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FISCAL IMPACT REPORT

SPONSOR	<u>Sharer</u>	ORIGINAL DATE	<u>1/28/09</u>	HB	<u></u>
		LAST UPDATED	<u></u>		
SHORT TITLE	<u>Parental Notification Act</u>	SB	<u>121</u>		
		ANALYST	<u>Hanika-Ortiz</u>		

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	\$0.1 See narrative				Recurring	Various

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Attorney General (AG)

Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Bill 121 enacts the parental notification act which would prohibit an abortion of an unemancipated or incapacitated pregnant minor without prior notification of the parent, guardian or conservator.

Section 1: cites the act;

Section 2: provides for definitions including “fetus” to mean “... from fertilization until birth”;

Section 3: provides that no abortion be performed until forty-eight hours after written notice;

Section 4: removes the reporting requirement if the abortion is necessary to prevent the pregnant minor’s death;

Section 5: provides guidelines for the courts when to allow an abortion without the notification requirement; confidentiality provisions; rights of the pregnant minor to participate in the judicial proceedings; and an expedited appeal process if the petition is denied;

Section 6: a violation of the act is a criminal misdemeanor and subject to civil action by a person entitled to notice;

Section 7: DOH to establish reporting requirements for physicians on abortions performed; subjects physicians who fail to perform pursuant to the act to monetary penalties and sanctions for civil contempt; requires DOH to provide public statistical reports on abortions performed;

subjects the Department to sanctions for civil contempt for failure to perform;
Section 8: provides for severability; and
Section 9: establishes the effective date of the act as July 1, 2009.

FISCAL IMPLICATIONS

There will be additional duties for the DOH to comply with provisions in the bill. There is no appropriation in the bill to support these efforts.

The judicial system will need to allow pregnant females twenty-four hours a day, seven days a week access to appellate courts for purposes of appeal. There is also no appropriation in the bill to support these efforts.

SIGNIFICANT ISSUES

DOH reports that the Vital Statistic Act Section 24-14-18, NMSA 1978, mandates that all abortions occurring in New Mexico be reported to the State Registrar and not be part of the permanent records of the vital records system. Reports shall not include the name and address of the patient or attending physician.

DOH provided the following:

A survey of 1,519 unmarried pregnant minors in states where parental involvement is not mandatory found that 61 percent told one or both parents about their intent to have abortions. The younger the minor, the more likely she was to do so (90 percent of 14 year olds and 74 percent of 16 year olds). One third of minors who do not inform parents already have experienced family violence and fear it will recur.

Restricting access to timely abortion services may increase the number of unintended or unwanted live births, or late term abortions. A study by the RAND Corporation of adolescent pregnancies from 1974 to 1997 in states with parental involvement laws revealed that parental notification laws increased the number of later term abortions by lowering the first trimester abortion rates.

Guardians or conservators may have limited court appointed and statutory duties. DOH reflects that the legal issue before any medical procedure can be performed is one of informed consent, not notice.

PERFORMANCE IMPLICATIONS

The bill is subject to judicial challenge based on various state and federal constitutional provisions. The AG provided the following:

The issue of parental notification was discussed by the United States Supreme Court in *Bellotti v. Baird*. In that case, four justices held that a minor must have the opportunity to go directly to court without consulting or notifying her parents prior to having an abortion. In *H.L. v. Matheson*, the United States Supreme Court ruled that a Utah statute which required a physician to “*notify, if possible, the parents or guardian of the woman upon whom the abortion is to be performed, if she is a minor...*” before performing an abortion on a minor was constitutional

since the parent could not veto the adolescent's final decision to have an abortion. The court stated "*The Utah statute gives neither parents nor judges a veto power over the minor's abortion decision*". This bill makes a minor's decision to have an abortion without parental notification subject to court ruling, which could violate that ruling.

In *New Mexico Right To Choose v. Johnson* the New Mexico Supreme Court overturned a rule adopted by the Human Services Department prohibiting the use of state funds to pay for "medically necessary" abortions for Medicaid-eligible women. The Supreme Court noted that an abortion was "medically necessary" when a pregnancy aggravates a preexisting condition, makes treatment of a condition impossible, interferes with or hampers a diagnosis, or has a profound negative impact upon the physical or mental health of an individual.

The bill's statistical reporting requirements and penalties for physicians may be seen as placing an undue burden on a female minor's right to have an abortion under *Roe V. Wade*. The state may have to demonstrate its interest in having those statistics reported and publicly disseminated.

The state may need to provide a rational basis for the requirement that ten "citizens" file suit to enjoin the DOH to issue a report on abortions performed, as opposed to just one "citizen".

ADMINISTRATIVE IMPLICATIONS

NMSA Section 24-14-18 currently requires physicians to submit reports of induced abortions for statistical compilation by DOH.

TECHNICAL ISSUES

The bill does not specify an age range for an unemancipated "minor".

The bill does not define "citizen" as used on page 9 line 16.

The bill does not define "mature" as used on page 3 line 12.

The bill defines "fetus" as "...from fertilization until birth" on page 2 line 1. There are legal and widely used contraceptives that act after fertilization but before implantation.

ALTERNATIVES

A number of state statutes now afford persons 14 and older with rights similar to those of adults with relation to consent to medical and mental health treatment without parent consent.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico will not have a "parental notification" law with regard to abortions performed on minors.

AHO/mc