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July 27, 1999

Hon. Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Connie Lemus
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative entitled the "Family Communication and Parental Responsibility Act" (File No. SA1999 RF 0022). This measure would require physicians to notify at least one of the parents or legal guardians of a pregnant unemancipated minor prior to performing an abortion unless (1) a medical emergency makes an immediate abortion necessary or (2) a juvenile court has granted a waiver of this requirement.

Background

In 1953, the California Legislature enacted Chapter 1654, which allowed minors to receive, without parental consent or notice, the same range of medical care for a pregnancy that is available to an adult. This law eventually became the vehicle through which minors could obtain abortions without parental consent or notice. In 1987, the Legislature amended this law—through the enactment of Chapter 1237—to require minors to obtain parental consent or a court authorization prior to obtaining an abortion. However, implementation of Chapter 1237 was enjoined by the courts, and in 1997 the California Supreme Court invalidated the law by finding that it violates the right to

privacy guaranteed by Section 1 of Article I of the California Constitution. Consequently, minors in the state may receive abortion services, including abortion services provided by the state Medi-Cal Program, without parental consent or notification, to the same extent that adults may receive such services.

Under the Initiative

The proposed measure would amend the California Constitution and enact related statutory provisions to require physicians to notify a parent or legal guardian of a pregnant unemancipated minor prior to performing an abortion, with certain exceptions. Unemancipated minors, under the measure, would include (1) any unmarried pregnant female under the age of 18 who is not in the armed services and has not been declared emancipated under state law or (2) an older pregnant female for whom a guardian has been appointed because of a finding of incompetency.

Notification Requirement. Physicians could meet the notification requirement imposed by the measure in either of the following two ways:

- *Personal Notification.* Notice could be provided to the parent or guardian personally—for example, when a parent accompanies the child to an office examination or to obtain the abortion itself.
- *Mail Notification With Waiting Period.* A parent or guardian may be notified by sending two separate mail notifications to his or her last known address. One notice must be sent by certified mail with return receipt requested and delivery only to the addressee, and another notice must be sent by regular first-class mail. In the case of mail notification, the measure imposes a waiting period before an abortion may be performed. Generally, the waiting period would be about three or four days, depending on whether a weekend intervenes.

Exceptions to Notification Requirement. The measure includes the following two exceptions to the notification requirement:

- *Medical Emergency.* Physicians could perform an abortion without notification if they determine that the abortion is necessary to prevent the mother's death or that a delay would result in a "serious risk of substantial and irreversible impairment of a major bodily function."
- *Judicial Waiver Bypass Process.* The pregnant minor could file a confidential petition with the juvenile court to waive the notification requirement. Petitioners

would be entitled to court-appointed counsel, and would be exempt from filing fees. The measure requires the courts to meet expedited deadlines for issuing judgments and considering appeals, and requires the Judicial Council to establish rules for these proceedings. The measure authorizes the court to grant a waiver based on any of the following findings:

- The minor is sufficiently mature to give informed consent.
- There is evidence of physical or sexual abuse by the parent or guardian (in which case a referral must be made to the county child protection agency).
- Notification is not in the minor's best interest.

Penalties. Violation of this measure would be subject to a civil penalty of \$1,000 to \$5,000. Also, the measure authorizes parents who are wrongfully denied notification to sue violators for damages and attorney's fees.

Fiscal Effects

This measure could affect state and local government costs in a number of ways, primarily depending on how it affects the behavior of teens regarding abortion, child-bearing, sexual activity, and birth control.

Medi-Cal Savings or Costs. To the extent that the parental notice provisions discourage abortions, there would be fewer Medi-Cal abortions. Based on studies of other states with parental involvement laws, we estimate that the reduction in abortions to minors in California could be up to 25 percent (some of this reduction might reflect an increase in travel by minors to obtain abortions in states without restrictions). Since state costs for Medi-Cal abortions for minors currently total about \$3 million annually, this potential savings would be less than \$1 million annually. The measure's effect on Medi-Cal costs for teen pregnancies, deliveries, and resulting infant care is uncertain. To the extent that the measure causes minors to avoid pregnancies, there would be savings. On the other hand, there would be additional Medi-Cal costs due to births from pregnancies that otherwise would have been terminated by abortion. The net fiscal effect of these factors is unknown, but could result in state savings or costs of up to several million dollars annually, which would not be a significant amount in the context of total General Fund spending for the Medi-Cal Program.

Juvenile Court Costs. The measure would result in increased state costs related to the implementation of the judicial bypass process. The magnitude of these costs would

depend on the number of minors that use the judicial bypass process as an alternative to parental notification. To the extent that minors use the judicial bypass process, courts will incur additional workload and administrative costs, as well as costs to provide court-appointed counsel to minors. The amount of these costs is unknown, but probably not significant in the context of total state and local expenditures for courts.

Indirect Fiscal Effects. The measure could result in various indirect fiscal effects on state and local government, such as savings or costs for welfare depending, in part, on the extent to which the measure results in a net decrease or increase in births to teen parents (as discussed above). The net indirect fiscal effects are unknown.

Summary of Fiscal Effects. The net fiscal impact of this measure on expenditures for the Medi-Cal Program and the courts is unknown, but probably not significant in the context of the total expenditures for these programs.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

B. Timothy Gage
Director of Finance