



**House  
Legislative  
Analysis  
Section**

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**RESTRICT REQUIREMENT OF  
PREPAYMENT FOR ABORTION**

**House Bill 5971 (Substitute H-1)  
First Analysis (5-15-02)**

**Sponsor: Rep. Jerry Vander Roest  
Committee: Health Policy**

***THE APPARENT PROBLEM:***

Although the United States Supreme Court's 1973 *Roe v Wade* decision affirmed that a woman has the constitutional right to choose to terminate her pregnancy, and that position has consistently been maintained, the court also advised that the basic right is not unqualified. Since 1994 the Public Health Code has required a physician to obtain a patient's written, freely given and informed consent before performing an abortion, except in the case of a medical emergency. As part of the requirement that the patient's consent be informed, the legislation required that a physician provide a patient who chooses to have an abortion with certain information, including medically accurate depictions and descriptions of a fetus and the specific procedure to be performed, at least 24 hours before performing the procedure. After the 24-hour waiting period was created, it was reported that some physicians were requiring patients to pay for planned abortions and related services during the 24-hour waiting period and then refusing to refund fully or partially the payment to patients who decided not to have abortions. In 2000 the legislature amended the code to prohibit a physician from requiring or obtaining payment for an "abortion related medical service" provided to a patient before the waiting period expired, but the amendment did not include a definition of "abortion related medical service".

Various elements of the informed consent requirement have been challenged as unconstitutional at the state or federal level. In February 2002, a U.S. District Judge opined that the provision prohibiting prepayment for an abortion related medical service offered "no coherent guidance . . . about the type of conduct that it proscribes". Pregnant women require many services regardless of whether they choose to carry a pregnancy to term, and without an exhaustive definition, the judge said that it is unclear which services performed for a woman who eventually has an abortion are "related" to the abortion and which are not. In light of the code's criminal penalties for violations of the informed consent provision, the

judge concluded that the provision is unconstitutionally vague and made special note of its "especially dangerous" potential to "chill the exercise of the right to choose".

Legislation has been introduced to eliminate the criminal sanctions for violations of the abortion informed consent provisions of the code and to specify that a physician may not collect payment for any medical service performed within the 24-hour waiting period or within 24 hours from the time that the patient has scheduled an abortion.

***THE CONTENT OF THE BILL:***

House Bill 5971 would amend the Public Health Code to prohibit a physician or his or her agent from collecting payment for any "medical service" provided to or planned for a patient before the expiration of 24 hours from the time the patient had done either of the following:

- inquired about obtaining an abortion after her pregnancy was confirmed and had received from that physician or a qualified person assisting the physician both the written summary and certain required medically accurate depictions and descriptions of a fetus at the appropriate gestational age; or
- scheduled an abortion to be performed by that physician.

This prohibition would not apply to a physician or a physician's agent who received capitated payments or who were under a salary arrangement for providing the medical services. The bill would specify that a physician or his or her agent could notify the patient that payment for medical services would be required and that collection of payment in full for all medical services (provided or planned) could be demanded, after the expiration of the 24-hour period. "Medical service" would be defined as the provision of a treatment, procedure, medication,

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examination, diagnostic test, assessment, or counseling, including a pregnancy test, ultrasound, pelvic examination, or an abortion. (Under the bill a physician could collect payment for a medical service prior to performing the abortion as long as the physician waited until after the 24-hour waiting period.) The bill would also make several other changes to the code summarized below.

Legislative findings. Currently, the code enumerates several statements explaining why the legislature finds the sections of the code requiring informed consent for abortion to be essential. The bill would add the following finding:

“Because abortion services are marketed like many other commercial enterprises, and nearly all abortion providers advertise some free services, including pregnancy tests and counseling, the legislature finds that consumer protection should be extended to women contemplating an abortion decision by delaying any financial transactions until after a 24-hour waiting period. Furthermore, since the legislature and abortion providers have determined that a woman’s right to give informed consent to an abortion can be protected by means other than the patient having to travel to the abortion facility during the 24-hour waiting period, the legislature finds that abortion providers do not have a legitimate claim of necessity in obtaining payments during the 24-hour waiting period.”

Written summary. The code requires that at least 24 hours before performing an abortion a physician or his or her assistant provide a patient with a copy of a written summary, provided by the Department of Community Health (DCH), describing the procedure that the patient will undergo. The bill would specify that if the DCH had not recognized the procedure and had not provided a written summary for the procedure but the procedure was otherwise allowed under state law, the physician would have to develop and provide the patient with a written summary of the procedure. Specifically, the summary would have to describe the procedure, any known risks or complications of the procedure, and risks associated with live birth. The summary would also be required to contain various other statements and information that the DCH summary is currently required to contain.

Violations. Violations of the sections of the code requiring informed consent for abortion are currently subject to two sets of sanctions—criminal and administrative. Potential administrative sanctions include all of the following: denial or revocation of

license or registration; putting the licensee or registrant on probation; suspension or limitation of the license or registration; reprimanding the licensee or registrant; requiring the person to make restitution; and imposing a fine. Under the code’s criminal provisions, a person who violates or aids or abets another in violation of specific portions of the code, including the abortion informed consent requirements, is guilty of a misdemeanor and subject to imprisonment up to 90 days and a fine of up to \$100, for the first offense. Subsequent offenses, which are also misdemeanors, are punishable by imprisonment for between 90 days and six months and a \$200-\$500 fine. The bill would decriminalize violations of the code’s abortion informed consent provisions. Thus, the bill would no longer define a violation of the provision as a misdemeanor and would eliminate imprisonment and criminal fines from the list of potential sanctions.

MCL 333.16229 et al.

### ***FISCAL IMPLICATIONS:***

The House Fiscal Agency expects that the bill would have no fiscal impact. (5-14-02)

### ***ARGUMENTS:***

#### ***For:***

By prohibiting physicians who have scheduled to perform an abortion for a patient or who have given the required information to a patient from collecting payment for any medical service during the following 24-hour period, the bill would eliminate the vagueness of the current requirement while preserving its intent. The intent of the “vague” language and the informed consent requirement in general is very clear. The legislature wanted to make sure that a woman who is considering having an abortion receives medically accurate information before she actually has the procedure performed. The code’s current restriction on prepayments for abortion related services was intended to ensure that a woman who is considering having an abortion is not financially vested in doing so before she has had time to read and reflect on the material that must be given to her. Physicians and facilities often advertise free services to women seeking to determine whether they are pregnant and seeking information or advice on what to do if they are pregnant. After advertising free pregnancy testing and other services, some physicians and facilities have required that a woman who is planning to have an abortion make a down payment. Some unscrupulous physicians and facilities that have required down payments have

refused to refund the money to women who eventually decide to carry their pregnancies to term or have at least created hurdles for women seeking to obtain refunds. Such actions effectively pressure women to make decisions that they might not otherwise make. For instance, a woman who has decided not to have an abortion might reason that since she has paid \$200 towards an abortion, or whatever the amount may be, and since she cannot get the money back, she might as well go through with it.

The bill would also decriminalize violations of the informed consent provisions in order to address an unintended consequence of the original legislation. The point of the informed consent requirements has never been to punish or intimidate physicians who perform abortions but to ensure that women have access to medically accurate information prior to making such an important decision.

***Against:***

Although the bill eliminates the ambiguity in “abortion related medical service”, it does so by including all medical services that the physician could perform in the 24-hour waiting period, regardless of whether they are related to abortion. Thus, if a patient asked the physician providing the information or scheduling an abortion to diagnose another medical condition, the physician could not collect payment for any services rendered until 24 hours had passed. This is an overly broad prohibition, and whether or not a physician is put out by the prohibition, a physician generally has the right to collect payment at the time that services are provided. The fact that he or she may be providing other services, for which there may be good reasons to delay required payment, should not affect a physician’s ability to collect payment on unrelated services.

***POSITIONS:***

Right to Life of Michigan supports the bill. (5-14-02)

The American Civil Liberties Union of Michigan opposes the bill. (5-14-02)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.