

October 25, 2004

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

Attention: Ms. Tricia Knight
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative cited as “Parents’ Right to Know and Child Protection” (File No. SA2004RF0030-Amdt.#1-S). 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

Prior State Legislation

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 health care program for the poor, without parental consent or notification, to the same extent that adults may receive such services.

Proposal

Unemancipated Minors Affected

The proposed measure would amend the California Constitution and enact related statutory provisions to require a physician to notify a parent or legal guardian of a pregnant unemancipated minor at least 48 hours before performing an abortion, with certain exceptions. An unemancipated minor, under the measure, would include any unmarried pregnant female under the age of 18 who has not entered into a valid marriage, is not in the armed services, and has not been declared emancipated under state law.

Notification Procedures

A physician could meet the notification requirement imposed by the measure in either of the following two ways:

- ***Personal Written Notification.*** Written notice could be provided on a form prescribed by the Department of Health Services (DHS) to the parent or guardian personally—for example, when a parent accompanied the child to an office examination or to obtain the abortion itself.
- ***Mail Notification With Waiting Period.*** A parent or guardian could be sent a written notice by certified mail with return receipt requested and delivery only to the addressee.

Exceptions to Notification Requirement

The measure includes the following two exceptions to the notification requirement:

- ***Medical Emergency.*** A physician could perform an abortion without notification if it were determined that the abortion was necessary to prevent the mother's death or that a delay would result in her experiencing "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. A petitioner 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 if the minor is sufficiently mature to

give informed consent; if there is evidence of physical or sexual abuse by the parent or guardian (in which case the matter would have to be referred to the county child protection agency); or if notification would not be in the minor's best interest. If the waiver request was denied by the juvenile court, the minor could subsequently appeal the judgment by filing a written notice.

State Reporting Requirement

The measure would require DHS to develop new forms related to its implementation. Physicians would be required to file a form reporting specified information to DHS within one month after performing an abortion on an unemancipated minor. This form would not identify any minor or her parent(s) or guardian by name or request other information by which these persons might be identified, but would include the identity of the physician, the date and place where the abortion was performed, the minor's month and year of birth, and other information about the circumstances under which the procedure was performed. The DHS would also be required to compile this information in an annual report that would be made available to the public.

Penalties

Any person who performed an abortion on an unemancipated minor and who failed to comply with the provisions of the measure would be liable for damages in a civil action brought by the minor, her legal representative, or by a parent or guardian wrongfully denied notification. A parent or guardian wrongfully denied notification would be authorized to recover either actual damages or \$10,000 in statutory damages, plus reasonable attorney fees. Any person who knowingly provided false information to a physician, indicating that notice of an abortion had been provided to a parent or guardian, other than the unemancipated minor who is the patient of the physician or the physician or their assistant, would be guilty of a misdemeanor punishable by a fine of up to \$1,000.

Fiscal Effects

This measure could affect state and local government costs in a number of ways, primarily depending on how it affected the behavior of teens regarding abortion and childbearing.

Medi-Cal Program

To the extent that the parental notice provisions discouraged abortions, there would likely 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 such restrictions). Since costs for Medi-Cal abortions for minors currently total \$2.3 million General Fund annually, the potential savings would be almost \$600,000 General Fund 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 caused 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 costs of up to several million dollars annually, which would not be a significant amount in the context of total spending for the Medi-Cal Program, estimated to be \$28.7 billion (\$9.9 billion General Fund) in 2003-04.

Department of Health Services

The requirements of this measure for physician reporting to DHS of information about abortions performed on unemancipated minors would probably result in increased state costs in the first year of less than \$600,000 for the development of new reporting forms, the establishment of the reporting system, and the preparation by DHS of an annual report. The annual ongoing costs to DHS to implement this measure would probably be less than \$250,000.

Juvenile Courts

The measure would result in increased state costs related to the implementation of the proposed 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 used the judicial bypass process, the courts would incur additional workload and administrative costs, and counties would probably incur costs to provide court-appointed counsel to minors. The amount of these costs is unknown, but would probably not be significant in the context of total state and local expenditures for the courts.

Indirect Fiscal Effects

The measure could result in unknown net indirect fiscal effects to state and local government. For example, welfare programs could experience costs, depending in part, on the extent to which the measure results in a net increase in births to teen parents.

Summary

- The net costs of this measure to Medi-Cal and other programs are unknown, but are probably not significant in the context of the total expenditures for these programs.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Michael C. Genest
Interim Director of Finance