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FISCAL IMPACT REPORT

SPONSOR Little/Gallegos DM ORIGINAL DATE 1/17/18
LAST UPDATED _____ HB 56
SHORT TITLE Parental Notification of Abortion Act SB _____
ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$31.0*	\$93.0	\$93.0	\$217.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

*Assuming the Emergency Clause were to be invoked on March 1, 2018.

Duplicates 2017 House Bill 221 and is similar to 2017 Senate Bill 361
Related to 2018 House Bills 16, 75 and 76

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

New Mexico Medical Board (MB)

SUMMARY

Synopsis of Bill

House Bill 56 would require that a parent or guardian be notified at least 48 hours before a planned abortion procedure is performed on a minor patient. Notification is prescribed to be done through a sealed envelope, sent by a “courier or similar service” at the physician’s or abortion facility’s expense. The parent or guardian’s consent is not required – only notification – and the requirement is waived if two attempts at delivery are unsuccessful. If parent or guardian instead signs acknowledgement at the abortion facility that he/she knows the minor is seeking an abortion, separate notification is not required. Physicians must keep records of notifications.

An exception to notification would be made in cases of rape, sexual abuse, or incest, using questions approved by the Children, Youth and Families Department to determine whether one of these had occurred – “medical staff, intake employees and physicians” would need to undergo at least eight hours of training each year in use of the questions and consultations to prove rape, incest, or sexual abuse. In these cases a report must be immediately made with the Children, Youth and Families Department.

An exception to notification could also be made in cases where the physician believes it to be essential to the life or physical health of the pregnant woman to perform the abortion before notice could be given the parent or guardian.

House Bill 221 also delineates the procedure by which a court may determine that a waiver of notification is necessary. The proceedings would be required to be confidential, and the courts would “make every effort to hold a hearing within 48 hours;” if the court took longer than that, the waiver would be deemed granted. Grounds for waiving notice could be any of the following:

- The minor is cognitively able to “decide intelligently whether or not to have an abortion, or
- Notification is determined to be against the best interests of the minor. This would be assumed to be the case if the minor had been subject to rape, incest or sexual abuse. Medical tests would not be required.

Section 6 of the legislation would require abortion providers to report the following statistics on a yearly basis:

- Number of women requesting abortion
- Number of abortions performed
- Number of times parental notification had been provided
- Number of waivers of notification used, and the reasons for those waivers
- Number of occasions when abortions were performed due to sexual abuse, incest or rape and the infant was “viable,” defined as “potentially able to live outside the uterus with or without artificial life support systems.”

Section 7 prescribes penalties for failing to comply with the act of at least \$5 thousand and suspension or revocation of the physician’s license for at least one year, enforced by the Medical Board or the Board of Osteopathic Medicine.

Section 30-5-3 NMSA 1978 would be repealed and replaced by the new bill.

Institutions and individuals could not be required to admit any patient for purposes of performing an abortion if they had moral or religious grounds to oppose the procedure.

The bill has an emergency clause.

FISCAL IMPLICATIONS

To calculate costs of enacting House Bill 56, AOC uses statistical information provided by the Department of Health about the 290 abortions performed on minors in New Mexico in 2010. Thirty-nine percent of young women surveyed in states not requiring notification indicated that they did not tell a parent or guardian of wanting an abortion. If a court case were required in 39 percent of 290 New Mexico cases of abortions performed on minors, AOC estimates the cost would be \$93,048 including the cost of court-appointed attorneys to represent the woman requesting the exemption and the costs of adjudicating cases appealed to the Court of Appeals. In addition, there would be a “minimal administrative cost” for regulatory changes and notification of stakeholders.

SIGNIFICANT ISSUES

The Medical Board notes that the bill would require certain penalties for failure to notify parents of adolescents requesting an abortion, removing the Board’s authority to prescribe a penalty appropriate to the case. Section 4 of House Bill 56 requires the Medical Board to “promulgate a series of questions and consultation procedures” to determine whether the minor has become pregnant as a result of rape, incest, or sexual abuse; the Medical Board states that it does not participate in the determination of standards of care such as envisioned by this legislation.

The Administrative Office of the Courts (AOC) notes its detection of several significant issues with the legislation:

1. Abortion would be defined as either medically or surgically induced.
2. Medical providers found to have violated provisions of the proposed act are not given an avenue for appeal of the prescribed sanctions.
3. HB56 differs from previously proposed legislation in stating that courts must “make every effort to” (rather than “must”) provide judicial review within 48 hours of being requested for an exemption from parental notification. AOC cites the availability of on-line briefs both favorable to and opposed to parental notification laws.
4. AOC indicates that language in the proposed legislation conflicts with 2015 House Bill 390, allowing pharmacists to refuse to fill prescriptions for medications that would end a pregnancy.

RELATIONSHIP with House Bills 16, 75, and 76, all of which deal with aspects of abortion.

CONFLICT with House Bill 16, which would decriminalize all abortion.

TECHNICAL ISSUES

AOC indicates that “HB 56 does not require an attending physician or intake employee to inquire, investigate or discover whether a minor is seeking a judicial exception to the required notification, nor does it place a duty upon the courts to notify physicians that a petition has been filed to waive notification. HB 56 also does not require an attending physician or intake employee to inform a minor seeking an abortion of the availability of a judicial exception to notification as well as the exception to notification for sexual abuse, rape or incest.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Abortion providers would continue to be able to decide when, in their best judgement, parents should be notified before a minor’s abortion procedure.

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