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FISCAL IMPACT REPORT

SPONSOR: Larranaga DATE TYPED: 02/06/01 HB 372
 SHORT TITLE: Parental Notification Act SB _____
 ANALYST: Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Narrative			

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 298
 Relates to HB 376 and HB 477

SOURCES OF INFORMATION

Attorney General's Office (AG)
 Children, Youth and Families Department (CYFD)
 Health Policy Commission (HPC)
 Board of Medical Examiners (BME)
 Administrative Office of the Courts (AOC)

No Response
 Department of Health (DOH)

SUMMARY

Synopsis of Bill

HB 372 bill enacts the Parental Notification Act which requires parental or guardian notification at least 48 hours before an abortion is performed on a minor that is not emancipated or a female of any age who has been declared incompetent and has had a guardian or conservator appointed. The only exception is when the procedure is necessary to save the life of the patient. The bill contains a judicial bypass procedure, which allows a court to direct that notification is not required upon a finding that the minor or incompetent woman is mature enough to make the decision, or that an abortion is in the patient's best interests. This bypass must be confidential and expedited, but no time limits are set. The bill also contains reporting requirements, both on the doctor who performs the procedure and on the department of health to publish statistics on an annual basis. HB 372 bill also makes the performance of an abortion in knowing or reckless violation of the Act a crime (misdemeanor). Finally, it creates a civil cause of action which allows a parent or guardian wrongfully denied notice to sue a physician who performs an abortion without the requisite notice, and awards

attorney fees to the prevailing party in certain circumstances

Significant Issues

The Attorney General has raised the following issues:

- The “medical emergency” exception exempting procedures when the life of the patient is in danger is too narrowly drawn, and would render the Act unconstitutional.
- The provisions regarding notice to a guardian or conservator of an incompetent may be too strong, and therefore may be unconstitutional.
- The judicial bypass procedures may not be specific enough to guarantee the expedited proceeding to which the minor who is not emancipated or is incompetent is entitled.
- Under independent state grounds, the entire Act may be unconstitutional.

FISCAL IMPLICATIONS

See Administrative Implications.

ADMINISTRATIVE IMPLICATIONS

HB 372 will require each newly licensed physician be informed of consent requirements prior to abortion procedures. A Board member personally interviews each new physician and the required information can be distributed at the time of the interview. SB298 also requires annual notification and BME will provide mailing labels of each licensed MD in the State to DOH

The DOH under HB 372 is required to prepare forms for physicians and issue a public report. The DOH has not provided any estimates on the amount of staff time these reports will require nor have they estimated what it will cost to perform the requirements of HB 372.

DUPLICATION/RELATIONSHIP

Identical to:

SB 298, Parental Notification Act

Relates to:

HB 376, Teen Pregnancy

HB 477, Informed Choice Act

TECHNICAL ISSUES

The AG has raised the following technical issues:

1. Section 6(A)(2), line 3, page 6: “from” should be “to”.
2. Section6(C), line 7, page 7: “female” should be “unemancipated female”.
3. Section 6(E), line 22, page 8: “reasonable” should be “reasonably”.

4. Section 6(E), line 23, page 8: the phrase “, or of any female for whom a guardian or conservator has been appointed” does not appear to be necessary.

SUBSTANTIVE ISSUES

The Health Policy Commission provided the following statistics:

- C New Mexico pregnancy rate among teens aged 15-19 declined by 14.7 percent between 1992 and 1996, it was the sixth highest among all 50 states in 1996.
- C New Mexico’s pre-*Roe* abortion law provides that a minor under 18 may not obtain an abortion unless both the minor and one parent request the procedure.) The Attorney General has issued an opinion stating that the law does not provide a constitutionally required bypass procedure and is therefore unenforceable.
- C According to DOH, in 1998, the following teen New Mexico residents reported legal induced abortions: <15 age group was .8 percent and 15-19 age group was 21.8 percent.
- C Nationally, in 1995, 10 percent of all females aged 15-19 or 19 percent of sexually active females aged 15-19 became pregnant.

The AG has raised the following issues:

- Medical emergency exception. As drafted, the notification requirements do not apply upon a physician’s certification that an immediate abortion is necessary to prevent the death of the unemancipated or incompetent. In 1973, the United States Supreme Court determined that statutes regulating abortions must allow, based on medical judgment, abortions not only when a woman’s life is at risk, but also when her health is at risk. Minors as well as adults are entitled to the protections afforded by the constitution. The Act’s limitation to life-threatening conditions renders it unconstitutional.
- Incompetents. The term “incompetent” in the bill is not defined. Under the New Mexico Probate Code, which contains the statutory mechanism for appointing conservators and guardians for individuals who are determined to be incapacitated, such a person retains all legal and civil rights except those expressly limited by the court order or which are specifically granted to the guardian in a court order. Thus, to the extent this bill requires notification to a guardian or conservator in a situation where the “incompetent individual retains the right to make this decision, the bill conflicts with that statute and may also violate that person’s right under both the federal and state constitutions.
- Lack of deadlines re judicial proceedings. Although the bill requires cases brought by a minor who is not emancipated or incompetent seeking to bypass the notice requirements be “given precedence” at the trial court level, that the decision be issued “promptly and without delay”, and that an “expedited” appeal be available, the absence of any timetables or deadlines for trial court hearing, decision or appellate ruling has rendered similar provisions in other states unconstitutional.
- Independent State Grounds. In addition to the mandates of the federal constitution, the New Mexico constitution may afford greater protections. Our supreme court held that the Medicaid regulation restricting state funding of abortions for Medicaid-eligible women violated the Equal Rights Amendment of our state constitution. Although our courts have not been faced with analyzing the issues that arise in parental notice or consent statutes, courts in other states have. The Supreme Court of New Jersey recently found that the State’s interest in enforcing its parental notification statute, which is substantially similar to HB 372, failed to override the substantial intrusion it imposed on a young woman’s fundamental right to abortion and was unconstitutional under the equal protection guarantee contained in its state constitution (because it imposed no corresponding limitation on a minor who seeks medical and surgical care otherwise related to her

pregnancy). Other jurisdictions have recognized a minor's right to privacy is fundamental, and because it is implicated in parental consent statutes, the state must be able to satisfy a strict scrutiny review by demonstrating a compelling state interest that imposes the least restrictive means available. Consent statutes containing provisions similar to the Act have not withstood judicial scrutiny of this nature. HB 372 may be similarly found unconstitutional under the right to privacy, equal protection, due process or equal rights guarantees contained in the New Mexico Constitution.

DW/pr:ar