

Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

**SFA****BILL ANALYSIS**

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

House Bill 5971 (Substitute H-1 as passed by the House)  
Sponsor: Representative Jerry Vander Roest  
House Committee: Health Policy  
Senate Committee: Families, Mental Health and Human Services

Date Completed: 12-4-02

### **CONTENT**

**The bill would amend the abortion informed consent provisions of the Public Health Code to do both of the following:**

- Revise a provision prohibiting prepayment for abortion services before the expiration of the required 24-hour waiting period to undergo an abortion.**
- Require that a physician or qualified assistant develop and give to an abortion patient a written summary of the procedure, if the Department of Community Health (DCH) did not recognize the procedure and had not developed a summary of it.**
- Exclude violations of the abortion informed consent provisions from criminal penalties under the Code.**
- Add to the Code's legislative findings concerning abortion informed consent.**

#### Prepayment for Services

The bill would delete a provision that prohibits a physician from requiring or obtaining payment for an abortion-related medical service provided to a patient who has inquired about an abortion or scheduled an abortion until the expiration of the 24-hour period required under the Code. (The Code requires that a physician or qualified assistant provide certain information to a patient at least 24 hours before performing an abortion.) The bill instead would prohibit a physician or physician's agent from collecting payment, in whole or in part, for a medical service provided to or planned for an abortion patient before the expiration of 24 hours from the time the patient did either or both of the following:

- Inquired about obtaining an abortion after her pregnancy was confirmed and received from the physician, or a qualified assistant, information required to be provided under the Code. (The information includes a summary of the abortion procedure to be performed and possible complications and side effects associated with the procedure as well as a copy of an accurate depiction, illustration, or photograph and description of a fetus at the gestational age nearest the probable gestational age of the patient's fetus.)
- Scheduled an abortion to be performed by that physician.

The bill's prohibition would not apply to a physician or agent who received capitated payments or was under a salary arrangement for providing the services.

The bill specifies that this prohibition would not prohibit notifying the patient that payment for medical services would be required or that collection of payment in full for all medical services provided or planned could be demanded after the 24-hour period expired.

The Code also requires the Department of Community Health to develop an acknowledgment and consent form that includes specific language above a signature line for the patient. That language includes a certification that the patient has not been required to make any payments for an abortion or any "abortion related" medical service before the expiration of the 24-hour period. The bill would delete "abortion related" from that provision, making it applicable to any "medical service". Under the bill, "medical service" would mean the provision of a treatment, procedure, medication, examination, diagnostic test, assessment, or counseling, including, but not limited to, a pregnancy test, ultrasound, pelvic examination, or an abortion.

### Written Summary

Among the information that a physician or qualified assistant must provide to a patient at least 24 hours before performing an abortion is a physical copy of the written summary provided by the DCH of the procedure the patient will undergo. The bill specifies that, if the procedure were not recognized by the DCH, but otherwise were allowed under Michigan law, and the Department had not provided a written summary of that procedure, the physician would have to develop and provide a written summary describing the procedure, any known risks or complication of the procedure, and risks associated with live birth.

The physician-developed summary would have to comply with the Code's requirements regarding DCH-developed summaries, including identifying possible complications and side effects of the procedure and counseling services that could be available to the patient through public agencies after undergoing an abortion, and identifying services available to the patient through public agencies if she chose to give birth.

### Criminal Penalties & Physician Sanctions

The Public Health Code provides that it is a misdemeanor to violate or aid and abet another in a violation of Article 15 of the Code ("Occupations"). A first offense is punishable by up to 90 days' imprisonment, a maximum fine of \$100, or both; a second or subsequent offense is punishable by not less than 90 days' or more than six months' imprisonment, a fine of not less than \$200 or more than \$500, or both. The bill would exclude violations of the abortion informed consent provisions from those criminal sanctions.

Physician sanctions applicable under the Code, including license revocation or denial, would continue to be available for violations of the abortion informed consent provisions.

### Legislative Findings

Public Act 133 of 1993, which enacted the 24-hour waiting period and informed consent for abortion provisions, also listed several legislative findings relating to public policy surrounding abortion. The bill would add the following to those legislative findings.

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 transaction 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.

## **FISCAL IMPACT**

The bill would have no fiscal impact on the State, including the DCH, and an indeterminate fiscal impact on local government.

There are no statewide data available with regard to misdemeanor offenses, so there are no data to indicate how many people, if any, are currently convicted of violating the informed consent provisions. Offenders currently receive either probation or incarceration in a local facility. Local units incur the cost, which varies by county from \$27 to \$65 per day; therefore, any savings resulting from the elimination of the criminal provisions would benefit local governments.

Fiscal Analyst: Dana Patterson  
Bethany Wicksall