FISCAL IMPACT REPORT

SPONSOR Jones/Dow **LAST UPDATED** 2/10/2025 **ORIGINAL DATE** 2/7/2025

SHORT TITLE Medical Care for All Infants Born Alive **BILL NUMBER** House Bill 234

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Department of Health		$118.8	$118.8	$237.6	Recurring	General Fund
Children, Youth and Families Department		$459.0	$452.0	$911.0	Recurring	General Fund
Total		$577.8	$570.8	$1,148.6	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 236

Sources of Information

LFC Files

Agency Analysis Received From
Department of Health (DOH)
New Mexico Attorney General (NMAG)
Children, Youth and Families Department (CYFD)
Health Care Authority (HCA)

SUMMARY

Synopsis of House Bill 234

House Bill 234 (HB234) mandates that medical care be given to all infants born alive, as evidenced by umbilical cord pulsation, respiratory effort, or heartbeat. Appropriate feeding must occur, and reasonable medical treatment must be given. The parents, parent, or guardian can withhold approval of treatment if that treatment is not lifesaving, has perceived risk to the infant, or would only briefly prolong life.

Abortion providers who deliver a born-alive infant must provide emergency care and then refer to an appropriate care giver in a hospital or call 911 for emergency transfer to a hospital if the abortion is being performed in a non-hospital setting. An infant born alive during an abortion procedure is to be considered a legal person, entitled to care.

Any person in the place performing the abortion may report failure to comply with these requirements to a state or federal law enforcement agency.

Those "performing an overt act" killing a born alive infant is guilty of a first-degree felony, and attempting to do so is a second-degree felony. Women delivering a born-alive infant who is not given appropriate medical care can sue for damages and for three times the cost of the abortion.

The legislation creates a task force to "monitor born alive infants", with two members from Department of Health (DOH) and three from the Children, Youth and Families Department (CYFD) to create guidelines for "all born alive infants," assign CYFD caseworkers to inspect each abortion facility each month to be sure appropriate medical care is given to born alive infants and reporting is being done properly. The task force is to report to the Legislature and the governor each year.

Section 7 of the bill requires the DOH to inspect each facility providing abortions and interview staff at each facility to be certain each "born alive infant" is accorded all mandated healthcare and the facility is making required reports.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

HB234 would require the employment of inspectors who would be tasked with looking at each of the state's abortion providing institutions each month.

DOH estimates:

> HB234 would require that DOH staff perform monthly inspections and staff interviews at 14 providers of elective abortions in New Mexico, and it may take on average approximately four hours for a staff to travel to a site, interview staff, and document the findings. This would be approximately 4 hours * 14 sites/month = 56 hours, or 672 hours per year (i.e., 672/2,080 = 0.33 FTE). To provide sufficient medical knowledge to ensure an appropriate evaluation, this would require a minimum of an [registered nurse level 2] position (Pay Band HG – midpoint $76,286). Therefore, this would require an approximate 0.33*$76,286 = $24,646/year in salary and benefits for inspections. Desktop software ($699/FTE/year), phones ($1,724.40/FTE/year), IT enterprise costs ($1,500/year), and office space ($54,000/year) would add an additional $57,923*0.33 = $19,115/year."

DOH also indicates an additional FTE position would be required to manage information from healthcare providers completing birth and death certificates and suggests both DOH and CYFD would incur personnel costs relative to its employees taking part in the task force envisioned in the bill.

In addition to DOH's costs, CYFD indicates it would need to hire an attorney and a physician to be part of the task force. Their salary and benefit costs are included in the table above; travel costs for meetings of the task force cannot be estimated without knowing how frequently they would meet.

SIGNIFICANT ISSUES

DOH raises the concern the provisions of HB234 might necessitate overriding medical decisions on whether a "born alive" infant (as defined in the bill) is to be resuscitated. That all infants with evidence of breathing, a heartbeat, pulsation in the umbilical cord or definite voluntary muscle movement would have to be fully resuscitated, regardless of their gestational age would appear to take any decision-making choice away from both the parents and the medical care team. DOH, citing a 2015 study in the New England Journal of Medicine on preterm births:

> A concern is that HB234 overrides medical standards of practice. One 2015 study in the *New England Journal of Medicine* on preterm births said: "Active [lifesaving] intervention for infants born before 22 weeks of gestation is generally not recommended, whereas the approach for infants born at or after 22 weeks of gestation varies." The study noted the "extremely difficult" decision on whether to use treatment for infants "born near the limit of viability," saying that while in some cases treatment is clearly indicated or not, "in many cases, it is unclear whether treatment is in the infant's best interest." HB234 could interfere with these kinds of difficult decisions made by parents with their healthcare provider.

HCA makes the following comments:

> HB234 could arguably create criminal liability for certain abortions and induced childbirths, such as ones performed because of lethal fetal anomalies or to save the life of the mother. Sometimes in those circumstances, the infant is meant to be alive to allow parents to hold the child and grieve before [the child] dies. While HB234 does allow parents to decline medical services for the infant when death is "imminent" the bill does not define "imminent." Therefore, if law enforcement's definition of "imminent" is of shorter duration than that of the parents or care providers, criminal charges could be brought. If HB234 is enacted, access to medically necessary abortions may be reduced as a result of healthcare providers mitigating risk of criminal and civil penalties described in the bill. Addressing statewide provider shortages continues to be a significant challenge while developing and maintaining provider networks that meet the needs of a growing Medicaid population. This challenge is particularly acute in rural areas and "OB deserts," where access to obstetric care and other essential health services is severely limited.

The New Mexico Attorney General (NMAG) comments extensively on conflict between this bill's provisions and current law, and effects it may have on the care of pregnant patients and their caregivers:

> The bill also adds significant legal risk to providers to perform procedures that are legal in NM. It appears that the bill attempts to change the outcome of an intended abortion from terminating a pregnancy to attempting to save the life of the fetus. This appears to be in conflict with the Reproductive and Gender Affirming Health Care Freedom Act (the Freedom Act), NMSA 1978, §§ 24-34-1 to -5 (2023), and the related Reproductive and Gender-Affirming Health Care Protection Act (the Protection Act), NMSA 1978, §§ 24-35-1 to -8 (2023). This also may render the bill in conflict with the New Mexico Supreme Court's recent opinion ensuring women's right to abortion. See State ex rel. Torrez v. Bd. of Cnty. Comm'rs for Lea Cnty., 2025-NMSC-___ (S-1-SC-39742, Jan. 9, 2025). The bill may also conflict with NMSA 1978, § 24-7A-6.1 (2015), which generally provides that a parent of a minor may make the minor's healthcare decisions, including the decision to withhold or withdraw life-sustaining treatment.

Possible unintended consequences include an increase in prosecutions of women desiring abortions and their caregivers, a decreased level of trust between patients and their abortion-providing caregivers, an exodus of medical providers from the state for these reasons, and a movement of patients to so-called "back-door" abortion providers who would not be prosecuted under this legislation.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB234 relates to House Bill 236, which would require any healthcare facility prescribing mifepristone to post a notification that the drug's effects can be reversed in some circumstances, and Senate Bill 57, which would exclude personal information on abortion-related healthcare providers from the Inspection of Public Records Act.

OTHER SUBSTANTIVE ISSUES

DOH lists the following concerns with current language in HB234:

The Civil Remedies in Section 5 only appear to apply to performed or attempted abortions (page 5, line 5)—this does not appear to apply to other situations as outlined in HB234, such as natural labor or cesarian section. It is unclear whether this is intentional or an omission. Similarly, while Section 6 specifies that the task force will develop guidelines for reporting born alive infants in the state, it only appears to be concerned with monitoring at facilities where elective abortions are offered, rather than including the range of facilities where births occur (e.g., birthing centers, hospitals) but abortions are not offered. It is not clear what, if anything, the task force could do to monitor and report on born alive infant incidents that may occur in the home (e.g., home births).

HB234 invokes existing homicide laws that would already apply to a case of a baby being intentionally killed (an intentional, overt act that results in the death of an infant is a first- degree felony, attempting to kill an infant is a second-degree felony). However, while HB234 does state that depriving a born alive infant of nourishment or medical care is prohibited, the penalty of a failure to act is not stated. It is possible that HB234 considers a failure to act as an overt act in itself—it is not known if this is legally defensible. As a result, the penalties for failing to provide the care required by HB234 are unclear.

HB234 states that the parent or guardian may refuse consent to medical treatment or surgical care that is not medically necessary or reasonable, including care/treatment that is not necessary to save the life of the infant. This implies that a parent or guardian cannot refuse consent for medical care/treatment. This could create significant medical-religious and legal conflicts where the provision of some care (e.g., resuscitation, blood transfusion) may be medically appropriate, and therefore required under HB234, despite the parent or guardian's refusal to provide consent.

HB234 states that a healthcare practitioner or any employee of a hospital, physician's office, or an abortion clinic who has knowledge of failure to comply with the Act to immediately report the failure to an appropriate state or federal law enforcement agency, or both. Federal law enforcement agencies would not have the authority to act on a violation of state law.

HB234 refers to developing guidelines for each born alive incident. Guidelines provide direction but have no force of law or regulation—healthcare providers would not be required to use the guidelines or submit reports of any kind. It may be possible to require use of the guidelines if promulgated in Administrative Code.

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