

1999 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-AB133)

Received: **06/22/99**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Assembly Republican Caucus 266-1452**

By/Representing: **Sande**

This file may be shown to any legislator: **NO**

Drafter: **kenneda**

May Contact:

Alt. Drafters:

Subject: **Health - abortion**
Health - miscellaneous

Extra Copies: **TAY**

Pre Topic:

ARC:.....Sande - Amdt. No. 87,

Topic:

Require parent or guardian notification before minor obtains prescription for birth control from family planning services

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kenneda 06/23/99	chanaman 06/24/99		_____			
/1			hhagen 06/24/99	_____	lrb_docadmin 06/24/99		
/2	kenneda 06/26/99	chanaman 06/26/99	kfollet 06/26/99	_____	lrb_docadmin 06/26/99		

FE Sent For:

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/1		<i>cm</i> <i>el</i> <i>12</i>	hhagen 06/24/99	_____	lrb_docadmin 06/24/99		
			<i>Kjf</i> 6/26	<i>Kjf/1cm</i> 6/26			

FE Sent For: <END>

1999 DRAFTING REQUEST

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Require parent or guardian notification before minor obtains prescription for birth control from family planning services

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1?	kenneda	<i>cmd</i>		_____			
		<i>4/24</i>		_____			
		<i>11</i>					

FE Sent For:

<END>

To Be Drafted

DAK
ARC

Agency

Amendment#

ARC Analyst

LRB#

Tax Cut

60867

Summary

Under current law, the parents of minors are not required to be notified if their children receive prescription drugs from state-funded family planning programs and services.

This motion requires state-funded family planning programs and services to notify a parent or legal guardian before a minor obtains a prescription for birth control from those state-funded family planning programs or services.

The motion does not prohibit any physician or family planning clinic from prescribing birth control to minors. However, the physician or family planning clinic would be prohibited from receiving state funds if they chose to do so without notifying a parent or legal guardian.

The motion does not require parental notification before a minor obtains testing or treatment for sexually transmitted diseases.

Fiscal Impact

Indeterminate

Statement of Intent

DHFS. The motion requires parental notification before a minor receives a prescription for birth control from a state-funded family planning program or service.

1999

Date (time) needed

SOON -
In edit 6/23

LRB b 0867/1

CAUCUS BUDGET AMENDMENT
[ONLY FOR CAUCUS]

DAK :CMM:

See form AMENDMENTS — COMPONENTS & ITEMS.

CAUCUS AMENDMENT
TO ASSEMBLY SUBSTITUTE AMENDMENT 1
TO 1999 ASSEMBLY BILL 133

>>FOR CAUCUS SUPERAMENDMENT — NOT FOR INTRODUCTION<<

At the locations indicated, amend the substitute amendment as follows:

#. Page 419, line 12.: after that line insert:

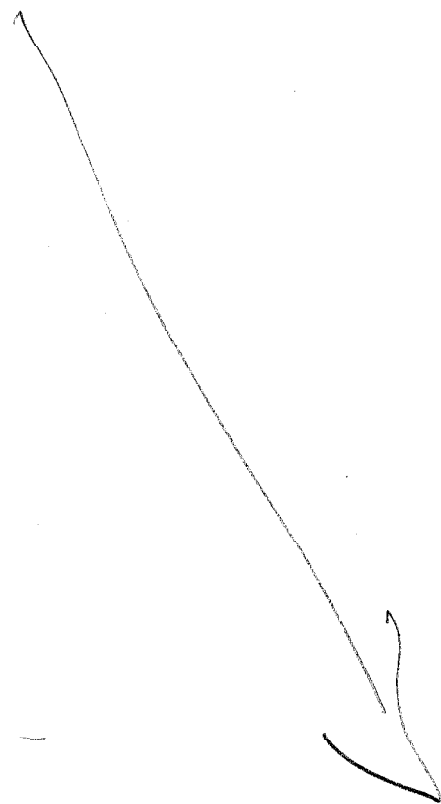
#. Page , line :

#. Page , line :

#. Page , line :

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#. Page , line :



1999 BILL

1 **AN ACT to create 20.9276 of the statutes; relating to:** prohibiting the use of
2 funds for family planning services and pregnancy counseling that is provided
3 to a minor without parental consent.

Analysis by the Legislative Reference Bureau

This bill prohibits state agencies and local governmental units from authorizing payments of state or local funds or federal funds passing through the state treasury to an organization (defined as a nonprofit corporation or a public agency) that provides family planning services or pregnancy counseling to a minor without first obtaining the written consent of one of the minor's parents or legal guardian or custodian. ("Family planning services" are defined to mean counseling and distribution of information about family planning and referral to licensed nurse practitioners or physicians or local health departments for consultation, examination, medical treatment and prescriptions for the purpose of family planning; "family planning" is voluntary action by individuals to prevent or aid conception that does not include performance, promotion, encouragement, counseling in favor of or referral for voluntary termination of pregnancy.) If a state agency or local unit of government violates this prohibition, the organization to which payments were made must return the moneys paid. If an organization provides the family planning services or pregnancy counseling to a minor without the written consent, the organization may not receive any of the state, local or federal funds to provide the services for 24 months or the date of the organization's last violation, whichever is later; any grant, subsidy or other form of the funds to the

BILL

organization is terminated; and the organization must return to the state agency or local unit of government all funds paid under the grant, subsidy or other funding.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.9276 of the statutes is created to read:

contraceptive articles prescribed for minors

1

2

20.9276 Prohibitions on funding for ~~services or counseling~~ provided

INSERT 2-3

49,001 (1s)

without parental consent. (1) In this section:

3

(a) "Family planning services" has the meaning given in s. ~~263.04 (1) (a)~~.

c

4

(b) "Local governmental unit" means a city, village, town or county or an agency

or subdivision of a city, village, town or county.

(c) "Organization" means a nonprofit corporation, as defined in s. ~~46.93 (1m)~~

5

(c), or a public agency, as defined in s. ~~46.93 (1m) (e)~~.

6

(d) "Program funds" means all of the following funds distributed or attributable to an ~~organization~~ for providing family planning services ~~or pregnancy counseling~~:

7

8

1. Funds specified under sub. (2).

entity, public agency or individual

9

2. Income derived from a grant, subsidy or other funding specified under sub.

10

(2) or from family planning services ~~or pregnancy counseling~~ funded by a grant, subsidy or other funding specified under sub. (2).

11

12

3. Funds that are matching funds to a grant, subsidy or other funding specified under sub. (2).

13

14

(e) "State agency" has the meaning given in s. 20.9275 (1) (g).

15

16

(f) No state agency or local governmental unit may authorize payment of funds

17

18

of this state, of any local governmental unit or, subject to sub. (4), of federal funds

19

20

passing through the state treasury as a grant, subsidy or other funding that wholly

INSERT 2-16

BILL

entity, public agency or individual

prescribes a contraceptive article for

1 or partially funds family planning services ~~or pregnancy counseling~~ if the
2 ~~organization~~ that receives the funding ~~provides family planning services or~~
3 ~~pregnancy counseling to~~ a minor without the written consent of one of the minor's
4 parents or his or her legal guardian or custodian.

entity, public agency or individual

5 (3) Subject to sub. (4), no ~~organization~~ that receives funds specified under sub.
6 (2) may use program funds to ~~provide family planning services or pregnancy~~
7 ~~counseling to~~ a minor without the written consent of one of the minor's parents or his
8 or her legal guardian or custodian.

prescribes a contraceptive article for

9 (4) The restriction under subs. (2) and (3) on the authorization of payment and
10 the use of federal funds passing through the state treasury shall apply only to the
11 extent that the application of the restriction does not result in the loss of any federal
12 funds.

13 (5) If an ~~organization~~ that receives funds specified under sub. (2) violates sub.
14 (3), all of the following shall apply:

15 (a) The ~~organization~~ may not receive funds specified under sub. (2) for 24
16 months after the date on which the state agency or local governmental unit last
17 authorized payment or the date on which the ~~organization~~ last violated sub. (3),
18 whichever is later.

19 (b) The grant, subsidy or other funding under which an ~~organization~~ has used
20 funds in violation of sub. (3) is terminated; and the ~~organization~~ shall return to the
21 state agency or local governmental unit all funds that have been paid to the
22 ~~organization~~ under the grant, subsidy or other funding.

23 (6) If a state agency or local governmental unit authorizes payment in violation
24 of sub. (2), the grant, subsidy or other funding under which the state agency or local
25 governmental unit authorized payment in violation of sub. (2), is terminated; and the

BILL

SECTION 1

1 ~~organization~~ shall return to the state agency or local governmental unit funds that
2 have been paid to the ~~organization~~ under the grant, subsidy or other funding. "

3

*entity, public agency
or individual*



1999

Nonstat File Sequence: **EEE**

LRB _____ / _____

_____ : _____ : _____

INITIAL APPLICABILITY

- In the component bar:
 For the action phrase, execute: create → action: → *NS: → inappl
 For the budget action phrase, execute: create → action: → *NS: → 93XX
 For the text, execute: create → text: → *NS: → inappl
- Nonstatutory subunits are numbered automatically if "(#1)", "(#2)", etc., is filled in. Below, for the budget, fill in the 9300 department code; and fill in "___" or "()" only if a "frozen" number is needed.

#, Page 1592, line 16: after that line insert:

SECTION # 2 [93] . Initial applicability;

Initial App
 (#1) () PROHIBITIONS ON FUNDING FOR CONTRACEPTIVE ARTICLES PRESCRIBED FOR MINORS. The treatment of section

20.9276

..... of the statutes
 first applies to ... a contract that contains provisions
 inconsistent with that treatment on the day on which the
 contract expires or is extended, modified or renewed,
 whichever first occurs."

- In the component bar:
 For the action phrase, execute: create → action: → *NS: → inappl
 For the text, execute: create → text: → *NS: → inapplA
- Nonstatutory subunits are numbered automatically if "(#1)", "(#2)", etc., is filled in. Below, fill in "___" or "()" only if a "frozen" number is needed.

SECTION # _____ . Initial applicability;

(#1) () This act first applies to

(End)

BILL

SECTION 10

or any hormonal compound that is taken orally,

1 **SECTION 10.** 632.895 (14) of the statutes is created to read:

2 **632.895 (14) CONTRACEPTIVE ARTICLES AND SERVICES.** (a) In this subsection,

3 (a) "contraceptive article" means any drug, medicine, mixture, preparation, instrument,

4 article or device of any nature that is approved by the federal food and drug

5 administration for use to prevent a pregnancy and that is prescribed by a licensed

6 health care provider for use to prevent a pregnancy, ~~or any hormonal compound that~~

7 ~~is taken orally and that is approved by the federal food and drug administration for~~

8 ~~use to prevent a pregnancy.~~ "Contraceptive article" does not include any drug,

9 medicine, mixture, preparation, instrument, article or device of any nature

10 prescribed for use in terminating the pregnancy of a woman who is known by the

11 prescribing licensed health care provider to be pregnant.

12 (b) Every disability insurance policy, and every self-insured health plan of a
13 county, city, village or school district, that provides coverage of outpatient health care
14 services shall provide coverage for all of the following:

- 15 1. Contraceptive articles.
- 16 2. Medical services, including counseling and physical examinations, for the
- 17 prescription or use of a contraceptive article or of a procedure to prevent a pregnancy.
- 18 3. Medical procedures performed to prevent a pregnancy.

19 (c) Coverage under this subsection may be subject to exclusions or limitations,
20 including copayments and deductibles, that apply generally to the benefits that are
21 provided under the policy or plan.

22 (d) This subsection does not apply to any of the following:

- 23 1. A disability insurance policy that covers only certain specified diseases.



(a) (b) "Entity" has the meaning given in s. 180.0103(8),
except that "entity" does not mean the United States or a
foreign government and "entity" includes a nonprofit
corporation, as defined in s. 66.504(1)(b).

(END OF INSERT)

(f) "Public agency" has the meaning given
in s. 46.93 (1m)(e).

(END OF INSERT)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2245/1dn
DAK:jlghmh

cmj

April 28, 1999

To Brian Dake:

ITALICS

(99) 1. Prrereconciliation?

(99) Please note that the definition of "family planning services" in this draft refers to that created in Amendment # 78 ((99)LRBb0773).

To Representative Grothman:

As I told your aide, Maggie, I have been concerned about issues raised in the fiscal estimate for 1995 Assembly Bill 965, on which this bill is based, as to possible unconstitutionality and contravention of federal medicaid statutes and regulations. My research has yielded the following:

2. ~~1.~~ Possible issues of unconstitutionality:

States may not impose blanket prohibitions on the receipt by minors of certain procedures or treatment to which the constitutional right of privacy is perceived to attach, e.g., ~~with respect to abortion, *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, at 74 (1976), and~~ with respect to contraceptives, *Carey v. Population Services International*, 431 U.S. 678 (1977). In *Carey*, the Court found unconstitutional a New York statute under which it was a crime for a person to sell or distribute contraceptives of any kind to a minor under the age of 16, for anyone other than a licensed pharmacist to distribute contraceptives to persons 16 or older, and for anyone to advertise or display contraceptives. The Court found that the restrictions on the sale and distribution of contraceptives burdened the minors' constitutional right of privacy to decide whether to bear children and were not justified by compelling state interests.

Generally, unless a state specifically provides otherwise, a minor is considered to be legally incapable of giving consent to his or her treatment. However, under *Bellotti v. Baird*, 443 U.S. 622 (1979), a state that requires a pregnant minor to obtain one or both parents' consent to an abortion must provide an alternative procedure whereby authorization for the abortion can be obtained.

The bill prohibits payment of funds for ~~family planning services or pregnancy counseling to an organization that provides family planning services to~~ a minor without the written consent of the minor's parent or legal guardian or custodian. The term "family planning services" is defined to include "... referral to licensed nurse practitioners ..., licensed physicians or local health departments for ... prescriptions for the purpose of family planning". The term "family planning" is, in turn, defined to mean voluntary action by individuals to prevent or aid conception. Thus, the bill does not directly prohibit a minor from obtaining contraceptives without parental consent, nor does it prohibit physicians from prescribing contraceptives for minors. However, the effect of the bill, in eliminating funding for ~~organizations that provide family~~

entities, public agencies or individuals

prescribe contraceptive articles for

prescribe contraceptive articles
for

~~planning services to~~ minors without parental consent may be to eliminate access by some minors to a means of obtaining contraceptives that must be prescribed by a physician. To the extent that the bill prohibits access by a minor to contraceptives, by requiring parental consent to services that would provide a referral for the contraceptives and by not providing for an alternative procedure, it is conceivable that a court would find that the bill infringes on the minor's right to privacy, as applied under *Carey and Bellotti*. Whether any other services under the bill's definition of "family planning services" are applicable to this reasoning, would depend, I assume, on the extent to which a court might equate the other services with contraceptives in analyzing whether their deprivation would burden the minors' constitutional right of privacy to decide whether to bear children.

3. ~~A.~~ Federal Medicaid requirements:

Federal regulations set forth various requirements safeguarding information on Medicaid applicants and recipients, under 42 CFR 431.300 to 431.307. In 42 CFR 431.305 the agency (the state's lead agency for receipt of the federal moneys, i.e., in this state, the Department of Health and Family Services) must have criteria that govern the types of information about applicants and recipients that are safeguarded. This information must include, among other things, names and addresses, medical services provided and medical data, including past history of disease or disability. In 42 CFR 431.306, the agency must have criteria specifying the conditions for release and use of information about applicants and recipients and must not publish names of applicants or recipients. I do not know how these provisions affect access by minors to ~~family planning services~~ with or without parental consent. ~~If you would wish, I would be happy to attempt to obtain this information from DHHS.~~

~~If I may assist you further with this draft, please do not hesitate to call.~~

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137

contraceptive articles

ITALICS

, although not necessarily likely.

→ 4. ~~Other:~~ The provisions of s. 20.9276 would apply to an emancipated or married minor.
Is that your intent?

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0867/1dn

DAK:cmh:ksh

June 24, 1999

To Matt Sande:

1. *Prereconciliation:*

Please note that the definition of "family planning services" in this draft refers to that created in Amendment #78 (1999 LRBb0773).

2. *Possible issues of unconstitutionality:*

States may not impose blanket prohibitions on the receipt by minors of certain procedures or treatment to which the constitutional right of privacy is perceived to attach, e.g., with respect to contraceptives, *Carey v. Population Services International*, 431 U.S. 678 (1977). In *Carey*, the Court found unconstitutional a New York statute under which it was a crime for a person to sell or distribute contraceptives of any kind to a minor under the age of 16, for anyone other than a licensed pharmacist to distribute contraceptives to persons 16 or older, and for anyone to advertise or display contraceptives. The Court found that the restrictions on the sale and distribution of contraceptives burdened the minors' constitutional right of privacy to decide whether to bear children and were not justified by compelling state interests.

Generally, unless a state specifically provides otherwise, a minor is considered to be legally incapable of giving consent to his or her treatment. However, under *Bellotti v. Baird*, 443 U.S. 622 (1979), a state that requires a pregnant minor to obtain one or both parents' consent to an abortion must provide an alternative procedure whereby authorization for the abortion can be obtained.

The bill prohibits payment of funds to entities, public agencies or individuals that prescribe contraceptive articles for contraceptive articles for a minor without the written consent of the minor's parent or legal guardian or custodian. The effect of the bill, in eliminating funding for entities, public agencies or individuals that prescribe contraceptive articles for minors without parental consent may be to eliminate access by some minors to a means of obtaining contraceptives that must be prescribed by a physician. To the extent that the bill prohibits access by a minor to contraceptives, by requiring parental consent to services that would provide a referral for the contraceptives and by not providing for an alternative procedure, it is conceivable, although not necessarily likely, that a court would find that the bill infringes on the minor's right to privacy, as applied under *Carey* and *Bellotti*.

3. Federal Medicaid requirements:

Federal regulations set forth various requirements safeguarding information on Medicaid applicants and recipients, under 42 CFR 431.300 to 431.307. In 42 CFR 431.305 the agency (the state's lead agency for receipt of the federal moneys, i.e., in this state, the Department of Health and Family Services) must have criteria that govern the types of information about applicants and recipients that are safeguarded. This information must include, among other things, names and addresses, medical services provided and medical data, including past history of disease or disability. In 42 CFR 431.306, the agency must have criteria specifying the conditions for release and use of information about applicants and recipients and must not publish names of applicants or recipients. I do not know how these provisions affect access by minors to contraceptive articles with or without parental consent.

4. Other:

The provisions of s. 20.9276 would apply to an emancipated or married minor. Is that your intent?

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137

6/26

Matt Sunde:

Put in emancip or married
minor.

SOON - Inedit 6/26

1999 - 2000 LEGISLATURE

LRBb0867/2

DAK:cmh:ksb

D-NOTE

ARC:.....Sande - Amdt. No. 87 Require parent or guardian notification before minor obtains prescription for birth control from family planning services

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 419, line 12: after that line insert:

3 "SECTION 652g. 20.9276 of the statutes is created to read:

4 **20.9276 Prohibitions on funding for contraceptive articles prescribed**
5 **for minors without parental consent. (1) In this section:**

6 (a) "Contraceptive article" means any drug, medicine, mixture, preparation,
7 instrument, article or device of any nature or any hormonal compound that is taken
8 orally, that is approved by the federal food and drug administration for use to prevent
9 a pregnancy and that is prescribed by a licensed health care provider for use to

1 prevent a pregnancy. “Contraceptive article” does not include any drug, medicine,
2 mixture, preparation, instrument, article or device of any nature prescribed for use
3 in terminating the pregnancy of a woman who is known by the prescribing licensed
4 health care provider to be pregnant.

5 (b) “Entity” has the meaning given in s. 180.0103 (8), except that “entity” does
6 not mean the United States or a foreign government and “entity” includes a nonprofit
7 corporation, as defined in s. 66.504 (1) (b).

8 (c) “Family planning services” has the meaning given in s. 49.001 (1s).

9 (d) “Local governmental unit” means a city, village, town or county or an agency
10 or subdivision of a city, village, town or county.

11 (e) “Program funds” means all of the following funds distributed or attributable
12 to an entity, public agency or individual for providing family planning services:

13 1. Funds specified under sub. (2).

14 2. Income derived from a grant, subsidy or other funding specified under sub.
15 (2) or from family planning services funded by a grant, subsidy or other funding
16 specified under sub. (2).

17 3. Funds that are matching funds to a grant, subsidy or other funding specified
18 under sub. (2).

19 (f) “Public agency” has the meaning given in s. 46.93 (1m) (e).

20 (g) “State agency” has the meaning given in s. 20.9275 (1) (g).

21 (2) No state agency or local governmental unit may authorize payment of funds
22 of this state, of any local governmental unit or, subject to sub. (4), of federal funds
23 passing through the state treasury as a grant, subsidy or other funding that wholly
24 or partially funds family planning services, if the entity, public agency or individual

other than a married or emancipated minor, as defined in s. 48.375 (2) (e),

1 that receives the funding prescribes a contraceptive article for a minor without the
2 written consent of one of the minor's parents or his or her legal guardian or custodian.

3 (3) Subject to sub. (4), no entity, public agency or individual that receives funds
4 specified under sub. (2) may use program funds to prescribe a contraceptive article
5 for a minor without the written consent of one of the minor's parents or his or her
6 legal guardian or custodian.

7 (4) The restriction under subs. (2) and (3) on the authorization of payment and
8 the use of federal funds passing through the state treasury shall apply only to the
9 extent that the application of the restriction does not result in the loss of any federal
10 funds.

11 (5) If an entity, public agency or individual that receives funds specified under
12 sub. (2) violates sub. (3), all of the following shall apply:

13 (a) The entity, public agency or individual may not receive funds specified
14 under sub. (2) for 24 months after the date on which the state agency or local
15 governmental unit last authorized payment or the date on which the entity, public
16 agency or individual last violated sub. (3), whichever is later.

17 (b) The grant, subsidy or other funding under which an entity, public agency
18 or individual has used funds in violation of sub. (3) is terminated; and the entity,
19 public agency or individual shall return to the state agency or local governmental
20 unit all funds that have been paid to the entity, public agency or individual under the
21 grant, subsidy or other funding.

22 (6) If a state agency or local governmental unit authorizes payment in violation
23 of sub. (2), the grant, subsidy or other funding under which the state agency or local
24 governmental unit authorized payment in violation of sub. (2), is terminated; and the
25 entity, public agency or individual shall return to the state agency or local

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0867/44a 2dn
DAK:cmh:ksb

June 24, 1999

To Matt Sande:

1. *Prereconciliation:*

Please note that the definition of "family planning services" in this draft refers to that created in Amendment #78 (1999 LRBb0773).

2. *Possible issues of unconstitutionality:*

States may not impose blanket prohibitions on the receipt by minors of certain procedures or treatment to which the constitutional right of privacy is perceived to attach, e.g., with respect to contraceptives, *Carey v. Population Services International*, 431 U.S. 678 (1977). In *Carey*, the Court found unconstitutional a New York statute under which it was a crime for a person to sell or distribute contraceptives of any kind to a minor under the age of 16, for anyone other than a licensed pharmacist to distribute contraceptives to persons 16 or older, and for anyone to advertise or display contraceptives. The Court found that the restrictions on the sale and distribution of contraceptives burdened the minors' constitutional right of privacy to decide whether to bear children and were not justified by compelling state interests.

Generally, unless a state specifically provides otherwise, a minor is considered to be legally incapable of giving consent to his or her treatment. However, under *Bellotti v. Baird*, 443 U.S. 622 (1979), a state that requires a pregnant minor to obtain one or both parents' consent to an abortion must provide an alternative procedure whereby authorization for the abortion can be obtained.

The bill prohibits payment of funds to entities, public agencies or individuals that prescribe contraceptive articles for contraceptive articles for a minor without the written consent of the minor's parent or legal guardian or custodian. The effect of the bill, in eliminating funding for entities, public agencies or individuals that prescribe contraceptive articles for minors without parental consent may be to eliminate access by some minors to a means of obtaining contraceptives that must be prescribed by a physician. To the extent that the bill prohibits access by a minor to contraceptives, by requiring parental consent to services that would provide a referral for the contraceptives and by not providing for an alternative procedure, it is conceivable, although not necessarily likely, that a court would find that the bill infringes on the minor's right to privacy, as applied under *Carey* and *Bellotti*.

3. *Federal Medicaid requirements:*

Federal regulations set forth various requirements safeguarding information on Medicaid applicants and recipients, under 42 CFR 431.300 to 431.307. In 42 CFR 431.305 the agency (the state's lead agency for receipt of the federal moneys, i.e., in this state, the Department of Health and Family Services) must have criteria that govern the types of information about applicants and recipients that are safeguarded. This information must include, among other things, names and addresses, medical services provided and medical data, including past history of disease or disability. In 42 CFR 431.306, the agency must have criteria specifying the conditions for release and use of information about applicants and recipients and must not publish names of applicants or recipients. I do not know how these provisions affect access by minors to contraceptive articles with or without parental consent.

4/ *Other:*

The provisions of s. 20.9276 would apply to an emancipated or married minor. Is that your intent?

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0867/2dn

DAK:cmh:kjf

June 26, 1999

To Matt Sande:

1. *Prereconciliation:*

Please note that the definition of "family planning services" in this draft refers to that created in Amendment #78 (1999 LRBb0773).

2. *Possible issues of unconstitutionality:*

States may not impose blanket prohibitions on the receipt by minors of certain procedures or treatment to which the constitutional right of privacy is perceived to attach, e.g., with respect to contraceptives, *Carey v. Population Services International*, 431 U.S. 678 (1977). In *Carey*, the Court found unconstitutional a New York statute under which it was a crime for a person to sell or distribute contraceptives of any kind to a minor under the age of 16, for anyone other than a licensed pharmacist to distribute contraceptives to persons 16 or older, and for anyone to advertise or display contraceptives. The Court found that the restrictions on the sale and distribution of contraceptives burdened the minors' constitutional right of privacy to decide whether to bear children and were not justified by compelling state interests.

Generally, unless a state specifically provides otherwise, a minor is considered to be legally incapable of giving consent to his or her treatment. However, under *Bellotti v. Baird*, 443 U.S. 622 (1979), a state that requires a pregnant minor to obtain one or both parents' consent to an abortion must provide an alternative procedure whereby authorization for the abortion can be obtained.

The bill prohibits payment of funds to entities, public agencies or individuals that prescribe contraceptive articles for contraceptive articles for a minor without the written consent of the minor's parent or legal guardian or custodian. The effect of the bill, in eliminating funding for entities, public agencies or individuals that prescribe contraceptive articles for minors without parental consent may be to eliminate access by some minors to a means of obtaining contraceptives that must be prescribed by a physician. To the extent that the bill prohibits access by a minor to contraceptives, by requiring parental consent to services that would provide a referral for the contraceptives and by not providing for an alternative procedure, it is conceivable, although not necessarily likely, that a court would find that the bill infringes on the minor's right to privacy, as applied under *Carey* and *Bellotti*.

3. Federal Medicaid requirements:

Federal regulations set forth various requirements safeguarding information on Medicaid applicants and recipients, under 42 CFR 431.300 to 431.307. In 42 CFR 431.305 the agency (the state's lead agency for receipt of the federal moneys, i.e., in this state, the Department of Health and Family Services) must have criteria that govern the types of information about applicants and recipients that are safeguarded. This information must include, among other things, names and addresses, medical services provided and medical data, including past history of disease or disability. In 42 CFR 431.306, the agency must have criteria specifying the conditions for release and use of information about applicants and recipients and must not publish names of applicants or recipients. I do not know how these provisions affect access by minors to contraceptive articles with or without parental consent.

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0867/2
DAK:cmh:kjf

ARC:.....Sande - Amdt. No. 87, Require parent or guardian notification before minor obtains prescription for birth control from family planning services

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 419, line 12: after that line insert:

3 **"SECTION 652g.** 20.9276 of the statutes is created to read:

4 **20.9276 Prohibitions on funding for contraceptive articles prescribed**
5 **for minors without parental consent. (1)** In this section:

6 (a) "Contraceptive article" means any drug, medicine, mixture, preparation,
7 instrument, article or device of any nature or any hormonal compound that is taken
8 orally, that is approved by the federal food and drug administration for use to prevent
9 a pregnancy and that is prescribed by a licensed health care provider for use to

1 prevent a pregnancy. “Contraceptive article” does not include any drug, medicine,
2 mixture, preparation, instrument, article or device of any nature prescribed for use
3 in terminating the pregnancy of a woman who is known by the prescribing licensed
4 health care provider to be pregnant.

5 (b) “Entity” has the meaning given in s. 180.0103 (8), except that “entity” does
6 not mean the United States or a foreign government and “entity” includes a nonprofit
7 corporation, as defined in s. 66.504 (1) (b).

8 (c) “Family planning services” has the meaning given in s. 49.001 (1s).

9 (d) “Local governmental unit” means a city, village, town or county or an agency
10 or subdivision of a city, village, town or county.

11 (e) “Program funds” means all of the following funds distributed or attributable
12 to an entity, public agency or individual for providing family planning services:

13 1. Funds specified under sub. (2).

14 2. Income derived from a grant, subsidy or other funding specified under sub.
15 (2) or from family planning services funded by a grant, subsidy or other funding
16 specified under sub. (2).

17 3. Funds that are matching funds to a grant, subsidy or other funding specified
18 under sub. (2).

19 (f) “Public agency” has the meaning given in s. 46.93 (1m) (e).

20 (g) “State agency” has the meaning given in s. 20.9275 (1) (g).

21 (2) No state agency or local governmental unit may authorize payment of funds
22 of this state, of any local governmental unit or, subject to sub. (4), of federal funds
23 passing through the state treasury as a grant, subsidy or other funding that wholly
24 or partially funds family planning services, if the entity, public agency or individual
25 that receives the funding prescribes a contraceptive article for a minor other than a

1 married or emancipated minor, as defined in s. 48.375 (2) (e), without the written
2 consent of one of the minor's parents or his or her legal guardian or custodian.

3 (3) Subject to sub. (4), no entity, public agency or individual that receives funds
4 specified under sub. (2) may use program funds to prescribe a contraceptive article
5 for a minor other than a married or emancipated minor, as defined in s. 48.375 (2)
6 (e), without the written consent of one of the minor's parents or his or her legal
7 guardian or custodian.

8 (4) The restriction under subs. (2) and (3) on the authorization of payment and
9 the use of federal funds passing through the state treasury shall apply only to the
10 extent that the application of the restriction does not result in the loss of any federal
11 funds.

12 (5) If an entity, public agency or individual that receives funds specified under
13 sub. (2) violates sub. (3), all of the following shall apply:

14 (a) The entity, public agency or individual may not receive funds specified
15 under sub. (2) for 24 months after the date on which the state agency or local
16 governmental unit last authorized payment or the date on which the entity, public
17 agency or individual last violated sub. (3), whichever is later.

18 (b) The grant, subsidy or other funding under which an entity, public agency
19 or individual has used funds in violation of sub. (3) is terminated; and the entity,
20 public agency or individual shall return to the state agency or local governmental
21 unit all funds that have been paid to the entity, public agency or individual under the
22 grant, subsidy or other funding.

23 (6) If a state agency or local governmental unit authorizes payment in violation
24 of sub. (2), the grant, subsidy or other funding under which the state agency or local
25 governmental unit authorized payment in violation of sub. (2), is terminated; and the

1 entity, public agency or individual shall return to the state agency or local
2 governmental unit funds that have been paid to the entity, public agency or
3 individual under the grant, subsidy or other funding.”

4 **2.** Page 1592, line 16: after that line insert:

5 “(13g) PROHIBITIONS ON FUNDING FOR CONTRACEPTIVE ARTICLES PRESCRIBED FOR
6 MINORS. The treatment of section 20.9276 of the statutes first applies to a contract
7 that contains provisions inconsistent with that treatment on the day on which the
8 contract expires or is extended, modified or renewed, whichever first occurs.”

9 (END)