



Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

##### Synopsis:

SB 500, the Detransitioner Protection Act, regulates gender transition procedures, mandates disclosures, introduces reporting requirements, and establishes penalties for violations of the Act. The legislation prohibits healthcare providers and “public bodies,” defined to include all government-funded or affiliated entities, from performing gender transition procedures on minors; requires healthcare providers and public bodies to provide specific, extensive and prescribed disclosures regarding gender transition to minors and parents who “seek information about or access to a gender transition procedure for a minor,” and mandates new, extensive reporting requirements for gender clinics and insurers on gender transition procedures and detransition cases. The bill mandates that providers and insurers of gender transition services also provide and cover gender detransition services and makes providers and public bodies that provide minors with gender transition services “strictly and personally liable for all costs associated with subsequent detransition procedures sought by the minor within twenty-five years after the commencement of a gender transition procedure.” The bill provides penalties for violations of the Act including fines, license suspension and revocation, and a private right of action.

#### **FISCAL IMPLICATIONS**

#### **SIGNIFICANT ISSUES**

SB 500 violates federal and state human rights and privacy laws and may conflict with free speech protections under both the New Mexico and United States Constitutions. The bill seeks to create barriers to gender-affirming care by mandating that providers and public entities violate state and federal laws, requiring “disclosures” that contain unsubstantiated information, imposing onerous reporting requirements, greatly increasing exposure civil liability.

SB 500 violates the New Mexico Human Rights Act (HRA), NMSA 1978, § 28-1 *et seq.* The HRA prohibits discriminatory practices, including refusal to offer services because of a person’s sex, gender, gender identity, or condition related to pregnancy or childbirth. Due to New Mexico’s rules of statutory construction, there is some potential for SB 500 to significantly narrow the breadth of the HRA.

Changes to Section 24-36-3 specifically deny “pharmaceutical or surgical intervention to alter an individual’s body as a treatment to address an inconsistency between a minor’s sex and that minor’s perceived gender or perceived sex.” Because this denial of medical treatment is based on a person’s sex, gender, or gender identity, it violates the HRA. However, New Mexico’s rules of statutory construction (NMSA 1978, § 12-2A-10A) provide that if “statutes appear to conflict, they must be construed, if possible, to give effect to each. If the conflict is irreconcilable, the later-enacted statute governs.” This statutory construction mandate creates the potential for SB 500, if enacted, to significantly narrow the breadth of the HRA.

SB 500 (Section 24-36-3) may violate the free speech clause of both the New Mexico constitution. NM Const. Art. II, § 17 and the First Amendment to the U.S. Constitution. SB 500 directs physicians to provide notice to “a minor or a minor’s parent who requests information about or access to a gender transition procedure for a minor.” The statute would require written notice with specific language. As we know from the pregnancy center cases in California under which the State of California sought to compel certain speech about abortion care and the recent case in Colorado around whether a website developer was compelled to produce a website for a LGBTQ theme, the US Supreme Court has made clear that under the First Amendment, the government may not compel speech.

The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule (45 CFR Part 160 & 164) protects individually identifiable health information (PHI) and limits how it can be used or disclosed. SB 500 conflicts with HIPAA as follows:

1. SB 500 requires gender clinics to submit patient-specific reports on transition procedures to the New Mexico Department of Health. HIPAA prohibits the disclosure of PHI without patient consent except under specific public health exceptions and may violate HIPAA’s minimum necessary standard (45 CFR § 164.502(b)).
2. SB 500 mandates parental access to minors' medical records (except in abuse cases). Both HIPAA and New Mexico State Law allow minors to consent to certain treatments without parental notification in some circumstances. SB 500 may override HIPAA protections for confidential treatment records for gender-related care previously received by a minor.
3. SB 500 imposes financial and legal liability on providers who offer gender-affirming care, including private lawsuits and professional discipline. The reporting mandated by SB 500 requires providers to violate federal law or be vulnerable to civil action.

The disclosures mandated by SB 500 include specific language that includes statements that have no evidence base such as "the use of puberty blockers and cross-sex hormones for this purpose increases the risk of a child or an adolescent being sterilized, meaning that the child will never be able to have children. The use of puberty blockers and cross-sex hormones for this purpose carries numerous other risks of physical harm, including severely decreased bone density, heart disease, stroke and cancer."

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

## **AMENDMENTS**