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HOUSE BILL 51

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Alonzo Baldonado

AN ACT

RELATING TO HEALTH; ENACTING THE PARENTAL NOTIFICATION RIGHTS ACT; ESTABLISHING PROCEDURES WHEN CERTAIN FEMALES REQUEST AN ABORTION; PROVIDING FOR JUDICIAL HEARINGS; PROVIDING FOR PHYSICIAN AND DEPARTMENT OF HEALTH REPORTING ON ABORTIONS RECEIVED BY CERTAIN FEMALES; PRESCRIBING PENALTIES; REPEALING SECTION 30-5-3 NMSA 1978 (BEING LAWS 1969, CHAPTER 67, SECTION 3) RELATING TO CRIMINAL ABORTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. SHORT TITLE.--This act may be cited as the "Parental Notification Rights Act".

SECTION 2. DEFINITIONS.--As used in the Parental Notification Rights Act:

A. "abortion" means the use of any means to terminate the pregnancy of a female known to be pregnant, with

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1 knowledge that the termination will, with reasonable
2 likelihood, cause the death of the fetus;

3 B. "fetus" means an individual human organism from
4 fertilization until birth; and

5 C. "parent" means one parent of a pregnant female
6 or a guardian or conservator of a pregnant female.

7 SECTION 3. NOTIFICATION CONCERNING ABORTION.--

8 A. An abortion shall not be performed upon an
9 unemancipated minor or upon a female for whom a guardian or
10 conservator has been appointed because of a finding of
11 incompetency until at least forty-eight hours after written
12 notice of the pending operation has been delivered in the
13 manner specified in this section.

14 B. The notice shall be addressed to the parent,
15 guardian or conservator, as appropriate, at the usual place of
16 abode of the addressee and delivered personally to the
17 addressee by the physician or an agent.

18 C. In lieu of the delivery required pursuant to
19 Subsection B of this section, notice shall be made by certified
20 mail addressed to the parent, guardian or conservator at the
21 usual place of abode of the addressee with return receipt
22 requested and restricted delivery to the addressee. Time of
23 delivery shall be deemed to occur at 12:00 noon on the next day
24 subsequent to mailing on which regular mail delivery takes
25 place.

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1 SECTION 4. LIMITATIONS.--A notice shall not be required
2 pursuant to the provisions of the Parental Notification Rights
3 Act if:

4 A. the attending physician certifies in the
5 pregnant female's medical record that the abortion is necessary
6 to prevent the pregnant female's death and there is
7 insufficient time to provide the required notice; or

8 B. the person who is entitled to notice certifies
9 in writing that the person has been notified.

10 SECTION 5. ELECTION BY FEMALE NOT TO ALLOW NOTICE.--

11 A. If a pregnant female elects not to allow the
12 notification of her parent, guardian or conservator, a judge of
13 a court of competent jurisdiction shall, upon petition or
14 motion and after an appropriate hearing, authorize a physician
15 to perform the abortion if the judge determines that the
16 pregnant female is mature and capable of giving informed
17 consent to the proposed abortion. If the judge determines that
18 the pregnant female is not mature or if the pregnant female
19 does not claim to be mature, the judge shall determine whether
20 the performance of an abortion upon her without notification of
21 her parent, guardian or conservator would be in her best
22 interests and shall authorize a physician to perform the
23 abortion without such notification if the judge concludes that
24 the pregnant female's best interests would be served by the
25 abortion.

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1 B. A pregnant female may participate in proceedings
2 in the court on her own behalf, and the court may appoint a
3 guardian ad litem for her. However, the court shall advise her
4 that she has a right to court-appointed counsel and shall, upon
5 her request, provide her with counsel.

6 C. Proceedings in the court pursuant to this
7 section shall be confidential and shall be given precedence
8 over other pending matters so that the court may reach a
9 decision promptly and without delay so as to serve the best
10 interests of the pregnant female. A judge of the court who
11 conducts proceedings pursuant to this section shall make in
12 writing specific factual findings and legal conclusions
13 supporting the decision and shall order a record of the
14 evidence to be maintained, including the judge's own findings
15 and conclusions.

16 D. The court shall rule on an application submitted
17 pursuant to this section no later than 5:00 p.m. on the
18 business day after the date of filing. Upon the request of the
19 pregnant female, the court shall grant an extension of the
20 period specified by this subsection. If the pregnant female
21 makes a request for an extension, the court shall rule on the
22 application no later than two days after the date the pregnant
23 female has stated in her request for extension that she is
24 ready to proceed by 5:00 p.m. If the court fails to rule on
25 the application within the period specified by this subsection,

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1 the application shall be deemed granted. The clerk of the
2 court shall issue a written statement to the pregnant female
3 indicating that the time for granting a decision has expired
4 and therefore the application is deemed granted.

5 E. An expedited confidential appeal shall be
6 available to a pregnant female for whom the court denies an
7 order authorizing an abortion without notification. An order
8 authorizing an abortion without notification shall not be
9 subject to appeal. Filing fees shall not be required of a
10 pregnant female at either the trial or the appellate level.
11 Access to the trial court for the purposes of a petition or
12 motion and access to the appellate courts for purposes of
13 making an appeal from denial of the same shall be afforded to a
14 pregnant female twenty-four hours a day, seven days a week.

15 SECTION 6. PENALTY.--

16 A. Performance of an abortion in knowing or
17 reckless violation of the Parental Notification Rights Act is a
18 misdemeanor, and the offender shall be sentenced pursuant to
19 Section 31-19-1 NMSA 1978.

20 B. Performance of an abortion in knowing or
21 reckless violation of the Parental Notification Rights Act is
22 grounds for a civil action by a person wrongfully denied
23 notification.

24 C. A person shall not be held liable pursuant to
25 this section if the person establishes by written evidence that

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1 the person relied upon evidence sufficient to convince a
2 careful and prudent person that the representations of the
3 pregnant female regarding information necessary to comply with
4 this section were bona fide and true or if the person attempted
5 with reasonable diligence to deliver notice, but was unable to
6 do so.

7 SECTION 7. REPORTING REQUIREMENTS--INJUNCTION--ATTORNEY
8 FEES.--

9 A. No later than October 1, 2012, the department of
10 health shall prepare a reporting form for physicians regarding:

11 (1) the number of parents to whom the
12 physician or an agent of the physician provided the notice
13 described in Section 3 of the Parental Notification Rights Act;
14 of that number, the number provided personally and the number
15 provided by mail, and of each of those numbers, the number of
16 females who, to the best of the reporting physician's
17 information and belief, went on to obtain an abortion;

18 (2) the number of females upon whom the
19 physician performed an abortion without providing to the parent
20 of the female the notice described in Section 3 of the Parental
21 Notification Rights Act; of that number, the number who were
22 emancipated minors and the numbers for whom each of the
23 subsections of Section 5 of the Parental Notification Rights
24 Act were applicable;

25 (3) the number of abortions performed by the

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1 physician after receiving judicial authorization to do so
2 without parental notification; and

3 (4) the same information described in
4 Paragraphs (1) through (3) of this subsection with respect to
5 females for whom a guardian or conservator has been appointed
6 because of a finding of incompetency.

7 B. The department of health shall ensure that
8 copies of the reporting form described in Subsection A of this
9 section, together with a reprint of the Parental Notification
10 Rights Act, are provided:

11 (1) no later than October 1, 2012 to all
12 physicians licensed to practice in this state;

13 (2) to each physician who subsequently becomes
14 licensed to practice in this state at the same time that the
15 physician receives official notification of licensure; and

16 (3) by December 1 of every year, other than
17 the calendar year in which forms are distributed in accordance
18 with Paragraph (1) of this subsection, to all physicians
19 licensed to practice in this state.

20 C. By February 28 of each year following a calendar
21 year in any part of which the Parental Notification Rights Act
22 was in effect, each physician who provided, or whose agent
23 provided, the notice described in Section 3 of that act and any
24 physician who knowingly performed an abortion upon a female or
25 upon a female for whom a guardian or conservator had been

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1 appointed due to a finding of incompetency during the previous
2 calendar year shall submit to the department of health a copy
3 of the form described in Subsection A of this section with the
4 requested data entered accurately and completely.

5 D. Reports that are not submitted within a grace
6 period of thirty days following the due date shall be subject
7 to a late fee of five hundred dollars (\$500) for each
8 additional thirty-day period or portion of a thirty-day period
9 they are overdue. A physician required to report in accordance
10 with this section who has not submitted a report, or has
11 submitted only an incomplete report, more than one year
12 following the due date, may, in an action brought by the
13 department of health, be directed by a court of competent
14 jurisdiction to submit a complete report within a period stated
15 by court order or be subject to sanctions for civil contempt.

16 E. By June 30 of each year, the department of
17 health shall issue a public report providing:

18 (1) statistics for the previous calendar year
19 compiled from all of the reports covering that year submitted
20 in accordance with this section for each of the items listed in
21 Subsection A of this section;

22 (2) statistics that shall be provided to the
23 department by the administrative office of the courts setting
24 forth the total number of petitions or motions filed pursuant
25 to Section 5 of the Parental Notification Rights Act, and of

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1 that number:

2 (a) the number in which the court
3 appointed a guardian ad litem;

4 (b) the number in which the court
5 appointed counsel;

6 (c) the number in which the judge issued
7 an order authorizing an abortion without notification;

8 (d) the number in which the judge denied
9 an order;

10 (e) the number of denials from which an
11 appeal was filed;

12 (f) the number of appeals that resulted
13 in the denials being affirmed; and

14 (g) the number of appeals that resulted
15 in reversals of denials;

16 (3) statistics for all previous calendar years
17 for which such a public statistical report was required to be
18 issued, adjusted to reflect any additional information from
19 late or corrected reports; and

20 (4) no information that could reasonably lead
21 to the identification of any individual female or of any female
22 for whom a guardian or conservator has been appointed.

23 F. The department of health may by rule alter the
24 dates established in this section or consolidate the forms or
25 reports to achieve administrative convenience or fiscal savings

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1 or to reduce the burden of reporting requirements, so long as
2 reporting forms are sent to all licensed physicians in the
3 state at least once every year and the report described in
4 Subsection E of this section is issued at least once every
5 year.

6 G. If the department of health fails to issue the
7 public report required by Subsection E of this section, any
8 group of ten or more citizens of this state may seek an
9 injunction in a court of competent jurisdiction against the
10 secretary of health requiring that a complete report be issued
11 within a period stated by court order. Failure to abide by
12 such an injunction shall subject the secretary of health to
13 sanctions for civil contempt.

14 H. If judgment is rendered in favor of the
15 plaintiff in any action described in this section, the court
16 shall also render judgment for reasonable attorney fees in
17 favor of the plaintiff against the defendant. If judgment is
18 rendered in favor of the defendant and the court finds that the
19 plaintiff's suit was frivolous and brought in bad faith, the
20 court shall also render judgment for reasonable attorney fees
21 in favor of the defendant against the plaintiff.

22 SECTION 8. REPEAL.--Section 30-5-3 NMSA 1978 (being Laws
23 1969, Chapter 67, Section 3) is repealed.

24 SECTION 9. SEVERABILITY.--If any part or application of
25 the Parental Notification Rights Act is held invalid, the

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1 remainder or its application to other situations or persons
2 shall not be affected.

3 SECTION 10. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2012.

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