



**House
Legislative
Analysis
Section**

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MEDICAID FUNDED ABORTIONS

**House Bill 5458 (Substitute H-4)
First Analysis (12-13-95)**

**Sponsor: Rep. Michelle McManus
Committee: Human Services**

THE APPARENT PROBLEM:

Congress ended federal funding for Medicaid abortions in 1976, and in 1977 the U.S. Supreme Court issued a decision which left the question of whether to provide public funds for abortion, or to limit the use of funds to abortions performed for certain reasons, in the hands of the states. The court ruled, in *Maher v. Roe, et. al.* (1977) that, although the Constitution guarantees a woman the right, subject to certain time conditions, to choose abortion as the means a terminating a pregnancy for any reason, the equal protection clause does not require a state participating in the federal Medicaid program to pay the expenses incident to non-therapeutic abortions for indigent women simply because it had chosen to pay expenses incident to childbirth. In 1980, the supreme court upheld the constitutionality of a restriction on federal funding for Medicaid abortions in *McRae v. Califano* (1980), noting that Medicaid abortions could continue in states which paid for them out of state funds. Michigan continued to fund Medicaid abortions out of state funds until 1987, when the Right to Life Initiative Proposal resulted in a prohibition on Medicaid payments for abortions unless an abortion was necessary to save the mother's life.

As a result of the Right to Life Initiative Proposal, the Social Welfare Act currently specifies that "it is the policy of this state to prohibit the appropriation of public funds for the purpose of providing an abortion to a person who receives welfare." Recently, however, the Right to Life of Michigan organization discovered an apparent loophole in Michigan's laws regarding abortion. Reportedly, primary care physicians in health maintenance organizations (HMOs) frequently refer pregnant Medicaid patients for pregnancy or ultrasound tests to clinics that specialize in obstetrics and prenatal care. However, some of these clinics -- often referred to as "family planning clinics" -- also provide abortion services, and, should the Medicaid patient who has been referred to them, decide at some point during her pregnancy to have an abortion, the clinic would provide this option. According to Right to Life, the clinic -- which is under contract with the HMO -- bills the HMO for the pregnancy tests and charges the patient \$50 for the abortion procedure. The clinic can charge the patient this reduced rate, because it is, in effect, subsidized by the HMO, and, ultimately, by Medicaid.

In order to end this practice, legislation has been proposed that would penalize physicians and HMOs who accepted Medicaid payments to perform abortions.

THE CONTENT OF THE BILL:

The bill would amend the Social Welfare Act to prohibit a health care professional, or a health facility or agency, from accepting reimbursement for performing a publicly funded abortion. The bill would define "abortion" to mean 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 would not include the use or prescription of a drug or device intended as a contraceptive.

Under the bill, health care professionals and health facilities and agencies that were licensed or registered under the Public Health Code would be prohibited from seeking or accepting reimbursement to perform an abortion if they knew that public funds would be -- or had been -- used, in whole or in part, for the reimbursement. A person who violated this provision would be guilty of a misdemeanor, punishable by imprisonment for up to 90 days, a fine of up to \$100, or both.

The bill would specify that its provisions did not restrict the right of a physician to discuss abortion or abortion services with a pregnant patient, that it did not create a right to an abortion, and that a person could not perform an abortion that was prohibited by law.

MCL 400.109d

FISCAL IMPLICATIONS:

According to the Department of Social Services, the bill could result in a savings for state if the department were no longer billed for abortion-related services from clinics. However, since it is not known how

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widespread the practice is, the amount of the savings is unknown. (12-12-95)

ARGUMENTS:

For:

As has been pointed out by the Right to Life of Michigan organization, once a patient is pregnant, it is too late for family planning services, and there is therefore no reason for Medicaid patients to be referred to family planning clinics. By providing penalties for these practices, House Bill 5458 would acknowledge this point and preempt those who would circumvent the law by billing HMOs for "pregnancy-related" services.

Against:

The practice described by Right to Life of Michigan clearly violates the ban on Medicaid funding of abortion and could be prosecuted as Medicaid fraud. As the Department of Social Services has taken steps to investigate and correct the situation, the bill is not needed.

POSITIONS:

The Department of Social Services (DSS) supports the bill. (12-12-95)

Right to Life of Michigan supports the bill. (12-12-95)

The Association of Health Maintenance Organizations (HMOs) supports the bill. (12-12-95)

Planned Parenthood Affiliates of Michigan has no position on the bill. (12-12-94)

The ACLU of Michigan has no position on the bill, but continues to oppose restrictions in Medicaid programs for low income women which deny access to complete reproductive health care services, including abortion. (12-13-95)

■ 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.