

LFC Requester:	Eric Chenier
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AGENCY BILL ANALYSIS - 2025 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: March 7, 2025 *Check all that apply:*
Bill Number: SB 404 Original Correction
 Amendment Substitute

Sponsor: <u>Senators Stewart, Nava, & Wirth</u>	Agency Name and Code Number: <u>University of New Mexico-952</u>
Short Title: <u>Healthcare Privacy Protections</u>	Person Writing: <u>Kelly O'Donnell</u>
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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
Total		UNK >\$1M	UNK >\$1M		Recurring	Operating

(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

Synopsis: Senate Bill 404, the Patient Records Privacy Act, aims to amend the Electronic Medical Records Act to segregate certain health care records, to prohibit disclosure of certain health care information, and to repeal reporting requirements for induced abortion.

FISCAL IMPLICATIONS

Complying with SB 404 would require comprehensive changes across UNM's electronic medical records systems, health information management processes, and consent procedures and would entail system overhauls, process reengineering, staff training, and potentially complex negotiations with third-party vendors. SB 404 would also greatly increase UNM's legal exposure and litigation costs.

SIGNIFICANT ISSUES

UNM supports efforts to protect reproductive health-related PHI. However, despite its laudable intentions, SB 404 as drafted has the very real potential to undermine the health and healthcare of the patients it seeks to protect by limiting the flow of crucial health information between providers and impeding care coordination. The provisions of this bill, if enacted, would also compromise the collection of public health data and create new barriers to equitable healthcare delivery, particularly for populations already facing significant health disparities.

SB 404 makes unrealistic assumptions about the technical capabilities of electronic medical record systems and the ability of health care providers to compel software vendors to make the changes necessary to accommodate the new law. The bill's silence on the treatment of historical health information creates a significant loophole that undermines the bill's ability to protect patient privacy.

Not only will SB 404 compromise patient care and impose costly new technical requirements on New Mexico's already strained healthcare system, it exposes providers to high financial penalties for non-compliance and costly litigation by establishing a private right of action.

Below are detailed 9 specific areas of concern:

- 1. Technical Barriers of Information Segregation:** UNM's current electronic medical record (EMR) system lacks the sophisticated capabilities required to implement the fine-grained access controls proposed in SB 404. The complexity of medical practice far exceeds the simplistic categorization suggested by SB 404.

Consider, for instance, the multifaceted use of birth control medications. These are prescribed for a wide array of indications beyond reproductive health, including acne management, premenstrual syndrome (PMS), endometriosis treatment, polycystic ovarian syndrome (PCOS) control, mitigation of menstrual migraines, and even cancer risk reduction. UNM's EMR system cannot distinguish between these various use cases to

selectively segregate information only when it pertains to reproductive health.

Consequently, to comply with the proposed amendments, providers would be compelled to segregate all information related to birth control prescriptions, regardless of their intended use. This blanket approach introduces significant patient safety risks. For example, birth control medications are known to increase the risk of blood clots. If this information is segregated, medical personnel outside the reproductive health sphere would be unaware of a patient's use of these medications. This critical information gap could result in dangerous drug interactions or the formulation of inappropriate treatment plans, thereby potentially compromising patient care.

2. **Public Health Implications:** SB 404 does not contain a public health exception, potentially hampering essential public health initiatives. For instance, our current practice of sharing vaccine data, including HPV vaccinations, with the NM Statewide Immunization Information System (NMSIIS) could be jeopardized. The HPV vaccine has been shown to prevent cancers of the reproductive system. If patients opt out of sharing reproductive health-related information under these amendments, healthcare providers would be forced to withhold this vital vaccine data from state registries. This could result in incomplete public health databases, potentially skewing epidemiological data and reduced ability to monitor and improve vaccination rates for critical vaccines. This unintended consequence contradicts the fundamental mission of public health entities, which rely on comprehensive data for effective policymaking and resource allocation.
3. **User Interface and Vendor Limitations:** The EMR interface would need to be updated to clearly indicate segregated information to healthcare providers, while also ensuring this data isn't inadvertently disclosed or accessed without proper authorization. As end-users, healthcare systems lack leverage to compel major vendors like Oracle to implement such sweeping changes.
4. **Consent Requirements and Care Coordination:** The proposed bill's emphasis on stricter consent requirements for health information disclosure, while well-intentioned, presents significant operational challenges in modern healthcare delivery. These challenges stem from the inherently collaborative nature of medical care and the complex information flow required for effective treatment. Consider the following scenarios that illustrate the potential pitfalls:

Scenario 1: Fragmented Care in Reproductive Health A patient consents to share reproductive health information only with a specific reproductive health clinic. The clinic physician orders an ultrasound to assess fetal viability, typically performed by the Radiology department. Under the proposed amendments, Radiology would be unaware of the order due to information segregation, creating a significant barrier to coordinated care.

Scenario 2: Emergency Care for Pregnant Patients A pregnant patient presents at the emergency department with stroke-like symptoms but withholds consent for sharing reproductive health data. This restriction could prevent the emergency physician from documenting the pregnancy in the shared medical record. Consequently, the neurologist might make treatment decisions without crucial information about the patient's condition, potentially endangering both the patient and the fetus.

- 5. Health Equity Concerns:** While aiming to enhance privacy, the proposed amendments risk inadvertently exacerbating health disparities:
- **Technological Divide:** Patients with limited digital literacy or access may struggle to navigate complex consent processes, further widening the health equity gap.
 - **Compromised Care Coordination:** Information segregation could disproportionately impact patients with complex health needs, who often require seamless communication across multiple specialties.
 - **Barriers for Marginalized Communities:** Vulnerable populations, already facing healthcare access challenges, may encounter additional obstacles in receiving comprehensive, integrated care.
 - **Fragmented Health Records:** The proposed segregation might lead to incomplete medical histories, potentially resulting in suboptimal treatment decisions for those most in need of holistic care.
 - **Resource Disparities:** Smaller healthcare providers serving underprivileged communities may lack the resources to implement sophisticated data segregation systems, potentially reducing their ability to serve these populations effectively.
- 6. Historical Data Management:** A significant oversight in the proposed legislation is its failure to address the complex issue of managing historical medical data. Healthcare systems have accumulated vast repositories of patient information over years, if not decades, and this data has not been segregated according to the proposed criteria. Moreover, much of this historical data has already been disseminated to various entities, including health information exchanges and other healthcare providers.

SB 404's silence on this matter raises several critical questions:

- How are healthcare systems expected to retroactively segregate historical data that spans numerous legacy systems and formats?
- What are the implications for data that has already been shared with external entities?
- How can we ensure compliance with the new regulations without compromising the integrity and continuity of patient records?
- What are the technical, financial, and operational burdens of such a massive data restructuring effort?

This legislative gap not only presents significant logistical challenges but also potential legal and ethical dilemmas. It could lead to inconsistencies in data protection across different time periods of a patient's medical history, potentially undermining the very privacy protections the bill aims to strengthen.

- 7. Penalties and Legal Implications:** SB 404 would establish a penalty framework that significantly expands legal exposure for healthcare entities. Violations could result in injunctive relief and civil penalties of up to \$2,500 for negligent and \$7,500 for intentional infractions per violation.

Unlike HIPAA, SB 404 empowers individuals to sue in New Mexico district courts for perceived violations, seeking damages and other remedies. This expanded legal exposure could lead to increased litigation, substantial financial risks, and potentially overly cautious information-sharing practices.

- 8. Implementation Timeline:** The proposed effective date of July 1, 2025, presents a formidable challenge for achieving compliance. This timeline is likely insufficient to

implement the comprehensive changes required across our electronic medical records systems, health information management processes, and consent procedures. The scope of necessary modifications encompasses system overhauls, process reengineering, staff training, and potentially complex negotiations with third-party vendors. Moreover, the substantial financial and human resource investments needed for these changes, coupled with the time required for thorough compliance verification and potential iterative adjustments, make the proposed deadline unrealistic.

- 9. The Existing Regulatory Framework Already Protects Patient Data:** The Health Insurance Portability and Accountability Act (HIPAA) already provides a comprehensive federal framework for protecting patient health information. It requires covered entities to have a valid reason for using or disclosing protected health information (PHI) and mandates patient authorization for most uses beyond treatment, payment, and healthcare operations.

In 2024, the UNM HSC Privacy Office implemented changes to the HIPAA – Use and Disclosure of Protected Health Information Policy, to include greater protections for the disclosure of reproductive health-related PHI. This change was made in order to comply with updated HIPAA standards, and with the New Mexico Reproductive and Gender-Affirming Health Care Protection Act. According to this policy, when UNM HSC receives a request for PHI that may be related to reproductive health care, from a third party (any requester who is not the patient or their authorized personal representative), UNM HSC must obtain a signed attestation from the requester that the requested information is not intended for criminal or civil investigations or seeking liability, for seeking, obtaining, providing or facilitating lawful reproductive healthcare. The UNM HSC policy also requires that the individual be notified that a request has been made for this information.

Given the existing structure, the necessity for additional legislation is unclear.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS