LFC Requestor: KLUNDT, Kelly

2025 LEGISLATIVE SESSION
AGENCY BILL ANALYSIS

Section I: General

Chamber: House

Category: Bill

Number: 234

Type: Introduced

Date (of **THIS** analysis)**:** 01-31-25

Sponsor(s): Jenifer Jones and Rebecca Dow

Short Title: Medical Care for All Infants Born Alive

Reviewing Agency: Agency 665 - Department of Health

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Section II: Fiscal Impact

APPROPRIATION (dollars in thousands)

Appropriation Contained		Recurring or Nonrecurring	Fund Affected
FY 25	FY 26		
$0	$0	N/A	N/A

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY 25	FY 26	FY 27		
$0	$0	$0	N/A	N/A

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY 25	FY 26	FY 27	3 Year Total Cost	Recurring or Non-recurring	Fund Affected
Total	$0	$118.8	$118.8	$237.5	Recurring	SGF

There is no appropriation attached to this bill.
NMDOH Bureau of Vital Records and Health Statistics has estimated that HB234 would require the development and implementation of new administrative procedures. One additional FTE would need to be created for the purpose of managing information from health care providers completing birth and death certificates.

HB234 would require that NMDOH staff perform monthly inspections and staff interviews at fourteen providers of elective abortions in New Mexico, and it may take on average approximately 4 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 RN Level II 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.

Note that CYFD may have more operational costs as three staff are required for membership of theTask Force, as well as caseworkers to perform monthly visits of facilities.

Section III: Relationship to other legislation

Duplicates: None

Conflicts with: None

Companion to: None

Relates to: None

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

Section IV: Narrative

1. BILL SUMMARY

a) Synopsis
The following provisions are taken directly from HB234:
HB234 defines "Born alive" or "live birth" as the birth of an infant who, whether or not the umbilical cord has been cut or the placenta is attached, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion, shows any evidence of life, including breathing, a heartbeat, umbilical cord pulsation, or definite movement of voluntary muscles.

- "Infant" is defined as a child who has been completely expulsed or extracted regardless of the state of development.
- HB234 defines requirements and responsibilities related to the care of such infants to include:

- Prohibit denying or depriving an infant of nourishment with the intent to cause or allow death of the infant when the infant is born alive;
- Prohibit depriving an infant born alive of medically appropriate and reasonable medical care and treatment or surgical care;
- Allow an infant's parent or guardian to refuse consent to medical treatment or surgical care that is not medically necessary or reasonable.
- Requiring a health care provider attempting to perform an abortion to take all medically appropriate and reasonable steps to preserve the life and health of a born alive infant.
    - If in a hospital, the health care provider must provide immediate medical care to the infant, inform the mother of the live birth, and request transfer of the of the infant to a resident or emergency care physician to provide medically appropriate and reasonable medical care and treatment to the infant.
    - If in another facility, an attending health care provider must provide immediate medical care to the infant, and call the 911 EMS for emergency transfer to a hospital.

      If the health care provider is assisting the woman on whom the abortion was to be performed, another health care provider shall assume the required duties.
        - Any born alive infant shall be treated as a legal person under state law. Birth, and if necessary, death certificates, shall be issued according to state law.
        - No person may use any born alive infant for any type of scientific research or experimentation except as necessary to protect or preserve the life and health of the infant.

- Require a health care 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.

- Provide criminal penalties related to the death of such an infant where.
    - Whoever intentionally performs an overt act that kills a born alive infant is guilty of a first-degree felony resulting in the death of a child and shall be sentenced upon conviction pursuant to the provisions of Section 31-18-15 NMSA 1978

    - Whoever intentionally attempts to perform an overt act to kill a born alive infant is guilty of a second-degree felony and shall be sentenced upon conviction pursuant to the provisions of Section 31-18-15 NMSA 1978.

- Provide civil remedies where:
    - If a child is born alive and there is violation of this act, the woman upon whom the abortion was performed or attempted may seek civil relief. Relief may include monetary damages for injuries, statutory damages equal to three times the cost of the procedure, punitive damages, and reasonable attorney fees.
- Create a "Task Force to Monitor Born Alive Births" with five members (two members from NMDOH, three members from CYFD).

- Create reporting guidelines for each born alive infant incident that takes place in the state, which include a minimum of when a born alive infant was given medical treatment or when EMS was called.
- Assign NMDOH staff to perform monthly inspections and conduct staff interview at each facility in the state that offers elective abortions to determine whether appropriate measures and care are being given to born alive infants and reporting guidelines are followed.
- Provide an annual report of its findings to the Governor and the Legislature.

Is this an amendment or substitution? ☐ Yes ☒ No

Is there an emergency clause? ☐ Yes ☒ No

b) Significant Issues

Individuals require access to safe, legal abortion. Abortion, although legal, is increasingly out of reach because of numerous restrictions imposed by the government that target patients seeking abortion and their health care practitioners.

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 health care provider.

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 facilities where elective abortions are performed, rather than including the range of facilities where births occur (e.g., birthing centers, hospitals), but abortions are not performed. 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).

It is unclear how the proposed Task Force will operate, how membership will be determined, and which agency will take the lead. Participation on the Task Force would require staff time and resources, with no additional funding provided. There also are no provisions for the handling of protected identifiable health information by the Task Force.

HB234 is also unclear about who would have responsibility for monitoring of birth and death certificate registration with Vital Records. If Vital Records would be responsible for monitoring, administrative procedures would need to be developed and implemented, with associated costs.

Born alive infant protection bills have been proposed in the 2016 regular session (HB275), in the 2017 regular session (HB37), in the 2018 regular session (HB75), in the 2019 regular session (HB209), in the 2023 regular session (HB0441) and in the 2024 regular session (HB167). Each of these bills died in their first committee.

HB234 would affect NMDOH, including Vital Records, and potentially other state agencies such as the Division of Health Improvement in the Health Care Authority, as well as CYFD.

2. PERFORMANCE IMPLICATIONS

- Does this bill impact the current delivery of NMDOH services or operations?

  ☐ Yes ☒ No

- Is this proposal related to the NMDOH Strategic Plan? ☒ Yes ☒ No

  ☐ **Goal 1**: We expand equitable access to services for all New Mexicans

  ☐ **Goal 2**: We ensure safety in New Mexico healthcare environments

  ☐ **Goal 3**: We improve health status for all New Mexicans

  ☐ **Goal 4**: We support each other by promoting an environment of mutual respect, trust, open communication, and needed resources for staff to serve New Mexicans and to grow and reach their professional goals

3. FISCAL IMPLICATIONS

- If there is an appropriation, is it included in the Executive Budget Request?

  ☐ Yes ☐ No ☒ N/A

- If there is an appropriation, is it included in the LFC Budget Request?

  ☐ Yes ☐ No ☒ N/A

- Does this bill have a fiscal impact on NMDOH? ☒ Yes ☐ No

  HB234 would require two NMDOH staff to participate in a Task Force to Monitor Born Alive Birth. Duties of the task force members would be limited to creating reporting guidelines for each born alive infant incident that takes place in the state, assigning NMDOH staff to perform monthly inspection at each facility in the state that offers elective abortions and develop an annual report of its findings. The qualifications for the Task Force are not clear, therefore salary costs are difficult to estimate. However, given the limited minimum requirements for reporting, and the very limited number of expected infants born alive events (less than three per year for abortion-related incidents), developing the guidelines, participating in Task Force meetings, and developing the annual report is expected to require minimal effort (e.g., on average 0.1 FTE per week after the initial implementation). However, if rules must be promulgated, this may substantially increase the initial work – and cost - required.

  It is possible that Bureau of Vital Records and Health Statistics may be required to develop and implement new administrative procedures and assign staff to the task related to health

care providers completing birth and death certificates for each born alive infant. Although the total number of events would be very small, costs to support the program for all facilities that provide abortions are estimated at $75,000 per year based on comparable activities within Vital Records.

However, HB234 would require that NMDOH staff visit each facility monthly (currently, there are 14), regardless of actual reports of infants born alive. This would have additional administrative costs for the staff salaries and benefits.

4. ADMINISTRATIVE IMPLICATIONS

Will this bill have an administrative impact on NMDOH? ☒ Yes ☐ No

Two NMDOH employees would be involved in creating reporting guidelines for born alive births. It is unclear how much time and involvement this will entail. Insufficient information is provided to accurately estimate resources needed and level of expertise required. It is also unclear how birth and death certificate registration would be monitored, and what affect it would have on the already strained Vital Records system. In addition, NMDOH staff would need to be directed to perform monthly inspections of abortion providers.

5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

None

6. TECHNICAL ISSUES

Are there technical issues with the bill? ☒ Yes ☐ No

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).

7. LEGAL/REGULATORY ISSUES (OTHER SUBSTANTIVE ISSUES)

- Will administrative rules need to be updated or new rules written? ☒ Yes ☐ No
- Have there been changes in federal/state/local laws and regulations that make this legislation necessary (or unnecessary)? ☐ Yes ☒ No
- Does this bill conflict with federal grant requirements or associated regulations? ☐ Yes ☒ No
- Are there any legal problems or conflicts with existing laws, regulations, policies, or programs? ☒ Yes ☐ No

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 medically necessary 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 health care 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 – health care 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.

8. DISPARITIES ISSUES

Adolescents, people of color, those living in rural areas, those with low incomes, and incarcerated people can face disproportionate effects of restrictions on abortion access. Where abortion is illegal or highly restricted, pregnant people may resort to unsafe means to end an unwanted pregnancy, including self-inflicted abdominal and bodily trauma, ingestion of dangerous chemicals, and reliance on unqualified or predatory abortion providers. (Abortion Is Healthcare | ACOG)

9. HEALTH IMPACT(S)

HB234 would largely affect pregnant people and their families, as well as health care providers. Given the very small number of infants born alive that would be expected in New Mexico, especially related to pregnancy termination services, HB234 would not be expected to have a significant impact on the health of the public. In addition, the impact on the health of individuals may be even more limited, given that the "vast majority" of late-term abortions would be performed with dilation and evacuation, which "is not survivable," or in conjunction with medication that stops the baby's heart. Therefore, HB234 would mostly be relevant for "catastrophic pregnancies" in which the parents and care team "intend to deliver the baby," but know that there's a chance the baby won't survive. In such cases, there may be a plan in place, a "choice by the care team and the patient to not explore extraordinary measures" for a fetus with conditions that aren't survivable, she said. The care team would provide "comfort and compassion" in such a circumstance.(The Facts on the Born-Alive Debate - FactCheck.org) But HB234 would potentially interfere with this management.

10. ALTERNATIVES

Providing effective and safe contraceptive to women of reproductive age will likely reduce the number of abortions being sought. A report conducted by the congressional research service found in 2016 alone, 901,838 unintended pregnancies were averted. (Family Planning Program Under Title X of the Public Health Service Act).

Without the federally-funded Title X services, unintended pregnancy and abortion in women of reproductive age would have been 31% higher (https://www.guttmacher.org/report/publicly-funded-contraceptive-services-us-clinics-2015 , retrieved on 1/30/2020). Further support for education and access to contraception in New Mexico would be more effective at reducing abortions.

11. WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

If HB234 is not enacted, medical care for all infants who are born alive as defined in this bill will not be required; criminal penalties and civil remedies will not be enacted; and there will not be a Task Force to Monitor Born Alive Births.

12. AMENDMENTS

None