F I S C A L I M P A C T R E P O R T

SPONSOR SPAC **ORIGINAL DATE** 01/23/13 **LAST UPDATED** 02/18/13 **HB**

SHORT TITLE Require Health Services For Pregnant Women **SB** CS/43/aSFC

ANALYST Trowbridge

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Unknown*	Unknown*	Unknown*	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)
*See Fiscal Implications

SOURCES OF INFORMATION
LFC Files

Responses Received From
Human Services Department (HSD)
Department of Health (DOH)

SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee amendment to Senate Bill 43 clarifies that if a pregnant woman is referred to or requests substance abuse treatment from a health care provider that does not receive reimbursement from state or federal health coverage programs and that provider is not able to offer timely substance abuse treatment to that pregnant woman pursuant to her request or referral, the health care provider shall assist the pregnant woman in finding appropriate treatment.

Synopsis of Original Bill

Senate Bill 43 (SB 43), a Senate Public Affairs Committee substitute bill requires health care providers, rather than facilities, which offer substance abuse treatment to give priority to pregnant women. SB 43 also defines "health care provider" as 1) a licensed health facility that provides substance abuse treatment in the regular course of business; or 2) a person licensed or otherwise authorized to provide substance abuse treatment in the regular course of treatment. Providers would be required to give treatment to a pregnant woman at the earliest reasonable opportunity after the pregnant woman requests or is referred to substance abuse treatment.

FISCAL IMPLICATIONS

The Department of Health (DOH) indicates that if SB 43 is enacted, it would not be able to absorb additional costs by a lengthened survey and intake process. Additionally, in order to implement SB 43, the DOH does not currently have the staff to: promulgate regulations, develop survey protocols and tools, and train staff. The Human Services Department (HSD) notes that some outpatient substance use treatment services to pregnant women are covered through Medicaid if the following criteria are met:

the patient is Medicaid-eligible and the service is a Medicaid covered service;
the provider is credentialed as a Medicaid provider of that service through the New Mexico Medicaid fiscal agent and/or as a network provider of a Medicaid managed care organization;
and the provider is providing services in accordance with his or her license.

The HSD reports the bill has no IT Impact.

SIGNIFICANT ISSUES

The DOH states that the U.S. Preventive Services Task Force (USPSTF) recommends screening and behavioral counseling interventions to reduce alcohol misuse by adults, including pregnant women, in primary care settings.

Though rates of substance abuse typically decline in pregnancy, several studies estimate that as many as four percent of pregnant women continue to use alcohol and/or illicit substances throughout the entire pregnancy *(Helmbrecht and Thiagarajah [2008]; Management of addiction disorders in pregnancy. J Addict Med, 2 [1], 1-16*). New Mexico Pregnancy Risk Assessment and Monitoring System (NMPRAMS) data from 2009-2010 indicate that seven percent of all pregnant women surveyed used alcohol in the last three months of pregnancy (NMPRAMS Report: http://www.health.state.nm.us/phd/prams/home.html).

Substance abuse during pregnancy can lead to increased obstetric risks which can affect both maternal and child health. These health risks can be broken down into the medical conditions commonly co-occurring in substance-abusing women and those that primarily relate to the pregnancy. Some of those conditions linked to substance abuse include: anemia, infections, depression/anxiety, diabetes and sexually transmitted infections. Obstetric complications include: placental abruption, uterine infections, fetal growth restriction, fetal hypoxia and brain injury, neonatal abstinence, miscarriage, stillbirth, preterm labor, and hypertensive disorders/preeclampsia (Helmbrecht, 2008). Rates of these co-morbid conditions and complications are higher in substance-abusing women than in the general population; however, these women may not seek regular prenatal care or disclose their drug use because of fear of losing children due to intervention by child welfare authorities, arrest, prosecution and imprisonment (Gehshan, 1993; Brady et al, 2001; Jessup, 2003).

An unintended consequence is that women who fear being taken into custody may avoid seeking prenatal care and drug treatment services. For this reason, leading medical and public health groups such as the American Academy of Pediatrics, the American Medical Association, the American Public Health Association, and the March of Dimes all oppose punitive responses to prenatal drug use. (State Responses to Substance Abuse among Pregnant Women, AGI.org, http://www.guttmacher.org/pubs/tgr/03/6/gr030603.pdf).

A number of states have opted for non-punitive approaches designed to improve both short and long term outcomes for the mother and her baby through drug treatment and other support services. For example, 25 states have responded to the traditional lack of drug treatment slots available to pregnant women by creating and funding treatment programs for this population or by giving pregnant women priority access to treatment.

The HSD reports that SB 43 is a result of the Senate Memorial 19 Task Force (2010), which issued its final report and recommendations in November 2010 *(SM 19 Task Force Final Report*); specifically: Policy Recommendation II-Increase *Access to Quality Substance Abuse Treatment, Prenatal Care and Family Planning for Women;* Part d- Prohibit discrimination against pregnant women in accessing substance abuse treatment.

Currently, the DOH does not license alcohol and drug treatment facilities as a category of licensure. However, acute care and rehabilitation hospitals may provide some form of "substance abuse treatment" within their DOH-issued hospital license. Currently, there are approximately seven licensed hospitals that provide some form of "substance abuse treatment."

A licensed alcohol and drug treatment facility such as a rehabilitation hospital, which has a chemical dependency unit, is expected to provide the same services to pregnant women as well as women who are not pregnant. With respect to treating "pregnant women at the earliest reasonable opportunity after the pregnant woman requests or is referred to substance abuse treatment,"… treatment at the earliest opportunity is expected for all patients – man or woman, pregnant woman or non-pregnant woman. If this component of the proposed bill implies that some partiality is to be exercised (such that treatment is not to be given to non-pregnant women at the earliest opportunity, or that treatment to pregnant women is to be given at an earlier opportunity than non-pregnant women), no basis in the current applicable state regulations exists for partiality. Therefore, such language would have to be added to the current licensing requirements for hospitals.

With regard to a health care provider offering "treatment to pregnant women at the earliest reasonable opportunity after the pregnant woman requests or is referred to substance abuse treatment," the term "reasonable" is not one that can be used objectively by the DOH surveyors in determining regulatory compliance. Regulations would have to be revised to establish parameters for "reasonable" as it applies to this requirement.

While federal regulations (42 CFR Section 483.75(c)) prohibit discrimination (including discrimination against pregnant women with high risk pregnancies), The DOH Division of Health Improvement (DHI) regulations do not specifically prohibit discrimination either by requiring that pregnant women are offered the same services it offers to all women and that pregnant women receive treatment at the earliest reasonable opportunity. In order to meet the requirements of SB 43 for licensed health care facilities that provide substance abuse treatment, the DHI would have to revise existing regulations for rehabilitation and acute care hospitals to prohibit discrimination and to require treatment of pregnant women at the earliest reasonable opportunity after the pregnant woman requests or is referred to substance abuse treatment.

PERFORMANCE IMPLICATIONS

The DOH notes that SB 43 aligns with the 2012 State Health Improvement Plan: Healthy People 2020 goal #4: to promote the quality of life and healthy behaviors across all life stages.

ADMINISTRATIVE IMPLICATIONS

The DOH maintains that SB 43 is silent as to the responsibility of the DOH's DHI to monitor licensed health care facilities' compliance with the requirements of the bill. If SB 43 is enacted, as the entity responsible for monitoring licensed health care facilities, the DHI would be required to survey for compliance. Determining whether a health care facility offered the same services to pregnant women with substance abuse disorders that it offers to all women would require: revisions to existing regulations; a new survey tool; staff training; and an extended survey process. The licensed facility would be required to determine whether women presenting for treatment were pregnant and maintain evidence that the same services were offered regardless of pregnancy status. Language would have to be added to existing licensing regulation requirements of facilities that offer substance abuse treatment so as to give treatment to pregnant women at the earliest reasonable opportunity. The DOH surveys of such facilities would possibly lengthen due to the additional necessity of making such a determination.

OTHER SUBSTANTIVE ISSUES

The DOH indicates that SB 43 would presumably apply to both public and non-public entities. It may be difficult to enforce, and it may actually have the unintended consequence of limiting substance abuse treatment providers because the treatment of pregnant women may be more complex and pose higher liability for providers; thus, providers may choose not to offer substance abuse treatment services.

Moreover, if the language requiring that pregnant women be served at the earliest reasonable time is deemed to require that they be preferred to other patients, then the same constitutional equal protection issues that existed in the prior version of this substitute bill remain. It is worth noting that the recommendation of the SM 19 Task Force, which has been stated to be the impetus for SB 43, was that pregnant women should not be discriminated against in accessing substance abuse treatment. That goal may be addressed by simply adopting the language requiring that they be offered the same services offered to any other woman, without adding the requirement of treatment "at the earliest reasonable opportunity after the pregnant woman requests or is referred to substance abuse treatment", which may be read to require discrimination in favor of pregnant women.

DISPARITIES ISSUES

Pregnant women are not currently prioritized for substance abuse treatment.

TECHNICAL ISSUES

The substitute eliminates a concern that the original version would have applied to few facilities. Currently, the DOH, DHI, Health Facilities Licensing and Certification Bureau issues licenses to Community Mental Health Centers and Alcohol and Drug Abuse Treatment Hospitals. SB 43, as filed, would not cover additional substance abuse treatment service providers. The substitute language would instead apply to all licensed facilities and providers who provide substance abuse treatment services in the state.

The DOH advises to retain page 1, lines 20 - 22 as written, which would require that pregnant women be offered the same treatment for substance abuse that would be offered to any other

women, and omit Page 1, lines 23 - 25, which may be read to require discrimination in favor of pregnant women.

OTHER SUBSTANTIVE ISSUES

The HSD notes that pregnant women are prioritized for substance abuse treatment under the federal Substance Abuse Prevention and Treatment Block Grant.

TT/blm:svb