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FISCAL IMPACT REPORT

SPONSOR Larranaga DATE TYPED 2/22/05 HB 251

SHORT TITLE Parental Notification Act SB _____

ANALYST Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
		See Narrative	See Narrative		

Duplicates SB 126

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Attorney General's Office (AGO)
Children, Youth & Families (CYFD)
Commission on the Status of Women (CSW)
Corrections Department (CD)
Department of Health (DOH)
Human Services Department (HSD)

SUMMARY

Synopsis of Bill

House Bill 251 creates the Parental Notification Act, establishes procedures for imposing a 48-hour waiting period when unemancipated minors age 16 years of age or less or females for whom a guardian or conservator has been appointed, request an abortion. This bill will require written parental notification except in the event the procedure will prevent the pregnant female's death or the parent certifies he or she has already been notified.

This bill will provide for judicial hearing and prescribe penalties. This bill will also require the DOH to prepare annually and distribute notification reporting forms to all licensed physicians in the state, collect and compile data concerning abortions to unemancipated minors, and to prepare a public report that includes information provided by the AOC.

Significant Issues

The CSW believes that the confidentiality of females will be violated, particularly in small towns where everyone knows each other.

The DOH provided the following:

The Vital Statistics Act mandates that all abortions occurring in New Mexico be reported to the State Registrar, and that these reports be statistical reports used only for medical and health purposes and shall not be incorporated into the permanent statistical records of the system of vital records and health statistics. Additionally, reports shall not include the name or address of the patient and DOH shall not release the name or address of the physician involved in the abortion. In 2001 there were 251 abortions performed in New Mexico on females age 16 and under according to data provided by New Mexico Vital Records and Health Statistics. A large percentage of impregnated children 15 and under is reported to have been impregnated due to incest or rape.

Abortion restrictions affect the timing of abortions, resulting in more late term abortions. Restricting access to timely abortion service may increase the number of unintended and unwanted live births or late term abortions. A study of adolescent pregnancies from 1974-1997 in states with parental involvement laws revealed that parental notification laws increased the share of later term abortions by lowering the first trimester abortion rate. A study in Mississippi before and after the implementation of parental notification for abortion – showed an increase of 19% in the ratio of minors to adults who obtained their abortion after 12 weeks gestation.

Clarification is indicated in the bill's definition section regarding the definition of "fetus", which according to Webster's Medical Desk Dictionary, refers to a developing human from three months after conception. This bill defines "fetus" as "an individual human organism from fertilization until birth". This bill's reference to fertilization also runs counter to accepted medical definition of pregnancy, which occurs with implantation of the embryo, not at fertilization. It is possible that many widely utilized contraceptives may act after fertilization but before implantation.

FISCAL IMPLICATIONS

The DOH will be required to provide administrative support for contacting physicians; follow up to assure that reports are submitted to the DOH; the statistical compilation of physician reports, as well as coordination with the administrative offices of the courts in order to assemble an annual public report on adolescent abortion services. This bill does not include any budget to support these provisions. DOH will need two more FTEs to support these functions at an estimated cost of \$93 thousand.

HSD states that the payment of abortion claims by the Medicaid Program will be affected so minimally as to have a negligible fiscal impact.

The AGO will have to defend this bill in the event of a judicial challenge.

Additional costs are anticipated for the judicial branch in conducting judicial bypass proceedings. The AOC states that giving an additional level of priority to specific types of cases in an effort to reach an expedited adjudication will have a fiscal impact on the court's operation since other cases, perhaps of equal importance and severity of criminal charges, may be delayed resulting in an increase in caseloads in the courts, thus requiring additional resources to handle the increase.

Further, the bill proposes that AOC provides reports to the DOH. The information is presently not being collected and will require that a data system be established in order to provide the information to the DOH on an annual basis.

In addition, there will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase. AOC will also have to pay for court appointed guardians ad litem in cases where the pregnant female chooses not to consent to the notification of her parent or guardian and petitions the district court for an order for an abortion without notification.

ADMINISTRATIVE IMPLICATIONS

The administrative impact to DOH will be significant. This proposes yearly reporting of all physicians who perform abortions to DOH and the production of an annual report that includes statistics from the administrative offices of the court. Abortion statistics are presently reported annually as required by statute.

This bill requires DOH to ensure that all currently licensed physicians be informed of these new requirements by October 1, 2005 and all physicians who subsequently become licensed in this state would be so informed at the same time as they receive their license. This bill also proposes that the DOH will bring court action against individual physicians who have not submitted timely reports. A minimum of one FTE would be necessary for collection, tracking and reporting of data and another FTE financial analyst to track non-reporting and associated fines, plus substantially increased postage and printing.

Medicaid Program regulations will need to be changed.

CYFD's Protective Services and Juvenile Justice Services staff will be required to engage in case management and treatment planning for clients consistent with the intent of this legislation.

The AGO personnel will have to defend this bill in the event of a judicial challenge. Additional costs are anticipated for the judicial branch in conducting judicial bypass proceedings.

Administrative impact on the courts, both as to adopting rules regarding judicial bypass proceedings and actually conducting those proceedings may be anticipated.

In order to provide 24-hour access, the Court of Appeals will have to set up an emergency telephone number and a workable procedure for contacting three judges for a three-judge panel on short notice. This procedure may require acquisition and maintenance of pagers or mobile telephones for the judges and appropriate staff. It will also require staff time to monitor the emergency telephones and possible overtime compensation for clerical and legal staff if they were required to open the court and its offices for filings or emergency hearings. The impact on the district courts will be similar but will only involve one judge and a court monitor.

DUPLICATION

HB 251 duplicates SB 126.

OTHER SUBSTANTIVE ISSUES

The AGO supplied the following:

The “medical emergency” exception dispensing with notice when the life of the patient is in danger is too narrowly drawn and will render the act unconstitutional. In this bill the notification requirements do not apply upon a physician’s certification that an immediate abortion is necessary to prevent the death of the unemancipated or incompetent. 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. The courts have affirmed that minors as adults are entitled to the protections afforded by the constitution.

The term “incompetent” in the bill is not defined. Under the New Mexico Probate Code, which contains the statutory mechanism for appointing conservators and guardians for individuals who are determined to be incapacitated, such a person retains all legal and civil rights except those expressly limited by the court order or which are specifically 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 the “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 judicial bypass procedures may not be specific enough to guarantee the expedited proceeding to which the unemancipated minor or incompetent is entitled, which will render the Act unconstitutional. Although the bill requires cases brought by unemancipated minors or incompetents seeking to bypass the notice requirements be “given precedence” at the trial court level, that the decision be issued “promptly and without delay” and that an “expedited” appeal be available, the absence of any timetables or deadlines for trial court hearing, decision or appellate ruling has rendered similar provisions in other states unconstitutional.

In addition to the mandates of the federal constitution, the New Mexico constitution may afford greater protections. Our supreme court so held in ruling that the Medicaid regulation restricting state funding of abortions for Medicaid-eligible women violated the Equal

Rights Amendment of our state constitution. Although our courts have not been faced with analyzing the issues that arise in parental notice or consent statutes, courts in other states have. The Supreme Court of New Jersey recently found that the State's interest in enforcing its parental notification statute, which is substantially similar to the Act contained in this bill, failed to override the substantial intrusion it imposed on a young woman's fundamental right to abortion and was unconstitutional under the equal protection guarantee contained in its state constitution because it imposed no corresponding limitation on a minor who seeks medical and surgical care otherwise related to her pregnancy. Other jurisdictions have recognized a minor's right to privacy is fundamental, and because it is implicated in parental consent statutes, the state must be able to satisfy a strict scrutiny review by demonstrating a compelling state interest that imposes the least restrictive means available. Consent statutes containing provisions similar to the Act have not withstood judicial scrutiny of this nature. Most recently, the Alaska Supreme Court directed the lower court to conduct an evidentiary hearing to determine whether, under the Alaska Constitution's guarantee of privacy, the state has a compelling interest in enforcing its parental consent statute, and, if so, whether that statute contains the least restrictive means necessary to promote such an interest. Similarly, this bill, if enacted, may be found unconstitutional under the right to privacy, equal protection, due process or equal rights guarantees contained in the New Mexico Constitution.

POSSIBLE QUESTIONS

HSD asks the following:

Does this bill apply to the termination of ectopic pregnancies because it could result in death of the mother?

Does this bill apply to "morning after pills" administered by either a physician or by a pharmacist without physician involvement because in most cases it will not be known for certain if the patient were pregnant?

DW/njw