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HOUSE BILL 239

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

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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 the pregnant female
3 or a guardian or conservator of the 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 at
12 the usual place of abode of the parent and delivered personally
13 to the parent by the physician or an agent.

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

22 Section 4. LIMITATIONS.--

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

25 (1) 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;

4 (2) the person who is entitled to notice
5 certifies in writing that the person has been notified; or

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

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

25 C. Proceedings in the court pursuant to this

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

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

20 Section 5. PENALTY.--

21 A. Performance of an abortion in knowing or
22 reckless violation of the Parental Notification Act shall be a
23 misdemeanor and the offender shall be sentenced pursuant to
24 Section 31-19-1 NMSA 1978.

25 B. Performance of an abortion in knowing or

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1 reckless violation of the Parental Notification Act shall be
2 grounds for a civil action by a person wrongfully denied
3 notification.

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

12 Section 6. REPORTING REQUIREMENTS--INJUNCTION--ATTORNEY
13 FEES.--

14 A. No later than October 1, 2007, the department of
15 health shall prepare a reporting form for physicians regarding:

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

23 (2) the number of pregnant females upon whom
24 the physician performed an abortion without providing to the
25 parent of the female the notice described in Section 3 of the

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1 Parental Notification Act; of that number, the number who were
2 emancipated minors, and the numbers of whom each of the
3 subsections of Section 4 of the Parental Notification Act were
4 applicable;

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

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

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

16 (1) no later than October 1, 2007 to all
17 physicians licensed to practice in this state;

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

22 (3) by December 1 of every year, other than
23 the calendar year in which forms are distributed in accordance
24 with Paragraph (1) of this subsection, to all physicians
25 licensed to practice in this state.

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

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

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

24 (1) statistics for the previous calendar year
25 compiled from all of the reports covering that year submitted

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1 in accordance with this section for each of the items listed in
2 Subsection A of this section;

3 (2) statistics that shall be provided to the
4 department by the administrative office of the courts setting
5 forth the total number of petitions or motions filed pursuant
6 to Section 4 of the Parental Notification Act and of that
7 number:

8 (a) the number in which the court
9 appointed a guardian ad litem;

10 (b) the number in which the court
11 appointed counsel;

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

14 (d) the number in which the judge denied
15 an order;

16 (e) the number of denials from which an
17 appeal was filed;

18 (f) the number of appeals that resulted
19 in the denials being affirmed; and

20 (g) the number of appeals that resulted
21 in reversals of denials;

22 (3) statistics for all previous calendar years
23 for which such a public statistical report was required to be
24 issued, adjusted to reflect any additional information from
25 late or corrected reports; and

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

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

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

20 H. If judgment is rendered in favor of the
21 plaintiff in any action described in this section, the court
22 shall also render judgment for reasonable attorney fees in
23 favor of the plaintiff against the defendant. If judgment is
24 rendered in favor of the defendant and the court finds that the
25 plaintiff's suit was frivolous and brought in bad faith, the

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1 court shall also render judgment for reasonable attorney fees
2 in favor of the defendant against the plaintiff.

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

7 Section 8. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2007.