



OHIO LEGISLATIVE SERVICE COMMISSION

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Fiscal Note & Local Impact Statement

Bill: H.B. 493 of the 131st G.A.

Date: December 6, 2016

Status: As Passed by the Senate

Sponsor: Reps. Sears and Ryan

Local Impact Statement Procedure Required: No

Contents: To make changes to the child abuse and neglect reporting law, to generally prohibit an abortion of an unborn human individual with a detectable heartbeat, to create the Joint Legislative Committee on Adoption Promotion and Support, and to make an appropriation

State Fiscal Highlights

- The bill permits a single child abuse or neglect report to be made by a health care professional in cases in which more than one professional has provided services to a child. As a result, there might be a minimal decrease in administrative costs to state government agencies employing these health care professionals.
- **Department of Medicaid.** The Medicaid Program pays abortion costs for enrollees in cases involving life endangerment, incest, and rape. The bill could result in fewer abortions. If this occurs, abortion costs for the Medicaid Program would decrease. However, there could be an increase in birth-related costs. According to the Department of Medicaid, the Medicaid Program paid for six abortions in FY 2014.
- **Department of Health.** The Department of Health may realize an increase in costs to inspect the medical records from any facility that performs abortions to ensure that individuals who perform abortions are in compliance with the reporting requirements of the bill.
- **State Medical Board.** The State Medical Board could experience an increase in administrative and possible investigative costs related to the bill. However, it is assumed that the number of violators would be small. Thus, any increase in costs would likely be minimal.
- **Department of Job and Family Services.** The bill appropriates \$100,000 in fiscal year 2017 to GRF line item 600528, Adoption Services (State).

Local Fiscal Highlights

- The bill permits a single child abuse or neglect report to be made by a health care professional in cases in which more than one professional has provided services to a child. As a result, there might be a minimal decrease in administrative costs to local government agencies employing these health care professionals.

- **Local courts.** As a result of any violations, additional felony criminal cases may be generated for county criminal justice systems to process, potentially increasing the costs to investigate, prosecute, adjudicate, and sanction violators. However, the court could impose court costs and fines to be paid by violators to help offset some of these costs.
 - **Local courts.** It is also possible that additional civil cases may be generated for county municipal or common pleas courts. However, the courts could impose court costs to help offset some of these costs.
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Detailed Fiscal Analysis

The bill makes changes to Ohio's child abuse and neglect reporting law. These changes focus primarily on reporting and other related actions by health care professionals. The bill also generally prohibits an abortion of an unborn human individual with a detectable heartbeat, creates the Joint Legislative Committee on Adoption Promotion and Support, and makes an appropriation.

Single reporting by health care professionals

The bill provides that if two or more health care professionals, after providing health care services to a child, determine or suspect a child has been or is being abused or neglected, the professionals may designate one of them to report the abuse or neglect. This single report would meet the mandatory reporting requirement. There might be a minimal decrease in administrative costs to state and local government agencies employing these health care professionals if only one report is necessary.

Information in follow-up reports

The bill provides that any written, follow-up report requested by a public children services agency (PCSA) or municipal or county peace officer may include any medical examinations, tests, or procedures regarding the child reported to be abused or neglected or the child's siblings or other children. Under current law, the written report must include the names and addresses of the child and child's parents or the person having custody of the child, if known; the child's age and nature of the child's injuries, abuse, or neglect; and any other information that would be helpful in establishing the cause of the injury, abuse, or neglect. The bill requires that any additional reports of medical examinations, tests, or procedures by a mandatory reporter that become available after initial reports were provided must be provided to the PCSA upon its request. The Ohio Children's Hospital Association anticipates that this provision will have no fiscal impact.

Medical examinations, tests, procedures, and other actions

The bill provides that a mandatory reporter, after making a report, if medically necessary for diagnosing or treating injuries that are suspected to have occurred as a result of abuse or neglect, may perform or cause to be performed radiological examinations and any other medical examinations of, and tests or procedures on, the child. The bill also requires the results of such tests to be included in the child abuse report required by the professional. Under current law, a mandatory reporter may only do the following: (1) take or order color photographs of areas of visible trauma on the child and (2) if medically indicated, cause to be performed radiological examinations on the child.

The bill adds that a health care professional may conduct medical examinations, tests, or procedures on the siblings of, or other children who reside in the same home as, a child who is the subject of a mandatory report. These examinations may be conducted if the professional determines that they are medically necessary to diagnose or treat the siblings or other children in order to determine whether mandatory reports are required for the siblings or other children. The results of these examinations, tests, or procedures may be included in a report about the child who is the subject of the mandatory report.

The bill adds that a health care professional that provides health care services in a hospital, children's advocacy center, or emergency medical facility to a child who is the subject of a mandatory report may take any steps reasonably necessary to release or discharge the child to an appropriate environment. The bill provides that a health care professional's ability to discharge a child who is the subject of a mandatory report does not alter the responsibilities of any person under Ohio's laws for filing a complaint involving a child in juvenile court or taking a child into custody.

Fiscal impact

According to the Ohio Children's Hospital Association, these provisions are codifying current best practice standards. As such, there should be no fiscal impact associated with these provisions.

Abortion prohibition and fetal heart examination

The bill generally prohibits a person from knowingly and purposefully performing or inducing an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the unborn human individual the pregnant woman is carrying and whose fetal heartbeat has been detected. Whoever violates this is guilty of performing or inducing an abortion after the detection of a fetal heartbeat, a felony of the fifth degree. Under the bill, there are two circumstances in which a person is not in violation of this prohibition. A physician who performs a medical procedure that, in the physician's reasonable medical judgment, is designed or intended to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman, is not in violation. If the procedure is done under these circumstances, the

physician performing the procedure is required to declare in writing, that the procedure is necessary, to the best of that physician's reasonable medical judgment to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. The physician must also provide, in the written document, the medical condition that the procedure will assertedly address, and the medical rationale for the conclusion that the procedure is necessary. The written document must be placed in the pregnant woman's medical records and a copy must be maintained in the physician's files for at least seven years. Additionally, a person who has performed an examination for the presence of a fetal heartbeat, in accordance with the person's good-faith understanding of standard medical practice, that does not reveal a fetal heartbeat, is not in violation of the prohibition.

After a fetal heartbeat has been detected, any person performing or inducing an abortion for the purpose of preserving the health of the pregnant woman is required to set forth in a written document the medical condition that the abortion will address and the medical rationale for the conclusion that the abortion is necessary to address the condition. If the abortion is not to preserve the health of the pregnant woman, the person performing or inducing the abortion must specify in a written document that the purpose was not maternal health. The person must place written documentation in the pregnant woman's medical records and a copy must be maintained in the person's own records for seven years.

If the person who intends to perform or induce an abortion on a pregnant woman detects a fetal heartbeat, the bill requires the pregnant woman to sign a form acknowledging that she has received information, from the person intending to perform or induce the abortion, that the unborn human individual she is carrying has a fetal heartbeat and that she is aware of the statistical probability of bringing the unborn human individual she is carrying to term. The acknowledgement form must be signed at least 24 hours prior to performance or inducement of the intended abortion. Continuing law requires the person to notify the pregnant woman of the existence of a fetal heartbeat and the statistical probability of the unborn human individual being brought to term.

The bill provides that, except when prevented by a medical emergency in certain cases, whoever knowingly and purposefully performs or induces an abortion without determining whether there is a detectable fetal heartbeat is guilty of a felony of the fifth degree. Continuing law prohibits this already, but only provides for a civil action for compensatory and exemplary damages or disciplinary action by the State Medical Board for a violation. The bill provides that a physician does not commit this offense if the physician believes that a medical emergency exists. The bill also provides that a person does not commit the offense if that person has performed an examination for the presence of a fetal heartbeat and the method used does not reveal a fetal heartbeat.

The Ohio Department of Health (ODH) is required under the bill to inspect the medical records from any facility that performs abortions to ensure that physicians or other persons who perform abortions are in compliance with the reporting requirements of the bill. The facility is required to make those records available to ODH, but shall not release any personal medical information that is prohibited by law.

The bill requires a physician who performs or induces abortions to provide all of the information the physician is required to certify in writing or determine with respect to detection. The bill also provides that if a person other than the physician makes or maintains records relating to abortions and fetal heartbeat detection on the physician's behalf or at the physician's direction, that person must comply with the reporting requirements.

The bill permits the State Medical Board to take disciplinary action for failure to comply with the requirements to make or maintain certain medical records or documents for a pregnant woman regarding an abortion procedure. The bill makes changes to existing law permitting a woman who received an abortion to bring a wrongful death action for her unborn child. The bill permits an action to be brought if the abortion was knowingly and purposely performed or induced (1) with the specific intent of causing or abetting the termination of the unborn human individual whose fetal heartbeat has been detected, or (2) without the woman's signature on an acknowledgement that the woman received the information that there was a fetal heartbeat and about the statistical probability of the unborn human individual with a fetal heartbeat being brought to term. These circumstances for supporting the wrongful death action are in addition to those under continuing law regarding abortions. The bill requires the court to award the woman court costs and reasonable attorney's fees if she prevails in the action. The bill also specifies that if a defendant prevails, the court is to award reasonable attorney's fees to the defendant under certain conditions. The bill provides that a court finding of unconstitutionality of the law under which the wrongful death action is brought is to be a defense to the action. The bill provides that a pregnant woman on whom an abortion is performed in violation of any of the crimes specified by the bill is not guilty of the crimes or of attempting to commit, conspiring to commit, or complicity in committing the crimes. Further, the pregnant woman is not subject to a civil penalty based on the violations.

Additionally, the bill provides that if any provision of O.R.C. 2919.171 or 2919.19 to 2919.1910 or their application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the bill that can be given effect without the invalid provision or application, and to this end the provisions of the bill are severable. Moreover, the bill expresses that the General Assembly's intent is to continue the immediate and continuing enforcement of the remainder of the provisions in those sections, should any individual provision of those sections be held invalid or if any provision is potentially invalid. Nothing in O.R.C. 2919.171 or 2919.19 to 2919.1910 is intended to repeal or limit any other Ohio laws, except as provided in those sections.

Joint Legislative Committee on Adoption Promotion and Support

The bill creates the Joint Legislative Committee on Adoption Promotion and Support, which may review or study any matter that it considers relevant to the adoption process in Ohio, with priority given to the study or review of mechanisms intended to increase awareness of the process, increase its effectiveness, or both. The Committee will consist of three members of the House of Representatives and three members of the Senate. The bill specifies that the Committee has the same powers as other standing or select committees of the General Assembly.

Background information

According to ODH's 2015 report on "Induced Abortions in Ohio," 20,976 abortions were performed in Ohio in 2015. Of these abortions, 19,765 (94.2%) were performed on Ohio residents. The majority of abortions, 10,910 (52.0%), were performed at less than nine weeks gestation. Between nine and 12 weeks, 6,632 (31.6%) abortions were performed, 2,956 (14.1%) abortions were performed between 13 to 18 weeks, and 333 (1.6%) were performed between 19 and 20 weeks of gestation. A total of 145 abortions (0.7%) were performed at 21 weeks of gestation or over. Induced abortions must be reported to ODH by the physician who performed the abortion.

Fiscal impact

The Medicaid Program pays abortion costs for enrollees in cases involving life endangerment, incest, and rape. The bill could result in fewer abortions. If this occurs, abortion costs for the Medicaid Program would decrease. However, there could be an increase in birth-related costs. According to the Department of Medicaid, the Medicaid Program paid for six abortions in FY 2014.

ODH may realize an increase in costs to inspect the medical records from any facility that performs abortions to ensure that individuals who perform abortions are in compliance with the reporting requirements of the bill.

The State Medical Board could experience an increase in administrative and possible investigative costs related to the bill. However, it is assumed that the number of violators would be small. Thus, any increase in costs would likely be minimal.

As a result of any violations, additional felony criminal cases may be generated for county criminal justice systems to process, potentially increasing the costs to investigate, prosecute, adjudicate, and sanction violators. However, the court could impose court costs and fines to be paid by violators to help offset some of these costs. The number of cases that could be generated annually would likely be small. Therefore, any related fiscal effect on local criminal justice systems would likely be minimal. Dependent upon the number of successful prosecutions, the state could realize a gain in court cost revenues generated annually to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).

It is also possible that additional civil cases may be generated for county municipal or common pleas courts. However, the courts could impose court costs to help offset some of these costs. The number of cases that could be generated annually would likely be small. Therefore, any related fiscal effect on local civil justice systems would likely be minimal.

A small percentage of abortions are performed in hospitals and the majority of those are medical emergencies, so it appears that there will be little fiscal impact to public hospitals. There are currently 18 such hospitals in Ohio. Any increases in administrative costs to public hospitals relating to the requirements of the bill, would likely be minimal.

Appropriation

The bill also allocates \$100,000 within the Ohio Department of Job and Family Service's budget in fiscal year 2017 to GRF line item, Adoption Services (State).

Severability

The bill specifies that if any provisions of a section as amended or enacted by the bill, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section or related sections which can be given effect without the invalid provision or application, and to this end the provisions are severable.