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SFA**BILL ANALYSIS**

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House Bill 4599 (Substitute H-2 as passed by the House)
House Bill 4600 (Substitute H-3 as passed by the House)
House Bill 4601 (Substitute H-3 as passed by the House)
Sponsor: Representative Terry Geiger (House Bill 4599)
Representative Clark Bisbee (House Bill 4600)
Representative William J. O'Neill (House Bill 4601)
House Committee: Regulatory Reform
Senate Committee: Families, Mental Health and Human Services

Date Completed: 10-20-99

CONTENT

House Bill 4599 (H-2) would amend the Public Health Code to require that the Department of Consumer and Industry Services (DCIS) specify in rules that a facility, in which 50% or more of the patients undergo an abortion, would have to be licensed under the Code as a freestanding surgical outpatient facility (FSOF). The bill also would mandate that the DCIS republish several rules that were declared unconstitutional by a U.S. Court of Appeals decision, but would require the Department to include standards for an FSOF in which 50% or more of the patients undergo an abortion.

House Bills 4600 (H-3) and 4601 (H-3) would amend the Public Health Code to modify reporting requirements relating to abortion procedures and to require that a physician file a written report on physical complications or death that resulted from an abortion.

House Bills 4600 (H-3) and 4601 (H-3) are tie-barred.

“Abortion” would mean that term as currently defined in the Code (MCL 333.17015): “the intentional use of an instrument, drug, or other substance or device to terminate a woman’s pregnancy for a purpose other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus. Abortion does not include the use or prescription of a drug or device intended as a contraceptive.”

House Bill 4599 (H-2)

The Public Health Code requires the DCIS to promulgate rules to differentiate an FSOF from a private office of a practicing physician, dentist, podiatrist, or other private practice office. The bill would refer to “other health professional” rather than “other private practice office” and would require that the DCIS specify in those rules that a facility, including but not limited to a private practice office, in which 50% or more of the patients annually served at the facility undergo an abortion, would have to be licensed as an FSOF.

In addition, the bill would require the DCIS to promulgate rules that, in effect, would republish rules of the Michigan Administrative Code (R 325.3826, R 325.3832, R 325.3835, R 325.3857, R 325.3866, R 325.3867, and R 325.3868). (These rules pertain to surgical procedures and staffing, transportation services, physician qualifications, interior construction, clinical facilities, medication and storage areas, and patient observation and recovery areas. Sections of these rules were declared unconstitutional in 1984 by the U.S. Court of Appeals (6th Circuit) in *Birth Control Centers, Inc. v Reizen* (743 F.2d 352)). The DCIS would have to include in the republished rules, however, standards for an FSOF in which 50% or more of the patients annually served in the FSOF undergo an abortion. The Department also would have to assure that the standards were consistent with the most recent U.S. Supreme Court decisions regarding state regulation of abortions.

The bill specifies that, subject to the Public Health Code's requirements for design and construction of facilities and certificates of need (CONs), the DCIS could modify or waive one or more the rules of the Michigan Administrative Code (R 325.3801-R 325.3877) regarding construction or equipment standards, or both, for an FSOF in which 50% or more of the patients annually served undergo an abortion, if both of the following conditions were met:

- The FSOF was in existence and operating on the bill's effective date.
- The Department determined that the existing construction or equipment conditions, or both, within the FSOF were adequate to preserve the health and safety of the patients and employees or could be modified to preserve adequately the patients' and employees' health and safety without meeting the specific requirements of the rules.

Under the bill, a health facility required to be licensed as an FSOF because 50% or more of its patients served undergo an abortion would not be required to obtain a CON in order to be granted a license as an FSOF. If an FSOF applied for a CON to initiate, replace, or expand a covered clinical service consisting of surgical services, the Department could not count abortion procedures in determining whether the FSOF met the annual minimum number of surgical procedures required in the CON standards governing surgical procedures.

House Bill 4600 (H-3)

The Code requires a physician who performs an abortion to report the performance of that procedure to the Department of Community Health (DCH) on forms prescribed and provided by the Department. The report must be transmitted to the DCH Director within seven days after the abortion. The bill would change the deadline for the transmittal of the report to not less than 30 days but not more than 60 days after the abortion.

The Code specifies the information that must be contained in the reports. The bill would add all of the following to that list:

- The method used before the abortion to confirm the pregnancy.
- The type of diagnostic or genetic testing or screening, if any, performed upon the woman or fetus by the physician or by another licensed health professional before the abortion.
- The method and source of payment of the abortion.
- A physical complication or death resulting from the abortion and observed by the physician or reported to the physician or his or her agent before the report was transmitted to the DCH Director. (This would replace a requirement that the report contain the "immediate complications of the abortion".)

The bill would define "physical complication" as "a physical condition occurring during or after an abortion that, under generally accepted standards of medical practice, requires medical attention". The term would include, but not be limited to, "infection, hemorrhage, cervical laceration, or perforation of the uterus".

The required report may not contain the name of the woman or common identifiers or other information that would make it possible to identify who has obtained or seeks to obtain an abortion. The Code prohibits a State agency from comparing data in an information system file with data in another "computer" system that would result in identifying an individual obtaining or seeking to obtain an abortion. The bill would refer instead to an "electronic or other information system" in this prohibition.

The Code requires the DCH to make available an annual aggregate statistical report summarizing the information submitted in the individual abortion reports. The bill also would require the Department specifically

to summarize aggregate data regarding all of the following in the annual statistical report:

- The period of gestation in four-week intervals from five weeks through 28 weeks.
- Abortions performed on women who were 17 years old and younger.
- Physical complications reported under the bill and House Bill 4601.

Disclosure of confidential information in violation of the Code is a felony, punishable by up to three years' imprisonment, a maximum fine of \$5,000, or both. If the person who discloses information is a DCH employee, he or she is subject to immediate dismissal. The bill would retain the criminal penalties and extend them to a disclosure violation of House Bill 4601, but would delete the provision that a departmental employee is subject to dismissal.

House Bill 4601 (H-3)

The bill would require that a physician file a written report with the DCH regarding each patient who came under the physician's professional care and who suffered a physical complication or death that was a primary, secondary, or tertiary result of an abortion. The DCH would have to summarize aggregate data from the reports required under the bill, for inclusion in the annual statistical report on abortion currently required under the Code.

The DCH would have to destroy each individual report required under the bill and each copy of the report after retaining it for five years after the date the report was received. (This is consistent with the requirements for the individual abortion reports already in the Code.)

The DCH would have to develop and distribute a standardized form for the report required under the bill. The Department could not include on the form the name or address of the patient who was the subject of the report or any other information that could reasonably be expected to identify the patient. The DCH would have to include on the form a statement specifying the time period within which a report would have to be transmitted.

MCL 333.201115 et al. (H.B. 4599)
333.2835 (H.B. 4600)
Proposed MCL 333.2837 (H.B. 4601)

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. As a package, these bills would almost assuredly increase the costs of performing abortions in this State. Whether or not this cost increase would make it unaffordable for some women to seek the procedure is speculative, especially in the current economic environment. However, it should be noted that the aggregate health care costs are greater (on average) in bringing a conception to term, than the costs of terminating that conception.

Of potentially greater fiscal impact is the proposed requirement to license physician offices and hospital outpatient surgical clinics as freestanding surgical outpatient facilities (FSOFs) if 50% or more of their patients undergo an abortion. While it is likely that most hospital outpatient clinics could meet the physical plant requirements, it is highly unlikely that an individual practitioner's office or even a multi-specialty practice could either be certified as an FSOF or have the resources to build an acceptable facility. Of course, those practices that could be affected could always limit the number of procedures performed to one less than the cap. The bottom line is that these bills could produce any number of possible scenarios, thereby precluding any meaningful fiscal estimate.

According to the Department of Consumer and Industry Services, House Bill 4599 (H-2) would require those facilities meeting the 50% criterion to become licensed as an FSOF for which a \$238 annual license fee is charged, therefore increasing revenue to the Department. Additionally, the requirement to repromulgate the associated rules would cost the Department several thousand dollars.

Fiscal Analyst: J. Walker

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.