

LFC Requester:	Felix Chavez
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

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(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: 1/23/2025 *Check all that apply:*
Bill Number: SB 57 Original Correction
 Amendment Substitute

Sponsor: Peter Wirth and Reena Szczepanski **Agency Name and Code Number:** New Mexico Medical Board-446
Person Writing Analysis: Monique Parks, Interim Exec. Director
Short Title: IPRA Exception for Abortion Provider Information **Phone:** 505-490-3903 **Email:** moniquem.parks@nm.mb.nm.gov

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						

(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:

SB 57 adds a new exception to the Inspection of Public Records Act (IPRA), Section 14-2-1. The new exception provides records containing personal identifying information or sensitive information related to the practice of a medical provider employed by a public body who performs medical services related to abortion are not subject to disclosure in response to an IPRA request.

SB 57 would apply ONLY to records of medical care providers “employed by a public body.” For example, UNM is a publicly-funded institution of higher education created by an act of state government, and its Center for Reproductive Health provides abortions (<https://unmhealth.org/services/family-planning/#abortioncare>). The proposed amendment to IPRA might apply to (a) records about medical providers providing abortion services at UNMH as well as (b) records about patients receiving abortion care at UNMH.

FISCAL IMPLICATIONS

None.

SIGNIFICANT ISSUES

SB 57 could restrict the NMMB from providing information about licensees to the public. The NMMB has an affirmative duty under 16.10.1.9 NMAC to provide "personal identifying information" about licensees, including those who provide abortion-related care as part of their employment by a public body, as follows:

16.10.1.9 NMAC states, in part:

A. Inspection. Any citizen of the state may examine public records in the board’s custody...”

...

C. Public records will also be available on the internet. The following public information will be made available on the board website:

(1) demographic information to include name, date of birth, business address, business telephone, and gender;

(2) education information to include medical school, date of graduation, self-reported specialties, board certification(s);

(3) licensing information to include number, status, initial license date, last renewal date, expiration date, and disciplinary actions taken by the board.

The proposed amendment to IPRA in SB 57 would require NMMB to stop providing "personal

identifying information" on its website (i.e., name, address, phone number, specialty information or board certifications) about those few licensees (medical providers) who work at UNMH and provide abortion-related services. If so, the proposed amendment to IPRA would act as a "gag" on NMMB to keep confidential the names and addresses of licensees who provide abortion care. This possibility is inconsistent with the purpose of IPRA and the Medical Practice Act: The public has a right to know who is licensed to practice medicine in this state, especially if they are employed by a "public body"... and regardless of whether or not they provide abortion-related services.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

SB 57 may change the reporting on the NMMB website for licensees.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Confidentiality of certain health care information for a patient is provided in the Health Insurance Portability and Accountability Act (HIPAA). The HIPAA privacy rule protects patients' medical records and other health information. HIPAA protects all individually identifiable health information, called "protected health information" (PHI). HIPAA applies to health plans, health care clearinghouses, and certain health care providers. Public bodies, governed by IPRA, fall within the scope of HIPAA. The NMMB may cite HIPAA as an exception under Section 14-2-1(L) ("except as provided by law") as part of an IPRA response.

Section 14-2-1.1 defines "protected personal identifier information." Section 14-2-6(F) also defines "protected personal identifier information." A "public body" is defined at Section 14-2-6(G) of IPRA. Any branch of government that receives any public funding is a public body.

Section 61-6-34(B) of the Medical Practice Act address the confidentiality of investigative files and complaint files of the NMMB. For example, patient medical records collected by the NMMB during the course of an investigation, if generated by a licensee "employed by a public body who perform medical services related to abortion" are already protected from public disclosure.

The Medical Practice Act designates records "relating to actual and potential disciplinary action" held by the NMMB as non-public. *See* Section 61-6-34(B). The Board's rule at 16.10.1.9 NMAC defines non-public records and reaffirms the confidentiality statute, Section 61-6-34(B):

B. Non-public records. Pursuant to Section 61-6-34 NMSA 1978, all complaints against physicians and physician assistants, all investigation files and matters of opinion are confidential and are not subject to inspection.

...

D. Files. The board shall maintain a separate legal file for complaints, investigative reports and legal opinions. This information is confidential and shall not be disclosed.

Section 14-6-1(A) is another powerful protector of all health care records in the custody of state entities and employees where it commands: "All health information that relates to and identifies specific individuals as patients is strictly confidential and shall not be a matter of public record or accessible to the public even though the information is in the custody of or contained in the records of a governmental agency or its agent, a state educational institution, a duly organized

state or county association of licensed physicians or dentists, a licensed health facility or staff committees of such facilities."

Abortion related records held by NMMB and other "public bodies" are also specifically governed by the "Reproductive and Gender-Affirming Health Care Protection Act", Sections 24-35-1, *et seq.*, NMSA 1978 (2023) concerning public bodies' handling of requests and subpoenas for "protected health care activity" including abortion-related health care records. Section 24-35-3 requires public bodies that receive a request or subpoena for records relating to "protected health care activity" (including abortion) to (a) notify the persons who are the subject of the request and (b) apply to a court to "modify or quash the subpoena to prevent the release of protected health care activity information."

A definition of "sensitive information" should be included in SB 57. The term may be subject to different interpretations.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

See Amendments for proposed alternative.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The current protections for disclosure of information pursuant to IPRA apply and without any special statutory exception for abortion-related medical treatment.

AMENDMENTS

If the objective of SB 57 is to make abortion-related records exempt from public disclosure under IPRA (which would be consistent with current law and practice), the following language might better accomplish that goal:

"Every person has a right to inspect public records of this state except:

...

L. Records containing information about recipients and providers of abortion-related medical treatment; and

M. as otherwise provided by law."