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FAMILY PLANNING PROGRAM PRIORITIES

House Bill 4655 (Substitute H-1) First Analysis (10-25-01)

Sponsor: Rep. Mark Jansen
**Committee: Family and Children
Services**

THE APPARENT PROBLEM:

Current state and federal regulations prohibit the use of public funds for providing abortions and abortion related services. Family planning organizations that provide abortion services are still able to receive state and federal funding with the restriction that the funding does not directly provide these services. As a result, the abortion related services must remain separate and distinct from other services that the organization provides.

According to some, while family planning organizations cannot directly use public funds to promote and/or provide abortions and abortion related services, public funds are being used to support these organizations. As a result, it can be difficult to distinguish between funds being used to provide other services and funds that are being used for promoting and/or providing abortions and abortion related services. Some people object to this situation, saying that state policy should clearly favor non-abortion providers in the distribution of family planning funds. Legislation has been introduced that would give priority for family planning funding to organizations that do not perform abortions or advocate for abortion rights.

THE CONTENT OF THE BILL:

The bill would create a new act to specify that it would be the policy of the state for the Department of Community Health to give priority in the allocation of funds for family planning programs to agencies and organizations that do not perform abortions or advocate for abortion rights.

The policy would apply to the allocation of funds through grants or contracts for educational or other programs or services administered by the DCH primarily pertaining to family planning or reproductive health services, or both. Priority for funding would be given to a qualified entity (an entity determined by the DCH to be technically and

logistically capable of providing the quality and quantity of services required within an appropriate cost range determined by the department) that does not:

- * perform elective abortions or allow the performance of elective abortions within its facilities;
- * refer pregnant women to abortion providers for elective abortions;
- * engage in public advocacy promoting the legality or accessibility of elective abortion; or
- * adopt or maintain a policy in writing that elective abortion is considered part of a continuum of family planning and/or reproductive health services.

The funding priority would only apply to family planning and pregnancy prevention grants or contracts under subpart a of part 59 of Title 42 of the Code of Federal Regulations, which governs Title X grant money for these programs, or for state appropriated family planning or pregnancy prevention funds. However, in applying the funding priority, the DCH would not take into consideration any of the listed activities that is a qualification for receiving federal funding as required under federal law. In addition, the bill states that its provisions would not apply if the only applicant engages in the listed activities. Further, if all of the entities applying for funds engaged in one or more of the listed activities, priority would be given to those entities engaging in the fewest of the listed activities.

Under the bill, if an entity applying for a contract or grant for family planning or pregnancy prevention programs is affiliated with another entity that engages in at least one of the listed activities, the applying entity would, for the purposes of awarding a grant or contract, be considered independent of the affiliated entity if the physical properties and equipment of the

House Bill 4655 (10-25-01)

applying entity are separate and not shared with the affiliated entity; the financial records of the applying entity and the affiliated entity demonstrate that the affiliated entity receives no funds from the applying entity; and the paid personnel of the applying entity do not perform any function or duty on behalf of the affiliated entity while on the physical property of the applying entity or during the hours the personnel are being used by the applying entity. The bill specifies that two entities would be considered to be affiliated if they share a common name or other identifier; members of a governing board; a director; or any paid personnel.

The bill defines “elective abortion” to mean a procedure involving 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. The term would not include the use or prescription of a drug or device intended as a contraceptive, nor the termination of a woman’s pregnancy if the woman’s physical condition, in the physician’s reasonable medical judgment, necessitates the termination of the woman’s pregnancy to avert her death.

“Public advocacy” would be defined to mean:

* regularly engaging in efforts to encourage the passage or defeat of legislation pertaining to continued or expanded availability of elective abortion;

* publicly endorsing or recommending the election or defeat of a candidate for public office based on the candidate’s position on the legality of elective abortion; or,

* engaging in civil litigation against a unit of government as a plaintiff seeking to enjoin or otherwise prohibit enforcement of a statute, ordinance, rule, or regulation pertaining to elective abortion.

BACKGROUND INFORMATION:

Michigan’s family planning program provides general reproductive health services, contraceptive services, related health education and counseling, and referrals regarding family planning. The primary targets of the program are low-income men and women, who often receive these services at no cost. The Department of Community Health (DCH) contracts with local health departments, hospitals,

Planned Parenthood affiliates, and private nonprofit agencies throughout the state to carry out these services.

Funds for these family planning programs come primarily from two line-item appropriations within the DCH budget: family planning local agreements and the pregnancy prevention program. Family planning local agreements are primarily funded by Title X of the federal Public Health Service Act, which provides grants for family planning programs that offer a variety of acceptable and effective family planning methods, including natural family planning methods, infertility services, and services for adolescents.

Title X of the act states, “[n]one of the funds appropriated under this title shall be used in programs where abortion is a method of family planning”. While abortion and certain abortion related activities are prohibited under the act, the prohibition does not apply to all of the activities of a Title X grantee, but rather just those activities that fall within the family planning project. Furthermore, the law does not prohibit abortion related activities that have only a possibility of encouraging or promoting abortion; rather, a more direct connection is required. Under the act, a Title X project may not provide services that directly facilitate the use of abortion as a method of family planning. However, if the agency is requested to provide such information and counseling, it must provide neutral, factual information and nondirective counseling.

If requested, the Title X project may only provide the patient with contact information and other factual information about abortion providers. The federal Department of Health and Human Services does not consider this to be a “referral” for an abortion, but rather it is considered to be providing nondirective information. All Title X funding recipients must provide this information, regardless of whether or not they offer abortion services. The Title X project may not take an active role in referring a patient for an abortion, such as making the appointment, providing transportation, or negotiating a fee reduction. The restrictions on abortion referrals do not apply in instances where the mother’s life is in jeopardy.

A Title X project grantee may not advocate for abortion rights. Advocacy includes such activities as providing speakers in opposition to anti-abortion speakers, bringing legal action to liberalize abortion statutes, and producing or showing films that encourage or promote a favorable attitude toward abortion as a method of family planning. However, a

Title X project grantee may be a dues paying member of a national abortion advocacy organization, provided there are other program related reasons for the affiliation.

Finally, under Title X, non-Title X abortion related activities must remain separate and distinct from Title X project activities. This separation must go beyond separate bookkeeping entries. The law does allow for some shared staff and facilities with a few restrictions. A common waiting area is allowable as long as the costs are prorated. Shared staff is allowable as long as the salaries are properly allocated and all abortion related activities of the staff are under a program that is separate and distinct from the Title X project. A hospital may offer abortion services and family planning projects under Title X as long as the two activities are separated. An agency may maintain a single filing system for patients of abortion services and family planning programs as long as the costs are properly allocated.

The other main source of funding for family planning projects comes from the pregnancy prevention line-item in the DCH budget, which states that funds appropriated for pregnancy prevention programs shall not be used to provide abortion counseling, referrals, or services. In addition, the budget states that the department shall give priority in awarding contracts for pregnancy prevention programs to organizations that provide pregnancy prevention services as their primary function and to local health departments.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill creates no new costs or savings. However, the bill will alter the distribution of existing DCH grants. For the fiscal year 2001-2002, the DCH will distribute \$15.59 million in funds for family planning and pregnancy prevention services and contracts. The state generates 51 percent of these funds, with the balance being provided by federal grants. (10-24-01)

ARGUMENTS:

For:

Supporters of the bill point out that state and federal law clearly prohibits the use of taxpayer dollars for abortions. In addition, Michigan has a history of restricting the use of taxpayer dollars for providing abortions. In 1988, Michigan voters passed a ballot proposal 57 percent to 43 percent to prohibit public funds from being used to support abortions. They

believe that the state should maintain its policy that its funds are not used, either directly or indirectly, to provide and/or promote abortion and abortion related services.

Against:

Opponents of the bill believe that it would ultimately take away necessary funding from organizations (namely Planned Parenthood) that provide much-needed general health and reproductive services to young, low-income, and uninsured or underinsured men and women, many of whom would not receive the health care from other organizations. According to the Planned Parenthood Affiliates of Michigan, they provide over 60,000 individuals with contraceptives, gynecological exams, breast and cervical cancer screenings and other health services. The number of individuals that receive these services is significantly greater than the number of those who received abortions. These services are aimed at reducing the number of unwanted pregnancies and helping mothers during their pregnancies, by providing the necessary health care, which has the potential to increase the overall health of the infant. Currently, of the 31 Planned Parenthood clinics throughout the state, there are only three clinics (in Kalamazoo, Ann Arbor, and Detroit) in the state that perform abortions. Opponents believe that the bill will not only cut off funding to the three clinics that provide abortions, but will also cut funding for the clinics that provide non-directive counseling, as is required in order to receive federal Title X funds, and other essential general and reproductive health services. It is asserted that removing funding from these organizations has the potential to compromise the health of the mother and the fetus, and will result in an increase in the number of unwanted pregnancies and in the number of abortions.

For:

Supporters of the bill believe that family planning programs are designed to reduce the number of unwanted pregnancies, and subsequently reduce the number of abortions. It is believed that organizations that provide abortions and advocate for abortion rights contradict the fundamental purposes of these family planning programs. Supporters argue that these groups increase the number of abortions, and that the state should fund organizations that are consistent with the goals of family planning programs.

Against:

Opponents of the bill believe that the current system of funding family planning programs has proven to be very successful, and should not be changed to a system that may not work. In recent years, the state has been among the top states in terms of reducing the number of abortions and the number of births to unmarried parents. As a result, Michigan has collected \$20 million in federal Temporary Assistance for Needy Families (TANF) funds each of the last two years. Planned Parenthood has been an integral part in the state's success at reducing the number of pregnancies. Opponents believe that unless it can be shown that this bill would improve upon an already successful program, the state should leave well enough alone.

Against:

The bill could place the nearly \$6 million the DCH receives for family planning programs in jeopardy. Title X projects must provide factual and neutral information, upon request, about abortion. The bill would give priority funding to organizations that do not provide abortion services. Just as some perceive that Planned Parenthood is not unbiased regarding abortion, it may also be the case that some of the organizations that could receive priority for funds under this bill might not provide unbiased information and counseling with regards to abortion, which would disqualify the agency from receiving federal Title X funding.

Response:

Supporters of the bill believe that it will not cut funds for family planning programs, nor will it jeopardize federal Title X funding. The bill gives funding priority to family planning programs that do not perform abortions or advocate for abortion rights. The DCH budget currently has language in it that gives priority in awarding contracts for pregnancy prevention programs to organizations that provide pregnancy prevention services as their primary function. It is also believed that should there be no other applicants, family planning organizations that perform abortions and advocate abortion rights (Planned Parenthood in particular) would still receive funding. The bill requires that funding be directed only to a qualified entity, that is, an organization determined by the Department of Community Health to be technically and logistically capable of providing the quality and quantity of services required. This ensures that family planning services will not suffer. The DCH would not provide family planning funds to an organization unless it can be shown that it is capable of providing these services.

Against:

Opponents of the bill believe that it unnecessarily punishes groups who advocate for abortion rights by essentially barring them from challenging the constitutionality of laws that they believe restrict abortion rights, if they also want to receive family planning funds. It is argued that this infringes on the right to freedom of speech. Federal law already sets guidelines that family planning groups must follow in order to receive funding. The bill does not address concerns that Planned Parenthood may not be complying with these regulations, but rather the bill simply seeks to strip funding from Planned Parenthood because of its political activities.

Against:

The provisions of the bill determining the independence of an applying entity from an affiliated entity that chooses to operate family planning (and abortion) services are stricter than federal regulations for Title X funding recipients. Common practice for many family planning providers who receive these funds and also provide abortion services is to share facilities and staff, but to offer abortion services only on certain days and only in certain areas. It is also common for family planning programs to share a common waiting area and patient records with other non-family planning programs. This is in line with federal regulations that allow for shared facilities and staff under certain restrictions. The bill, however, goes beyond federal regulations and states that physical properties and equipment between an applying entity and an affiliated entity must be completely separate and not shared. The question now becomes to what degree must these facilities be separate. It could be interpreted that two entities cannot share even a hallway, waiting area, bathroom, or copy machine. The result would be that the two entities must be entirely distinct. This has the potential of impacting not only Planned Parenthood affiliates, but also any hospital that receives family planning or pregnancy prevention funds distributed by the Department of Community Health.

POSITIONS:

Citizens for Traditional Values supports the bill. (10-24-01)

The Michigan Family Forum supports the bill. (10-24-01)

Right to Life of Michigan supports the bill. (10-23-01)

The Michigan Catholic Conference supports the bill.
(10-24-01)

The ACLU of Michigan opposes the bill. (10-23-01)

The Planned Parenthood Affiliates of Michigan
opposes the bill. (10-24-01)

A representative of the Lansing Area Advocates for
Choice testified in opposition to the bill. (10-23-01)

The Republican Coalition for Choice opposes the
bill. (10-24-01)

The Michigan Section of the American College of
Obstetricians and Gynecologists opposes the bill.
(10-25-01)

The Michigan Conference of the National
Organization for Women opposes the bill (10-24-01)

The Michigan Association for Local Public Health
opposes the bill. (10-24-01)

Analyst: M. Wolf

■ 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.