

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6943

BILL NUMBER: SB 371

NOTE PREPARED: May 6, 2013

BILL AMENDED: Mar 28, 2013

SUBJECT: Abortion-Inducing Drugs.

FIRST AUTHOR: Sen. Holdman

FIRST SPONSOR: Rep. Negele

BILL STATUS: Enrolled

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill amends the definition of "abortion" to include abortions by surgical procedures and by abortion-inducing drugs. It also amends the definition of "abortion clinic" to, beginning January 1, 2014, include facilities that provide abortion-inducing drugs. The bill prohibits the Indiana State Department of Health (ISDH) from exempting an abortion clinic seeking licensure after December 31, 2013, from licensure requirements.

The bill specifies that an abortion inducing-drug may not be dispensed, prescribed, administered, or otherwise given to a pregnant woman after nine weeks of postfertilization age unless the Food and Drug Administration has approved the drug to be used later than nine weeks. It requires a physician to examine a pregnant woman in person before prescribing or dispensing an abortion-inducing drug.

The bill requires that the written certification required of a pregnant woman before undergoing an abortion be on a form developed by the ISDH. It also requires the ISDH to develop an informed consent brochure and post the brochure on the ISDH web site.

The bill requires the abortion provider to distribute the brochure to a patient in color and with specified information included on the back cover. The bill also requires the abortion provider to be the one to perform pre-abortion fetal ultrasound imaging and auscultation of the fetal heart tone. It further provides that if the pregnant woman does not want to listen to the auscultation of the fetal heart tone, the woman must certify to that in writing and on a form developed by the ISDH.

Effective Date: July 1, 2013.

Summary of NET State Impact: *Licensure Survey Costs:* The fiscal impact of this bill would depend upon the number of newly defined medical abortion clinics that would meet the licensure requirements in the bill. Because the number of survey staff is currently operating above capacity, the increase in the number of inspections that may be due to the expanded definition of an abortion clinic could result in a small loss of federal reimbursement associated with other certification activities since abortion clinic inspections are paid with 100% state funds. Licensure revenue would be impacted to the extent that the number of newly defined clinics meeting the licensure requirements would increase. The fiscal impact if any, would be expected to be small.

Informed Consent Brochure: An estimate based on the experience of the Texas Department of State Health Services in implementing a similar requirement indicates that approximately \$5,100 to \$20,100 may be necessary for the ISDH to develop the required written information and post it to the ISDH web page. If acceptable color photographs or drawings can be used at no cost, the cost may be approximately \$5,100.

The additional funds and resources required could be supplied through existing staff and resources currently budgeted in another program or with new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend on legislative and administrative actions.

State Forms Requirements: The bill requires the ISDH to develop state forms to be used by abortion providers in the required informed consent procedure. The ISDH should be able to develop the required forms within the current level of resources available to the agency.

Explanation of State Expenditures: (Revised) *Licensure Survey Costs:* The bill would potentially increase the number of licensed abortion clinics due to the addition of medical abortions to the definition of abortion clinic. An existing provision in the ISDH rules exempts clinics operating before July 1, 2006, from specific physical plant requirements. The bill provides that clinics applying for an initial license would not be exempted from the ISDH physical plant requirements. ISDH has estimated this provision may add up to five clinics that would need to be inspected and licensed. Impact on the number of surveyor days required would depend on the number of applications for licensure the ISDH would receive as a result of the changed definition; if five clinics apply, about 14 days of surveyor time would be required.

ISDH reports that due to the increase in the number of acute care facilities, the survey staff is currently operating above capacity and that an increase in survey hours would result in other surveys being delayed or would require additional staff. Licensure of abortion clinics is a state-operated program conducted with 100% state general funds, while hospital, ambulatory outpatient surgical center, and other acute care survey inspections are conducted in concert with federal Medicare and Medicaid certification surveys qualifying those survey expenses for 50% federal administrative matching funds. Shifting resources to add up to 14 days of surveyor time to 100% state-funded program surveys would effectively remove resources for up to 28 days of surveyor time from acute care surveys that currently qualify for federal matching funds.

Informed Consent Brochure, Additional Information: The bill requires specified written information to be developed by the ISDH that is to be provided as a part of the informed consent brochure to be given to a pregnant woman. The bill requires the brochure be available on the ISDH web site. The information to be in

the document includes the following: scientific information regarding the development of a fetus, including color pictures of every two weeks of gestational age; medically accurate information regarding the medical risks associated with abortion and childbirth; information regarding assistance for pregnancy and childbirth; information regarding a biological father's obligation to pay child support; information regarding Indiana's Safe Haven Law; and information regarding telephone 211 dialing for accessing human services and the types of services available through the 211 service. The ISDH currently provides links to various web sites that provide the required information and more at: <http://www.in.gov/isdh/25199.htm>

The state of Texas enacted a similar requirement in 2003. The Texas Department of State Health Services estimated that 160 hours were used to assemble the initial document with the required information. Texas personnel suggested that by using the Texas template that the ISDH could reduce the amount of time required to assemble all the required information. The Texas document is copyrighted. If 160 hours were required to assemble the information and write the document, using an average total cost of \$32 per hour, assembling a booklet would be anticipated to cost approximately \$5,100. The ISDH could potentially contract for this work if no in-house staff is available.

The bill requires that the ISDH is to include objective scientific information concerning the probable anatomical and physiological characteristics of a fetus every two weeks of gestational age and must include color pictures that are available at no cost or low cost. The Texas Department of State Health Services reported that the color photographs used to illustrate the required two-week development phases of the embryo and fetus are copyrighted and cost \$15,000 for the original version. The availability of other drawings or photographs that meet the requirements of the bill is not known at this time. Web searches for the required series of developmental images show copyrighted information.

The bill requires the providers to supply the brochure by downloading the document from the ISDH web site and printing the brochure in color so the state would have no printing or distribution costs.

Explanation of State Revenues: The revision in the definition of abortion clinic to include medical abortions is estimated to add up to five facilities requiring licensure. Currently, the minimum abortion clinic license fee is \$500 annually. Any additional revenue would depend on the extent to which any newly defined facilities would meet the requirements necessary for licensure.

Federal Funding associated with Acute Care Facility Surveys: Because the ISDH reports that survey staff time is at capacity, assigning staff to surveys conducted with 100% state general funds would result in a decrease in federal funding associated with the matching funds available for Medicaid/Medicare acute care certification activities if more clinics seek licensure as a result of the change in definition. Any decrease in federal revenue would depend on the number of new clinics that would seek licensure. Any decrease in revenue would likely be small.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: ISDH.

Local Agencies Affected:

Information Sources: http://www.accessdata.fda.gov/drugsatfda_docs/label/2005/020687s013lbl.pdf
Accessed on 12/15/2012. And Texas Department of State Health Services and Texas Women's Right to Know
web page at: <http://www.dshs.state.tx.us/wrtk/default.shtm>. Accessed on 1/11/2013.

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