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SENATE BILL 121

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

William E. Sharer

AN ACT

RELATING TO HEALTH; ENACTING THE PARENTAL NOTIFICATION ACT;
ESTABLISHING PROCEDURES WHEN CERTAIN FEMALES REQUEST AN
ABORTION; PROVIDING FOR JUDICIAL HEARINGS; PRESCRIBING
PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Parental Notification Act".

Section 2. DEFINITIONS.--As used in the Parental
Notification Act:

A. "abortion" means the use of any means to
terminate the pregnancy of a female known to be pregnant, with
knowledge that the termination will, with reasonable
likelihood, cause the death of the fetus;

B. "fetus" means an individual human organism from

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1 fertilization until birth; and

2 C. "parent" means one parent of a pregnant female
3 or a guardian or conservator of a pregnant female.

4 Section 3. NOTIFICATION CONCERNING ABORTION.--

5 A. An abortion shall not be performed upon an
6 unemancipated minor or upon a female for whom a guardian or
7 conservator has been appointed because of a finding of
8 incompetency until at least forty-eight hours after written
9 notice of the pending operation has been delivered in the
10 manner specified in this section.

11 B. The notice shall be addressed to the parent,
12 guardian or conservator, as appropriate, at the usual place of
13 abode of the addressee and delivered personally to the
14 addressee by the physician or an agent.

15 C. In lieu of the delivery required pursuant to
16 Subsection B of this section, notice shall be made by certified
17 mail addressed to the parent, guardian or conservator at the
18 usual place of abode of the addressee with return receipt
19 requested and restricted delivery to the addressee. Time of
20 delivery shall be deemed to occur at 12:00 noon on the next day
21 subsequent to mailing on which regular mail delivery takes
22 place.

23 Section 4. LIMITATIONS.--A notice shall not be required
24 pursuant to the provisions of the Parental Notification Act if:

25 A. the attending physician certifies in the

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1 pregnant female's medical record that the abortion is necessary
2 to prevent the pregnant female's death and there is
3 insufficient time to provide the required notice; or

4 B. the person who is entitled to notice certifies
5 in writing that the person has been notified.

6 Section 5. ELECTION BY FEMALE NOT TO ALLOW NOTICE.--

7 A. If a pregnant female elects not to allow the
8 notification of her parent, guardian or conservator, a judge of
9 a court of competent jurisdiction shall, upon petition or
10 motion and after an appropriate hearing, authorize a physician
11 to perform the abortion if the judge determines that the
12 pregnant female is mature and capable of giving informed
13 consent to the proposed abortion. If the judge determines that
14 the pregnant female is not mature or if the pregnant female
15 does not claim to be mature, the judge shall determine whether
16 the performance of an abortion upon her without notification of
17 her parent, guardian or conservator would be in her best
18 interests and shall authorize a physician to perform the
19 abortion without such notification if the judge concludes that
20 the pregnant female's best interests would be served by the
21 abortion.

22 B. A pregnant female may participate in proceedings
23 in the court on her own behalf and the court may appoint a
24 guardian ad litem for her. The court shall, however, advise
25 her that she has a right to court-appointed counsel and shall,

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1 upon her request, provide her with counsel.

2 C. Proceedings in the court pursuant to this
3 section shall be confidential and shall be given precedence
4 over other pending matters so that the court may reach a
5 decision promptly and without delay so as to serve the best
6 interests of the pregnant female. A judge of the court who
7 conducts proceedings pursuant to this section shall make in
8 writing specific factual findings and legal conclusions
9 supporting the decision and shall order a record of the
10 evidence to be maintained, including the judge's own findings
11 and conclusions.

12 D. An expedited confidential appeal shall be
13 available to a pregnant female for whom the court denies an
14 order authorizing an abortion without notification. An order
15 authorizing an abortion without notification shall not be
16 subject to appeal. Filing fees shall not be required of a
17 pregnant female at either the trial or the appellate level.
18 Access to the trial court for the purposes of a petition or
19 motion and access to the appellate courts for purposes of
20 making an appeal from denial of the same shall be afforded to a
21 pregnant female twenty-four hours a day, seven days a week.

22 Section 6. PENALTY.--

23 A. Performance of an abortion in knowing or
24 reckless violation of the Parental Notification Act shall be a
25 misdemeanor and the offender shall be sentenced pursuant to

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1 Section 31-19-1 NMSA 1978.

2 B. Performance of an abortion in knowing or
3 reckless violation of the Parental Notification Act shall be
4 grounds for a civil action by a person wrongfully denied
5 notification.

6 C. A person shall not be held liable pursuant to
7 this section if the person establishes by written evidence that
8 the person relied upon evidence sufficient to convince a
9 careful and prudent person that the representations of the
10 pregnant female regarding information necessary to comply with
11 this section were bona fide and true, or if the person
12 attempted with reasonable diligence to deliver notice, but was
13 unable to do so.

14 Section 7. REPORTING REQUIREMENTS--INJUNCTION--ATTORNEY
15 FEES.--

16 A. No later than October 1, 2009, the department of
17 health shall prepare a reporting form for physicians regarding:

18 (1) the number of parents to whom the
19 physician or an agent of the physician provided the notice
20 described in Section 3 of the Parental Notification Act; of
21 that number, the number provided personally, the number
22 provided by mail, and of each of those numbers, the number of
23 females who, to the best of the reporting physician's
24 information and belief, went on to obtain an abortion;

25 (2) the number of females upon whom the

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1 physician performed an abortion without providing to the parent
2 of the female the notice described in Section 3 of the Parental
3 Notification Act; of that number, the number who were
4 emancipated minors, and the numbers for whom each of the
5 subsections of Section 5 of the Parental Notification Act were
6 applicable;

7 (3) the number of abortions performed upon a
8 female by the physician after receiving judicial authorization
9 to do so without parental notification; and

10 (4) the same information described in
11 Paragraphs (1) through (3) of this subsection with respect to
12 females for whom a guardian or conservator has been appointed
13 because of a finding of incompetency.

14 B. The department of health shall ensure that
15 copies of the reporting form described in Subsection A of this
16 section, together with a reprint of the Parental Notification
17 Act, are provided:

18 (1) no later than October 1, 2009 to all
19 physicians licensed to practice in this state;

20 (2) to each physician who subsequently becomes
21 licensed to practice in this state, at the same time as
22 official notification to that physician that the physician is
23 so licensed; and

24 (3) by December 1 of every year, other than
25 the calendar year in which forms are distributed in accordance

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1 with Paragraph (1) of this subsection, to all physicians
2 licensed to practice in this state.

3 C. By February 28 of each year following a calendar
4 year in any part of which the Parental Notification Act was in
5 effect, each physician who provided, or whose agent provided,
6 the notice described in Section 3 of that act and any physician
7 who knowingly performed an abortion upon a female or upon a
8 female for whom a guardian or conservator had been appointed
9 due to a finding of incompetency during the previous calendar
10 year shall submit to the department of health a copy of the
11 form described in Subsection A of this section, with the
12 requested data entered accurately and completely.

13 D. Reports that are not submitted within a grace
14 period of thirty days following the due date shall be subject
15 to a late fee of five hundred dollars (\$500) for each
16 additional thirty-day period or portion of a thirty-day period
17 they are overdue. A physician required to report in accordance
18 with this section who has not submitted a report, or has
19 submitted only an incomplete report, more than one year
20 following the due date, may, in an action brought by the
21 department of health, be directed by a court of competent
22 jurisdiction to submit a complete report within a period stated
23 by court order or be subject to sanctions for civil contempt.

24 E. By June 30 of each year, the department of
25 health shall issue a public report providing:

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1 (1) statistics for the previous calendar year
2 compiled from all of the reports covering that year submitted
3 in accordance with this section for each of the items listed in
4 Subsection A of this section;

5 (2) statistics that shall be provided to the
6 department by the administrative office of the courts setting
7 forth the total number of petitions or motions filed pursuant
8 to Section 5 of the Parental Notification Act and of that
9 number:

10 (a) the number in which the court
11 appointed a guardian ad litem;

12 (b) the number in which the court
13 appointed counsel;

14 (c) the number in which the judge issued
15 an order authorizing an abortion without notification;

16 (d) the number in which the judge denied
17 an order;

18 (e) the number of denials from which an
19 appeal was filed;

20 (f) the number of appeals that resulted
21 in the denials being affirmed; and

22 (g) the number of appeals that resulted
23 in reversals of denials;

24 (3) statistics for all previous calendar years
25 for which such a public statistical report was required to be

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1 issued, adjusted to reflect any additional information from
2 late or corrected reports; and

3 (4) no information that could reasonably lead
4 to the identification of any individual female or of any female
5 for whom a guardian or conservator has been appointed.

6 F. The department of health may by rule alter the
7 dates established in this section or consolidate the forms or
8 reports to achieve administrative convenience or fiscal savings
9 or to reduce the burden of reporting requirements, so long as
10 reporting forms are sent to all licensed physicians in the
11 state at least once every year and the report described in
12 Subsection E of this section is issued at least once every
13 year.

14 G. If the department of health fails to issue the
15 public report required by Subsection E of this section, any
16 group of ten or more citizens of this state may seek an
17 injunction in a court of competent jurisdiction against the
18 secretary of health requiring that a complete report be issued
19 within a period stated by court order. Failure to abide by
20 such an injunction shall subject the secretary of health to
21 sanctions for civil contempt.

22 H. If judgment is rendered in favor of the
23 plaintiff in any action described in this section, the court
24 shall also render judgment for reasonable attorney fees in
25 favor of the plaintiff against the defendant. If judgment is

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1 rendered in favor of the defendant and the court finds that the
2 plaintiff's suit was frivolous and brought in bad faith, the
3 court shall also render judgment for reasonable attorney fees
4 in favor of the defendant against the plaintiff.

5 Section 8. SEVERABILITY.--If any part or application of
6 the Parental Notification Act is held invalid, the remainder or
7 its application to other situations or persons shall not be
8 affected.

9 Section 9. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2009.