

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Schmedes/Montoya/
Dow/Gallegos, DM/
Brown ORIGINAL DATE 2/26/19
LAST UPDATED 3/05/19 HB 600

SHORT TITLE Women's Health & Safety Act SB _____

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$50.0	\$10.0	\$60.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 51, HB 525, HB 608

SOURCES OF INFORMATION

LFC Files

Responses Received From

Human Services Department (HSD)

Children, Youth, and Families Department (CYFD)

Department of Health (DOH)

SUMMARY

Synopsis of Bill

House Bill 600 would create a new "Women's Health and Safety Act", exempting institutions and persons from having to admit women for abortions, or, in the case of facility staff from participating in abortion if the procedure clashed with that person's beliefs. Abortions would have to be performed by a licensed physician (MD or DO), or someone acting under a physician's direction, and anyone else performing an abortion would be guilty of a felony. Written informed consent from a physician (only) to a woman requesting an abortion would be required, with that information to include a list of possible complications of an abortion.

Abortions performed on minors would require informed consent as above, written notice to a parent or guardian delivered personally by the abortion provider or by certified mail, although this requirement could be waived in the case of a physician-certified emergency. A person violating this last provision would be guilty of a misdemeanor, and the act specifies a legal cause of action by a person who should have been informed but was not. Penalties are also prescribed for those who attempt to provide consent but are not authorized to do so, and for anyone who

coerces a woman to have an abortion. A procedure for obtaining judicial exemption from the need for a pregnant minor's parent's or guardian's consent is detailed. The district court should "make every effort" to hold the hearing within five business days; if it is not held within that time period, the request will be deemed granted. The court hearing would not be open to the public, and parents or guardians would not be informed of the hearing. Pregnant minors receiving a court decision denying them the right to an abortion without consent would be granted a direct appeal to the New Mexico Supreme Court.

Complications of an abortion would have to be reported to the Department of Health (DOH) within three days of their occurrence in the case of a provider at an abortion facility, and within 30 days, if case of a hospital or other emergency facility. A list of medical complications is included, as is the abortion resulting in a living infant. DOH would provide a form and rules for reporting complications, with many requirements specified in the bill regarding fields to be included on the form.

Information on the forms would be confidential, released only in the following cases:

- 1) for de-identified statistical purposes, or
- 2) with consent of each person identified on a given form, or
- 3) to medical personnel, state agencies or courts in order to enforce the act, or\
- 4) to the relevant state licensing boards to enforce state laws

Physicians not complying with the complication reporting procedures would be subject to a civil penalty of \$500 in addition to court costs. A third violation would result suspension or revocation of the physician's or facility's license, or other disciplinary action. Any violations would be reported to the relevant state licensing board.

Section 8 defines late-term abortion as occurring in a viable pregnancy at 20 or more weeks' gestation, which the bill defines as the onset of viability. For pregnancies to be terminated at more than 20 weeks, a physician must be the one performing the abortion, and must first have ascertained whether the fetus was viable using appropriate tests. If the infant is found to be viable using these tests, the late-term abortion could only be done to save the life of the mother, and must in that instance try to preserve the life of the fetus. Any such abortions would have to be done in a hospital or other facility with access to emergency and on-going care.

Any facility in which a pregnant woman obtained care could not discriminate against her on the basis of her decision to undergo an abortion.

Physicians willfully violating the Women's Health and Safety Act would be subject to fine, liability to "aggrieved individuals" or to license revocation or suspension, to be enforced by the board of medicine or osteopathic medicine, as appropriate.

Section 12 of the act amends Section 61-6-15 and Section 61-10-15 NMSA 1978, which deal with the occasions when a medical/surgical or osteopathic physician's licenses are to be denied or restricted. In both sections of statute, it newly redefines "unprofessional or dishonorable conduct" to include failing to comply with the Women's Health and Safety Act.

Section 13 of the act amends NMSA 1978, which deals with the occasions when a medical/surgical license is denied or restricted. It newly redefines "unprofessional or dishonorable conduct" to include failing to comply with the Women's Health and Safety Act. Other provisions of these sections are left unchanged.

This bill would repeal Sections 30-5-1, 30-5-2, and 30-5-3 NMSA 1978, which criminalize abortion, but are currently invalid due to the 1973 Supreme Court decision in *Roe v. Wade*.

FISCAL IMPLICATIONS

No appropriation is made. There would be a cost in personnel time to DOH to monitor reports of complications and to consolidate them into reports to the public, to the Governor, and to the Legislature. DOH estimates its costs at \$50 thousand in the first year, to include modification of its Vital Records E-vitals system, and \$10 thousand in subsequent years.

SIGNIFICANT ISSUES

The bill would establish 20 weeks gestation as the definition of viability. Although the limits of viability have moved downward over the past several decades as a result of advances in medical care for very premature infants, the medical literature does not support a 20-week limit. In the following January 2019 excerpt from the widely-used medical resource, Up-to-date (), that limit is described as being at least 22 weeks completed gestation:

Periviability, also referred to as the limit of viability, is defined as the stage of fetal maturity that ensures a reasonable chance of extrauterine survival. With active intervention, most infants born at 26 weeks and above have a high likelihood of survival, and virtually none below 22 weeks will survive. The chance of survival thus increases dramatically over these few weeks, and this crucial time window may be considered the period of periviability. In addition to the high risk of death in the immediate newborn period, children born at the limit of viability have a high risk of permanent disability. An understanding of both of these risks is essential to parental counseling and decision-making, with regard to attempted resuscitation and provision of life-sustaining measures in the newborn intensive care unit (NICU).

DOH notes that “HB600 would allow courts to grant a waiver of the parental notification requirement if the minor is found to be “sufficiently mature and well enough informed” or if parental notification is not in the minor’s best interest. In both instances, it is in the court’s discretion to make these findings, but there is no clarity on what legal standard a court would apply in making a determination regarding maturity or best interests. In addition, while HB600 would allow a court to appoint a guardian ad litem, there are no provisions regarding the minor’s right to legal representation. The duties and responsibilities of the guardian ad litem are also not defined.

PERFORMANCE IMPLICATIONS

HSD notes that the Medicaid State Plan might need revision and approval by the federal Center for Medicare and Medicaid Services.

CONFLICT with House Bill 51, which would decriminalize abortion.

RELATIONSHIP with House Bill 608, which would allow health care facilities to refuse to admit a patient for abortion and health care providers to refuse to participate in whatever aspect of abortion their beliefs caused them to oppose, and HB 525, which allows providers, health care facilities and insurers to opt out of participating in medical care that is against their conscience,

House Bill 600 – Page 4

admitting patients for procedures against the institution’s conscience, or insuring patients for conditions against an insurer’s conscience.

TECHNICAL ISSUES

HSD points out that the word “coerce” on page 7, in “a person who coerces a pregnant woman to have an abortion is guilty of a misdemeanor”, is undefined.

LAC/sb