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Office

S.B. 157
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Reported by House Families, Aging and Human Services

Primary Sponsors: Sens. Johnson and S. Huffman

Local Impact Statement Procedure Required: No

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Highlights

- The Ohio Department of Health (ODH) will experience an increase in costs to develop a child survival form and compile the information received into an annual report.
- ODH may also experience a minimal increase in costs to review additional compliance materials for variances from written transfer agreements.
- Public hospitals could experience an increase in costs to complete the required forms and reports if an abortion is performed or attempted in which a child is born alive at the facility. However, only a small percentage of abortions are performed in hospitals and the majority of those are due to medical emergencies, so the impact is anticipated to be minimal.
- It is expected that violations of the bill's requirements will be infrequent, which means that there should be no discernible ongoing effect on the criminal and civil caseloads and related annual operating costs of common pleas courts.
- The State Medical Board may realize an increase in costs as a result of investigations and disciplinary actions related to the bill's provisions.

Detailed Analysis

Child survival form

The bill requires the Director of Health to develop a child survival form to be submitted to the Ohio Department of Health (ODH) each time a child is born alive after an abortion or attempted abortion. The bill specifies certain information that is to be included on the form. The attending physician who performed or attempted an abortion in which a child was born alive is required to complete the child survival form. The physician must submit the form to ODH no later

than 15 days after the woman is discharged from the facility. The form is required to be made part of the medical record maintained for the woman by the facility in which the abortion was performed or attempted.

The bill requires each facility in which an abortion is performed or attempted and in which a child was born alive to submit monthly and annual reports to ODH listing the total number of women on whom an abortion was performed or attempted at the facility in which a child was born alive, delineated by the type of abortion procedure that was performed or attempted. The facility must submit the annual report after the end of the state's fiscal year. Each monthly or annual report must be submitted not later than 30 days after the end of the applicable reporting period.

Fiscal effect

ODH will experience an increase in costs to develop the child survival form and make the form available to providers. Public hospitals could experience an increase in costs to complete the required forms and reports if an abortion is performed or attempted in which a child is born alive at the facility. However, only a small percentage of abortions are performed in hospitals, so the number of forms that would be required to be completed is anticipated to be small.

Department of Health annual reports

The bill requires ODH, no later than October 1 of each year, to issue a report regarding data that it has received in the previous year through the submission of abortion facility child reports described above. At a minimum, the annual report must specify the number of women on whom an abortion was performed or attempted and in which a child was born alive after that event, delineated by the type of abortion procedure performed or attempted and the facility in which the procedure was performed or attempted.

Fiscal effect

ODH will experience an increase in costs to compile the information and to issue the required annual report.

Post-birth care

The bill also requires a physician who performs or attempts an abortion in an ambulatory surgical facility or other location that is not a hospital and in which a child is born alive to immediately take the following steps upon the child's birth: (1) provide post-birth care to the newborn in accordance with prevailing and acceptable standards of care, (2) call for assistance from an emergency medical services provider, and (3) arrange for the transfer of the newborn to a hospital. A physician who fails to comply with this requirement is subject to disciplinary action by the State Medical Board.

Fiscal effect

These provisions may result in an increase in post-birth care costs for public health insurance programs and increase the use of emergency medical services. Additionally, the State Medical Board may incur costs if any violations occur. Any associated costs would depend on the number of instances in which this occurs.

Penalties

Criminal penalties

The bill expands the crime of abortion manslaughter to include purposely failing to take measures to preserve the health or life of a child who is alive when removed from the uterus of a pregnant woman, a violation of which is a felony of the first degree. Additionally, the bill establishes new criminal offenses for failure to render medical care to an infant born alive, a first degree felony, if the child survives notwithstanding the person's failure to take the required measures under law.

Under current law, unchanged by the bill, for a first degree felony, there is a presumption for an indefinite prison term the minimum of which is 3, 4, 5, 6, 7, 8, 9, 10, or 11 years and the maximum is 50% greater than the minimum sentence, a fine of up to \$20,000, or both. The average time served for those committing a first degree felony and released in calendar year (CY) 2016 was 7.62 years.

The bill specifies that a person who purposely fails to comply with the child survival form or abortion facility report submission requirements is guilty of a third degree felony. Under current law, unchanged by the bill, for a third degree felony, the court may impose a definite prison term of 9, 12, 18, 24, 30, or 36 months, a fine of up to \$10,000, or both. The average time served for those committing a third degree felony and released in CY 2016 was 2.09 years.

Civil penalties

The bill authorizes: (1) a woman on whom an abortion is performed or attempted to file a lawsuit against a person who commits abortion manslaughter, and (2) a woman on whom an abortion is performed or attempted to file a civil lawsuit against a person that purposely fails to comply with either the bill's child survival form or report submission requirements.

Fiscal effect

It is likely that violations of the bill's requirements will be few and infrequent, in particular in the case of physicians who would essentially be at risk of personal liability by exposing themselves to the possibility of a criminal prosecution, civil action, and investigation by the State Medical Board. This suggests that there should be no discernible ongoing effect on the criminal and civil caseloads and related annual operating costs of common pleas courts, which are likely to adjudicate such matters. The marginal annual cost of adding an offender to the prison system administered by the Department of Rehabilitation and Correction is around \$4,000. Additionally, it is possible that the State Medical Board may realize an increase in costs if it receives any questions regarding the bill's provisions, investigates or takes disciplinary action in any cases, or if it provides any education to physicians regarding these requirements.

Variances from written transfer agreements

The bill adds the following limitations to existing law governing variances from written transfer agreements for ambulatory surgical facilities (ASF): (1) the consulting physician does not teach or provide instruction at a medical school or osteopathic medical school affiliated with a state university or college, any state hospital, or other public institution, and (2) the physician is not employed by or compensated pursuant to a contract with, and does not provide instruction or consultation to the previously mentioned entities. The bill requires an ASF with an existing variance to demonstrate compliance with the bill's limitations within 90 days of the effective

date, or the variance is rescinded. The bill also prohibits a consulting physician from engaging in any of the activities mentioned previously while serving as a consulting physician for an ASF with an approved variance; the Director of Health is required to rescind the variance if there are any violations.

Fiscal effect

ODH may experience an increase in costs to review additional compliance materials for variances. Costs will likely be minimal.