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SFA BILL ANALYSIS

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House Bill 4599 (Substitute H-2 as reported without amendment)
House Bill 4600 (Substitute S-1 as reported)
House Bill 4601 (Substitute H-3 reported without amendment)
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

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 as a freestanding surgical outpatient facility (FSOF). The DCIS also would have to republish several rules that were declared unconstitutional by a U.S. Court of Appeals decision, but would have to include standards for an FSOF in which 50% or more of the patients undergo an abortion.

House Bills 4600 (S-1) and 4601 (H-3) would amend the Code to modify reporting requirements relating to abortion procedures and to require that a physician file a report on physical complications or death that resulted from an abortion. The two bills are tie-barred.

House Bill 4599 (H-2)

The 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 undergo an abortion, would have to be licensed as an FSOF. The DCIS also would have to promulgate rules that, in effect, would republish rules of the Michigan Administrative Code. (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.) 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 undergo an abortion. The Department would have to assure that the standards were consistent with the most recent U.S. Supreme Court decisions regarding state regulation of abortions.

Subject to the Code's requirements for design and construction of facilities and certificates of need (CONs), the DCIS could modify or waive one or more of the rules regarding construction and/or equipment standards for an FSOF in which 50% or more of the patients annually served undergo an abortion, if the FSOF were in existence and operating on the bill's effective date, and the DCIS determined that the existing construction and/or equipment conditions were adequate (or could be modified) to preserve the health and safety of the patients and employees without meeting the specific requirements of the rules.

A health facility required to be licensed as an FSOF because 50% or more of its patients served undergo an abortion would not have 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 (S-1)

The Code requires a physician who performs an abortion to report the performance of that procedure to the Department of Community Health (DCH). The Code specifies the information that must be contained in the reports. The bill would add to that list the method used before the abortion to confirm the pregnancy; the

method and source of payment of the abortion; and 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.

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.

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 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 multispecialty 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 DCIS, 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 DCIS several thousand dollars.

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