

From the UMHS ObGyn Program in Sexual Rights and Reproductive Justice



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Proposed Legislation in Michigan

Omnibus Bill Seeks to Severely Limit Abortion in MI

House Bill 5711 is the Michigan Legislature's most recent attempt to diminish the supply of providers throughout the state and to make it increasingly difficult to provide abortion services in Michigan. The bill passed the House and the Senate Judiciary Committee, but has yet to be approved by the full Senate. If passed and signed by Governor Snyder, HB 5711 would probably have immediate effect.

The bill combines a number of previously introduced bills that amend Michigan's Public Health code in various sections. It ignores best medical evidence and would force doctors into improper medical practice. For example, the bill prohibits telemedicine, requires all facilities that perform abortions to be free standing surgical facilities, and requires that any fetal remains be buried or cremated, thereby adding thousands of dollars to the cost of any abortion.

The bill also mandates \$1 million malpractice insurance coverage for any practitioner conducting 6 or more abortions a month or who has been found liable in damages for harm caused by an abortion in the prior 7 years, despite the fact that safe and legal abortions are already extremely low risk procedures. It also requires providers to rule out coercion even though data does not show that coercion occurs, and it mandates the original FDA protocol for medical abortions, even though the protocol has subsequently been revised to be safer and less expensive.

Proponents of HB 5711 claim that the legislation is an effort to protect pregnant women, while opponents maintain that it does not provide any needed protection, but does adds costs, delays, and undue burdens on women and providers. The clear intent is to shut down a majority—if not all—of the facilities that provide abortions in Michigan.

For more information on the individual provisions, see the Summer 2012 edition of this newsletter (Volume 2, Issue 1) and visit: Michigan's Legislative Website at www.legislature.mi.gov and www.rhrealitycheck.org/blog/tag/michigan-hb-5711

New State Laws Across the Country

Please consult UMHS' Medical-Legal Handbook for ObGyn Health Care Professionals for more information about medical-legal issues:

<http://www.med.umich.edu/obgyn/research/ssrj/>

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Virginia: In September, the Virginia Board of Health voted to reverse an earlier decision that would have protected the state's existing abortion clinics from strict new regulations. Abortion clinics must now meet the same strict building standards as new full-scale hospitals. These regulations, often referred to as targeted regulation of abortion providers (TRAP laws), force abortion clinics either to make expensive and unnecessary renovations or to stop offering abortion services altogether.

In response to the increased regulations, Virginia's Health Commissioner, Karen Remley, resigned from the position. In her resignation letter, Remley explained that as a career health care professional, these regulations have "created an environment in which my ability to fulfill my duties is compromised and in good faith I can no longer serve in my role."

California: Governor Jerry Brown signed Senate Bill 623 into law in September. It extends an ongoing pilot program allowing nurse practitioners, physician assistants, and nurse midwives to perform non-surgical, manual vacuum aspiration abortions until January 2014. The procedure, which can only be performed during the first trimester, involves passing a small tube into the uterus that is attached to pump that vacuums fetal tissue from the uterus.

The bill was introduced by Senator Christine Kehoe and was co-sponsored by several women's health care organizations. A statement from the Senator's office explained that, as a result of current restrictions, more than half of the state's counties lack accessible abortion providers, and this bill ensures that women have access to safe and early services from local providers they trust.

Putting an End to Shackling

On September 28, 2012, after passing the legislature with overwhelming bipartisan support, California Governor Jerry Brown signed AB 2530 into law. The bill, authored by Assembly Member Toni Atkins, makes the state one of the first in the country to completely ban the practice of shackling pregnant inmates during pregnancy, labor, delivery, and recovery.

As of January 1, 2013, California's prisons, youth authority, county jails, and juvenile detention facilities will no longer be allowed to use "leg irons, waist chains, and handcuffs behind the body on women who are pregnant or who are in recovery following the birth of a child unless deemed necessary for the safety of the inmate, the staff, or the public." It also requires that, unequivocally, "shackles be removed for emergency medical treatment."

Incarcerated pregnant women are more likely to experience pre-eclampsia, preterm birth, miscarriage, and give birth to low birth weight infants. Shackling pregnant women at any stage of their pregnancy increases the likelihood of these risks by making emergency medical care more difficult to administer and jeopardizing the health of the mothers and the health of their babies. Yet in spite of such facts, 33 states across the country currently allow pregnant inmates to be shackled to their hospital beds while giving birth, as well as throughout their pregnancy.

Increasingly, legal advocates and legislators are challenging the shackling of pregnant inmates. Such legislation and lawsuits not only affirm the rights of incarcerated women, but also highlight unacceptable prison conditions. Following the passage of California's shackling ban, Alicia M. Walters, an advocate with the ACLU of Northern California, summed up the issue by stating: "Pregnant women are the most vulnerable and the least threatening in the prison system and should rarely, if ever, be restrained."

Attacks on Planned Parenthood Funding

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Indiana:

In 2011, Indiana became the first of several states to deny Medicaid funds to Planned Parenthood for general health services. Indiana's governor signed legislation that bars any entity that performs abortions from contracting with Medicaid to provide other health care.

The ACLU of Indiana, representing Planned Parenthood, filed suit in federal court challenging the law.

After U.S. District Judge Tanya Walton Pratt issued a temporary injunction in 2011, a three-judge panel of the Seventh Circuit upheld the lower court's injunction in October, stating that Planned Parenthood was likely to prevail on its claim that the state cannot cut off funding to which it is otherwise entitled based solely on providing abortion services.

In the recent decision, U.S. Circuit Court Judge Diane Sykes

wrote that the "defunding law excludes Planned Parenthood from Medicaid for a reason unrelated to its fitness to provide medical services, violating its patients' statutory right to obtain medical care from the qualified provider of their choice."

Planned Parenthood of Indiana Inc. v. Commissioner of the Indiana State Department of Health

Arizona: On October 19, U.S. District Court Judge Neil Wake issued a temporary injunction to block Arizona from applying a new law that bars Planned Parenthood's health clinics from receiving money through the state because the organization also performs abortions.

Supporters of the law said it was necessary to ensure that no indirect money was funneled to organizations that provide abortion, even though Arizona does not provide tax dollars for abortion. Over the past two years, more than a dozen states have taken steps to eliminate funding for Planned Parenthood. The measures are part of a larger campaign by those opposed to abortion, in spite of the fact that abortions account for only three percent of the organization's services, which include birth control and cancer screening.

The President of Planned Parenthood Arizona declared the injunction "a victory for poor women," whose basic health care will not be interrupted while the case moves forward.

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Second Circuit Finds DOMA Unconstitutional

In *Windsor v. USA*, the Second Circuit struck down Section 3 of the Defense of Marriage Act, which stated that "the word 'marriage' means only a legal union between one man and one woman," as unconstitutional. The court held that gays and lesbians are entitled to heightened scrutiny because they a) have historically endured discrimination; b) homosexuality is not related to the ability to contribute to society; c) they are a group with non-obvious distinguishing characteristics; and d) the class is a political minority. After applying heightened scrutiny, the court found that "DOMA's classification of same-sex spouses was not substantially related to an important government interest."

Before the Second Circuit held oral arguments, the Supreme Court had already been petitioned to review the case. Although it has yet to announce whether it will hear the case, Justice Ruth Bader Ginsburg stated that she believes the Defense of Marriage Act will likely go to the Supreme Court within the next year.

Breaking News

U.S. Court of Appeals Protects Women from Prosecution After Abortion: *McCormack v. Hiedeman*

On September 11, 2012 the U.S. Court of Appeals for the Ninth Circuit held that an Idaho statute making it a felony for a pregnant woman to terminate her own pregnancy constitutes an undue burden for women seeking an abortion.

Defendant, Jennie McCormack, filed suit in federal district court to enjoin the state from prosecuting her and other women in the future under several Idaho laws, including one stating that "it is unlawful for any person other than a physician to cause or perform an abortion," and a pre-Roe law stating that "every woman . . . who purposely terminates her own pregnancy otherwise than by a live birth, shall be deemed guilty of a felony."

The Ninth Circuit affirmed the trial court's preliminary injunction preventing the state from using criminal abortion statutes to prosecute women, and found that defendant's constitutional challenge was likely to succeed on the merits. The court also acknowledged the very real barriers that women face in obtaining abortions services, including lack of providers, financial obstacles, and harassment at clinics.

The experiences of Ms. McCormack paint a portrait of precisely those kinds of challenges. In fall 2010, Ms. McCormack became pregnant. Unemployed and already a mother of three, she sought an abortion, but there were no providers in southeast Idaho. The closest provider was in Utah, and because she could not afford the costs of travel and a surgical procedure, she terminated her pregnancy through a medical abortion by using pills obtained online. She was then charged with the aforementioned criminal statutes.

Women have rarely been charged with self-abortion statutes in the past, but this case highlights a trend that Lynn Paltrow, Executive Director of National Advocates for Pregnant Women, has long feared: "Leading 'pro-life' organizations have repeatedly claimed that their efforts will not result in women going to jail, yet none opposed the arrest of Ms. McCormack."