

# Legislative Analysis



## PROHIBIT STATE FUNDS TO ENTITIES PROVIDING ELECTIVE ABORTIONS

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**House Bill 4145 as introduced**  
**Sponsor: Rep. Thomas Hooker**  
**Committee: Appropriations**

Analysis available at  
<http://www.legislature.mi.gov>

**Complete to 1/26/2016**

### SUMMARY:

House Bill 4145 as introduced would amend PA 360 of 2002 to prohibit the allocation of state funds from any state department or agency through a grant or contract to an entity that engages in any of the following activities:

- 1) Performing elective abortions or allowing performance of elective abortions within a facility owned or operated by the entity.
- 2) Referring a pregnant woman to an abortion provider for an elective abortion.
- 3) Adopting or maintaining a policy in writing that elective abortion is considered part of a continuum of family planning or reproductive health services, or both.

The bill would amend and supersede existing provisions which established a procedure to favor granting of state funds for family planning and pregnancy prevention services to entities that do not engage in the above activities or that engage in the least number of the above activities.

The bill would amend MCL 333.1091, by adding section 2.

### FISCAL IMPACT:

The bill would potentially impact expenditures by the Department of Health and Human Services.

For public health family planning and pregnancy prevention programs, the bill would not affect current grants and allocations. Current law and recently enacted budget boilerplate<sup>1</sup> for FY 2015-16 have had the effect of eliminating the allocation of state funds for these programs to entities that provide abortion services in Michigan. In FY 2015-16 \$9.0 million is appropriated for public health family planning and pregnancy prevention programs, of which \$392,300 are state funds. Currently, no state funds are granted to entities that provide abortions.

For Medicaid programs and services, based on early experience from other states, the fiscal impact of this bill would appear to hinge on the outcome of likely legal disputes

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<sup>1</sup> Section 1303, Article X, Public Act 84 of 2015

regarding the bill's provisions. Medicaid is a federal/state cost-shared program, and the bill would affect payment of the state share of health care costs for Medicaid eligible services (such as family planning or physician services) obtained by beneficiaries from entities that provide abortions.

Other states have attempted to prohibit providers of elective abortion services from enrolling as Medicaid providers, but the most common response from the courts has been to issue an injunction on implementing the provisions in that bill/executive action.<sup>2</sup> The federal government and the courts have noted that those bills/executive actions violate a Medicaid beneficiary's federal statutory right, under Sec. 1902(a)(23) of the federal Social Security Act, to obtain medical services from any provider qualified to perform the services required.<sup>3</sup> These cases are still in the appeals process.

If the courts allowed the provisions of this bill to take effect, then the fiscal impact of this bill would depend on the degree to which Medicaid beneficiaries are able to receive these medical services from other nearby enrolled Medicaid providers. If they were not able to receive the services, state expenditures would be reduced.

If the court determined the provisions of this bill violated federal law, then this bill may have a significant state fiscal cost to fully support Medicaid eligible services (such as family planning or physician services) without the availability of federal Medicaid matching funds.

Note: This analysis should be considered preliminary and may not reflect all legal and fiscal implications of the bill.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

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<sup>2</sup> For additional information:

[http://www.csg.org/pubs/capitolideas/enews/issue71\\_3.aspx](http://www.csg.org/pubs/capitolideas/enews/issue71_3.aspx)

[http://www.nola.com/politics/index.ssf/2016/01/planned\\_parenthood\\_brief\\_filed.html](http://www.nola.com/politics/index.ssf/2016/01/planned_parenthood_brief_filed.html)

<sup>3</sup> For example please see:

[http://www.politico.com/static/PPM169\\_110601\\_indiana\\_letter.html](http://www.politico.com/static/PPM169_110601_indiana_letter.html)

[http://www.lamd.uscourts.gov/sites/default/files/opinions/15cv565PlannedParentHood\\_10-18-2015.pdf](http://www.lamd.uscourts.gov/sites/default/files/opinions/15cv565PlannedParentHood_10-18-2015.pdf)