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House Bill 5548 (Substitute H-1 as passed by the House)  
Sponsor: Representative Janet Kukuk  
House Committee: Family and Children Services  
Senate Committee: Families, Mental Health and Human Services

Date Completed: 9-27-00

## CONTENT

**The bill would amend the Public Health Code to revise abortion informed consent procedures. The bill would do all of the following:**

- Eliminate a requirement that, before giving a patient material regarding abortion procedures and fetal depictions, a physician explain the patient's option to review or not review the material.
- Require that a physician "provide the patient with a physical copy" of abortion procedure summaries, fetal depictions, and prenatal care and parenting pamphlets.
- Prohibit physician notification requirements for informed consent from being fulfilled by accessing an Internet web site, other than the Department of Community Health (DCH) web site.
- Revise the requirement that the DCH develop and distribute fetal depictions and eliminate the requirement that the depictions be based on curriculum materials from the Michigan Model for Comprehensive School Health Education.
- Require that information provided to a patient identifying complications associated with abortion include any relationship between abortion and increased risk of breast cancer.
- Delete a requirement that the DCH approve alternative written summaries of abortion procedures and acknowledgment and consent forms submitted by physicians.
- Require the DCH to develop and maintain a web site to allow a patient to review the information required to be provided at least 24 hours before an abortion.
- Delete requirements that local public health departments provide abortion procedure summaries and fetal depictions.

### Physician Responsibilities

Under the Code, a physician may not perform an otherwise legal abortion without the patient's informed consent, given freely and without coercion. At least 24 hours before performing an abortion, a physician or qualified person assisting the physician must confirm that, according to the physician's best medical judgment, the patient is pregnant and determine the probable gestational age of the fetus.

Among the responsibilities required by the Code is that the physician or a qualified assistant present to the patient a written summary provided or approved by the DCH that corresponds to the procedures the patient will undergo. The bill would delete the requirement that provision of the summary be preceded by an explanation that the patient has the option to review or not review it. The bill also would require the physician to "provide the patient with a physical copy" of the summary; and would remove the option that the summary be one that is approved by, rather than provided by, the DCH. ("Provide the patient with a physical copy" would mean giving a patient a copy of a required document in person; by registered mail, return receipt requested; or by parcel delivery service that required the recipient to provide a signature in order to receive delivery.)

The Code also requires that a physician or qualified assistant provide the patient with a copy of a medically accurate depiction and description of a fetus, supplied by the DCH, at the gestational age nearest the probable gestational age of the patient's fetus. The bill would delete the requirement that provision of the depiction and description be preceded by an explanation that the patient has the option to review or not

review the material. The bill also would require the physician to provide the patient with a physical copy of the depiction and description; and would allow the material provided to be an illustration or photograph rather than a depiction.

The physician or qualified assistant also must provide a patient with a copy of the prenatal care and parenting information pamphlet distributed by the DCH. The bill would require that the physician or qualified person provide the patient with a physical copy of that pamphlet.

The bill would delete a provision that allows the physician or qualified assistant to refer the patient to a local health department in order to have a pregnancy confirmed and to obtain the summary of the abortion procedure and the depiction and description of the fetus. The pregnancy could be confirmed, however, by a local health department.

The bill specifies that the physician notification requirements could not be fulfilled by the patient accessing an Internet web site other than the DCH web site. Those requirements could be fulfilled by a patient accessing the Internet web site maintained and operated through the DCH and receiving a printed, valid confirmation form from the web site that the patient had reviewed the required information at least 24 hours before an abortion was performed on her. The web site could not require that any information be supplied by the patient. The DCH could not track, compile, or otherwise keep a record of information that would identify a patient who accessed the web site. The patient would have to supply the valid confirmation form to the physician or qualified assistant be included in the patient's medical record to comply with the Code's notification requirements.

The Code requires that, before performing an abortion, a physician do all of the following:

- Provide the patient with the physician's name and inform the patient of her right to withhold or withdraw her consent to the abortion at any time before the procedure is performed.
- Orally describe, in language designed to be understood by the patient, taking into account her age, level of maturity, and intellectual capability, both the specific risk to the patient, if any, of the complications associated with the procedure the patient will undergo and the specific risk of complication to the patient if she chooses to continue the pregnancy, based on her particular medical condition and history.
- Obtain the patient's signature on a form prepared or approved by the DCH, consenting to the abortion and acknowledging that she received the information that must be provided at least 24 hours before the abortion, along with the explanation that she had the option to review or not review the written summary and fetal depictions. (The physician must retain a copy of the acknowledgment and consent form in the patient's medical record.)
- Provide the patient with a copy of the written acknowledgment and consent form.

The bill would delete the third and fourth requirements above. The bill also would require that the physician perform the first two requirements (inform the patient of the physician's identity and the patient's right to withdraw consent, and orally describe complications) before obtaining the patient's signature on the acknowledgment and consent form required under the Code. The physician would have to fulfill those responsibilities personally and in the presence of the patient.

In addition, the bill would require that, before performing an abortion, a physician or a qualified assistant do all of the following:

- Obtain the patient's signature on the acknowledgment and consent form required under the Code, confirming that she had received the information required to be supplied at least 24 hours before the procedure.
- Provide the patient with a physical copy of the signed acknowledgment and consent form.
- Retain in the patient's medical record a copy of the acknowledgment and consent form and, if applicable, a pregnancy certification form.

A physician could not require or obtain payment for a service provided to a patient who had inquired about an abortion or scheduled an abortion until the expiration of the 24-hour period required for supplying information to the patient and until the patient had signed the acknowledgment and consent form.

## Department of Community Health Responsibilities

The Code requires the DCH to produce medically accurate depictions of the development of a human fetus that reflect the actual size of the fetus at four-week intervals from the fourth week through the 28th week of gestation, using curriculum materials from the Michigan Model for Comprehensive School Health Education. The bill would require, instead, that the DCH produce medically accurate depictions, illustrations, or photographs of the development of a human fetus that indicated by scale the actual size of the fetus at two-week intervals from the fourth week through the 28th week of gestation. The bill would delete the requirement that the depictions be produced using the Michigan Model curriculum materials.

The Code also requires the DCH to develop, draft, and print written standardized summaries, based upon the various medical procedures used to abort pregnancies, that identify the physical complications that have been associated with each procedure used to perform abortions in Michigan that are recognized by the DCH and with live birth, as determined by the DCH. The bill would require that the complications identified as being associated with abortion include current, published data regarding any scientifically significant relationship between abortion and increased risk of breast cancer.

In addition, the Code requires that the DCH develop, draft, and print an abortion acknowledgment and consent form. The form must include affirmations that the patient has been supplied with required information, including a depiction of a fetus at the probable gestational age of the fetus the patient is carrying. The bill would refer to depiction, illustration, or photograph. The form also must contain acknowledgments that the depiction of a fetus and a description of the procedure were preceded by an explanation of the patient's option to review or not review the material. The bill would delete that requirement. Currently, the form includes a certification that the patient is freely and voluntarily signing the form. The bill would change that to a certification that the patient had not been required to make any payments before freely and voluntarily signing the acknowledgment and consent form.

The Code requires the DCH to make available to physicians, all local public health departments, and any person upon request copies of the medically accurate depictions of a fetus that must be provided to a patient. The bill would remove local public health departments, and would refer to depictions, illustrations, or photographs.

The bill would delete a requirement that the DCH approve an alternative written summary or acknowledgment and consent form submitted by a physician for DCH approval, if the proposed summary or acknowledgment and consent form contains information substantially similar to the information supplied by the DCH. The bill also would prohibit the DCH from developing written summaries for abortion procedures that used medication that had not been approved by the United States Food and Drug Administration for use in performing an abortion.

The bill would require the DCH to develop and maintain an Internet web site that allowed a patient considering an abortion to review the information required to be supplied at least 24 hours before the procedure. After the patient reviewed that information, the DCH would have to assure that a confirmation form that would verify the time and date the information was reviewed, could be printed by the patient from the web site. A confirmation form printed under this provision would become invalid 14 days after the date and the time printed on it.

## Local Health Department Responsibilities

The Code requires that, upon an individual's request, each local health department do all of the following:

- Provide a pregnancy test and determine the probable gestational age of a fetus.
- Preceded by an explanation that the individual has the option to review or not review the written summaries, provide the summaries of abortion procedures that a physician must supply at least 24 hours before an abortion procedure and that are recognized by the DCH as applicable to the individual's gestational stage of pregnancy.
- Preceded by an explanation that the individual has the option to review or not review the depiction and

description, provide the individual with a copy of a medically accurate depiction and description of a fetus, that a physician must supply at least 24 hours before an abortion procedure, at the gestational age nearest the probable gestational age of the patient's fetus.

The bill would delete the second and third requirements above. The bill would retain the first requirement, but specifies that the local public health department would not have to comply with it if a physician or qualified person assisting a physician had already confirmed that the patient was pregnant and determined the fetus's probable gestational age.

MCL 333.17015

Legislative Analyst: P. Affholter

### **FISCAL IMPACT**

The fiscal impact on the Department of Community Health should be nominal. First, the Department would no longer be required to make available to local health departments the information that a patient is required to review before undergoing an abortion. As a result, the DCH should incur a small saving in printing costs. However, these materials would still have to be made available to physicians through the Michigan Board of Medicine and the Michigan Board of Osteopathic Medicine and Surgery, or any other person upon request.

Second, the Department would incur the costs of developing and maintaining an Internet web site, or modifying the existing web site, in order to make available the information that a patient is required to receive before undergoing an abortion. This bill would allow patients to review the required information over the Department's Internet site instead of obtaining a physical copy. As a result, the DCH could incur further savings in printing costs if a significant number of patients chose to review the information over the Internet.

Fiscal Analyst: D. Patterson

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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.