly Klundt

### 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:** 2/21/2025

*Check all that apply:*

**Bill Number:** HB543

Original  x  Correction       
Amendment      Substitute     

**Sponsor:** Rep. Rod Montoya, Rep. Harlan Vincent, and Rep. Jenifer Jones

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

**Person Writing**

**Analysis:** Lawrence M. Marcus

**Short Title:** PARENTAL CONSENT FOR MINOR’S HEALTH CARE

**Phone:** 505-537-7676

**Email:** legisfir@nmag.gov

#### 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: This bill is related to HB 466 (see below for more information)

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

### **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 proposes to amend the Reproductive and Gender-Affirming Health Care Freedom Act (the Freedom Act), which prevents interference by public bodies with the ability to obtain reproductive health care (including, but not limited to, abortion, birth control, and treatment for infertility and sexually transmitted diseases), as well as gender-affirming care. The proposed amendment to the bill would clarify that the Freedom Act, in and of itself, does not allow a minor to receive reproductive or gender affirming care.

Section 1: This section amends Section 24-34-2 NMSA 1978, the definitional section of the Freedom Act. It simply adds Subsection "B," which defines "minor" as someone under the age of eighteen.

Section 2: This section amends Section 24-34-3 NMSA 1978, which lists the actions prohibited under the Freedom Act. It adds a new Subsection "G," which states that nothing in the Act shall be construed to allow a minor to receive gender-affirming or reproductive health care without parental consent in any manner that is not otherwise provided for by law."

### **FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

### **SIGNIFICANT ISSUES**

The definition of minor does not account for emancipated minors or minors who are not under the legal authority of their parents. As such, there may be conflict between the definition of "minor" and the provision stating that the Freedom Act does not provide for a minor to receive the specified health care without parental consent in the bill, and a minor's actual and legal reality. *See, e.g.,* NMSA 1978, § 32A-21-5 (emancipated minors); NMSA 1978, § 24-7A-6.2 (minors living apart from a parent or guardian). To the extent the Freedom Act does provide a right to such health care, the bill would impose a natural conflict in these and other situations.

Also, there are certain other statutes and constitutional provisions (see under “Other Substantive Issues”) that may conflict with this bill. Although the bill is written to automatically exempt reproductive and gender affirming health care that is protected by those other provisions, and only states that the Freedom Act, in particular, does not allow for minors to receive the specified care without parental consent, those other provisions may limit the bill’s effect.

## **PERFORMANCE IMPLICATIONS**

None

## **ADMINISTRATIVE IMPLICATIONS**

None

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

This bill is related to HB 466, which does not just clarify that a particular Act does not provide for gender affirming care without parental consent, but it creates an outright ban on any gender affirming care, and places restrictions on reproductive health care. HB 466 generally goes quite a bit further, so it is in conflict with the proposed bill.

## **TECHNICAL ISSUES**

None apparent

## **OTHER SUBSTANTIVE ISSUES**

This bill states that the Freedom Act does not provide for minors to be able to obtain reproductive and gender affirming health care without parental consent, except as otherwise provided by law. Thus, it would likely have no effect on other statutes that could be construed to allow for this type of care to minors under at least some circumstances, including, e.g., statutes allowing for anyone to receive treatment for family planning, NMSA 1978, § 24-8-5, or treatment for sexually transmitted diseases, NMSA 1978, § 24-1-9.

To the extent this provision could be interpreted to serve as an outright ban, it might run afoul of state constitutional provisions, such as N.M. Const. art. II, § 18, which states that “Equality of rights under law shall not be denied on account of the sex of any person.” The New Mexico Supreme Court has held that by adopting this language, the people of new Mexico intended to provide “something beyond that already afforded by the general language of the Equal Protection Clause.” *N.M. Right to Choose/NARAL v. Johnson*, 1995-NMSC-005, ¶ 30, 126 N.M. 788, 975 P.2d 841. Moreover, the restriction on medical care may run afoul of the privacy protections under the New Mexico Constitution. The N.M. Constitution provides for robust privacy rights to from governmental intrusion and invasion. “New Mexico courts have long held that Article II, Section 10 provides greater protection of individual privacy than the Fourth Amendment [of the U.S. Constitution].” *State v. Crane*, 2014-NMSC-026, ¶ 16, 329 P.3d 689. This right includes both the right to “personal bodily privacy” and “personal dignity.” *State v. Chacon*, 2018-NMCA-065, ¶ 15, 429 P.3d 347. The bill’s catch-all exemption, “not otherwise provided by law” may avoid this conflict.

## **ALTERNATIVES**

None apparent

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

Status quo

**AMENDMENTS**

None yet.