



HB 59 Issue Briefing

Governor John Kasich recently signed into law the state budget bill, Amended Substitute House Bill 59. HB 59 contains five¹ pro-life provisions that include: “Defunding” Planned Parenthood, establishing a new Parenting and Pregnancy Support program, altering abortion clinic regulations, banning public hospitals from entering into transfer agreements with abortion clinics, and amending the informed consent provisions of the abortion law to require an ultrasound be performed and a pregnant woman to be notified if her unborn child has a heartbeat. Because this legislation has resulted in significant discussion and has been subject to various interpretations, we are providing this general analysis of the provisions to our members.

Planned Parenthood “Defunding”²

While many have described provisions in the state budget as “defunding Planned Parenthood”, this is somewhat of a mischaracterization. The provisions actually reprioritize the use of state and federal planning dollars under a new formula, although the practical implication is that a private organization that provides a narrow scope of reproductive health services and family planning (such as Planned Parenthood) will be at the lowest priority level for funds. The funds in question are “family planning” dollars, which according to news articles impacts about 7% of Planned Parenthood funding, or roughly \$1.4 million dollars per year. Some or all of this funding could be lost if funds are appropriated before groups like Planned Parenthood are eligible to apply. Under the new law, state and local entities that provide comprehensive care and family planning services will have the highest priority to receive these state and federal tax dollars. Non-public entities that are federally qualified health centers (FQHC’s), FQHC look-alikes, and community action agencies will have the next highest priority. Non-public entities that provide comprehensive primary and preventative care as well as family planning services will be third in line for funds, and non-public entities that provide family planning services but do not provide primary and preventative care will be last in line.

The funds subject to the priority levels described above include federal funds received under the Maternal and Child Health Block Grant (Title V of the Social Security Act), the Family Planning

¹ A 6th minor amendment prohibits the use of certain state funds used in genetic counseling to be used to refer for an abortion. A 7th provision in the bill also expands victim assistance and reparations funds administrated by the attorney general fund to include programs related to sexual assault crimes, including funding for rape crisis programs (2743.191). The provisions allows eligible rape crisis centers (defined in the bill as non-profits that assist women in crisis and do not provide medical assistance and do not refer for abortion except in the case of medical emergency), state CDC programs, and prosecuting attorney witness programs to apply for the funds and appropriates \$1 million to the program.

² R.C. 3701.027, 3701.033, 5101.101, 5101.46, and 5101.461

Program (Title X of the Public Health Service Act,) the Social Services Block Grant (Title XX of the Social Security Act), and the Temporary Assistance for Needy Families Block Grant (TANF, Title IV-A of the Social Security Act), to the extent that TANF funds are being used by Ohio to provide Title XX social services³. The bill exempts Medicaid and funds awarded by ODH women’s health services grants from the prioritized distribution. Title X family planning programs fund “a broad road range of FDA-approved contraceptive methods and related counseling; as well as breast and cervical cancer screening; pregnancy testing and counseling; screening and treatment for sexually transmitted infections (STIs); HIV testing; and other patient education and referrals.⁴”

While some pro-abortion and pro-Planned Parenthood sources would argue that this puts women’s health at risk, proponents of the new law justly point out that it makes sense when our tax dollars are used to support public health organizations that provide comprehensive medical care to women first and private organizations that provide limited services last.

Parenting and Pregnancy Support (Pregnancy Resource Center Funding)⁵

HB 59 also establishes a program to allow TANF block grants to be made available to nonprofit entities that provide services to pregnant women and parents or other relatives caring for children under 12 months of age that promote childbirth, parenting, and alternatives to abortion and meet one of the purposes of the TANF block grant. Basic requirements are that the entities must be private, non-profit groups that provide their services at no cost to women and families who do not refer for, endorse, or otherwise promote abortion. TANF dollars will be distributed in amounts to be determined by the director of ODJFS from existing TANF dollars.

Strengthening Abortion Clinic Regulations⁶

Abortion Clinics are regulated in Ohio as ambulatory surgical facilities (ASF⁷). While not all ASFs are abortion clinics, all abortion clinics are required to be ASFs. Current Ohio Department of Health (ODH) rules⁸ require that an ASF that performs abortions have a written transfer agreement with a local hospital.

HB 59 imposes several new statutory requirements on ASFs and ODH

³ Source: Legislative Services Commission Analysis

⁴ <http://www.hhs.gov/opa/title-x-family-planning/>

⁵ R.C. 5101.804, 3125.18, 5101.35, 5101.80, 5101.801, 5101.803, and 5153.16

⁶ 3702.30, 3702.302 - 3702.308

⁷ What constitutes an ambulatory surgical facility is described in 3702.30 of the revised code

⁸ OAC: 3701-83-19

- 1) Requires that ODH rules currently governing ASFs be amended to require an infection-control program;
- 2) Requires that ODH conduct inspections of ASFs every time the ASF applies to renew its license;
- 3) Generally requires that an ASF have a transfer agreement with a local hospital unless the ASF is a federally-inspected provider or if the director of the department of health has issued a waiver, and requires the ODH to be notified within one business day if the transfer agreement is amended;
- 4) Creates a process and standards under which a waiver can be granted and notes that the director can rescind the waiver for any reason;

Transfer Agreement Provisions⁹

Prohibits a taxpayer-funded hospital from entering into a written transfer agreement with an ambulatory surgical facility (ASF) that performs abortions or from authorizing a staff member who is on staff at the hospital or who has been granted admitting privileges at the hospital to substitute those credentials for a transfer agreement if the ASF seeks a variance from the requirement to have a transfer agreement.

Informed Consent¹⁰

Existing state law requires that, except in medical emergencies, a doctor must meet with a woman at least 24 hours prior to an abortion. At that meeting, the woman must be informed of the nature of the procedure, the medical risks related to abortion and childbirth, and the probable gestational age of the child. The woman must also be given the name of her abortionist, materials that describe the development of the unborn child, and a listing of agencies that can help her with pregnancy and childbirth. The woman must sign a form saying that she understands all of these things.¹¹

HB 59 amends this law by requiring that the doctor who intends to perform or induce an abortion on a pregnant woman also make a good-faith effort to determine if the unborn child has a detectible heartbeat. The language specifies that the law may only require external exam (ie the law and any rules adopted by ODH may not require a vaginal ultrasound). The doctor is also required to inform the woman if the unborn baby has a detectible fetal heartbeat and what the statistical probability of carrying the unborn child to term is. The doctor is also required to give the woman the choice to hear the fetal heartbeat if one is present. Anyone violating the law is subject to being charged with a first degree misdemeanor on a first violation and a fourth degree felony on any subsequent offense. In addition to criminal charges, the law permits a woman to

⁹ R.C. 3727.60, 3702.30

¹⁰ R.C. 2317.56, 2919.19, 2919.191 - 2919.193, 4731.22

¹¹ R.C. 2315.56

sue for civil damages if the above requirements are not met. Other provisions of the law note that a woman whose unborn child is aborted in violation of this section is not guilty of any crime.

Lastly, HB 59 defines several terms¹² related to the new informed consent provisions, including:

Fetal heartbeat: defined as, “cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.”

Fetus: defined as, “the human offspring developing during pregnancy from the moment of conception and includes the embryonic stage of development.”

Gestational age: defined as, “the age of an unborn human individual as calculated from the first day of the last menstrual period of a pregnant woman.”

Gestational sac: defined as, “the structure that comprises the extraembryonic membranes that envelop the fetus and that is typically visible by ultrasound after the fourth week of pregnancy.”

It is worth noting that some pro-abortion individuals and members of the media have characterized the definition of “fetus” to include “from the moment of conception” to be a shift in Ohio law, ostensibly arguing that Ohio law currently requires defines life as beginning at implantation of an ovum. However, existing abortion, adoption, and fetal death provisions of the revised code use “the product of human conception” or “at the time of conception” consistently.¹³ This can be contrasted with the idea of implantation of an ovum, which is only used twice: once in the law addressing embryonic adoption¹⁴ and once exempting Medicaid reimbursement for contraceptive birth control, treatment in the case of ectopic pregnancy, and septic abortions from the general prohibition on using Medicaid to fund abortion services¹⁵.

While the effective date of provisions in the state budget bill varies, these provisions of the state budget will be effective on September 29, 2013 – absent any legal challenge or subsequent amendments.

The full bill is available online: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_59 . Other information, including previous versions of the bill, gubernatorial vetoes, and votes in favor of and against the bill are also available.

Note: this summary is provided to help explain a newly adopted law. While every effort has been made to provide factual information using reliable sources, this document is not intended to be legal advice. Additional review of the new law may result in updates to this summary.

¹² R.C. 2919.19

¹³ See, for example: 2919.14, 3701.341, 3107.01, 3701.79, 3705.20, etc.

¹⁴ 3111.97

¹⁵ 5101.56 (F) “Nothing in this section denies reimbursement for drugs or devices to prevent implantation of the fertilized ovum, or for medical procedures for the termination of an ectopic pregnancy. This section does not apply to treatments for incomplete, missed, or septic abortions”