

LFC Requestor: Self Assigned

2025 LEGISLATIVE SESSION
AGENCY BILL ANALYSIS

Section I: General

Chamber: Senate
Number: 404

Category: Bill
Type: Introduced

Date (of THIS analysis): 2/19/25
Sponsor(s): Mimi Stewart
Short Title: Patient Records Privacy Act

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	\$0	\$0	\$0	N/A	N/A

Section III: Relationship to other legislation

Duplicates: None

Conflicts with: HB389

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

SB404 proposes to amend the Electronic Medical Records Act. It would change the name of the Act to “Patient Record Privacy Act”. SB404 proposes adoption of greater protections for individuals’ electronically held records, particularly health records related to reproductive health care, gender-affirming care, mental health care, and alcohol or substance use treatment. These changes generally align with newer protections enacted for reproductive health records in New Mexico and elsewhere in the US.

A new enforcement section would create a private right to sue for an individual whose records have been released in violation of the statute. Damages would be limited to \$2,500 for each negligent violation, and \$7,500 for each intentional violation.

Is this an amendment or substitution? Yes No

Is there an emergency clause? Yes No

b) Significant Issues

SB404 would add definitions to the renamed “Patient Record Privacy Act” for electronic patient record systems, gender-affirming care, and health care service plans. Other definitions in the act such as “health care information” and “health care group purchaser” would be updated to clarify the types of records that are protected and the individuals and entities that the Act applies to.

SB404 would change Section 24-14B-6 to add “Segregated Health Care Information”. A new section is added, Section B, which describes a health information exchange, or electronic patient record system, how storing electronic records of various listed types shall be handled given the potential for outside jurisdictions to target providers of reproductive health care services in New Mexico.

The bill would add new material, at section 24-14b-6(H), stating:

H. “Notwithstanding the provisions of Subsection B of this section or any other provision of law, a provider, a contractor or an employee of the provider or a health care service plan shall not release patient records containing an individual's health care information related to that individual seeking or obtaining an abortion in response to a subpoena or request if that subpoena or request is based on another state's laws that interfere with a person's rights under the Reproductive and Gender-Affirming Health Care Freedom Act or the Reproductive and Gender-Affirming Health Care Protection Act.”

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.

2. PERFORMANCE IMPLICATIONS

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

Yes No

SB404 would require NMDOH public health offices to segregate certain types of medical information about an individual to comply with the terms of the bill. NMDOH would need to ensure that its electronic records databases are able to segregate the required information.

- 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

4. ADMINISTRATIVE IMPLICATIONS

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

NMDOH would need to ensure that its electronic records databases are able to segregate the required information.

5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

HB389 is similar to SB404 but is primarily concerned with creating a designation for “health data utility” and does not address any prohibited releases of reproductive or gender affirming health care information as directed in 24-34-1 *et seq.*

6. TECHNICAL ISSUES

Are there technical issues with the bill? Yes No

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

DOH regulations concerning the Electronic Records Act would have to be updated to reflect changes from SB404.

8. DISPARITIES ISSUES

Women, individuals with an STI, and anyone seeking gender-affirming health care would have increased protections of their personal health information as a result of this legislation. People of all genders have sexual and reproductive health needs. Adolescents, people of color, those living in rural areas, those with low incomes, and incarcerated people can face disproportionate effects of restrictions of abortion access.

According to pre-published Youth Risk and Resiliency Survey (YRRS) data provided by the Injury and Behavioral Epidemiology Bureau, in 2021:

- Transgender or gender non-conforming students were about two and a half times as likely to be bullied on school property (27.0%) than cisgender students (12.0%).
- Transgender or gender non-conforming students were about two and a half times as likely to be electronically bullied (27.7%) than cisgender students (10.8%).
- Transgender or gender non-conforming students were nearly four times as likely to have attempted suicide (30.9%) than cisgender students (8.3%).
 - About one in every three transgender or gender non-conforming students attempted suicide in the previous 12 months (30.9%).
- About three out of every four transgender or gender non-conforming students experienced frequent mental distress in the past 30 days (73.3%).

- Transgender or Gender non-conforming students were about three times as likely to experience sexual assault (29.6%) than cisgender students (10.3%).

9. HEALTH IMPACT(S)

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. Providing additional protections for the health information of individuals receiving reproductive health services could positively impact health outcomes, as individuals could receive safe care in New Mexico and be assured that privacy of their health records would be maintained.

Because gender-affirming care encompasses many facets of healthcare needs and support, it has been shown to increase positive outcomes for transgender and nonbinary children and adolescents. (Understanding the Mental Health of Transgender and Nonbinary Youth - Journal of Adolescent Health (Understanding the Mental Health of Transgender and Nonbinary Youth - Journal of Adolescent Health (jahonline.org)).

Gender-affirming interventions have been shown to improve mental health outcomes among transgender and gender diverse youth, whereas invalidating school and family environments results in worse mental health outcomes (Providing Affirmative Care to Transgender and Gender Diverse Youth: Disparities, Interventions, and Outcomes, 2021). Protections for the health information of individuals seeking gender-affirming care could improve health outcomes, as it could reduce fear around seeking gender-affirming care.

10. ALTERNATIVES

None.

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

If SB404 is not enacted, the Electronic Medical Records Act will not be renamed the Patient Record Privacy Act and will not be amended to require that health care providers segregate and limit access to health information related to reproductive health care.

12. AMENDMENTS

None.