

Section 3: provides that no abortion be performed until forty-eight hours after written notice delivered personally to parent by physician;

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 of parent, rights of the pregnant minor to participate in judicial proceedings, and an expedited appeal process if a petition is denied;

Section 6: establishes penalties, a violation of the act is a criminal misdemeanor and grounds for civil action by a parent wrongfully denied notification;

Section 7: requires 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 DOH to sanctions for civil contempt for failure to perform;

Section 8: repeals Section 30-5-3 NMSA 1978 which imposes a fourth degree felony on criminal abortion and a second degree felony if an abortion results in the death of the woman;

Section 9: provides for severability; and

Section 10: establishes the effective date of the act as July 1, 2011.

FISCAL IMPLICATIONS

The bill allows a pregnant female to participate in court proceedings on her own behalf or with a court appointed guardian ad litem and/or court-appointed counsel. AOC suggests the district court caseload could increase by 100 cases statewide. The total estimated amount for 100 district and 20 appellate court cases as reflected above is \$82.6 thousand. The bill allows a pregnant female access to the appellate courts twenty-four hours a day and seven days a week for purposes of appeal. This unprecedented access could have a significant impact on the judiciary in ensuring court staff availability 24 hours a day 7 days a week. There will also be costs associated with the opening of buildings and security for courts that have to be opened after hours.

SB 230 imposes a late fee of \$500 on any physician that does not submit timely reports on abortions performed. The bill does not identify the state entity responsible for assessing and managing the fees. It is unlikely that the imposed fees will cover the cost of administering the statute. The revenue estimate above is based on ten physicians being fined \$500 each for failing to submit a timely report. The bill suspends filing fees for pregnant females at both the trial and appellate level.

There will be additional duties for DOH staff to comply with provisions in the bill. DOH will also be assessed a \$500 fine for each month its public report is overdue.

SIGNIFICANT ISSUES

The bill will require a judge to determine that the pregnant female is mature and capable of informed consent when she elects not to notify her parent. If she is found to be immature, the judge shall determine whether it would be in her best interests to not notify her parent.

The Vital Statistic Act mandates that all abortions occurring in New Mexico be reported to the State Registrar for statistical purposes and not be part of the permanent records of the vital records system. Reports do not include the name and address of the patient or attending physician.

In 2009, there were 370 abortions performed in New Mexico on females less than 18 years of age. Thirty-seven of those were on females less than 15 years of age. DOH notes that studies show that most adolescents consult parents on issues of pregnancy and when they do not consult a parent, they consult another interested adult.

PERFORMANCE IMPLICATIONS

Below is a synopsis of recent AGO comments:

Medical emergency exception: in 1973, the United States Supreme Court determined that statutes regulating abortions must allow, based on medical judgment, abortions not only when a woman's life is at risk, but also when her health is at risk. Minors as well as adults are entitled to the protections afforded by the U.S. Constitution.

Incompetency: under the New Mexico Probate Code, incapacitated person retains all legal and civil rights except those limited by court order or which are granted to the guardian in a court order. Thus, to the extent this bill requires notification to a guardian or conservator in a situation where an "incompetent" individual retains the right to make this decision, the bill conflicts with that statute, and may also violate that person's rights under both the federal and state constitutions.

The AGO asserts that the New Mexico Supreme Court previously ruled that the Medicaid regulation restricting state funding of abortions for Medicaid-eligible women violated the Equal Rights Amendment of its constitution. The AGO further asserts that other state consent statutes containing provisions similar to the bill have not withstood judicial scrutiny. The AODA notes that there is no state interest set out in this bill as to why this additional burden should be put on minor and incompetent pregnant females.

ADMINISTRATIVE IMPLICATIONS

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

Courts are typically open to the public from 8:00 a.m. to 5:00 p.m. Monday through Friday. Although judges are available to issue bench warrants during non-business hours, these activities do not require a full evidentiary hearing.

TECHNICAL ISSUES

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.

The bill includes guardians and conservators when referring to the term "parent". Guardians and conservators may have limited court appointed and statutory duties.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The decision to have an abortion in New Mexico will continue to be a decision between a pregnant female, her family and health care provider.

AHO/mew:bym