House
Legislative
Analysis
Section

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FAMILY PLANNING PROGRAM PRIORITIES

House Bill 4655 as enrolled
Public Act 360 of 2002
Third Analysis (6-26-02)

Sponsor: Rep. Mark Jansen
House Committee: Family and Children Services
Senate Committee: Families, Mental Health, and Human 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 that does not do any of the following:

* perform elective abortions or allow the performance of elective abortions within its facilities;

* refer pregnant women to abortion providers for elective abortions;

* adopt or maintain a policy in writing that elective abortion is considered part of a continuum of family planning and/or reproductive health services.

A "qualified entity" would be defined to mean an entity reviewed and 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.

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 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.

In addition, the bill would require the DCH to award grants and contracts to qualified entities to ensure that family planning services are adequately available and distributed in a manner that is reflective of the geographic and population diversity of the state. Furthermore, a qualified entity that was awarded a grant or contract would also have to be capable of serving the patient census reflected in the contract or grant for which the qualified entity is applying.

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.

BACKGROUND INFORMATION:

Family Planning Program. 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 faciliate 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 in 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.

Legislation in other states. Similar legislation has been introduced in Minnesota and Wisconsin. In Minnesota, House File 3130 would establish requirements regarding the use of family planning grant funds. Under the bill, family planning funds would not be expended to subsidize, either directly or indirectly, abortion services or administrative expenses; paid to an organization or an affiliate of an organization that provides abortion services (unless the affiliate is independent); or paid to an organization that has a policy that abortion is part of a continuum of family planning or reproductive health services. The bill would permit organizations that receive family planning funding to provide nondirective family planning counseling, though the organizations would be prohibited from directly referring an individual for abortion services. In addition, the bill would prohibit an organization from displaying or distributing materials about abortion services and engaging in public advocacy promoting the legality and accessibility of abortion. [Note: Previous versions of House Bill 4655 had included a prohibition against public advocacy in favor of abortion as a condition of receiving family planning funds.] However, House File 3130 would not prohibit an organization that receives Title X funds from providing services that must be provided as a condition of receiving such funds. House File 3130 died in committee. However, the provisions in the bill were later added to House File 2515, a human services budget bill, which passed the House of Representatives in March. The proposal effectively died when the provisions of House File 2515 were subsequently substituted with an anti-terrorism bill, and when the family planning provisions were not included in a later budget balancing bill (House File 3270 – Chapter 374 of the Session Laws of 2002).

In Wisconsin, with certain exceptions, no public funds from the state, a local government, or federal funds passing through the state treasury may be expended for a program that provides abortion services; promotes, encourages, or counsels in favor of abortion services; or makes abortions referrals, either directly or indirectly, in any instance other than when an abortion is directly and medically necessary to save the life of a woman (Wisconsin Statutes 20.9275). Assembly Bill 546 of the 2001, which died in committee, specifies that the prohibited abortion-related services would include acting to assist women to obtain abortions; acting to increase the availability or accessibility of abortions for family planning purposes; lobbying for the passage of legislation to increase the availability of abortion as a method of family planning; providing speakers to promote the use of abortion as a method of family planning; paying dues to a group that, as a significant portion of its activities, advocates abortion as a method of family planning; using legal action to make abortion available as a method of family planning; and developing and disseminating materials advocating abortion as a method of family planning.

In addition, the bill would prohibit payment to an organization or an affiliate of an organization that engages in any of the activities listed above, or receives funds from any source that requires, as a condition or receiving such funds, the organization or affiliate to perform any of the listed activities. Furthermore, the bill would prohibit an organization that receives funds from transferring those funds to an organization, or affiliate of an organization, which engages in the listed activities, unless the two organizations are physically and financially independent from one another. Specifically, the two organizations could not be located in the same building or share any of the following: the same or a similar name; medical or nonmedical facilities, including treatment, consultation, examination, waiting rooms, or business offices; equipment or supplies; services, including management, accounting, payroll services, or equipment or facility maintenance; income, grants, or donations; fund-raising activities; expenses; employees; employee

wages or salaries; or databases, including client lists. In addition, the organizations would have to be separately incorporated and maintain records demonstrating that the affiliate does not receive any economic or marketing benefit from the funded organization.

Further, the bill would strike a provision in current law that states that the prohibition on the use of federal funds that have been passed through the state treasury applies only to the extent that applying the prohibition does not result in the loss of any federal funds.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, the bill would have no fiscal impact on the state or local units of government. The bill could potentially lead to a redistribution of grants and contracts for family planning and pregnancy prevention services. The DCH will allocate $14.7 million for these types of services in fiscal year 2001-2002. (4-25-02)

ARGUMENTS:

For:

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 (1,959,727 in favor to 1,486,371 against) to prohibit public funds from being used to support abortions for recipients of welfare benefits, unless the life of the mother is at stake (see MCL 400.109a). In addition, the Social Welfare Act states, "a health care professional or health facility or agency shall not seek or accept reimbursement for the performance of an abortion knowing that public funds will be or have been used in whole or in part for the reimbursement in violation of (MCL 400.109a)" (see MCL 400.109e). By enacting this bill, the state will reinforce its policy that public funds are not used, either directly or indirectly, to provide and/or promote abortion and abortion related services.

Against:

Many believe that the bill 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 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.

Against:

Generally speaking, the bill is predicated upon the belief that an organization that is receiving funding for family planning programs is not providing neutral and factual information regarding abortion. In particular, many believe that Planned Parenthood clinics have a propensity to advocate in favor of abortion services, which is in clear violation of state and federal regulations. However, that general concern is not addressed in the bill. If the main concern is that public dollars are not being spent properly (that is, they are being expended on abortion services), then the bill should enact language requiring audits and penalties for those organizations that are not in compliance. Indeed, similar bills in Minnesota and Wisconsin would require that independent audits be conducted on organizations that receive family planning grants to ensure compliance. This bill, however, does not do that. Rather, it seeks to strip funding from those organizations that have proven and demonstrated their capability to provide men and women of the state with adequate reproductive health care and family planning services, not because they have been shown to be ineffective, or are no longer capable of providing the proper level of services, or are not complying with federal regulations, but rather simply because of their view of abortion rights. The bill automatically assumes that any organization that advocates for abortion rights or is affiliated with an

organization that advocates for abortion rights is not capable of providing a patient with unbiased information, as required pursuant to federal regulations.

Response:

Family planning programs are designed to reduce the number of unintended and unwanted pregnancies and, subsequently, reduce the number of abortions. However, organizations that provide abortions and advocate for abortion rights contradict the fundamental purposes of these family planning programs. By providing abortions and advocating for abortion rights, these groups increase the number of abortions. In this regard, state funds are not being spent in a manner consistent with the fundamental purpose of family planning programs. The priority funding mechanism accomplishes that goal and ensures that the state funds organizations that provide services that are consistent with the goals of family planning programs.

Against:

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.

Response:

The bill will not cut funds for family planning programs, nor will it jeopardize federal Title X funding. The bill only establishes a 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. So in this regard, the bill is no different that current practice.

Furthermore, there are several provisions in the bill that will ensure that the quality of services will not suffer as a result of the bill. First, the bill states that grants would be awarded in a manner that is reflective of the geographic and population diversity of the state. This ensures that grant recipients will be located throughout the state, and will not be concentrated in one area, leaving other areas of the state without any service provider. In addition, 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, and that the DCH would not provide family planning funds to an organization unless it demonstrates that it is capable of providing these services.

Against:

The provisions of the bill governing the determination of the independence of an applying entity from an affiliated entity that chooses to operate family planning (and abortion) services are more stringent than federal regulations for Title X funding recipients. It is common practice for many family planning providers who receive these funds and also provide abortion services 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.

Analyst: M. Wolf

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