

Legislative Analysis



INFORMED CONSENT LAW: REQUIRE ULTRASOUND

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4446 as enrolled

Public Act 77 of 2006

Sponsor: Rep. David Robertson

House Committee: Health Policy

Senate Committee: Health Policy

Second Analysis (1-25-07)

BRIEF SUMMARY: The bill would require, in certain circumstances, a woman undergoing an abortion to have the opportunity to view an ultrasound image of the fetus prior to the procedure.

FISCAL IMPACT: House Bill 4446 as enacted imposes a requirement on the Department of Community Health to maintain new information on the state's existing Informed Consent for Abortion Law Website regarding provider and clinic locations that offer free ultrasounds. This responsibility will require a modest amount of staff time annually to maintain and regularly update the list.

THE APPARENT PROBLEM:

The Public Health Code requires a physician to obtain a patient's written, freely given, and informed consent before performing an abortion, except in the case of a medical emergency. As part of the requirement that the patient's consent be informed, a physician must provide a patient who chooses to have an abortion with certain information at least 24 hours before performing the procedure, including medically accurate depictions and descriptions of a fetus and the specific procedure to be performed.

Though the law currently does not require a woman to receive an ultrasound examination prior to an abortion, many abortion providers do perform an ultrasound immediately before the procedure. Stories have surfaced, however, from women who have had abortions, women who have called crisis pregnancy centers about their experiences at abortion clinics, and women who have talked to abortion clinic workers that some clinics and physicians discourage their patients from viewing (or refuse to allow them to view) the active ultrasound image of their fetus during the ultrasound procedure.

Some people feel this practice goes against the spirit of the informed consent law, which aims to ensure that a woman considering having an abortion receives medically accurate information before the procedure is performed. Some believe that requiring a woman to have an opportunity to view the ultrasound, if one is performed before the procedure, will provide essential additional medical information for use in making an informed decision.

THE CONTENT OF THE BILL:

House Bill 4446 would amend the Public Health Code. If at any time prior to the performance of an abortion, a patient underwent an ultrasound examination, or a physician determined that ultrasound imaging would be used during the procedure, the bill would require the physician or qualified person assisting the physician to provide the patient with the opportunity to view or decline to view an active ultrasound image of the fetus. The physician or assistant would also have to offer to provide the patient with a physical picture of the ultrasound image of the fetus prior to the performance of the abortion.

Current law also requires the Department of Community Health to develop and maintain an Internet website that allows a patient considering an abortion to review the information required to be provided within the 24-hour informed consent time period. The bill would require a list of health care providers, facilities, and clinics that offer to perform ultrasounds free of charge to be included on the informed consent website. The list would have to be organized geographically and would have to include the name, address, and telephone number of each health care provider, facility, and clinic providing the free ultrasounds.

MCL 333.17015

ARGUMENTS:

For:

Under Michigan's informed consent law, a woman must receive certain medically accurate information 24 hours before undergoing an abortion procedure. The packet of information required to be reviewed is available at clinics providing abortions and also on the Department of Community Health website. Some people believe that information from an ultrasound examination would be an invaluable addition. Reportedly, most if not all abortion providers utilize an ultrasound to determine gestational age and may use it to guide them in the performance of the procedure. Yet, according to testimony offered before the House Health Policy Committee, abortion providers do not always offer to let the woman view the ultrasound image. In fact, some women reportedly were discouraged from viewing the image by clinic workers while other women were refused even when they asked to see the image; these women said ultrasound screens were deliberately turned away from their view.

The bill would address this concern by requiring a physician, if an ultrasound exam were performed prior to or during the procedure, to allow the woman to view the active ultrasound image of the fetus or offer to provide a physical picture (similar to a photograph) of the image. A woman would not have to view the image if she chose not to. Since most if not all providers already conduct an ultrasound examination as part of the abortion procedure, the bill should not have a negative economic impact on providers. Proponents say that such a change to the informed consent law would be beneficial for many reasons, including the following.

** Some clinics perform abortions on the basis of the results of a urine test alone. These tests can give false positives. There is anecdotal testimony to suggest that women, in some circumstances, have been given an abortion when there was no pregnancy. Requiring an ultrasound will give additional verification that the woman is pregnant and protect the health of a woman by ensuring she is not given an unnecessary procedure.

** For some women, seeing an active ultrasound helped them to make the appropriate choice for their situation. A woman may be so overwhelmed by an unintended or unplanned pregnancy that her immediate thoughts may be centered on getting out of the crisis and not on which overall decision is best for her. According to some women, seeing the ultrasound image gave them pause to think, to connect with the fetus, and to make the decision best for them.

** Some women who were denied the opportunity to view the ultrasound prior to their abortion procedure have reported going into a depression afterwards, suffering post traumatic stress disorder, and experiencing lingering remorse. In some circumstances, these events were triggered when they viewed an ultrasound image during a subsequent pregnancy or saw another woman's ultrasound picture of her fetus. Though some admitted not knowing whether viewing an ultrasound at the time would have altered the decision they made, all felt that important information was kept from them, and therefore their decision was not truly "informed." The bill could thus prevent some women from experiencing post-abortion distress.

** The bill fits with the intent of the informed consent law, which is to ensure that women receive accurate medical information. Physicians often show patients x-rays and ultrasound images of their broken bones or tumors about to be removed. There is no difference between that and giving a woman the chance to view an image of the fetus before the abortion procedure.

Response:

If the ultrasound and viewing was done either just prior to or after giving final consent for the abortion, and the woman changed her mind, it would be important that the woman not feel pressure to go ahead with the abortion because "everything is ready" for the procedure.

Also, the health code prohibits a physician from collecting payment for medical services provided to or planned for a patient prior to the expiration of the 24-hour informed consent period, but he or she can require payment in full any time after that time, including payment in full before the abortion procedure is performed. This would mean full payment would have been made before the ultrasound examination, too. Clear guidelines or requirements that providers refund the amount paid if a woman changed her mind as a result of viewing the ultrasound, minus a reasonable charge for the ultrasound, may be needed so that the woman doesn't feel unduly pressured to go ahead with the abortion since it was already paid for.

Against:

Critics say the bill is redundant. Women already are given medically accurate depictions of a fetus at the same or similar gestational age in the packet of information that is required to be reviewed during the 24-hour informed consent period.

Response:

A picture of the actual fetus a woman is carrying is more personal and more "accurate" than a drawing or a picture such as those in medical textbooks. And, according to committee testimony, seeing the fetus move can have a powerful impact as well. For some, the information provided by seeing the actual fetus is an important component of the decision-making process.

Against:

Rather than legislating medical care, the state should do more to prevent unintended pregnancies in the first place. For example, it could be helpful, as part of the information that must be provided to a woman before an abortion, to provide information on family planning that includes all FDA-approved methods of contraception (including natural family planning). Also of benefit would be a list of family planning providers that receive state or federal funding to provide such services.

A proactive approach that would improve access to health care and family planning, expand insurance coverage of contraceptives, and increase education to adolescents about making responsible decisions, including comprehensive abstinence plus education, will do more for reducing unintended pregnancies and abortions than efforts that could be construed as having emotional overtones or creating obstacles to a legal procedure.

Response:

Current law does not restrict family planning clinics and abortion providers from giving clients information on all FDA-approved methods of contraception. Why should legislation be needed to require those offering family planning services to give comprehensive information? They should be providing this information as a normal and expected component of the services they provide.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Susan Frey

■ 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.