



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 649 and 650 (as introduced 6-18-09)
Sponsor: Senator Roger Kahn, M.D. (S.B. 649)
Senator Dennis Olshove (S.B. 650)
Committee: Health Policy

Date Completed: 10-27-09

CONTENT

Senate Bill 649 would amend the Public Health Code to do all of the following:

- **Prohibit a physician or health facility or agency from providing in vitro fertilization (IVF) services without obtaining an individual's written, informed consent.**
- **Prescribe a civil penalty for a person who violated the prohibition.**
- **Require a physician or health facility or agency that provided IVF services to submit to the Department of Community Health (DCH) a report regarding those services.**
- **Prescribe a civil penalty for failure to file a required report.**
- **Require the DCH to make available an annual aggregate statistical report summarizing the information from the reports filed by physicians and health facilities and agencies.**
- **Prohibit the report data from being used or maintained in a manner that made it possible to identify a person who had obtained IVF services.**
- **Prescribe a felony penalty for a disclosure of confidential identifying information.**

Senate Bill 650 would amend the Code of Criminal Procedure to add to the sentencing guidelines the disclosure of confidential identifying information by a human IVF services provider.

Senate Bill 650 is tie-barred to Senate Bill 649. The bills are described below in further detail.

Senate Bill 649

IVF Services: Informed Consent

The bill would prohibit a physician or health facility or agency from providing IVF services without first obtaining the voluntary and written informed consent from the individual who was seeking the services. In addition to any information required to be provided by the accepted standard of care, the documented informed consent would have to include, at a minimum, the following information:

- The intention or likelihood that the planned services would produce oocytes and embryos in excess of the potential number of children the individual might consider bringing to birth.
- Options available to create, use, or store embryos in a quantity most acceptable to the individual seeking the services.
- The potential or expected annual financial obligations if the individual chose to cryopreserve and store excess oocytes or embryos.
- Current data on embryo loss and implantation success subsequent to thawing cryopreserved embryos, including data from the DCH's aggregate report and data from the provider's previous two individual reports, where applicable.
- A statement on the legal prohibitions on people offering or providing any valuable consideration in exchange for providing excess oocytes or embryos to any other person.

A person who violated these provisions would be responsible for a State civil infraction and could be ordered to pay a civil fine of at least \$5,000 per violation.

IVF Services Annual Report

Under the bill, a physician or health facility or agency that provided human IVF services annually would have to submit to the DCH a report on forms prescribed and provided by the Department and at the time and in the manner prescribed by the Department. The physician or health facility or agency could collect and report to the DCH only specified information, including the number of the following:

- Patients on whom oocyte extractions were attempted.
- Patients from whom oocytes were extracted successfully.
- Oocytes extracted from all patients.
- Complications experienced by patients undergoing oocyte extraction.
- Oocytes retained in storage.
- Oocytes discarded before fertilization attempts.
- Oocytes exposed to sperm for fertilization.
- Embryos successfully created.
- Embryos undergoing genetic screening.
- Embryos discarded before implantation attempts.
- Patients undergoing embryo implantation procedures.
- Implantation procedures attempted.
- Embryos used in implantation procedures.
- Patients with successful implantation.
- Embryos implanted successfully
- Embryos terminated intentionally in utero after pregnancy was established.
- Miscarriages.
- Live births.
- Multiple births.
- Infants with disabilities or deformities detectable at birth.
- Embryos thawed for implantation or donation.
- Embryos viable after the thawing process.
- Embryos donated for implantation.
- Embryos donated for research.
- Embryos discarded after storage at the direction of the individual seeking IVF services.
- Embryos held in storage at the beginning and end of the reporting year.

Reported information also would include the following:

- Gestational age at the time of miscarriage and the number of embryos or fetuses miscarried for each miscarriage.
- The gestational age at birth and birth weight for each live birth.

- The health facility or agency, academic institution, or other person to which embryos were donated for research.

The bill would require the DCH to do all of the following:

- Develop and make available in print and electronic format a form for physicians and health facilities and agencies to use in filing the required report.
- Make available annually in aggregate a statistical report summarizing the information submitted in each individual report.
- Destroy each individual report and each copy after retaining the report for five years after it was received.

A person who submitted a report could not include the name, common identifiers such as Social Security number or motor vehicle operator's license number, or other information or identifiers that would make it possible to identify in any manner or under any circumstances an individual who had obtained IVF services. A State agency could not compare data in an electronic or other information system file with data in any other electronic or other information system that would result in identifying in any manner or under any circumstances an individual who had obtained IVF services. A person could not maintain statistical information that could reveal the identity of an individual who had obtained IVF services.

The bill provides that the required reports would be statistical reports to be used only for medical and health purposes and could not be incorporated into the permanent official records of the system of vital statistics.

A person who disclosed confidential identifying information would be guilty of a felony punishable by imprisonment for up to one year and/or a fine of up to \$5,000. A person who failed to file a required report would be responsible for a State civil infraction and could be ordered to pay a civil fine of at least \$5,000 per violation.

Senate Bill 650

The bill would add to the sentencing guidelines an IVF services provider's disclosure of confidential identifying information as a Class G felony against the public trust punishable by imprisonment for up to one year.

Proposed MCL 333.2694 & 333.2695 (S.B. 649)
MCL 777.13k (S.B. 650)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offense. An offender convicted of the proposed Class G "human in vitro fertilization services provider disclosing confidential identifying information" offense would receive a sentencing guidelines minimum sentence range of 0-3 months to 7-12 months, with a statutory maximum of one year. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$32,000. Individuals convicted of this offense could be subject to penal fines, not to exceed \$5,000. Any additional revenue collected under this classification would benefit public libraries.

Senate Bill 649 also would establish a civil infraction fine of not less than \$5,000 per violation to be levied against physicians or health facilities that failed to obtain informed consent from patients in accordance with the bill.

The Department of Community Health would see a marginal indeterminate increase in costs due to the requirement to collect and aggregate the reports regarding IVF services.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.