

ABORTION PROVISIONS / PERINATAL HOSPICE

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House Bill 5086 as introduced
Sponsor: Rep. Sue Allor
Committee: Health Policy
Complete to 6-23-21

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5086 would amend the Public Health Code to require the creation of a clearinghouse to provide information on life-limiting and prenatally diagnosed conditions, including increased information on perinatal hospice opportunities. It would also amend the code's provisions regarding abortion.

Definition of abortion

Currently, abortion, as defined in the code, does not include the use of a drug or device intended as a contraceptive. The bill would stipulate that abortion also does not include any medical treatment that is provided to a woman who is experiencing an intrauterine fetal death or has been diagnosed with an extrauterine pregnancy.

Consent and acknowledgement form

The code requires that a woman seeking an abortion sign a form that lists the procedures, consents to the abortion, and acknowledges that the woman has been provided with specified information and given an opportunity to ask questions. The bill would add all of the following to the list of language to include on the form:

- If an ultrasound procedure was performed upon me, I certify that I was offered the opportunity to view, or decline to view, an active ultrasound image of the fetus or receive a physical picture of the ultrasound image of the fetus that I am carrying.
- I certify that a fetal heartbeat (check 1) ___ has ___ has not been detected. If a fetal heartbeat has not been detected, I certify that I have been informed about the probability of maintaining the pregnancy.
- If I am undergoing an abortion procedure that utilizes the drug known as mifepristone, I have been informed about the existence of treatment to reverse the effects of mifepristone before ingesting misoprostol to increase the possibility of maintaining my pregnancy if I change my mind about terminating the pregnancy.

Requirement to determine whether a fetal heartbeat exists

The bill would also provide that, except when a medical emergency exists that prevents compliance with these requirements, a physician could not perform an abortion before determining whether a fetal heartbeat is detectable in the fetus. If a medical emergency prevented this determination, the physician would have to note in the woman's medical record the specific nature of the emergency. Compliance with this requirement would not require the use of an intravaginal diagnostic procedure.

If, during this examination, a fetal heartbeat was detected, the physician or a qualified person assisting the physician would have to offer the woman the option of hearing or seeing evidence of the fetal heartbeat.

If the examination did not detect a fetal heartbeat, the physician or assistant would have to do all of the following that apply:

- Inform the woman of the probability of maintaining the pregnancy versus experiencing a miscarriage, given the absence of a detectable fetal heartbeat, the state of pregnancy, and other factors known to affect the possibility of a miscarriage.
- Inform the woman whether an additional option for detecting the fetal heartbeat is available, including an additional diagnostic procedure that could be performed immediately or delayed until a later date to determine if the fetus is physically developing.
- If the fetus has been visibly identified but is not exhibiting a heartbeat or other signs of physical activity, advise the woman that a procedure to remove a fetus that has died is not considered an abortion under law and inform the woman of the relative risks and benefits of different means of terminating the pregnancy, including medical inducement, a surgical procedure, or allowing a miscarriage to occur spontaneously.

Life-limiting and prenatally diagnosed conditions

Under the bill, when a physician informs a patient of the results of a prenatal diagnostic test that has potentially identified or confirmed a *life-limiting condition* or *prenatally diagnosed condition* of the fetus, the physician or assistant would have to provide the patient with the applicable forms described below.

Life-limiting condition would mean a medical condition identified by prenatal diagnostic testing that will, with reasonably certainty, result in the death of the child either before birth or within one year after birth.

Prenatally diagnosed condition would mean a medical condition identified by prenatal diagnostic testing that will either temporarily or permanently require medical treatment or other support services after birth but will not, with reasonable certainty, result in the death of the child within one year after birth.

The bill would require the Department of Health and Human Services (DHHS) to do all of the following within one year of the bill's effective date:

- Determine which licensed hospices provide *perinatal hospice care*.
- Develop and make available on its website a life-limiting condition form that contains all of the following:
 - A statement that a prenatal diagnostic test that potentially identifies a life-limiting condition is not the same as a confirmed diagnosis, and it is advised that the patient obtain a confirmed diagnosis before obtaining treatment, including perinatal hospice care.
 - A description of perinatal hospice care.

- The website address of the *clearinghouse* and a statement that the clearinghouse has a list of licensed Michigan hospice facilities providing perinatal hospice care.
- Develop and make available on its website a prenatally diagnosed condition form that contains all of the following:
 - A statement that a prenatal diagnostic test that potentially identifies a prenatally diagnosed condition is not the same as a confirmed diagnosis, and it is advised that the patient obtain a confirmed diagnosis before obtaining treatment and support services for the condition.
 - The website address of the clearinghouse.
 - A statement that the clearinghouse contains medically accurate information, information on early intervention services, and referral information for peer support groups and adoption.
- Create, operate, and maintain, or contract with an organization to create, a clearinghouse that contains information regarding life-limiting and prenatally diagnosed conditions, including all of the information described above.
- Develop criteria for approving a qualified contributor for purposes of contributing information to the clearinghouse.

Perinatal hospice care would mean comprehensive medical and supportive care to a pregnant woman and her family that includes support from the time of diagnosis of a life-limiting condition through the time of birth and death of the child. Perinatal hospice care would include care by maternal-fetal medical specialists, obstetricians, neonatologists, anesthesia specialists, clergy, social workers, and specialty nurses.

Clearinghouse would mean an internet website containing information regarding life-limiting conditions and prenatally diagnosed conditions as defined above.

Proposed clearinghouse requirements

DHHS or an entity contracted by DHHS to develop the clearinghouse would have to do all of the following:

- Post on the clearinghouse a list of each licensed hospice that provides perinatal hospice care.
- Create, and update as needed, a list of medical conditions that meet all of the following:
 - Can affect a developing unborn child.
 - Can be detected by prenatal diagnostic tests.
 - Necessitates medical treatment or special services before birth or at birth.
 - Occurs with a frequency of at least one instance per 100,000 births.
- Provide the list of medical conditions to a prospective qualified contributor upon request and, if the list is developed by an entity contracted by DHHS, provide the list to DHHS upon request.
- Provide notice of approval or denial of a request by a qualified contributor to provide information to the clearinghouse in accordance with its criteria.
- For each medical condition identified on the list described above, provide directly, or solicit from a qualified contributor, information to be placed on the clearinghouse that describes the condition, known treatment options or supportive services, and

- information on government agencies or programs and private organizations that provide service or support to individuals with that condition or to their caregivers.
- Post on the clearinghouse information on organizations that assist with adoption of children with prenatally diagnosed conditions.
 - At least annually, review the information posted on the clearinghouse to confirm that it remains accurate.

The bill would take effect 90 days after its enactment.

MCL 333.16221 et seq. and proposed MCL 333.17015b et seq.

FISCAL IMPACT:

A fiscal analysis is in progress.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.