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## FISCAL IMPACT REPORT

SPONSOR Jones/Brown/Block/Terrazas ORIGINAL DATE 02/05/2024  
BILL  
SHORT TITLE Healthcare for Babies Born Alive NUMBER House Bill 167  
ANALYST Chilton

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
DOH		\$100.0 to \$500.0	\$100.0 to \$500.0	\$200.0 to \$500.0	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 110

### Sources of Information

LFC Files

Agency Analysis Received From  
Office of the Attorney General (NMAG)

Agency Analysis was Solicited but Not Received From  
Department of Health (DOH)

## SUMMARY

### Synopsis of House Bill 167

House Bill 167 mandates that medical care be given to all infants born alive, as evidenced by umbilical cord pulsation, respiratory effort, or heartbeat. Appropriate feeding must occur, and reasonable medical treatment must be given. The parents, parent, or guardian can withhold approval of treatment if that treatment is not life-saving, or has perceived risk to the infant, or would only briefly prolong life.

Abortion providers who deliver a born-alive infant must provide emergency care and then refer to an appropriate care giver in a hospital or call 911 for emergency transfer to a hospital if the abortion is being performed in a non-hospital setting. Infants born alive during an abortion procedure are to be considered legal persons, entitled to care.

Any person in the place performing the abortion may report failure to comply with these requirements to a state and/or federal law enforcement agency. Persons “performing an overt act” killing a born alive infant is guilty of a first-degree felony, and attempting to do so is a second-degree felony. Women delivering a born-alive infant who is not given appropriate medical care can sue for damages and for three times the cost of the abortion.

The legislation creates a task force to “monitor born alive infants,” with two members from the Department of Health (DOH) and three from the Children, Youth and Families Department (CYFD) to create guidelines for “all born alive infants,” assign CYFD caseworkers to inspect each abortion facility each month to be sure appropriate medical care is given to born alive infants and reporting is being done properly. The task force is to report to the Legislature and the governor each year.

In addition, DOH is mandated to inspect each facility offering elective abortions to assure that appropriate care, as defined in this act, is given to each infant.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

## **FISCAL IMPLICATIONS**

There is no appropriation in House Bill 167. DOH would be expected to inspect each hospital or clinic providing abortions to make certain that appropriate medical treatment, as defined in this bill, was being provided to each infant. This might require that several FTE positions be available to carry out such inspections, though DOH has not provided an estimate of the cost.

## **SIGNIFICANT ISSUES**

NMAG comments extensively on issues raised by House Bill 167. A summary of these comments follows (see also Conflicts below, which deals with NMAG’s analysis of conflicts with statutes already in place, and Technical Issues below, which deals with the lack of definitions of many terms in the bill). NMAG comments that it appears that the current bill attempts to change the outcome of an intended abortion to attempting to save the life of the fetus. NMAG also lists possible unintended consequences of passage of this bill, to include an increase in prosecutions of women desiring abortions and their caregivers, a decreased level of trust between patients and their abortion-providing caregivers, an exodus of medical providers from the state for these reasons, and a movement of patients to so-called “back-door” abortion providers who would not be prosecuted under this legislation.

NMAG also notes that the State Attorney General in January 2023 sought a ruling from the New Mexico Supreme Court to state that New Mexico Constitutional and statutory law protect women’s right to abortion.

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

Related to House Bill 110. Limit Certain Abortions. Similar bills in previous sessions include 2023 HB441, Medical Care for all Infants Born Alive, with which it is different only in that it adds the requirement for DOH inspections of abortion providers; 2023 HB468, Born Alive Act;

and 2023 SB459, Partial and Late-Term Abortions. Related and partially conflicts with 2021 House Bill 7, which decriminalized abortion in New Mexico.

As noted in NMAG’s legal analysis of this bill,

The proposed legislation presents a potential conflict with NMSA 1978, § 24-7A-6.1 (2015), which generally provides that a parent of a minor may make the minor’s healthcare decisions, including the decision to withhold or withdraw life-sustaining treatment.

The proposed legislation is in apparent conflict with the Reproductive and Gender-Affirming Health Care Freedom Act (the Freedom Act), NMSA 1978, §§ 24-34-1 to -5 (2023), which includes within the definition of reproductive health care, services related to abortions.

The proposed legislation is also in apparent conflict with the related Reproductive and Gender-Affirming Health Care Protection Act (the Protection Act), NMSA 1978, §§ 24-35-1 to -8 (2023), which includes within the definition of protected health care activity, providing reproductive health care including abortions.

## **TECHNICAL ISSUES**

As noted by NMAG, “as noted in prior years in related legislation, the proposed legislation fails to define what is meant by “abortion” or “health care provider.” The proposed legislation also does not define or provide any indication of the scope of the signs of life: “breathing,” “a heartbeat,” “umbilical cord pulsation,” or “definite movement of voluntary muscles.” These omitted definitions will likely result in ambiguity, vagueness, or overbreadth challenges and could place law enforcement in a difficult position if they were to attempt to enforce this statute. In addition, the failure to define “abortion” is particularly problematic given that a woman seeking an abortion could be criminally prosecuted under the proposed legislation.

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