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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 182  
133<sup>rd</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Rep. Becker

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### SUMMARY

- Generally prohibits health plan issuers from providing coverage for nontherapeutic abortions.
- Defines “nontherapeutic abortion” as an abortion that is performed or induced when the life of the mother would not be endangered if the fetus were carried to term, and includes drugs or devices used to prevent the implantation of a fertilized ovum.
- Excludes from the definition of “nontherapeutic abortion” (1) a procedure for an ectopic pregnancy that is intended to reimplant the fertilized ovum into the pregnant woman’s uterus, and (2) a procedure, in an emergency situation, that is medically necessary to save the pregnant woman’s life.
- Expands, through the change to the definition of nontherapeutic abortion, the reach of existing prohibitions and limitations imposed on public hospitals, the use of state funds and federal funds and materials, and state and political subdivision payment of health coverage for officials and employees.
- Prohibits a health insuring corporation from providing coverage for a nontherapeutic abortion under any policy, contract, or agreement that is issued, delivered, or renewed in this state.
- Prohibits a sickness and accident insurer and a public employee benefit plan from providing coverage for a nontherapeutic abortion under any policy of individual or group sickness and accident insurance or under any public employee benefit plan.
- Repeals a provision that allows the state or any political subdivision to pay for a health care plan that offers a rider on an individual basis for nontherapeutic abortion coverage, as long as the plan beneficiary pays for all associated expenses.
- Alters the prohibition against using state or local funds to pay for or reimburse an abortion if the abortion is *not* a nontherapeutic abortion and the physician certifies that

fact and certifies the abortion is necessary because the woman is in danger of dying because of a physical condition unless an abortion is performed.

- Repeals exceptions to the prohibition against state or local funds to pay for or reimburse an abortion to allow such payment or reimbursement for rape and incest that has been certified.
- Repeals a provision providing that nothing in the law regarding public funds and abortion denies reimbursement for drugs or devices to prevent implantation of the fertilized ovum, or for medical procedures for the termination of an ectopic pregnancy.
- Provides that the bill's provisions apply to policies, contracts, agreements, and plans that are issued, delivered, modified, or renewed on or after its effective date.

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## **DETAILED ANALYSIS**

### **Overview**

The bill generally prohibits health plan issuers, such as health insuring corporations, sickness and accident insurers, and public employee benefit plans from covering nontherapeutic abortions. The bill also changes the definition of nontherapeutic abortion to expand what is considered a nontherapeutic abortion with the effect of expanding the reach of existing prohibitions and limitations imposed on public hospitals, the use of state funds and federal funds, and the state and political subdivision payment of health coverage for officials and employees. Finally, the bill removes rape or incest as exceptions to the prohibition against state or local funds being used to pay for abortions.

### **Expansion of “nontherapeutic abortion”**

The bill expands what is considered a “nontherapeutic abortion” under continuing Ohio law and for purposes of the bill by defining it as an abortion that is performed or induced when the life of the mother would not be endangered if the fetus were carried to term, and includes drugs or devices used to prevent the implantation of a fertilized ovum. The term is defined to exclude: (1) a procedure for an ectopic pregnancy that is intended to reimplant the fertilized ovum into the pregnant woman’s uterus, and (2) a procedure, in an emergency situation, that is medically necessary to save the pregnant woman’s life.

Under existing law, a nontherapeutic abortion is defined as an abortion that is performed or induced when (1) the life of the mother would not be endangered if the fetus were carried to term or (2) the pregnancy of the mother was not the result of rape or incest reported to a law enforcement agency. The bill removes the rape or incest condition under (2) from the definition.<sup>1</sup>

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<sup>1</sup> R.C. 9.04(A)(1) and (B), 1739.05, 1751.95(C), 3923.591(C) and 5101.56; R.C. 3701.034 and 3727.60, not in the bill.

## Health insuring corporation coverage prohibition

Under the bill, a health insuring corporation cannot provide coverage for a nontherapeutic abortion under any policy, contract, or agreement that is issued, delivered, or renewed in Ohio.<sup>2</sup> However, this prohibition is not to be interpreted as prohibiting coverage, or enabling an insurer to deny coverage, for the treatment of any postabortion complication.<sup>3</sup>

## Health coverage provider prohibition

Under the bill, a sickness and accident insurer and a public employee benefit plan cannot provide coverage for a nontherapeutic abortion under any policy of individual or group sickness and accident insurance or under any public employee benefit plan.<sup>4</sup> However, this prohibition is not to be interpreted as prohibiting coverage, or enabling an insurer to deny coverage, for the treatment of any postabortion complication.<sup>5</sup> The bill also requires a multiple employer welfare arrangement that operates a group self-insurance program to comply with the sickness and accident insurer and public employee benefit plan prohibition regarding nontherapeutic abortions.<sup>6</sup>

## Publicly funded health coverage prohibition

The bill makes changes to the continuing law prohibition against expending state or political subdivision funds for nontherapeutic abortion health care coverage. The prohibition specifies that those funds cannot be expended directly or indirectly to pay the costs, premiums, or charges associated with a policy, contract, or plan if it provides coverage, benefits, or services related to a nontherapeutic abortion.<sup>7</sup>

First, by expanding the definition of what is considered a nontherapeutic abortion (see **“Expansion of nontherapeutic abortion,”** above), the bill expands the prohibition to the newly included drugs, devices, and procedures.

Second, the bill repeals an exception to the prohibition that allows the state or any political subdivision to pay for a health care plan that offers a rider or other provision on an individual basis for nontherapeutic abortion coverage, as long as the employee pays all associated expenses with the rider or provision. This applies to elected or appointed officials or employees of the state or any political subdivision. Associated expenses include all costs,

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<sup>2</sup> R.C. 1751.95(A).

<sup>3</sup> R.C. 1751.95(B).

<sup>4</sup> R.C. 3923.591(A).

<sup>5</sup> R.C. 3923.591(B).

<sup>6</sup> R.C. 1739.05(B).

<sup>7</sup> R.C. 9.04(B).

premiums, or charges associated with the rider or provision, including all administrative expenses related to the rider or provision and any claim made for a nontherapeutic abortion.<sup>8</sup>

## Public funds for abortion prohibition

The bill amends the current law prohibition against using state or local funds for payment or reimbursement of an abortion except under certain circumstances. Under the bill, state and local funds cannot be used to pay for or reimburse an abortion unless (1) the U.S. Constitution or a federal law or court decision requires the payment or reimbursement or (2) the abortion is *not* a nontherapeutic abortion, and the physician certifies that fact, and also certifies that the abortion is necessary because the woman has a physical illness, injury, disorder, or condition that put her in danger of dying unless an abortion is performed.<sup>9</sup> The bill also requires the documentation supporting the physician's certification must be maintained by the physician in the recipient's medical record.<sup>10</sup>

Under current law, state and local funds cannot be used for an abortion unless the U.S. Constitution/federal law or court decision exception applies (described above) or unless one of the following circumstances occurred:

1. The woman has a physical illness, injury, disorder, or condition that, as certified by the physician, puts her in danger of dying unless an abortion is performed.
2. The pregnancy was the result of rape, reported to a law enforcement agency as provided in the law, unless the patient was physically unable to report and the physician certified that fact.
3. The pregnancy was the result of incest, reported to a law enforcement agency or a county children services agency in the case of a minor, unless the patient was physically unable to report and the physician certified that fact.

Current law also requires the physician to certify that one of the three circumstances described above occurred and that the abortion was necessary because of one of those three circumstances. With respect to circumstances (2) and (3), the physician also must certify that:

- The patient, patient's legal guardian, or reporting person certified in writing that a law enforcement report was made about the rape or incest (which the law requires the physician to keep a copy of the certification in the patient's medical record); and
- The patient was physically unable to comply with the law enforcement reporting requirement.

The bill repeals all of the three circumstances as well as the certification requirements for circumstances (2) and (3). The bill also eliminates the requirement for the physician to

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<sup>8</sup> R.C. 9.04(C).

<sup>9</sup> R.C. 5101.56(A)(1), (B), and (C).

<sup>10</sup> R.C. 5101.56(E).

retain the law enforcement report certification made by the patient, legal guardian, or reporting person.<sup>11</sup>

## Coverage for drugs or devices

In conjunction with the change to the definition of nontherapeutic abortion (see **“Expansion of nontherapeutic abortion,”** above),<sup>12</sup> the bill repeals an existing law provision providing that nothing in the public funds for abortion prohibition denies reimbursement for drugs or devices to prevent implantation of the fertilized ovum, or for medical procedures for the termination of an ectopic pregnancy.<sup>13</sup>

## Public hospital and funding grant prohibition

By expanding the definition of what is considered a nontherapeutic abortion (see **“Expansion of nontherapeutic abortion,”** above), the bill expands the following prohibitions to the newly included drugs, devices, and procedures:

- The prohibition on public hospitals against (1) entering into transfer agreements with ambulatory surgical facilities that perform nontherapeutic abortions, and (2) authorizing a physician to use staff membership or professional privileges at the hospital as a substitute for or alternative to a written transfer agreement “for purposes of a variance application . . . submitted to the director of health by an ambulatory surgical facility in which nontherapeutic abortions are performed or induced.”<sup>14</sup>
- The prohibition against providing grants, funds, and materials received from federal or state programs to be used by the Ohio Department of Health for any of the following purposes: (1) perform nontherapeutic abortions, (2) promote nontherapeutic abortions, (3) contract with any entity that performs or promotes nontherapeutic abortions, (4) become or continue to be an affiliate of any entity that performs or promotes nontherapeutic abortions.<sup>15</sup>

## Applicability

The bill provides that its provisions apply to policies, contracts, agreements, and plans that are issued, delivered, modified, or renewed on or after the bill’s effective date.<sup>16</sup>

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<sup>11</sup> R.C. 5101.56(B), (C), and (E).

<sup>12</sup> R.C. 5101.56(A)(1) and (F) and 9.04(A)(1).

<sup>13</sup> R.C. 5101.56(F).

<sup>14</sup> R.C. 3727.60, not in the bill.

<sup>15</sup> R.C. 3701.034, not in the bill.

<sup>16</sup> Section 3.

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## COMMENT

Ohio Constitution, Article I, Section 21(B) provides that no “federal, state, or local law or rule shall prohibit the purchase or sale of health care or health insurance.” Certain provisions of the bill prohibit the provision of health coverage for nontherapeutic abortions.<sup>17</sup> It is not clear what impact this constitutional provision has on the bill, since the provision has not yet been construed by a court.

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## HISTORY

Action	Date
Introduced	04-03-19

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H0182-I-133/ec

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<sup>17</sup> R.C. 1739.05, 1751.95, and 3923.591.