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## FISCAL IMPACT REPORT

SPONSOR Brandt ORIGINAL DATE 2/25/15  
LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_  
SHORT TITLE Physicians Admitting Privileges for Abortions SB 437  
ANALYST Sánchez

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

|              | FY15 | FY16 | FY17 | 3 Year<br>Total Cost | Recurring or<br>Nonrecurring | Fund<br>Affected |
|--------------|------|------|------|----------------------|------------------------------|------------------|
| <b>Total</b> | NFI  | NFI  | NFI  |                      |                              |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB390 and CSHB391

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
University of New Mexico Hospital (UNM-H)  
Miners Hospital (MH)  
New Mexico Medical Board (NMMB)  
Attorney General's Office (AGO)  
Human Services Department (HSD)  
Administrative Office of the District Attorneys (AODA)

### SUMMARY

#### Synopsis of Bill

Senate Bill 437 proposes to add new statutory section prohibiting a physician from performing or inducing an abortion unless, on the date the abortion is performed or induced, the physician has active admitting privileges at a hospital located 30 miles or fewer from the location at which the abortion is performed or induced. A violation of the prohibition is a misdemeanor, punishable by a \$1,000.00 fine.

The bill requires a physician performing or inducing an abortion to provide the pregnant woman with the following:

(1) a telephone number at which the woman may reach the physician or other health care personnel employed by the physician or by the facility at which the abortion was performed or

induced, 24 hours a day, to request access to the woman's relevant medical records or for assistance for complications arising from the abortion; and

(2) the name and telephone number of the nearest hospital to the home of the woman at which an emergency arising from the abortion could be treated.

A violation of the information requirements is a petty misdemeanor, punishable by a \$300 fine.

## **FISCAL IMPLICATIONS**

Senate Bill 437 provides for criminal misdemeanor penalties for physicians in violation of the act. According to the AGO, it may be one of the agencies investigating and prosecuting violations of the act. This requires the AGO to potentially dedicate resources to these prosecutions, which may impact the agency's other activities.

## **SIGNIFICANT ISSUES**

The American Medical Association (AMA) defines "admitting privileges" as the right of a doctor, by virtue of membership as a hospital's medical staff, to admit patients to a particular hospital or medical center for providing specific diagnostic or therapeutic services to such patient in that hospital.

According to the AMA, many hospitals also require physicians to admit a minimum number of patients to the hospital each year before they will grant or renew privileges. Others require the doctor to live within a minimum distance of the hospital.

The AOC reports that on July 12, 2013, the Texas legislature passed a law, H.B.2, pertaining to the regulation of surgical abortions and abortion-inducing drugs. One provision of H.B.2 requires that a physician performing or inducing an abortion have admitting privileges on the date of the abortion at a hospital no more than 30 miles from the location where the abortion is provided. The law was challenged by Planned Parenthood, which presented 4 grounds for invalidating the hospital admitting privileges requirement: violation of patients' substantive due process rights, violation of physicians' procedural due process rights, unlawful delegation of authority to hospitals, and vagueness. On October 28, 2013, the district court held that the admitting privileges requirement of H.B.2 was unconstitutional because it was "without a rational basis and places substantial obstacles in the path of a woman seeking an abortion," and permanently enjoined the same. See *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, No. 1:13-CV-862-LY (W.D. Tex. Oct. 28, 2013) (final judgment). In March of 2014, the United States Court of Appeals for the Fifth Circuit, on appeal, concluded that the admitting privileges provision of H.B. 2 was constitutional. In October of 2014, the Fifth Circuit refused to reconsider their March ruling. It is likely that the issue of the constitutionality of the admitting privileges provision of H.B. 2 will end up before the U.S. Supreme Court. Meanwhile, challenges to admitting privileges provisions in Alabama, Mississippi and Wisconsin are winding their way through the legal system. (The Alabama and Mississippi laws were struck down as unconstitutional.) Challenges to admitting privileges laws are also underway in Louisiana, Oklahoma and Kansas.

In June 2014, the US Supreme Court refused to hear the case brought by the Wisconsin Attorney General regarding physician admitting privileges. Until a final resolution of the case, the requirement of admitting privileges remains.

UNMH provides the following if the bill is enacted:

- 1) Requests for UNMH and Sandoval Regional Medical Center (SRMC) Medical Staff membership from non-UNM physicians performing abortions may increase. UNMH is a closed Medical Staff, so community physicians without faculty appointments would not be able to join the UNMH Medical Staff. This could conceivably lead to pressure to open UNMH Medical Staff membership.
- 2) The physician performing an abortion may not be trained or competent to manage all complications of an abortion. Thus, even though the aborting physician has admitting privileges at a hospital, they may not be the appropriate physician to admit and care for the patient.
- 3) The bill defines an abortion as “the use of any means to terminate the pregnancy”, and defines a fetus as “an individual human organism from fertilization until birth”. Thus, even the use of RU486 (the “morning after pill”) the day after intercourse would qualify as an abortion. This would broaden the number of required notifications.
- 4) The responsibility for compliance falls upon the individual physician, not the institution.
- 5) As written, the bill does not apply to non-physician caregivers.

Patients with adverse outcomes following abortions, particularly those requiring emergency care, are often directed to the UNMH emergency room. This may still occur, since the bill does not specify that the aborting physician must admit the patient with an adverse outcome, or that the patient must go to the specified nearest hospital ER.

According to the AGO, the requirement of SB 437, that the physician performing the abortion have admitting privileges within 30 miles from the location at which the abortion is performed, may be unduly burdensome on the pregnant woman. While many states have placed limitations on the federal mandate allowing a woman to have an abortion, the conflict arises when state law imposes an undue burden on a pregnant woman. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). As many New Mexican women live in rural areas, the requirement of having the procedure performed within 30 miles of a hospital may be considered unduly burdensome. Moreover, SB 437 requires that the physician performing the abortion or other “health care personnel” be available 24 hours a day to provide medical records or other assistance. Again, it may be difficult in rural areas to find providers who are able to meet the requirements of the bill, making it more difficult for women to have access to these services. This calls into question whether the requirements of the bill are unduly burdensome.

## PERFORMANCE IMPLICATIONS

This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

## ADMINISTRATIVE IMPLICATIONS

If a physician is charged with a misdemeanor and fined under this Bill, the physician is required to report that to the Medical Board as it would be an adverse action taken by a law enforcement agency. Thus, implications to the Medical Board would be the investigation and possible discipline of licensees who fail to meet these requirements.

## **RELATIONSHIP**

Related to House Regulatory and Public Affairs amendment to HB390 (Late Term Abortion Ban) and Committee Substitute for HB391 (Parental Notification of Abortion Act).

## **OTHER SUBSTANTIVE ISSUES**

Miners' Colfax Medical Center does not approve privileges for physicians who conduct voluntarily abortions. Miners' Colfax Medical Center does privilege physicians for procedures to terminate pregnancy due to fetal demise. Only physicians who have been approved by the credentials committee and the board of trustees are granted privileges. Patients are admitted into the facility for procedures and all physicians providing services are privileged physician with the facility.

According to AOC, The bill defines “fetus” to mean an individual human organism from fertilization until birth. There are legal and widely used contraceptives, however, that act after fertilization but before implementation.

HSD states that SB 437 does not specify the oversight authority to ensure provide compliance or the authority for levying and collecting fines for noncompliance.

The AMA supports (1) the right of access to medical care and (2) physicians’ right to practice ethical medicine, under which they should exercise their best medical judgment solely on behalf of their patients and without concern that such exercise will run afoul of non-medical, legal restrictions. The AMA opposes laws regulating medical care that are unsupported by scientific evidence and that impede, rather than serve, public health objectives. Further, the AMA believes physicians should provide medical care according to their best medical judgment, according to accepted medical standards and their patients’ informed consent.

The American Congress of Obstetricians and Gynecologists (ACOG) states “ the ACOG believes physicians who provide medical and surgical procedures, including abortion services, in their offices, clinics or freestanding ambulatory care facilities should have a plan to ensure prompt emergency services if a complication occurs and should establish a mechanism for transferring patients who require emergency treatment. However, ACOG opposes legislation or other requirements that single out abortion services from other outpatient procedures. For example, ACOG opposes laws or other regulations that require abortions providers to have hospital admitting privileges.”

In February 2015, the US Supreme Court received the petition from Mississippi after the 5th Circuit found the law unconstitutional.

## **POSSIBLE QUESTIONS**

Will a woman be allowed an abortion if admitted to the emergency room and the only option to save her life is an abortion?

Will this bill impact the availability of safe abortions whether voluntary or emergency to women living in rural New Mexico?