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FISCAL IMPACT REPORT

SPONSOR Montoya/Jones/Terrazas/Moya/Block **LAST UPDATED** 03/08/2023
ORIGINAL DATE 02/28/2023
BILL
SHORT TITLE Standards of Women's Health Care **NUMBER** House Bill 511
ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		No fiscal impact	No fiscal impact			

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bills HB 7, 258, 438, 441, 468, 511, 513 and Senate Bills 13 and 459

Sources of Information

LFC Files

Responses Received From

Office of the Attorney General (NMAG)
Administrative Office of the Courts (AOC)
Department of Health (DOH)

SUMMARY

Synopsis of House Bill 511

House Bill 511 applies requirements to facilities that provide surgical or medical abortions. Each provider must maintain malpractice insurance equivalent to that of providers of obstetrical and gynecologic services, and each abortion-providing facility must have the capability to deal with emergencies or have admitting privileges at a nearby hospital.

The facility must provide 24-hour care until the fetus is fully expelled and the mother can be safely discharged.

Digoxin and potassium chloride use for effecting an abortion is specifically prohibited.

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 511, and no fiscal implication of the bill, as written and without enforcement mechanism, are found.

SIGNIFICANT ISSUES

NMAG, in analyzing legal ramifications of House Bill 511, states the following:

In New Mexico, the most pertinent limitation on abortion is found in §§ 30-5A-1, *et. seq.* wherein individuals are prohibited from performing partial-birth abortions except for limited circumstances in which the life or health of the mother is compromised. Beyond the partial-birth abortion limitations, New Mexico appellate jurisprudence points towards greater protection of an individual’s right to privacy and prohibition against any discrimination on the basis of a protected class, including gender. For example, in the area of search and seizure, New Mexico courts have recognized constitutional rights to privacy and liberty beyond those under federal law. *See e.g., State v. Crane*, 2014-NMSC-026. This includes the right to “personal bodily privacy” and “personal dignity.” *State v. Chacon*, 2018-NMCA-065. Additionally, the right to privacy is also included in Article II, Section 18’s guarantee that “no person shall be deprived of...liberty...without due process of law.” While the Court has not decided whether the New Mexico Constitution’s due process guarantees include a right to choose whether to terminate a pregnancy, the broad language of the State Constitution supports such an interpretation.

Further, New Mexico has enacted an equal rights amendment. *See N.M. Const. Art. II, § 18*. The equal rights amendment has been interpreted as “a specific prohibition that provides a legal remedy for the invidious consequences of the gender-based discrimination that prevailed under the common law and civil law traditions that preceded it.” *New Mexico Right to Choose/NARAL v. Johnson*, 1999-NMSC-005, ¶ 36. Our State Supreme Court has noted that “women's biology and ability to bear children have been used as a basis for discrimination against them.” *Id.* at ¶ 41. New Mexico further requires the State to provide a “compelling justification for using such classifications to the disadvantage of the persons they classify.” *Id.* at ¶ 43.

Although HB511 is by no means a categorical prohibition of abortion, it does impose additional restrictions in the type of drugs that can be utilized to induce abortions. *See Section 1(E)*. Similar burdens on obtaining an abortion, with reference to imposing a requirement of finding medical necessity before the state paid for this procedure, have been rejected outright under the equal rights amendment. *See Id.* at ¶ 54 (concluding that a rule amendment which would have required a medical finding of medical necessity prior to disbursing funds for abortion was an insufficiently compelling justification under the ERA in treating men and women differently with respect to their medical needs).

DOH comments on the burden this bill would disproportionately apply to abortion providers, many of whom provide prescription medications and neither do surgery nor need surgical facilities. “Where abortion is illegal or highly restricted, pregnant people may resort to unsafe means to end an unwanted pregnancy, including self-inflicted abdominal and bodily trauma, ingestion of dangerous chemicals, and reliance on unqualified or predatory abortion providers. ([Increasing Access to Abortion | ACOG](#))

RELATIONSHIP

HB511 relates to the following bills:

HB 7, Reproductive and Gender-Affirming Health Care

HB 258, Crime of Providing Abortions

HB 438, Parental Notification of Abortion Act

HB 441, Medical Care for All Infants Born Alive

HB 468, Born Alive Act

HB 511, Standards of Women’s Health Care

HB 513, Abortion Clinic Licensing

SB 13, Reproductive Health Provider Protections

SB 459, Partial and Late-Term Abortion Bans

ALTERNATIVES

DOH suggests the following alternative:

Providing opportunities to obtain effective contraception to women of reproductive age who need it is a strong catalyst for decreasing abortions

(<https://www.guttmacher.org/gpr/2019/09/us-abortion-rate-continues-drop-once-again-state-abortion-restrictions-are-not-main>, retrieved on 1/30/2020). In 2015, more than 3.8 million women received contraceptive services through the federal Title X program with almost 900 thousand unintended pregnancies averted and almost 300 thousand abortions prevented. Without the federally-funded Title X services, unintended pregnancy and abortion in women of reproductive age would have been 31 percent higher (<https://www.guttmacher.org/report/publicly-funded-contraceptive-services-us-clinics-2015>, retrieved on 1/30/2020). Further support for education and access to contraception in New Mexico would be more effective at reducing abortions.

TECHNICAL ISSUES

“Nearby” as in “nearby hospital” is not defined.

No method of enforcing the provisions of the bill is mentioned.

The use of digoxin and potassium chloride to stop the fetal heart are prohibited in Section 1E, but in the definition section, Section 2B(2), the definition of “induced abortion” includes use of digoxin or potassium chloride among the methods of inducing abortion. NMAG comments that Section 1E “may present the most likely grounds for legal challenge, as the prohibition of certain uses of drugs to induce an abortion may be viewed as a restriction on an individual’s right to privacy and/or a discrimination of an individual on the basis of gender, both protected under New Mexico law.