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Bill Analysis
Legislative Service Commission

Sub. H.B. 239

126th General Assembly
(As Passed by the House)

Reps. Schneider, Reidelbach, Brinkman, Faber, Seitz, Kearns, Flowers, Hood, Aslanides, Blessing, Bulp, Buehrer, Coley, Collier, Combs, Daniels, DeGeeter, Distel, Dolan, Domenick, Driehaus, Fessler, Garrison, Gibbs, Gilb, Hagan, Hoops, Kilbane, Latta, Law, Martin, McGregor, Oelslager, T. Patton, Raga, Raussen, Reinhard, Schaffer, Seaver, Setzer, G. Smith, Taylor, Trakas, Uecker, Wagner, Wagoner, Walcher, J. White, Widener, Widowfield, Willamowski, Wolpert, Calvert, Cassell, Core, D. White, Schlichter

BILL SUMMARY

- Declares that it is the public policy of the state to prefer childbirth over abortion to the extent that is constitutionally permissible.
- Modifies the law limiting the use of public funds to pay for an abortion.
- Prohibits the use of funds appropriated for genetics services programs for counseling or referral for an abortion, except in the case of a medical emergency.
- Allows any person to seek a court order enjoining a health care facility that is required to be licensed from operating without a license.

CONTENT AND OPERATION

Public policy of the state to prefer childbirth over abortion

(R.C. 9.041)

The bill states that it is the public policy of the state of Ohio to prefer childbirth over abortion to the extent that is constitutionally permissible.

Public funding of abortion

(R.C. 5101.55 and 5101.56)

The bill modifies the circumstances under which public funds, including Medicaid funds, may be used to pay for abortion services. Under it, a physician may not be reimbursed or paid with state or local funds for performing an abortion unless payment or reimbursement is required by federal law¹ or one of the following circumstances exists:

(1) The woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed;

(2) The pregnancy was the result of an act of rape and the patient, the patient's legal guardian, or the person who made the report to the law enforcement agency, certifies in writing that a report was filed prior to the performance of the abortion with a law enforcement agency having the requisite jurisdiction, unless the patient was physically unable to comply with the reporting requirement and that fact is certified by the physician performing the abortion;

(3) The pregnancy was the result of an act of incest and the patient, the patient's legal guardian, or the person who made the report certifies in writing that a report was filed prior to the performance of the abortion with either a law enforcement agency having the requisite jurisdiction, or, in the case of a minor, with a county children services agency, unless the patient was physically unable to comply with the reporting requirement and that fact is certified by the physician performing the abortion.

Public funds may not be used to pay or reimburse for services associated with an abortion if the abortion itself does not qualify for payment or reimbursement. These associated services include anesthesia, laboratory tests, and hospital services.

The limitation on the use of public funds does not serve to deny reimbursement or payment for drugs or devices to prevent implantation of the fertilized ovum or for medical procedures for the termination of an ectopic pregnancy. Also, the requirements do not apply to abortions that are treatments for incomplete, missed, or septic abortions.

¹ *The bill provides that federal law means the U.S. Constitution or a federal statute, regulation, or decision of a federal court (R.C. 5101.56).*

Physician certification

When seeking payment or reimbursement for performing an abortion, a physician must submit a written certification form to the relevant government agency. The physician must certify the circumstances under which the abortion was performed, as described above. The physician must retain any documents supporting the claim for payment or reimbursement as part of the patient's medical record.

Enforcement

The bill states that if its requirements would adversely affect eligibility for participation in a federal program, the requirements are to be enforced to the extent permissible without preventing participation in that federal program.

Use of genetics services funds to counsel or refer for abortion

(R.C. 3701.511)

Current law requires the Department of Health to administer certain genetics services programs, including the newborn screening program. An uncodified provision of Am. Sub. H.B. 66, the current biennial budget bill, prohibited the use of funds appropriated to administer the genetics services programs to counsel or refer for abortion, except in the case of a medical emergency. The bill makes this prohibition part of continuing law governing the administration of the genetics services programs.

Private action to enjoin operation of unlicensed health care facilities

(R.C. 3702.32 (not in the bill) and 3702.33)

Under current law, a health care facility² is required to obtain a license to operate from the Department of Health.³ The license signifies that the facility meets the quality standards and informed consent requirements adopted by the Department in rules. If the Department determines that a facility is operating

² "Health care facility" means an ambulatory surgical facility, freestanding dialysis center, freestanding inpatient rehabilitation facility, freestanding birthing center, freestanding radiation therapy center, or freestanding or mobile diagnostic imaging center (R.C. 3702.30).

³ Certain freestanding birthing centers are exempted from the licensure requirement, in particular, centers operated by a religious denomination, sect, or group that meets requirements specified in statute (R.C. 3702.301).

without a license, the Director of Health is required to take one of the following actions:

- (1) Provide an opportunity for the health care facility to apply for a license within a specified time, not exceeding 30 days after the date of the facility's receipt of the order;
- (2) Issue an order that the health care facility cease its operations;
- (3) Issue an order that prohibits the health care facility from performing certain types of services;
- (4) Impose a civil penalty of not less than \$1,000 and not more than \$250,000 on the health care facility for operating without a license;
- (5) Impose an additional civil penalty of not less than \$1,000 and not more than \$10,000 for each day the health care facility operates without a license.

If a health care facility continues to operate despite the Director's action, the Director may petition the court of common pleas in the county in which the facility is located for an injunction enjoining the facility from operating or providing certain services.

The bill allows any person to petition a court of common pleas in the county in which the facility is located for an order enjoining operation of the facility if the person believes the facility is operating without a license. On a showing that the facility is operating without a license, the court must grant the order.

HISTORY

ACTION	DATE
Introduced	05-04-05
Reported, H. Health	12-06-06
Passed House (68-25)	12-07-06

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