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## FISCAL IMPACT REPORT

**SPONSOR** Little/Herrell/Gallegos **ORIGINAL DATE** 2/5/17  
, DM/Montoya **LAST UPDATED** 2/15/17 **HB** 221/ec

**SHORT TITLE** Parental Notification of Abortion **SB** \_\_\_\_\_

**ANALYST** Chilton

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

### 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 221 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 \$5,000 *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 221, 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. In addition, there would be “minimal administrative cost” for regulatory changes and notification of stakeholders.

## **SIGNIFICANT ISSUES**

AOC notes that courts would be required to “make every effort” to adjudicate a request for a waiver within 48 hours; this would be burdensome to the court system in many cases.

AOC also notes that pharmacists in hospitals or facilities providing abortion services might be enabled to refuse to provide medications that would cause abortion to occur.

The Medical Board notes that its discretion to determine appropriate discipline for violations of professional standards would be removed by the prescribed penalties in the bill.

In a January 2017 statement, the American Academy of Pediatrics (AAP) noted its opposition to legislation requiring parental notification, concluding as follows:

The AAP reaffirms its position that the rights of adolescents to confidential care when considering abortion should be protected. Genuine concern for the best interests of minors argues strongly against mandatory parental consent and notification laws. Although the stated intent of mandatory parental consent laws is to enhance family communication and parental responsibility, there is no supporting evidence that the laws have these effects. No evidence exists that legislation mandating parental involvement against the adolescent's wishes has any added benefit in improving productive family communication or affecting the outcome of the decision. There is evidence that such legislation may have an adverse impact on some families and that it increases the risk of medical and psychological harm to the adolescent. Judicial bypass provisions do not ameliorate the risk and may delay access to safe and appropriate care, making it a later, more complicated procedure.

(<https://pediatrics.aappublications.org/content/early/2017/01/19/peds.2016-3861>).

Americans United for Life ([www.aul.org](http://www.aul.org)) counters this argument, stating, in its conclusion “ In order to protect the health and safety of minors and the constitutional rights of parents to rear their children, it is essential for the states to enact parental involvement laws. The USSC [United States Supreme Court] has made it abundantly clear that such laws are constitutional when drafted properly and further important legitimate state interests. The safety of minors and the rights of parents demand no less.”

**RELATIONSHIP** with House Bill 220 and Senate Bill 183, duplicate bills which would ban late-term abortion and House Bill 37, which would mandate medical treatment of infants “born alive” as a result of an abortion procedure.

## **TECHNICAL ISSUES**

AOC notes that a physician providing abortion services is not required to determine if a young woman has requested a waiver of notification through the courts; if notification occurred despite a waiver having been requested, the young woman might be endangered. Likewise, the legislation does not require an abortion provider to mention the possibility of a waiver to a patient seeking an abortion.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Abortion providers would continue to use their best judgment as to whether notification of parents or guardians was in the best interest of a young woman seeking an abortion.

LAC/jle/al/jle