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FISCAL IMPACT REPORT

SPONSOR	<u>Senate Judiciary Committee</u>	LAST UPDATED	<u>03/09/2023</u>
		ORIGINAL DATE	<u>03/09/2023</u>
		BILL	<u>CS/Senate Bill</u>
SHORT TITLE	<u>Reproductive Health Provider Protections</u>	NUMBER	<u>13/SJCS</u>
		ANALYST	<u>Chilton</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Indeterminate but likely minimal	Indeterminate but likely minimal	Indeterminate but likely minimal			

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 7

Conflicts with House Bill 258 and House Bill 490.

Sources of Information

LFC Files

Responses Received From

Office of the Attorney General (NMAG)

Board of Nursing (BON)

Medical Board (NMMB)

Department of Health (DOH)

No Response Received

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Senate Bill 13

Senate Bill 13 would protect providers of reproductive care or gender-affirming care from civil or criminal liability and discrimination by the licensing boards of their specialties and by other states where activities protected in New Mexico are not protected.

Section 1 establishes the name of the proposed new act as the Reproductive and Gender-Affirming Health Care Protection Act. Section 2 establishes definitions used in the act. Included among the definitions is that of “gender-affirming care” as any type of service supporting an

individual’s gender identity. “Protected health care activity” is defined as seeking, providing, or receiving gender-affirming or reproductive care or assisting someone seeking such care. “Reproductive care” is defined as services related to pregnancy prevention, abortion, managing miscarriage, infertility, menopause, reproductive tract cancer, or prevention of sexually transmitted infections.

Section 3 prohibits the release of information related to a provider’s provision of protected healthcare activity to an interstate board, except when the individual or entity being investigated gives written consent to release information or when what that person or entity’s alleged activity would have resulted in liability in New Mexico.

Section 4 establishes similar restrictions on release of information subject to foreign (meaning out-of-state) subpoenas. People or entities served with such a subpoena violating this act must notify the issuing court and the moving party that they will not comply unless the defect is cured. Remedies are prescribed for false attestations from parties, with a statutory penalty of \$10 thousand.

Section 5 refers to abusive legislation aimed at deterring or penalizing providers for protected healthcare activity, including filing litigation in a state where the protected healthcare activity is not protected or is forbidden. A person subjected to abusive litigation may sue for relief, and penalties are specified. These remedies do not apply to legal action regarding activities that would be illegal in New Mexico.

Section 6 applies similar restrictions to the release of electronic information by third parties other than a business associate or covered entity regarding a protected healthcare activity, unless the information is required for continuing a patient’s medical care, emergent or not, or if ordered by a court and not related to a professional organization’s disciplinary action. Request for information related to protected health activity under the bill is a violation if intended to humiliate, harass, or intimidate a person or entity or cause someone else to do so; to cause fear, injury, or substantial emotional distress; or to keep that person or entity from participating in protected healthcare activity. This does not apply to legal action regarding activities that would be illegal in New Mexico.

Section 7 regards enforcement and penalties for violations of this act.

Section 8 allows for individuals to apply for court remedy of alleged violations of this act and prescribes a civil penalty and payment of a litigant’s court costs.

Section 9 amends Section 31-4-6 NMSA 1978, which refers to extradition from New Mexico of those accused of a crime in another state. It adds a new subsection protecting providers of reproductive or gender-affirming care from extradition if the act prohibited in the demanding state was performed in New Mexico and protected here.

Section 10 prohibits licensing boards from taking action on against a license holder or an applicant’s license solely because of a protected health care activity according to this act.

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 Senate Bill 13. No definite fiscal impact is mentioned, but NMAG states, “As drafted, SB13 authorizes the Attorney General to institute civil actions for violations of the Act which could require additional attorney and staff resources.”

SIGNIFICANT ISSUES

In the wake of the Supreme Court’s *Dobbs v. Jackson* case reversal of *Roe v. Wade*, a number of states have restricted or criminalized abortion in various ways. According to the National Conference of State Legislatures, the methods used on multiple states include

- Requiring that surgical abortion be performed by a physician;
- Requiring that abortion medication be delivered in person;
- Enforcing a mandatory waiting period between expressing a desire for abortion and the abortion procedure;
- Prohibiting telemedicine for any abortion service; and
- Limiting or prohibiting insurance coverage of abortion.

On the other hand, other states have protected the right to abortion by

- Permitting some nonphysician providers to perform abortion services;
- Protecting abortion in state law;
- Prohibiting cooperation with out-of-state investigations from abortion (as would be the case in New Mexico if this law were passed);
- Requiring insurance coverage of abortion services; and
- Protecting providers from license actions and other penalties (as would also be the case in New Mexico if this law were passed).

DOH summarizes efforts similar to those in this bill to shield abortion providers from out-of-state prosecution:

Currently, there are five states that have enacted provider “shield” laws that protect abortion providers from prosecution by states that prohibit abortion ([Abortion Laws by State - Center for Reproductive Rights](#)). Similar legislation is currently before the legislatures of Vermont, Maryland, and Minnesota ([Abortion Provider Shield Laws - Bing News](#)). As a “surge state” providing abortions to people from other jurisdictions where abortion is prohibited, New Mexico has increased its provision of abortion care since the Supreme Court decision in *Dobbs v. Mississippi Women’s Health Organization* ([19-1392 Dobbs v. Jackson Women’s Health Organization \(06/24/2022\) \(supremecourt.gov\)](#)); in 2020, the proportion abortions in New Mexico to people from out of state was already 30 percent per the CDC ([Abortion Surveillance — United States, 2020 \(cdc.gov\)](#)). New Mexico abortion providers might benefit from the protections offered by the state when caring for individuals who travel here for abortion care.

CONFLICT

SB13 conflicts with HB258, which relates to reproductive healthcare and criminalizes abortion, and with House Bill 490, which creates penalties for those providing gender-affirming care without parental permission.

RELATIONSHIP

Related to House Bill 7, which prohibits in employment matters of discrimination against those choosing or not choosing reproductive care or gender-affirming care.

TECHNICAL ISSUES

NMAG points out, “Section 8 allows a private right of action against a ‘public body’ - a ‘public body’ as defined by this legislation may not fit into a waiver for the filing of a lawsuit under the Tort Claims Act pursuant to NMSA 1978 Sections 41-4-5 thru 41-4-12.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

As noted by DOH, “Abortion and gender-affirming care providers would potentially be subject to legal action by entities from other states. This could have a negative effect on the already limited pool of health care providers in New Mexico.”

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