

October 30, 2015

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative (A.G. File No. 15-0062) that would amend the California Constitution to generally require physicians to notify the parent or guardian of a minor under the age of 16 before performing an abortion on that minor, with certain exceptions.

BACKGROUND

In 1953, a state law was enacted that allowed minors to receive, without parental consent or notification, the same types of medical care for a pregnancy that are available to an adult. Based on this law and later legal developments related to abortion, minors were able to obtain abortions without parental consent or notification.

In 1987, the Legislature amended this law to require minors to obtain the consent of either a parent or a court before obtaining an abortion. However, due to legal challenges, the law was never implemented, and the California Supreme Court ultimately struck it down in 1997. Consequently, minors in the state currently receive abortion services to the same extent as adults. This includes minors in various state health care programs, such as the Medi-Cal health care program for low-income individuals.

PROPOSAL

Notification Requirements

This measure amends the Constitution to require, with certain exceptions, a physician (or his or her representative) to deliver a written notice to the parent or legal guardian at least 48 hours before performing an abortion involving an “unemancipated” minor. (This measure does not require a physician or a minor to obtain the consent of a parent or guardian.) For all provisions of this measure, an unemancipated minor is defined as being a female under the age of 16 who has not entered into a valid marriage, is not on active duty in the armed services of the United States, and has not been declared free from her parents’ or guardians’ custody and control under state law.

A physician could provide the required notification in either of the following two ways.

Personal Notification. Written notice could be provided to the parent or guardian personally—for example, when a parent accompanied the minor to an office examination.

Mail Notification. Written notice to a parent or guardian could be sent by certified mail so long as a return receipt was requested by the physician and delivery of the notice was restricted to the parent or guardian who must be notified. An additional copy of the written notice would have to be sent at the same time to the parent or guardian by first-class mail. Under this method, notification would be presumed to have occurred as of noon on the second day after the written notice was postmarked.

Exceptions to Notification Requirements

The measure provides the following exceptions to the parental notification requirements.

Medical Emergencies. The notification requirements would not apply if the physician certifies in the minor's medical record that the abortion is necessary to prevent the mother's death or that a delay would "create serious risk of substantial and irreversible impairment of a major bodily function."

Waivers Approved by Parent or Guardian. A minor's parent or guardian could waive the notification requirements and the waiting period by completing and signing a written waiver form for the physician. The parent or guardian must specify on this form that the waiver would be valid either (1) for 30 days, (2) until a specified date, or (3) until the minor's 18th birthday. The form would need to be notarized unless the parent or guardian delivered it personally to the physician.

Abuse Documented by a Notarized Statement. Notification to a parent or guardian by the physician would not be required if the minor is the victim of physical or sexual abuse committed by one or both of her parents and the abuse is documented by a signed and notarized statement. The statement must be made by (1) a person who is at least 21 years of age with personal knowledge of the abuse and is a grandparent, stepparent, foster parent, sibling of a parent, or sibling or half-sibling of the minor, or (2) a law enforcement officer or agent of a public child protective agency who has investigated the abuse of the minor. In addition, the measure requires the physician to retain the notarized statement with the minor's medical records and also to bring the documentation of physical or sexual abuse to the attention of the appropriate law enforcement or public child protective agency.

Waivers Approved by Courts. The pregnant minor could ask a juvenile court to waive the notification requirements. A court could do so if it finds that the minor is sufficiently mature and well-informed to decide whether to have an abortion or that notification would not be in the minor's best interest. If the waiver request is denied, the minor could appeal that decision to an appellate court.

A minor seeking a waiver would not have to pay court fees, would be provided other assistance in the case by the court, and would be entitled to an attorney appointed by the court. The identity of the minor would be kept confidential. The court would generally have to hear and issue a ruling within three business days of receiving the waiver request. The appellate court would generally have to hear and decide any appeal within four business days.

The measure also requires that, in any case in which the court finds evidence of physical or sexual abuse, the court must refer the evidence to the appropriate law enforcement or public child protection agency.

State Reporting Requirements

Physicians are required by this measure to file a form reporting certain information to the state Department of Public Health (DPH) within one month after performing an abortion on a minor. The reporting form would include the date and facility where the abortion was performed, the minor's month and year of birth, and certain other information about the minor and the circumstances under which the abortion was performed. The forms that physicians would file would not identify the minor or any parent or guardian by name. Based on these forms, the department would compile certain statistical information relating to abortions performed on minors in an annual report that would be available to the public.

The courts are required by the measure to report annually to the state Judicial Council the number of petitions filed and granted or denied. The reports would be publicly available. The measure also requires the Judicial Council to prescribe a manner of reporting that ensures the confidentiality of any minor who files a petition.

Limits Ability to Perform Abortions on Unemancipated Minors to Physicians Only

Under this measure, only physicians would be able to perform an abortion on an unemancipated minor. Accordingly, under this measure, nurse practitioners, certified nurse-midwives, and physician assistants, who under current law may perform a medication and aspiration abortion during the first trimester of a pregnancy, would no longer be able to perform this procedure on an unemancipated minor.

Requirements for Reimbursement of Physician Services

A physician who provides abortion-related medical services to a minor would not be reimbursed by the Medi-Cal program or any other program paid for or subsidized by the state unless the claim for payment is accompanied by (1) a copy of the report that must be filed with DPH, or (2) proof that the minor was emancipated.

Penalties

Any person who performs an abortion on a minor and who fails 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. The measure would require such a legal action to commence within four years of the minor's 18th birthday or later, under specified circumstances; however, no new legal action may commence more than 12 years after the abortion occurred. Any person, other than the minor or her physician, who knowingly provides false information that notice of an abortion has been provided to a parent or guardian would be guilty of a misdemeanor punishable by a fine.

Relief From Coercion

The measure allows a minor to seek help from the juvenile court if anyone attempts to coerce her to have an abortion. A court would be required to consider such cases quickly and could take whatever action it found necessary to prevent coercion.

FISCAL EFFECTS

The fiscal effects of this measure on state government would depend mainly upon how these new requirements affect the behavior of minors regarding abortion and childbearing. Studies of similar laws in other states suggest that the effect of this measure on the birthrate for California minors would be limited, if any. We discuss the potential major fiscal effects of the measure below.

Savings and Costs for State Health Care Programs

Studies of other states with laws similar to the one proposed in this measure suggest that it could result in a reduction in the number of abortions obtained by minors within California. Most of these studies, however, did not measure the number of cases in which a minor left that state to obtain an abortion elsewhere as a consequence of such a new law. Thus, a reduction in abortions performed in California might be offset to an unknown extent by an increase in the number of out-of-state abortions obtained by California minors, to the extent that these minors are able to secure transportation out of the state.

To the extent that minors are aware of this measure, some might also alter their behavior to avoid unwanted pregnancies, thereby reducing the number of abortions for this group. If, for either reason, this measure reduces the overall number of minors obtaining abortions in California, it is also likely that fewer abortions would be performed under the Medi-Cal program and other state health care programs that provide medical services for minors. This would result in unknown state savings for these programs.

Given the measure's restrictions on who can perform abortions on unemancipated minors relative to current law, this measure would reduce access for unemancipated minors to medication and aspiration abortions performed during the first trimester of pregnancy. To the extent that reduced access to first trimester abortions caused unemancipated minors to delay having abortions until the second trimester, it would result in unknown, but likely minor, state costs due to second trimester abortions typically being more costly than first trimester abortions. On the other hand, reduced access could result in a decrease in unemancipated minors' abortions.

This measure could also result in some unknown additional costs for state health care programs. If this measure results in a decrease in minors' abortions and an increase in the birthrate of children in low-income families eligible for publicly funded health care, the state would incur additional costs. These could include costs for medical services provided during pregnancy, delivery, and ongoing care. Studies suggest these costs may be higher for minors than other women, as minors are more at risk for pregnancy-related complications and their children are of greater risk for premature birth, low birthweight, or other serious health problems.

The net fiscal effect, if any, of these or other related cost and savings factors would probably not exceed an amount in the millions of dollars annually to the state. To the extent net costs result, these costs would not be significant compared to total state spending for programs that provide health care services. The Medi-Cal program alone is estimated to cost the state \$18 billion in 2015-16.

State Health Agency Administrative Costs

The state would incur first-year costs of up to \$1.2 million to develop the new forms needed to implement this measure, establish the physician reporting system, and prepare the initial annual

report containing statistical information on abortions obtained by minors. The ongoing state health agency administrative costs to implement this measure could be as much as \$844,000 annually.

Juvenile and Appellate Court Administrative Costs

The measure would result in increased state costs for the courts, primarily as a result of the provisions allowing minors to request a court waiver of the notification requirements. The magnitude of these costs is unknown, but is not likely to exceed \$2 million dollars annually, depending primarily on the number of minors that sought waivers. These costs would not be significant compared to total state expenditures for the courts, which are estimated to be \$3.5 billion in 2015-16.

Social Services Program Costs

If this measure discourages some minors from obtaining abortions and increases the birthrate among low-income minors, expenditures for cash assistance and services to needy families would increase under the California Work Opportunity and Responsibility to Kids (CalWORKs) program. The magnitude of these costs, if any, would probably not exceed a few million dollars annually. The CalWORKs program is supported with both state and federal funds, but because all CalWORKs federal funds are capped, these additional costs would probably be borne by the state. These costs would typically not be significant compared to total state spending for CalWORKs, which is estimated to cost about \$5.7 billion in state and federal funds in 2015-16. Under these circumstances, there could also be a minor increase in child welfare and foster care costs for the state and counties.

Summary of Fiscal Effects

This measure would have the following fiscal effects:

- State administrative costs of at least \$1 million, and potentially a few million dollars, annually.
- Uncertain net fiscal impact on state health and social services programs, potentially in the millions of dollars annually, to the extent the measure results in changes to the abortion and/or birth rates in the state.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance