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## FISCAL IMPACT REPORT

**LAST UPDATED** \_\_\_\_\_  
**ORIGINAL DATE** 03/05/2025

**SPONSOR** Stewart/Nava/Wirth

**BILL**

**SHORT TITLE** Healthcare Privacy Protections      **NUMBER** Senate Bill 404

**ANALYST** Chilton

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
DOH	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
RHCA	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
UNM-HSC	No fiscal impact	At least \$1,000.0	At least \$1,000.0	At least \$2,000.0	Recurring	UNM HSC Operating Funds

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Agency Analysis Received From

Retiree Health Care Authority (RHCA)  
 Public School Insurance Authority (PSIA)  
 Department of Health (DOH)  
 University of New Mexico (UNM)

#### Agency Analysis was Solicited but Not Received From

Health Care Authority (HCA)  
 Office of the Superintendent of Insurance (OSI)

## SUMMARY

### Synopsis of Senate Bill 404

Senate Bill 404 (SB404) renames the Electronic Medical Records Act, Section 24-14B NMSA 1978 as the Patient Records Privacy Act. Its main purpose is to provide for the segregation of certain sensitive data, largely reproductive health care data, information regarding an individual’s alcohol or other substance use, and gender-affirming care, from medical records that would be available without further authorization from the individual.

Throughout the bill, the term “medical record” is replaced by the term “patient record.” Section 3 of the bill adds to definitions, newly defining “electronic patient record system,” “gender-

affirming health care,” “health care service plan,” and “reproductive health care;” these would all appear to be standard definitions. It modifies several definitions to include contractors to employees of record locator services as being subject to the provisions of the act.

Section 4 amends Section 24-14B-6, which deals with the use and disclosure of electronic health care records, adding subsections dealing with the segregation of data regarding reproductive health care, gender-affirming care, substance use treatment, and other aspects of health care service specified by the Health Care Authority. The segregated material is to be kept away from any potential user not authorized in advance by the individual to obtain the material. Specifically, individuals can authorize holders of their data to refuse to allow individuals in other states access to the segregated material. Holders of the segregated material must notify the individual of attempts to access their segregated data at least 30 days before the information is released.

Subsection 4H states that patient records referring to abortions or gender-affirming care are not to be produced in response to subpoenas or requests from states that restrict access to these services.

Section 8 enacts a new section of the Patient Records Privacy Act, which establishes penalties for health information exchanges or electronic medical record systems that are in violation of the act.

Section 9 repeals current Section 24-14-18 NMSA 1978, which currently requires institutions and individual providers which perform abortions to report that to the state registrar within five days.

The effective date of this bill is July 1, 2025.

## **FISCAL IMPLICATIONS**

There is no appropriation in Senate Bill 404. The Department of Health (DOH) and Retiree Health Care Authority (RHCA) state that those agencies need to be certain that their databases could segregate the sensitive data mentioned but they do not indicate that this would be costly to do. The University of New Mexico (UNM), on the other hand, states that it would cost at least \$2 million to make changes across its electronic medical records systems, to deal with third-party vendors of medical record systems and other services, and to train staff in new procedures and to reengineer processes. UNM is also concerned that the legislation would affect its legal exposure and costs.

## **SIGNIFICANT ISSUES**

DOH makes important points regarding the impact of this legislation:

SB404 would bring the Electronic Medical Records Act into conformity with the Reproductive and Gender-Affirming Health Care Freedom Act, NMSA 24-3-1 et seq.

Given new restrictions on medication and procedural abortion both at the federal level and in many states neighboring New Mexico, utilization of abortion services has greatly increased in the state. The Dobbs decision in June 2022, which reversed *Roe v. Wade*, had a tremendous impact on the state. Providing additional protections for individuals’

health records, particularly in relation to reproductive health services, could improve patient safety and access to care and provider protections.

While UNM states that it supports privacy with respect to reproductive health, it is concerned that the passage of Senate Bill 404 would compromise patient care and safety by inhibiting communication among providers of care to patients. It lists nine areas of concern with the legislation, summarized here:

1. Technical barriers to Information Segregation. For example, the proposed legislation would make it difficult to differentiate among uses of birth control medications, resulting in inability to appropriately guard against medication interactions.
2. Public health implications. There is no exception for public health use of data, jeopardizing the accuracy of data as it is used in programming at the local and state level. UNM gives the example of the cancer-reducing immunization, human papillomavirus vaccine – data might not be able to be shared with the state immunization registry.
3. User Interface and Vendor Limitations. The electronic medical record used at UNM is also used at many other institutions, and changes cannot easily be made to accommodate one user.
4. Consent requirements and care coordination. The legislation would impede the free flow of information among providers caring for any individual patient, leading to problems coordinating care.
5. Health equity concerns. UNM is concerned that the inability to share data will exacerbate existing inequities in health care.
6. Historical data management. In dealing with vast amounts of historical data on their patients, UNM and other health care institutions would experience great difficulty and cost segregating data about reproductive health.
7. Penalties and legal implications. Patients would be able to sue in New Mexico courts over perceived violations of the law, increasing legal risks and “over-cautious information-sharing practices.”
8. Implementation timeline. UNM objects to the proposed effective date of July 1, 2025, stating that the complexities of adhering to the privacy provisions make that start date unrealistic.
9. Existing regulatory framework already protects patient data. HIPAA already protects the privacy of patient data.