



**House
Legislative
Analysis
Section**

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MEDICAID FUNDED ABORTIONS

**House Bill 5458 as enrolled
Public Act 124 of 1996
Second Analysis (10-15-96)**

**Sponsor: Rep. Michelle McManus
House Committee: Human Services
Senate Committee: Families, Mental
Health, and Human Services**

THE APPARENT PROBLEM:

Congress ended federal funding for Medicaid abortions in 1976, and in 1977 the U.S. Supreme Court issued a decision that left the question of whether to provide public funds for abortion, or to limit the use of funds to abortions performed for certain reasons, in the hands of the states. The court ruled, in *Maher v. Roe, et. al.* (1977) that, although the Constitution guarantees a woman the right, subject to certain time conditions, to choose abortion as the means a terminating a pregnancy for any reason, the equal protection clause does not require a state participating in the federal Medicaid program to pay the expenses incident to non-therapeutic abortions for indigent women simply because it had chosen to pay expenses incident to childbirth. In 1980, the supreme court upheld the constitutionality of a restriction on federal funding for Medicaid abortions in *McRae v. Califano* (1980), noting that Medicaid abortions could continue in states that paid for them out of state funds. Michigan continued to fund Medicaid abortions out of state funds until 1987, when the Right to Life Initiative Proposal resulted in a prohibition on Medicaid payments for abortions unless an abortion was necessary to save the mother's life.

As a result of the Right to Life Initiative Proposal, the Social Welfare Act currently specifies that "it is the policy of this state to prohibit the appropriation of public funds for the purpose of providing an abortion to a person who receives welfare." Recently, however, the Right to Life of Michigan organization discovered an apparent loophole in Michigan's prohibition against Medicaid-funded abortion. Reportedly, primary care physicians in health maintenance organizations (HMOs) frequently refer pregnant Medicaid patients for pregnancy or ultrasound tests to clinics that specialize in obstetrics and prenatal care. However, some of these clinics -- often referred to as "family planning" clinics -- also provide abortion services, and, should the Medicaid patient who has been referred to them decide at some point during her pregnancy to have an abortion, the clinic would provide

this option. According to Right to Life, the clinic -- which is under contract with the HMO -- bills the HMO for the pregnancy tests and charges the patient \$50 for the abortion procedure. The clinic can charge the patient this reduced rate, because it is, in effect, subsidized by the HMO, and, ultimately, by Medicaid. In order to end this practice, legislation has been proposed that would penalize physicians and HMOs who accepted Medicaid payments to perform abortions.

THE CONTENT OF THE BILL:

The bill would amend the Social Welfare Act to prohibit a health care professional, or a health facility or agency, from accepting reimbursement for performing a publicly funded abortion. The bill would define "abortion" to mean 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; abortion would not include the use or prescription of a drug or device intended as a contraceptive.

Prohibition. Under the bill, health care professionals and health facilities and agencies that were licensed or registered under the Public Health Code would be prohibited from seeking or accepting reimbursement to perform an abortion if they knew that public funds would be -- or had been -- used, in whole or in part, for the reimbursement. A person who violated this provision would be liable for a civil fine of up to \$10,000 per violation. In addition, the Department of Community Health would be required to investigate an alleged violation of this provision and the attorney general, in cooperation with the Department of Community Health, could bring an action to enforce the prohibition.

The bill would specify that its provisions did not restrict the right of a health care professional to discuss abortion

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or abortion services with a pregnant patient, that it did not create a right to an abortion, and that a person could not perform an abortion that was prohibited by law.

Legislative Findings The bill would specify the legislative finding that the people of Michigan have clearly rejected the use of Medicaid fund for elective abortions, as indicated by the Right to Life Initiative Proposal, enacted as Public Act 59 of 1987 and sustained by the state supreme court; that the prohibition specified in the bill is necessary to clarify and enforce this finding, in light of evidence that abortion providers, in conjunction with third party payors, may have devised and implemented plans to reimburse services in violation of the intent of Public Act 59; and that any practice of separating or "unbundling" services directly related to the performance of an abortion in order to seek Medicaid reimbursement, with those funds thereby subsidizing, in whole or in part, the cost of the abortion, is an inappropriate use of taxpayer funds.

The bill would also specify that, in recognition of the fact that certain services relating to performing an abortion could also be part of legitimate and routine obstetric care, the prohibition specified under the bill should not be construed to affect diagnostic testing or other nonabortion procedures; that only physicians who actually performed abortions, and particularly those who performed abortions but didn't provide prenatal care or obstetric services, should view themselves as potentially affected by the prohibition specified under the bill; and that unacceptable requests for reimbursement would include those services that would not have been performed but for the preparation and performance of a planned or requested abortion.

MCL 400.109d and 400.109e

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no impact on state funds, since the state does not pay for abortions. (10-15-96)

ARGUMENTS:

For:

As has been pointed out by the Right to Life of Michigan organization, once a patient is pregnant, it is too late for family planning services, and there is therefore no reason for Medicaid patients to be referred to family planning clinics. By providing penalties for these practices, House Bill 5458 would acknowledge this point and preempt those who would circumvent the law by billing HMOs for "pregnancy-related" services.

Against:

The practice described by Right to Life of Michigan clearly violates the ban on Medicaid funding of abortion and could be prosecuted as Medicaid fraud. As state Medicaid officials have taken steps to investigate and correct the situation, the bill is not needed.

Analyst: R. Young

■ 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.