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FISCAL IMPACT REPORT

SPONSOR Moya/Montoya/Jones/Brown/Duncan **LAST UPDATED** 03/08/2023
ORIGINAL DATE 02/26/2023
BILL
SHORT TITLE Parental Notification of Abortion Act **NUMBER** House Bill 438
ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		\$0-\$100.0	\$0-\$100.0	\$0-\$200.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Office of the Attorney General (NMAG)

Children, Youth and Family Department (CYFD)

Department of Health (DOH)

SUMMARY

Synopsis of House Bill 438

House Bill 438 adds a section to Chapter 24 NMSA 1978 entitled (in Section1) the Parental Notification of Abortion Act requiring that a parent or guardian be notified 48 hours before an abortion is performed on an unemancipated minor (Minor is not defined in the bill, but is generally considered to be less than 18 years of age, as it is defined in Section 28-6-1 NMSA 1978). The notification must be done by a courier-delivered letter, paid for by the performing clinic or agency, and the courier service must get a signed statement saying that the letter has been received. Alternatively, the parent or guardian can sign a statement at the abortion facility; either way the abortion facility must keep a record of the notice given and signatures recorded. A waiver can be granted by a court, which may appoint a guardian ad litem for the minor. DOH must maintain records, with names and identifying information redacted, of the number of minors requesting and receiving abortions, the number of occasions when the fetus aborted was viable, and the number of occasions when the abortion was done because of rape, sexual abuse, or incest.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

There is no appropriation in House Bill 438. AOC points out that there will be a need for updating regulations, and increased call for use of guardian ad litem funds if the bill is passed. DOH also makes note of the added cost of the additional data required to be collected if the bill is passed.

SIGNIFICANT ISSUES

AOC makes the following points:

HB438 creates what is commonly referred to as “parental involvement laws” in other states. Parental involvement laws fall into two categories: those which require parental *notification* and those which require parental *consent*. Parental notification laws typically require written notification to the parent by a medical provider, 24 to 48 hours before a minor can receive an abortion. Parental consent laws require the minor to obtain consent from one or both parents, depending on the state. See <https://www.advocatesforyouth.org/resources/fact-sheets/abortion-and-parental-involvement-laws/> ...

(The Guttmacher Institute’s peer-reviewed journal *Perspectives on Sexual and Reproductive Health* studied and published an article in September 2012 entitled, “Abortion-Seeking Minors’ Views on the Illinois Parental Notification Law: A Qualitative Study,” where in-depth interviews were conducted with 30 minors in Chicago area abortion clinics in 2010. The study found that most of the minors interviewed had deep concerns about the potential harm of parental involvement laws, with a summary of the results as follows:

Most minors perceived the law negatively, citing fears that it would lead to diminished reproductive autonomy for minors, forced continuation of pregnancies, adverse parental reactions (including emotional or physical abuse) and damaged parental relationships. A few held positive or ambivalent opinions, concluding that notifying a trusted adult could provide an adolescent with needed support, but that parental involvement should not be mandated. Most participants held negative opinions of judicial bypass, describing it as overwhelming and logistically complicated, and worrying that some minors might go to extreme lengths to avoid the process.

CYFD points out the importance of taking into account difference between parents and children and the possibility of abuse that might come from knowing that a young woman has been sexually active or has become pregnant. CYFD continues:

While parents may wish to be involved in and notified of their children seeking medical procedures, children and parents can disagree on reproductive health and sex education. Most minors voluntarily tell at least one parent. This bill ignores the harsh realities of many adolescents’ lives, who are afraid to tell both parents. Some youths do not have parents willing to talk with them about anything; and in some family’s sexual subjects, especially abortion are never addressed. Some parents will prevent the youth from

keeping the abortion appointment, forcing them to carry a pregnancy to birth.

Currently, minors do not need their parents' consent to receive contraceptives. Similarly, minors should not need their parents' consent to receive an abortion, which is a brief outpatient procedure. Parental notification laws deter youth away from medical care, delaying counseling and abortion until later in pregnancy, or even not at all.

DOH points to statistics having to do with abortions in New Mexico and several unintended effects of requiring parental notification of abortion:

In New Mexico in 2019, the most recent year for which data are available, a total of 2,735 abortions were performed. This is a 3.2 percent decrease from 2018. Of those, 11 were performed on females under the age of 15 (0.4 percent), and 337 were performed on females aged 15-19 (12.3 percent). It is important to note that not all abortions that occurred in New Mexico were provided to state residents, as some patients may have traveled from other states; likewise, some individuals from New Mexico may have traveled to another state for an abortion. The abortion ratio for New Mexico in 2019 is 31 percent lower than the 2018 U.S. ratio (New Mexico Selected Health Statistics Annual Report 2019,

<https://www.nmhealth.org/data/view/vital/2504/>) page 60.

HB438 would require actions prior to an abortion that will delay the abortion. A potential result is an increase in late-term abortions or unintended births. For example, in an analysis of the impact of Mississippi's mandatory delay law, there was a 53 percent increase in second-trimester abortions after the law's enactment. (T. Joyce and R. Kaestner, "The impact of Mississippi's mandatory delay law on the timing of abortion," *Family Planning Perspectives*, 2000).

TECHNICAL ISSUES

AOC raises the following concerns:

- HB438's definition of "emancipated minor" differs from how emancipated minor is defined in other sections of Chapter 24 (See Sections 24-7A-1(D) and 24-7B-3(D) NMSA 1978).
- Although "emancipated minor" is defined in HB438, the term "minor" is not.
- HB438 does not address emergency scenarios where an abortion may be medically necessary to preserve the health of the mother.

In addition, CYFD raises these points:

- This bill fails to distinguish between minors aged 14 to 17 years, and minors under 14 years. Minors aged 14 to 17 years enjoy the right to consent to, and access, counseling and medical care without parental consent or notice (NMSA 1978 §27-7A-6.2).
- This bill defines "fetus" as "biological offspring of human parents", which encompasses, very literally, all humans, regardless of their age.
- The bill defines "department" as CYFD but does not thereafter reference "department" within the bill, preferring instead to DOH at all other points.
- There is no enforcement mechanism within this bill identifying what action, if any, could

be taken against a health care provider who declines to breach patient confidentiality in this fashion.

LAC/mg/ne