

2001 DRAFTING REQUEST

Bill

Received: 12/21/2000

Received By: kenneda

Wanted: As time permits

Identical to LRB:

For: Mark Gundrum (608) 267-5158

By/Representing: Mary Klaver

This file may be shown to any legislator: NO

Drafter: kenneda

May Contact:

Addl. Drafters:

Subject: Health - abortion

Extra Copies: ISR

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Prohibit organizations that engage in abortion-related activities from receiving public funds; prohibit organizations that receive public funds from engaging in abortion-related activities

Instructions:

Same as 99-3207/1, with attached changes

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>
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/1			martykr 03/09/2001	_____	lrb_docadmin 03/09/2001		S&L
/2	kenneda 04/23/2001	wjackson 04/24/2001	jfrantze 04/24/2001	_____	lrb_docadmin 04/24/2001		S&L
/3	kenneda	wjackson	haugeca	_____	lrb_docadmin		S&L

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/4	kenneda 05/09/2001	csicilia 05/09/2001	rschluet 05/09/2001	_____	lrb_docadmin 05/09/2001		S&L
/5	kenneda 06/12/2001	wjackson 06/12/2001	pgreensl 06/12/2001	_____	lrb_docadmin 06/12/2001	lrb_docadmin 08/29/2001	

FE Sent For:

LAT intro.

<END>

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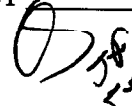
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/3		<i>wlj 5/4</i>	<i>CH</i>	<i>KWW</i>			

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6/4/24 *J/Ks*
4/24
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1/?	kenneda	11/14/3/8	km/8	<u>2/3</u> <u>4/9</u>			

FE Sent For:

<END>

12/21/00 From Mary Klever:

✓ ① Add repeal of s. 20.9275(3m) to the bill

✓ ② Fix 253.02(2m) (intro.) - language was not amended

③ aa2 + sub 1 + a1309/1 pp. 73 did not have notwithstanding language in 20.9275(3)

SOON - In edit 3/5/01

1625/1

1999-2000 LEGISLATURE

LRB-320711

D-NOTE

DAK:wh:lp

WLJ

1999 BILL

regenerate

1 AN ACT to repeal 20.9275 (2m) (c), 253.02 (2m) (c), 253.07 (1) (a) 3. and 253.07
 2 (1) (b) 3.; to amend 20.9275 (2m) (intro.), 20.9275 (3), 253.02 (2m) (intro.),
 3 253.07 (1) (a) (intro.) and 253.07 (1) (b) (intro.); and to create 20.9275 (2n) of
 4 the statutes; relating to: prohibiting an organization or affiliate of an
 5 organization that engages in abortion-related activities from receiving certain
 6 public funds, prohibiting an organization that receives certain public funds
 7 from using other public funds for abortion-related activities ~~and~~ changing the
 8 types of information that are not prohibited from being provided by
 9 organizations that receive the funds.

Analysis by the Legislative Reference Bureau

Under current law, federal funds passing through the state treasury and state and local funds may not be paid as a grant, subsidy, or other funding that wholly or partially or directly or indirectly involves pregnancy programs, projects, or services and that is a grant, subsidy, or other funding under specific state programs (adolescent pregnancy prevention and pregnancy services, adolescent self-sufficiency and pregnancy prevention, adolescent choices, welfare and hygiene of maternity and infancy, family planning, pregnancy counseling and outreach to

and changing requirements related to the maternal and child health program and family planning services

BILL

using income derived from the funds, or using matching funds

INSERT A (no #)

low-income pregnant women and under federal maternal and child health services block grants), if the pregnancy program, project, or service using these federal, state, or local funds provides abortion services; promotes, encourages, or counsels in favor of abortion services; or makes abortion referrals either directly or through an intermediary in any instance other than when an abortion is directly and medically necessary to save the life of the pregnant woman. An organization that violates ~~the~~ ^{the} prohibition may not receive the funds for 24 months after the violation and must return all funds paid under the grant, subsidy, or other funding, and the grant, subsidy, or other funding is terminated. This law specifically does not prohibit the providing of nondirective information explaining prenatal care and delivery; infant care, foster care, or adoption; or pregnancy termination.

Also under current law, federal funds passing through the state treasury and state and local funds may not be paid for the performance of an abortion other than an abortion that is directly and medically necessary to save the life of the woman ~~in~~ ⁱⁿ a case of sexual assault or incest, or if, due to a medical condition existing before the abortion, the physician determines that the abortion is directly and medically necessary to prevent grave, long-lasting physical health damage to the woman.

This bill expands the prohibition on payment of the specified federal, state, or local funds to prohibit payment to an organization or affiliate of an organization that provides abortion services; promotes, encourages, or counsels in favor of abortion services; or makes abortion referrals other than when directly and medically necessary to save the pregnant woman's life. The bill prohibits an organization that receives these funds from using any other public funds for an abortion-related activity. ~~Under the bill, the bill prohibits an organization that receives these funds from transferring any program funds or other public funds to an organization or affiliate of an organization that engages in abortion-related activity. In addition, the bill changes the types of information that an organization that receives the funds from providing; under the bill, the organization is not prohibited from promoting, encouraging or counseling in favor of or referring directly or through an intermediary for prenatal care and delivery and infant care, foster care, or adoption.~~

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:

INSERT 2-1

- 1 SECTION 1. 20.9275 (2m) (intro.) of the statutes is amended to read:
- 2 20.9275 (2m) (intro.) Nothing in sub. (2) prohibits the ^{play space} providing of nondirective
- 3 information explaining promotion, encouragement, or counseling in favor of, or
- 4 referral either directly or through an intermediary for, any of the following:
- 5 SECTION 2. 20.9275 (2m) (c) of the statutes is repealed.

the

pregnant

and

INSERT B (no #)

INSERT C (no #)

BILL

1 **SECTION 3.** 20.9275 (2n)[✓] of the statutes is created to read:

2 20.9275 (2n) None of the funds specified under sub. (2) (intro.) may be paid to
3 an organization or affiliate of an organization that engages in an activity that is
4 specified under sub. (2) (a) 1. to 3.

5 **SECTION 4.** 20.9275 (3)[✓] of the statutes is amended to read:

6 20.9275 (3) ~~Subject to sub. (3m), no~~ organization that receives funds specified
7 under sub. (2) (intro.) may use program funds or, notwithstanding s. 20.927 (2) (a)
8 and (b), any other public funds for an activity that is specified under sub. (2) (a) 1.
9 to 3. No organization that receives funds specified under sub. (2) (intro.) may
10 transfer any program funds or any other public funds to an organization or affiliate
11 of an organization that engages in an activity that is specified under sub. (2) (a) 1.
12 to 3.

13 **SECTION 5.** 253.02 (2m) (intro.)[✓] of the statutes is amended to read:

14 253.02 (2m) (intro.) Nothing in this section authorizes the performance,
15 promotion, encouragement[↑] or counseling in favor of, or referral either directly or
16 through an intermediary for, voluntary termination of pregnancy. Nothing in this
17 section prohibits the ~~providing of nondirective information explaining~~ promotion,
18 encouragement[↑] or counseling in favor of, or referral either directly or through an
19 intermediary for, any of the following:

20 **SECTION 6.** 253.02 (2m) (c)[✓] of the statutes is repealed.

21 **SECTION 7.** 253.07 (1) (a) (intro.)[✓] of the statutes is amended to read:

22 253.07 (1) (a) (intro.) "Family planning" means voluntary action by individuals
23 to prevent or aid conception. "Family planning" does not include the performance,
24 promotion, encouragement[↑] or counseling in favor of, or referral either directly or
25 through an intermediary for, voluntary termination of pregnancy, but may include

BILL

1 the ~~providing of nondirective information explaining promotion, encouragement or~~
2 ~~counseling in favor of, or referral either directly or through an intermediary for,~~ any
3 of the following:

4 SECTION 8. 253.07 (1) (a) 3. of the statutes is repealed.

5 SECTION 9. 253.07 (1) (b) (intro.) of the statutes is amended to read:

6 253.07 (1) (b) (intro.) "Family planning services" ~~mean~~ ^{means} counseling by trained
7 personnel regarding family planning; distribution of information relating to family
8 planning; and referral to licensed nurse practitioners within the scope of their
9 practice, licensed physicians or local health departments for consultation,
10 examination, medical treatment and prescriptions for the purpose of family
11 planning. "Family planning" does not include the performance, promotion,
12 encouragement or counseling in favor of, or referral either directly or through an
13 intermediary for, voluntary termination of pregnancy, but may include the ~~providing~~
14 ~~of nondirective information explaining promotion, encouragement or counseling in~~
15 ~~favor of, or referral either directly or through an intermediary for,~~ any of the
16 following:

17 SECTION 10. 253.07 (1) (b) 3. of the statutes is repealed.

18 (END)

D-NOTE

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1625/?ins
.....

INSERT A

The restriction applies only to the extent that applying it does not result in the loss of any federal funds.

INSERT B

eliminates authorization, including authorization under the maternal and child health and family planning laws, to provide nondirective information about pregnancy termination and, instead, specifies

INSERT C

Lastly, the bill eliminates the provision that specifies that the prohibitions on the use of the funds applies only to the extent that applying it does not result in the loss of any federal funds.

INSERT 2-1

1
2
3
4
5
6
7
8

SECTION ~~17~~[#] 20.9275 (2) (intro.) of the statutes is amended to read:

20.9275 (2) (intro.) No state agency or local governmental unit may authorize payment of funds of this state, of any local governmental unit or, ~~subject to sub. (3m),~~ of federal funds passing through the state treasury as a grant, subsidy¹ or other funding that wholly or partially or directly or indirectly involves pregnancy programs, projects, or services, that is a grant, subsidy² or other funding under s. 46.93, 46.99, 46.995, 253.05, 253.07, 253.08³ or 253.085 or 42 USC 701 to 710, if any of the following applies:

History: 1997 a. 27, 237; 1999 a. 9.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

1625/ldn
LRB-3207/Tdr
DAK:wlj:lsj
Wlj

June 17, 1999

U.S. cert. den.,
120 SC 501 (1999)

redrafted LRB 99-3027/1,
with the changes requested

The bill's

to

To Representative Gundrum:

1. I have drafted, under s. 20.9275 (2a), the language proposed by Ms. Mary Klaver on your behalf. As indicated in the motion for the Assembly Republican Caucus that was provided with the drafting instructions, the language is based on similar language enacted as section 10.715 (1), 89th Leg., 2d Sess. (Mo. 1998), which was reviewed by the 8th Circuit Court of Appeals in *Planned Parenthood of Mid-Missouri v. Dempsey*, 167 F.3d 458 (8th Cir. 1999). The language prohibits payment of the funds specified in s. 20.9275 (2), stats., to an organization or affiliate of an organization that provides abortions; promotes, encourages, or counsels in favor of abortion services; or makes abortion referrals either directly or through an intermediary in any instance other than when an abortion is directly and medically necessary to save the life of the pregnant woman. (For simplicity, I will refer to the funds as "family planning funds" and to the prohibited activities as "abortion-related activities".) Under the language as drafted, then, organizations are prohibited from receiving family planning funds if they are organizations or affiliates of organizations that provide abortion-related activities; put another way, in order to receive the family planning funds, they may not have any affiliation with an organization that provides abortion-related activities. However, please note that, if this is your intent, as it is expressed in the motion, the court in *Planned Parenthood v. Dempsey* found the language unconstitutional:

"In addition, Tier I would cross the line established in *Rust, League of Women Voters*, and *Regan*, and hence be an unconstitutional condition, if we interpreted it to prohibit grantees from having any affiliation with abortion service providers. . . . Accordingly, we construe the language of Tier I to allow a grantee to maintain an affiliation with an abortion service provider, so long as that affiliation does not include direct referrals for abortion. Under this construction, Tier I is not an unconstitutional condition, because it allows grantees to exercise their constitutionally protected rights through independent affiliates.

"To remain truly "independent" however, any affiliate that provides abortion services must not be directly or indirectly subsidized by a section 10.715 grantee. . . . No subsidy will exist if the affiliate that provides abortion services is separately incorporated, has separate facilities, and maintains adequate financial records to demonstrate that it receives no State family-planning funds." *Planned Parenthood v. Dempsey*, at 463.

At this time

currently

eliminates

The language proposed and drafted has none of the additions to it that the court in *Planned Parenthood v. Dempsey* finds necessary to make it constitutional. No opinion exists in the 7th Circuit (of which Wisconsin is a part) that construes the language to have these additions. Therefore, without more, the language appears under *Planned Parenthood v. Dempsey* to be unconstitutional.

repeals

2. The proposed and drafted language ~~does not amend~~ s. 20.9275 (3m), stats., which states that restrictions under current law under s. 20.9275 (2) and (3), stats., on the authorization of payment and the use of federal funds passing through the state treasury shall apply only to the extent that the application of the restriction does not result in the loss of any federal funds. Thus, the bill ~~provides no~~ protection to the state if the restrictions ~~in this bill~~ under s. 20.9275 (3m) result in a loss of federal funds.

3. Under the bill, the amendment to s. 20.9275 (3), stats., prohibits an organization that receives funds specified under s. 20.9275 (2), stats., from using any other public funds for an abortion-related activity, as specified under s. 20.9275 (2) (a), stats. Some of the organizations that receive these funds currently include organizations that are certified medical assistance providers. This prohibition appears to exceed the federal restrictions on the provision of medical assistance under the Hyde Amendment, since they make no exception for abortions in the case of rape; therefore, the prohibitions would place the state out of compliance with federal Title XIX (medicaid) requirements; potential loss to the state of federal medicaid money would not occur, however, under operation of s. 20.9275 (3m), stats.

Secondly, as proposed, the language is in conflict with s. 20.927, which permits use of public funds for performance of an abortion that is directly and medically necessary to save the life of the woman, in the case of sexual assault or incest (s. 20.927 (2) (a), stats.) or if the abortion is directly and medically necessary to prevent grave, long-lasting physical health damage to the woman (s. 20.927 (2) (b), stats.). I therefore have in s. 20.9275 (3) included the language "notwithstanding s. 20.927 (2) (a) and (b)", stats., with respect to the prohibited use of public funds.

Lastly, the breadth of the prohibition, especially with respect to counseling in favor of an abortion and referral for an abortion, may impinge on the doctor-patient relationship to a degree that violates the First Amendment to the U. S. Constitution and article I, section 3, of the Wisconsin Constitution. Restrictions on counseling or referrals for abortion that were at one time placed on recipients of Title X funds were upheld in *Rust v. Sullivan*, 500 U.S. 173, 111 S. Ct. 1759 (1991). With respect to the First Amendment challenge, the court found that programs covered by the restrictions did not significantly impinge on the doctor-patient relationship because that relationship was "not sufficiently all-encompassing" given that the program "does not provide post-conception medical care." *Rust*, 500 U.S. at 200, 111 S. Ct. at 1776. By going further than the regulations at issue in *Rust* and extending restrictions on abortion counseling and referral to all activities of a physician who provides care under the affected funding, including activities involving prenatal care and pregnancy

services, the prohibitions created in this draft may be more susceptible to a free speech challenge.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1625/1dn
DAK:wlj:km

March 8, 2001

To Representative Gundrum:

1. I have redrafted LRB99-3027/1, with the changes requested by Ms. Mary Klaver on your behalf. The bill's language is similar to language enacted as section 10.715 (1), 89th Leg., 2d Sess. (Mo. 1998), which was reviewed by the 8th Circuit Court of Appeals in *Planned Parenthood of Mid-Missouri v. Dempsey*, 167 F.3d 458 (8th Cir. 1999) U.S. *cert.den.*, 120 SC 501 (1999). The language prohibits payment of the funds specified in s. 20.9275 (2), stats., to an organization or affiliate of an organization that provides abortions; promotes, encourages, or counsels in favor of abortion services; or makes abortion referrals either directly or through an intermediary in any instance other than when an abortion is directly and medically necessary to save the life of the pregnant woman. (For simplicity, I will refer to the funds as "family planning funds" and to the prohibited activities as "abortion-related activities.") Under the language as drafted, then, organizations are prohibited from receiving family planning funds if they are organizations or affiliates of organizations that provide abortion-related activities; put another way, to receive the family planning funds, they may not have any affiliation with an organization that provides abortion-related activities. However, please note that, if this is your intent, as it is expressed in the motion, the court in *Planned Parenthood v. Dempsey* found the language *unconstitutional*:

"In addition, Tier I would cross the line established in *Rust*, *League of Women Voters*, and *Regan*, and hence be an unconstitutional condition, if we interpreted it to prohibit grantees from having any affiliation with abortion service providers. . . . Accordingly, we construe the language of Tier I to allow a grantee to maintain an affiliation with an abortion service provider, so long as that affiliation does not include direct referrals for abortion. Under this construction, Tier I is not an unconstitutional condition, because it allows grantees to exercise their constitutionally protected rights through independent affiliates.

"To remain truly "independent" however, any affiliate that provides abortion services must not be directly or indirectly subsidized by a section 10.715 grantee. . . . No subsidy will exist if the affiliate that provides abortion services is separately incorporated, has separate facilities, and maintains adequate financial records to demonstrate that it receives no State family-planning funds." *Planned Parenthood v. Dempsey*, at 463.

The language proposed and drafted has none of the additions to it that the court in *Planned Parenthood v. Dempsey* finds necessary to make it constitutional. No opinion

exists in the 7th Circuit (of which Wisconsin is a part) that construes the language to have these additions. At this time, therefore, without more, the language appears under *Planned Parenthood v. Dempsey* to be unconstitutional.

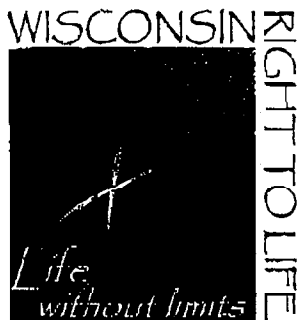
2. The proposed and drafted language repeals s. 20.9275 (3m), stats., which states that restrictions under current law under s. 20.9275 (2) and (3), stats., on the authorization of payment and the use of federal funds passing through the state treasury shall apply only to the extent that the application of the restriction does not result in the loss of any federal funds. Thus, the bill eliminates protection to the state if the restrictions currently under s. 20.9275 result in a loss of federal funds.

3. Under the bill, the amendment to s. 20.9275 (3), stats., prohibits an organization that receives funds specified under s. 20.9275 (2), stats., from using any other public funds for an abortion-related activity, as specified under s. 20.9275 (2) (a), stats. Some of the organizations that receive these funds currently include organizations that are certified medical assistance providers. This prohibition appears to exceed the federal restrictions on the provision of medical assistance under the Hyde Amendment, since they make no exception for abortions in the case of rape; therefore, the prohibitions would place the state out of compliance with federal Title XIX (medicaid) requirements; potential loss to the state of federal medicaid money would not occur, however, under operation of s. 20.9275 (3m), stats.

Secondly, as proposed, the language is in conflict with s. 20.927, which permits use of public funds for performance of an abortion that is directly and medically necessary to save the life of the woman, in the case of sexual assault or incest (s. 20.927 (2) (a), stats.) or if the abortion is directly and medically necessary to prevent grave, long-lasting physical health damage to the woman (s. 20.927 (2) (b), stats.).

Lastly, the breadth of the prohibition, especially with respect to counseling in favor of an abortion and referral for an abortion, may impinge on the doctor-patient relationship to a degree that violates the First Amendment to the U. S. Constitution and article I, section 3, of the Wisconsin Constitution. Restrictions on counseling or referrals for abortion that were at one time placed on recipients of Title X funds were upheld in *Rust v. Sullivan*, 500 U.S. 173, 111 S. Ct. 1759 (1991). With respect to the First Amendment challenge, the court found that programs covered by the restrictions did not significantly impinge on the doctor-patient relationship because that relationship was "not sufficiently all-encompassing" given that the program "does not provide post-conception medical care." *Rust*, 500 U.S. at 200, 111 S. Ct. at 1776. By going further than the regulations at issue in *Rust* and extending restrictions on abortion counseling and referral to all activities of a physician who provides care under the affected funding, including activities involving prenatal care and pregnancy services, the prohibitions created in this draft may be more susceptible to a free speech challenge.

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



State Affiliate of the
National Right to Life Committee, Inc.,
Washington, DC 20004-2193

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TO (Name): Debora Kennedy
 LOCATION: NRB
 AT FAX #: 608-264-6948 AT PHONE# 608-266-0137
 FROM: Mary Klaver

WRL Fax: 414/778-5785
 WRL Phone: 414/778-5780

Date Sent: 4/19/01
 Pages: 8 (including this cover sheet)
 Time Sent: _____ a.m. / p.m.

MESSAGE: Debora,
Attached are the changes to NRB 1625/1
that Rep. Gundrum wants. I am also
attaching a copy of the Title X
regulations upheld in Rust v. Sullivan
(see § 59.10) that he wanted to be
incorporated.
Please call me to work out details -
Rep. Gundrum needs this draft to be
completed by 4/24. Mary

Make the following changes to LRB-1625/1

1. Amend s. 20.9275 (2) (intro.) as follows:

20.9275 (2) (intro.) No state agency or local governmental unit may authorize payment of funds of this state, of any local governmental unit or, ~~subject to sub. (3m),~~ of federal funds passing through the state treasury as a grant, subsidy, or other funding that wholly or partially or directly or indirectly involves pregnancy programs, projects or services, ~~that is~~ including but not limited to a grant, subsidy or other funding under s. 46.93, 46.99, 46.995, 253.02 (2), 253.05, 253.07, 253.08, or 253.085 or 42 USC 701 to 710, if any of the following applies:

2. Amend s. 20.9275 (2) (a) 2. as follows:

20.9275 (2) (a) 2. Promotes, encourages or counsels in favor of abortion services, including but not limited to the following:

- a. Actions to assist women to obtain abortions.
- b. Lobbying for the passage of legislation to increase in any way the availability of abortion.
- c. Providing speakers to promote the use of abortion.
- d. Paying dues to any group that as a significant part of its activities advocates in favor of abortion.
- e. Using legal action to increase in any way the availability of abortion.
- f. Developing or disseminating in any way materials, including but not limited to, printed matter and audiovisual materials, advocating abortion.

3. Create s. 20.9275 (6), (7) and (8) as follows:

20.9275 (6) An otherwise qualified organization shall not be disqualified from receipt of the funds specified under sub. (2) (intro.) because of its affiliation with an organization that engages in an activity that is specified under sub. (2) (a) 1. to 3., provided that the affiliated organization that engages in an activity that is specified under sub. (2) (a) 1. to 3. is physically and financially independent as determined by the conditions set forth in this subsection.

(a) To ensure that the state, a state agency or local governmental unit does not lend its imprimatur to an activity that is specified under sub. (2) (a) 1. to 3., and to ensure that an organization that engages in an activity that is specified under sub. (2) (a) 1. to 3. does not receive a direct or indirect economic or marketing benefit from program funds, an organization that receives the funds specified under sub. (2) (intro.) and its independent affiliate that engages in an activity that is specified under sub. (2) (a) 1. to 3. may not be located in the same building and may not share any of the following:

1. The same or similar name.
2. Medical or nonmedical facilities, including but not limited to treatment, consultation, examination and waiting rooms and business offices.
3. Equipment or supplies, including but not limited to computers, telephone systems, telecommunications equipment, vehicles, office supplies and medical supplies.
4. Services, including but not limited to management, accounting, payroll, and equipment and facility maintenance.

5. Income, grants, donations of cash or property, in-kind gifts and other revenue.

6. Fundraising activities.

7. Expenses.

8. Employees.

9. Employee wages or salaries.

10. Databases, including but not limited to client lists.

(b) An organization that receives funds specified under sub. (2) (intro.) must be separately incorporated from an independent affiliate that engages in an activity that is specified under sub. (2) (a) 1. to 3. and must maintain financial records and database records that demonstrate that its independent affiliate that engages in an activity that is specified under sub. (2) (a) 1. to 3. receives no direct or indirect economic or marketing benefit from the program funds. Mere bookkeeping separation of program funds from other moneys is not sufficient.

(7) The legislative audit bureau shall conduct an audit of each organization that receives the funds specified under sub. (2) (intro.) and the state agency or local governmental unit that authorizes payment of funds specified under sub. (2) (intro.) at least once every three years to ensure strict compliance with this section. If the organization is an affiliate of an organization which engages in an activity that is specified under sub. (2) (a) 1. to 3., then the audit shall be conducted at least annually.

(8) Any person, including but not limited to a member of the legislature, shall have standing to bring an action to enforce the provisions of this section.

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Tuesday
February 2, 1988

Title X regulations
upheld in Rust v. Sullivan

Part IV

Department of
Health and Human
Services

Public Health Service

42 CFR Part 59
Statutory Prohibition on Use of
Appropriated Funds in Programs Where
Abortion is a Method of Family Planning;
Standard of Compliance for Family
Planning Services Projects; Final Rule

separation of abortion services from the national family planning program.

The final rules were assessed under the seven criteria in section 1 of E.O. 12606. We conclude that the rules below will not have a significant potential negative impact on family well-being, based on the following determinations:

1. Impact on stability of the family:

Although program services are provided without regard to, among other things, age, sex, number of pregnancies, or marital status, it is inherent in the character of the services provided under the program that other family members, such as a spouse, will be affected by the services. The limitations on project involvement with abortion in the rules below are intended to convey to the public the Department's concern for the well-being of both mothers and their unborn children.

2. Impact on parental influence: The rules below will lessen the influence of service providers and create an increased opportunity for parental influence on the education, nurture, and supervision of their children. Approximately 1,000,000 adolescents are served by Title X. Of those who become pregnant, Title X will no longer counsel or refer them for abortion. This increases the likelihood of adolescents seeking parental advice when faced with pregnancy and reinforces that the seeking of parental advice and involvement is preferable to government services.

3. Governmental intrusion on family activities: The rules below prohibit Title X projects from counseling once pregnancy is diagnosed and require referral for services. Insofar as this policy affects teenage clients of Title X projects, it thus diminishes the role of federally funded entities in influencing the childbearing decision and may serve to increase the parental role.

4. Impact on family earnings: The rules below will have no impact on family earnings, as they relate solely to receipt of health services under governmentally funded programs and not to income-producing activities of individuals. There should likewise be no impact on family budgets in the aggregate, as the decrease of services in some areas (e.g., prenatal services) will be replaced by increased services in other areas (e.g., preventive family planning services).

5. Feasibility of less Federal government involvement: The rules below principally involve establishing standards for compliance with a federal statute by recipients of federal grant funds. The monitoring activities called for could not be discharged by a non-federal entity.

6. Message of the rules regarding the status of the family: One message to the public is that family planning is separable from abortion and that the government supports, through its funding, programs that enable families to plan the number and spacing of their children, either through preventive methods of family planning or through management of infertility problems, but not through elimination of unborn children by abortion. In reviewing the public comments, the Department was impressed that both supporters and opponents of the proposed rules seemed to agree that Title X has in the past linked family planning and abortion; the rules below break this link and dispel any perception that Title X funds may be used to support abortion services and activities.

7. Message of the rules to young people concerning their behavior and social norms: The message to young people is that the federal government does not sanction abortion as a method of family planning and that it will not provide funding for actions that help young women with an unintended pregnancy to obtain an abortion.

List of Subjects in 42 CFR Part 59

Family planning—birth control, Grant programs—health, Health facilities.

Dated: January 28, 1988.

Robert E. Windom,
Assistant Secretary for Health.

Approved: January 28, 1988.

Onis R. Bowen,
Secretary.

For the reasons set out in the preamble, Subpart A of Part 59, 42 Code of Federal Regulations, is hereby amended as set forth below.

PART 59—[AMENDED]

1. The authority citation for Subpart A of 42 CFR Part 59 is revised to read as follows:

Authority: 42 U.S.C. 300a-4

2. In 42 CFR 59.2, the following definitions are added:

§ 59.2 [Amended]

"Family planning" means the process of establishing objectives for the number and spacing of one's children and selecting the means by which those objectives may be achieved. These means include a broad range of acceptable and effective methods and services to limit or enhance fertility, including contraceptive methods (including natural family planning and abstinence) and the management of infertility (including adoption). Family

planning services includes preconceptional counseling, education, and general reproductive health care (including diagnosis and treatment of infections which threaten reproductive capability). Family planning does not include pregnancy care (including obstetric or prenatal care). As required by section 1008 of the Act, abortion may not be included as a method of family planning in the Title X project. Family planning, as supported under this subpart, should reduce the incidence of abortion.

"Grantee" means the organization to which a grant is awarded under section 1001 of the Act.

"Prenatal care" means medical services provided to a pregnant woman to promote maternal and fetal health.

"Program" and "project" are used interchangeably and mean a coherent assembly of plans, activities and supporting resources contained within an administrative framework.

"Title X" means Title X of the Act, 42 U.S.C. 300, *et seq.*

"Title X program" and "Title X project" are used interchangeably and mean the identified program which is approved by the Secretary for support under section 1001 of the Act, as the context may require. Title X project funds include all funds allocated to the Title X program, including but not limited to grant funds, grant-related income or matching funds.

§ 59.5 [Amended]

3. In 42 CFR 59.5(a), paragraph (a)(5) is removed and paragraphs (a)(6) through (a)(11) are redesignated as paragraphs (a)(5) through (a)(10) respectively.

4. 42 CFR 59.5(b)(3)(i) is revised to read as follows:

§ 59.5 [Amended]

(b) * * *

(3) * * *

(i) achieve community understanding of the objectives of the Title X program.

5. In 42 CFR Part 59, § 59.7 through § 59.13 are redesignated as § 59.11 through § 59.17 respectively, and new § 59.7 through § 59.10 are added to read as follows:

§ 59.7 Standards of compliance with prohibition on abortion.

A [redacted] may not receive funds under this subpart unless it provides assurance satisfactory to the Secretary that it does not include abortion as a method of family planning. Such assurance must include, as a minimum, representation

(supported by such documentation as the Secretary may request) as to compliance with each of the requirements in § 59.8 through § 59.10. A project must comply with such requirements at all times during the period for which support under Title X is provided.

§ 59.8 Prohibition on counseling and referral for abortion services; limitation of program services to family planning.

(a)(1) A Title X project may not provide counseling concerning the use of abortion as a method of family planning or provide referral for abortion as a method of family planning.

(2) Because Title X funds are intended only for family planning, once a client served by a Title X project is diagnosed as pregnant, she must be referred for appropriate prenatal and/or social services by furnishing a list of available providers that promote the welfare of mother and unborn child. She must also be provided with information necessary to protect the health of mother and unborn child until such time as the referral appointment is kept. In cases in which emergency care is required, however, the Title X project shall be required only to refer the client immediately to an appropriate provider of emergency medical services.

(3) A Title X project may not use prenatal, social service or emergency medical or other referrals as an indirect means of encouraging or promoting abortion as a method of family planning, such as by weighing the list of referrals in favor of health care providers which perform abortions, by including on the list of referral providers health care providers whose principal business is the provision of abortions, by excluding available providers who do not provide abortions, or by "steering" clients to providers who offer abortion as a method of family planning.

(4) Nothing in this subpart shall be construed as prohibiting the provision of information to a project client which is medically necessary to assess the risks and benefits of different methods of contraception in the course of selecting a method; provided, that the provision of this information does not include counseling with respect to or otherwise promote abortion as a method of family planning.

(b) *Examples.* (1) A pregnant client of a Title X project requests prenatal care services, which project personnel are qualified to provide. Because the provision of such services is outside the scope of family planning supported by Title X, the client must be referred to appropriate providers of prenatal care.

(2) A Title X project discovers an ectopic pregnancy in the course of conducting a physical examination of a client. Referral arrangements for emergency medical care are immediately provided. Such action is in compliance with the requirements of paragraph (a)(2) of this section.

(3) A pregnant woman asks the Title X project to provide her with a list of abortion providers in the area. The Title X project tells her that it does not refer for abortion but provides her a list which includes, among other health care providers, a local clinic which principally provides abortions. Inclusion of the clinic on the list is inconsistent with paragraph (a)(3) of this section.

(4) A pregnant woman asks the Title X project to provide her with a list of abortion providers in the area. The project tells her that it does not refer for abortion and provides her a list which consists of hospitals and clinics and other providers which provide prenatal care and also provide abortions. None of the entries on the list are providers that principally provide abortions. Although there are several appropriate providers of prenatal care in the area which do not provide or refer for abortions, none of these providers are included on the list. Provision of the list is inconsistent with paragraph (a)(3) of this section.

(5) A pregnant woman requests information on abortion and asks the Title X project to refer her to an abortion provider. The project counselor tells her that the project does not consider abortion an appropriate method of family planning and therefore does not counsel or refer for abortion. The counselor further tells the client that the project can help her to obtain prenatal care and necessary social services, and provides her with a list of such providers from which the client may choose. Such actions are consistent with paragraph (a) of this section.

(6) Title X project staff provide contraceptive counseling to a client in order to assist her in selecting a contraceptive method. In discussing oral contraceptives, the project counselor provides the client with information contained in the patient package insert accompanying a brand of oral contraceptives, referring to abortion only in the context of a discussion of the relative safety of various contraceptive methods and in no way promoting abortion as a method of family planning. The provision of this information does not constitute abortion counseling or referral.

A Title X project must be organized so that it is

as determined in accordance with the review established in this section under section 1005 of the Act and § 59.8 and § 59.10 of these regulations from inclusion in the Title X program. In order to be physically and financially separate, a Title X

Mere bookkeeping separation of Title X funds from other monies is not sufficient. The Secretary will determine whether such objective integrity and independence exist based on a review of facts and circumstances. Factors relevant to this determination shall include (but are not limited to):

- (a) The existence of separate accounting records;
- (b) The degree of separation from facilities (e.g., treatment, consultation, examination, and waiting rooms) in which prohibited activities occur and the extent of such prohibited activities;
- (c) The existence of separate personnel;
- (d) The extent to which signs and other forms of identification of the Title X project are present and signs and material promoting abortion are absent.

§ 59.10 Prohibition on activities that encourage, promote or advocate abortion.

(a) A Title X project may not encourage, promote or advocate abortion as a method of family planning. This requirement prohibits actions to assist women to obtain abortions or increase the availability or accessibility of abortion for family planning purposes. Prohibited actions include the use of Title X project funds for the following:

- (1) Lobbying for the passage of legislation to increase in any way the availability of abortion as a method of family planning;
 - (2) Providing speakers to promote the use of abortion as a method of family planning;
 - (3) Paying dues to any group that as a significant part of its activities advocates abortion as a method of family planning;
 - (4) Using legal action to make abortion available in any way as a method of family planning; and
 - (5) Developing or disseminating in any way materials (including printed matter and audiovisual materials) advocating abortion as a method of family planning.
- (b) *Examples.* (1) Clients at a Title X project are given brochures advertising an abortion clinic. Provision of the brochure violates subparagraph (a) of this section.

(2) A Title X project makes an appointment for a pregnant client with

an abortion clinic. The Title X project has violated paragraph (a) of this section.

(3) A Title X project pays dues to a state association which, among other activities, lobbies at state and local levels for the passage of legislation to protect and expand the legal availability of abortion as a method of family planning. The association spends a significant amount of its annual budget on such activity. Payment of dues to the association violates paragraph (a)(3) of this section.

(4) An organization conducts a number of activities, including operating a Title X project. The organization uses non-project funds to pay dues to an association which, among other activities, engages in lobbying to protect and expand the legal availability of abortion as a method of family planning. The association spends a significant amount of its annual budget on such activity. Payment of dues to the

association by the organization does not violate paragraph (a)(3) of this section.

(5) An organization that operates a Title X project engages in lobbying to increase the legal availability of abortion as a method of family planning. The project itself engages in no such activities and the facilities and funds of the project are kept separate from prohibited activities. The project is not in violation of paragraph (a)(1) of this section.

(6) Employees of a Title X project write their legislative representatives in support of legislation seeking to expand the legal availability of abortion, using no project funds to do so. The Title X project has not violated paragraph (a)(1) of this section.

(7) On her own time and at her own expense, a Title X project employee speaks before a legislative body in support of abortion as a method of family planning. The Title X project has not violated paragraph (a) of this section.

6. In addition to the amendments set forth above, in 42 CFR Part 59 remove the words "project" or "projects" or "project's" and add in their place, the words "Title X project" or "Title X projects" or "Title X project's," respectively, in the following places:

(a) Section 59.2 definition of "low income family";

(b) Section 59.5(a)(1);

(c) Section 59.5(b), introductory text;

(d) Section 59.5(b)(3)(iii);

(e) Section 59.5(b)(4);

(f) Section 59.5(b)(7);

(g) Section 59.5(b)(10);

(h) Section 59.6(a);

(i) Newly redesignated § 59.11(a);

(k) Newly redesignated § 59.11(a)(7);

(l) Newly redesignated § 59.11(b);

(m) Newly redesignated § 59.11(c);

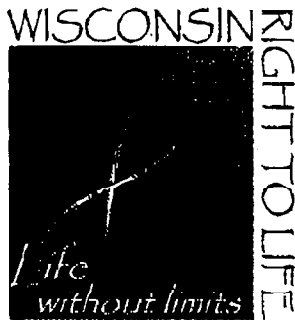
(n) Newly redesignated § 59.12(a), the first time it appears;

(o) Newly redesignated § 59.15;

(p) Newly redesignated § 59.16(a).

[FR Doc. 88-2089 Filed 1-29-88; 9:13 am]

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State Affiliate of the
National Right to Life Committee, Inc.
Washington, DC 20004-1137

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Home Page: www.wrl.org

TO (Name):

Deborah Kennedy

LOCATION:

LRB

AT FAX #:

608-264-6948 AT PHONE# 608-266-0137

FROM:

Mary Klaver

WRL Fax: 414/778-5785

WRL Phone: 414/778-5780

Date Sent:

4/19/01

Pages:

7

(including this cover sheet)

Time Sent:

a.m. / p.m.

MESSAGE:

MO. Law re families
planning fund prohibitions
and independent affiliate

FIRST REGULAR SESSION
 [TRULY AGREED TO AND FINALLY PASSED]
 CONFERENCE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 10
90TH GENERAL ASSEMBLY

LB010.04T

1999

AN ACT

To appropriate money for the expenses, grants, refunds, and distributions of the Department of Mental Health, the Board of Public Buildings, the Department of Health, and the several divisions and programs thereof and the Missouri Health Facilities Review Committee to be expended only as provided in Article IV, Section 28 of the Constitution of Missouri, for the period beginning July 1, 1999 and ending June 30, 2000.

Be it enacted by the General Assembly of the state of Missouri, as follows:

There is appropriated out of the State Treasury, to be expended only as provided in

2 Article IV, Section 28 of the Constitution of Missouri, for the purpose of funding each

3 Department, Division, agency or program enumerated in each section for the item or items stated,

4 and for no other purpose whatsoever, chargeable to the fund designated, provided, however, that

5 federal funds and block grants in the Department of Health shall be administered under the

6 oversight of a committee composed of five members of the House of Representatives, to be

7 appointed by the Speaker, five members of the Senate, to be appointed by the President Pro Tem,

8 and the Director of the Department of Social Services and the Director of the Department of

9 Health, (both of whom shall serve in an advisory capacity having no voting rights), and further

10 provided that department proposals shall be submitted in writing to members of this committee

11 thirty (30) days prior to scheduled meetings, for the period beginning July 1, 1999 and ending

12 June 30, 2000, as follows:

Section 10.005. To the Department of Mental Health

- 2 For the Office of the Director
- 3 For the purpose of funding Administration
- 4 **Personal Service and/or Expense and Equipment**
- 5 From General Revenue Fund **\$8,528,745**

C.C.S. H.B. 10

- 4 including rape medical examinations, Sudden Infant Death
- 5 Syndrome (SIDS) payments, and maternal and child health
- 6 services from sources other than the Maternal and Child Health
- 7 Block Grant
- 8 From General Revenue Fund (0 F.T.E.) \$699,018

Section 10.700. To the Department of Health

- 2 For the Division of Maternal, Child and Family Health
- 3 For the purpose of funding maternal and child health services under
- 4 the provisions of the Maternal and Child Health Block Grant
- 5 From Federal Funds (0 F.T.E.) \$6,700,000

Section 10.705. To the Department of Health

- 2 For the Division of Maternal, Child and Family Health
- 3 1. For the purpose of funding family planning services, pregnancy testing and
- 4 follow-up services, provided that none of these funds appropriated
- 5 herein may be expended to directly or indirectly subsidize
- 6 abortion services or administrative expenses. Abortion services
- 7 include performing, assisting with, or directly referring for abortions,
- 8 or encouraging or counseling patients to have abortions. Family
- 9 planning services are preconception services that limit or enhance
- 10 fertility, including contraception methods, the management of infertility,
- 11 preconception counseling, education, and general reproductive health
- 12 care. Follow-up services are services that supplement initial
- 13 consultations for family planning services and pregnancy testing but do
- 14 not include pregnancy or childbirth care. Nondirective counseling is
- 15 defined as providing patients with a list of health care and social
- 16 service providers that provide pregnancy, prenatal, delivery,
- 17 infant care, foster care, adoption, alternative to abortion and
- 18 abortion services and nondirective, non-marketing information
- 19 in regard to such providers. Such list may categorize the providers
- 20 by the service or services they provide. An organization that receives
- 21 these funds may not directly refer patients who seek abortion services to
- 22 any organization that provides abortion services, including its own
- 23 independent affiliate. Nondirective counseling relating to pregnancy
- 24 may be provided. None of these funds may be paid or granted to

C.C.S. H.B. 10

28

25 an organization or an affiliate of an organization that provides
26 abortion services. An organization that receives these funds may
27 not display or distribute marketing materials about abortion services
28 to patients. An otherwise qualified organization shall not be
29 disqualified from receipt of these funds because of its affiliation with
30 an organization that provides abortion services, provided that the
31 affiliated organization that provides abortion services is independent
32 as determined by the conditions set forth in this section. To ensure that
33 the state does not lend its imprimatur to abortion services, and
34 to ensure that an organization that provides abortion services does
35 not receive a direct or indirect economic or marketing benefit from
36 these funds, an organization that receives these funds and its
37 independent affiliate that provides abortion services may not share
38 any of the following:

- 39 (a) The same or similar name;
- 40 (b) Medical or non-medical facilities, including but not limited to business
41 offices, treatment, consultation, examination, and waiting rooms;
- 42 (c) Expenses;
- 43 (d) Employee wages or salaries; or
- 44 (e) Equipment or supplies, including but not limited to computers,
45 telephone systems, telecommunications equipment and office supplies.

46 An independent affiliate that provides abortion services must be separately
47 incorporated from any organization that receives these funds.
48 An organization that receives these funds must maintain
49 financial records that demonstrate strict compliance with
50 this section and that demonstrate that its independent affiliate
51 that provides abortion services receives no direct or indirect
52 economic or marketing benefit from these funds. An
53 independent audit shall be conducted at least once every three years
54 to ensure compliance with this section. If the organization
55 is an affiliate of an organization which provides abortion services,
56 the independent audit shall be conducted at least annually. The audit
57 shall be conducted by either an independent auditing firm retained
58 by the department of health or by an independent auditing
59 firm approved by the department and retained by an organization
60 receiving these funds. Nothing in this subsection requires an

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29

61 organization receiving federal funds pursuant to Title X of the
62 Public Health Service Act to refrain from performing any service
63 that must or shall be provided pursuant to Title X or the Title X
64 Program Guidelines for Project Grants for Family Planning Services
65 as published by the U. S. Department of Health and Human Services
66 as such laws and guidelines are currently in effect.

67 2. If any provision of subsection 1 of this section is held invalid, the
68 provision shall be severed from subsection 1 of this section
69 and the remainder of subsection 1 of this section shall be enforced.
70 If the entirety of subsection 1 of this section is held invalid, then
71 this appropriation shall be in accordance with subsection 3 of
72 this section; otherwise subsections 3 and 5 of this section shall have no effect.

73 3. For the purpose of funding family planning services, pregnancy
74 testing, and follow-up services that are provided directly by the
75 department of health or provided directly by government agencies
76 of this state or provided directly by any political subdivision of this
77 state or provided directly by community mental health centers
78 organized pursuant to sections 205.975 to 205.990, RSMo, or
79 provided directly by community action agencies organized pursuant
80 to sections 660.370 to 660.374, RSMo, through contractual
81 agreement with the department, provided that none of the funds
82 appropriated herein may be expended to directly or indirectly subsidize
83 abortion services or administrative expenses. Abortion services
84 include performing, assisting with, or directly referring for abortions,
85 or encouraging or counseling patients to have abortions. Family
86 planning services are preconception services that limit or enhance
87 fertility, including contraception methods, the management of infertility,
88 preconception counseling, education, and general reproductive health
89 care. Follow-up services are services that supplement initial
90 consultations for family planning services and pregnancy testing
91 but do not include pregnancy or childbirth care. Nondirective
92 counseling is defined as providing patients with a list of health
93 care and social service providers that provide pregnancy, prenatal,
94 delivery, infant care, foster care, adoption, alternative to abortion
95 and abortion services and nondirective, non-marketing information
96 in regard to such providers. Such list may categorize the providers

C.C.S. H.B. 10

97 by the service or services they provide. An entity that receives funds
98 pursuant to this subsection may not directly refer patients who seek
99 abortion services to any organization that provides abortion services.
100 Nondirective counseling relating to pregnancy may be provided.
101 None of the funds provided pursuant to this subsection may be
102 paid or granted to an entity that provides abortion services.
103 Any entity receiving funds pursuant to this subsection may not
104 display or distribute marketing materials about abortion
105 services to patients. An independent audit shall be conducted at
106 least once every three years to ensure compliance with this section.
107 The audit shall be conducted by either an independent auditing
108 firm retained by the department of health or by an independent
109 auditing firm approved by the department and retained by the entity
110 receiving these funds. Nothing in this subsection requires an
111 entity receiving federal funds pursuant to Title X of the Public
112 Health Service Act to refrain from performing any service that
113 must or shall be provided pursuant to Title X or the Title X
114 Program Guidelines for Project Grants for Family Planning Services
115 as published by the U.S. Department of Health and Human Services
116 as such laws and guidelines are currently in effect.

117 4. If the entirety of subsection 1 of this section is held invalid and any
118 provision of subsection 3 of this section is held invalid, then this
119 appropriation shall be in accordance with subsection 5; otherwise
120 subsection 5 shall have no effect.

121 5. For the purpose of funding family planning services, pregnancy testing,
122 and follow-up services that are provided directly by the department of
123 health or provided directly by government agencies of this state or
124 provided directly by any political subdivision of this state through
125 contractual agreement with the department, provided that
126 none of these funds appropriated herein may be expended to
127 directly or indirectly subsidize abortion services or administrative
128 expenses. Abortion services include performing, assisting with, or
129 directly referring for abortions, or encouraging or counseling patients
130 to have abortions. Family planning services are preconception
131 services that limit or enhance fertility, including contraception
132 methods, the management of infertility, preconception counseling,

C.C.S. H.B. 10

133 education, and general reproductive health care. Follow-up
134 services are services that supplement initial consultations for family
135 planning services and pregnancy testing but do not include pregnancy or
136 childbirth care. Nondirective counseling is defined as providing
137 patients with a list of health care and social service providers
138 that provide pregnancy, prenatal, delivery, infant care, foster care,
139 adoption, alternative to abortion and abortion services and nondirective,
140 non-marketing information in regard to such providers. Such list
141 may categorize the providers by the service or services they provide.
142 The department and any other government entity receiving funds
143 pursuant to this subsection may not directly refer patients who seek
144 abortion services to any organization that provides abortion services.
145 Nondirective counseling relating to pregnancy may be provided.
146 None of the funds provided pursuant to this subsection may be
147 paid or granted to a government entity that provides abortion services.
148 The department and any other government entity receiving funds
149 pursuant to this subsection may not display or distribute marketing
150 materials about abortion services to patients. An independent audit
151 shall be conducted at least once every three years to ensure compliance
152 with this section. The audit shall be conducted by either an
153 independent auditing firm retained by the department of health or
154 by an independent auditing firm approved by the department and
155 retained by the government entity receiving these funds. Nothing
156 in this subsection requires the department and any other government
157 entity receiving federal funds pursuant to Title X of the Public
158 Health Service Act to refrain from performing any service that must
159 or shall be provided pursuant to Title X or the Title X Program
160 Guidelines for Project Grants for Family Planning Services as
161 published by the U. S. Department of Health and Human Services
162 as such laws and guidelines are currently in effect.

163	From General Revenue Fund	\$5,018,639
164	From Federal Funds	<u>1,464,819</u>
165	Total (0 F.T.E.)	\$6,483,458

Section 10.710. To the Department of Health
2 For the Division of Maternal, Child and Family Health



TUESDAY - by noon, if possible

State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1625/2

DAK:wjl:km

D-NOTE

2001 BILL

and requiring audits

specifying restrictions on affiliation between certain organizations;

regenerate

1 AN ACT to repeal 20.9275 (2m) (c), 20.9275 (3m), 253.02 (2m) (c), 253.07 (1) (a)

2 3. and 253.07 (1) (b) 3.; to amend 20.9275 (2) (intro.), 20.9275 (2m) (intro.),

3 20.9275 (3), 253.02 (2m) (intro.), 253.07 (1) (a) (intro.) and 253.07 (1) (b) (intro.);

4 and to create 20.9275 (2n) of the statutes; relating to: prohibiting an

5 organization or affiliate of an organization that engages in abortion-related

6 activities from receiving certain public funds, prohibiting an organization that

7 receives certain public funds from using other public funds for abortion-related

8 activities, changing the types of information that are not prohibited from being

9 provided by organizations that receive the funds, and changing requirements

10 related to the maternal and child health program and family planning services.

maybe

and private

Analysis by the Legislative Reference Bureau

Under current law, federal funds passing through the state treasury and state and local funds may not be paid as a grant, subsidy, or other funding that wholly or partially or directly or indirectly involves pregnancy programs, projects, or services and that is a grant, subsidy, or other funding under specific state programs (adolescent pregnancy prevention and pregnancy services, adolescent

BILL

self-sufficiency and pregnancy prevention, adolescent choices, welfare and hygiene of maternity and infancy, family planning, pregnancy counseling, and outreach to low-income pregnant women and under federal maternal and child health services block grants), if the pregnancy program, project, or service using these federal, state, or local funds, using income derived from the funds, or using matching funds provides abortion services; promotes, encourages, or counsels in favor of abortion services; or makes abortion referrals either directly or through an intermediary in any instance other than when an abortion is directly and medically necessary to save the life of the pregnant woman. The restriction applies only to the extent that applying it does not result in the loss of any federal funds. An organization that violates the prohibition may not receive the funds for 24 months after the violation and must return all funds paid under the grant, subsidy, or other funding, and the grant, subsidy, or other funding is terminated. This law specifically does not prohibit the providing of nondirective information explaining prenatal care and delivery; infant care, foster care, or adoption; or pregnancy termination.

Also under current law, federal funds passing through the state treasury and state and local funds may not be paid for the performance of an abortion other than an abortion that is directly and medically necessary to save the life of the pregnant woman, in a case of sexual assault or incest, or if, due to a medical condition existing before the abortion, the physician determines that the abortion is directly and medically necessary to prevent grave, long-lasting, physical health damage to the pregnant woman.

*INSERT
A*

~~This bill expands the prohibition on payment of the specified federal, state, or local funds to prohibit payment to an organization or affiliate of an organization that provides abortion services; promotes, encourages, or counsels in favor of abortion services; or makes abortion referrals other than when directly and medically necessary to save the pregnant woman's life. The bill prohibits an organization that receives these funds from using any other public funds for an abortion-related activity and from transferring any program funds or other public funds to an organization or affiliate of an organization that engages in abortion-related activity.~~
 In addition, the bill eliminates authorization, including authorization under the maternal and child health and family planning laws, to provide nondirective information about pregnancy termination and, instead, specifies that an organization that receives the funds is not prohibited from promoting, encouraging, or counseling in favor of or referring directly or through an intermediary for prenatal care and delivery and infant care, foster care, or adoption. Lastly, the bill eliminates the provision that specifies that the prohibitions on the use of the funds applies only to the extent that applying it does not result in the loss of any federal funds.

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:

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Subject to sub. (6), notwithstanding s. 20.927(1) and (2); no

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SECTION 1. 20.9275 (2) (intro.) of the statutes is amended to read:

20.9275 (2) (intro.) No state agency or local governmental unit may authorize payment of funds of this state, of any local governmental unit or, subject to sub. (3m), of federal funds passing through the state treasury as a grant, subsidy, or other funding that wholly or partially or directly or indirectly involves pregnancy programs, projects, or services, that is a grant, subsidy, or other funding under s. 46.93, 46.99, 46.995, 253.05, 253.07, 253.08, or 253.085 or 42 USC 701 to 710, if any of the following applies: 253.02(2), including

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SECTION 2. 20.9275 (2m) (intro.) of the statutes is amended to read:

20.9275 (2m) (intro.) Nothing in sub. (2) prohibits the providing of nondirective information explaining promotion, encouragement, or counseling in favor of, or referral either directly or through an intermediary for, any of the following:

SECTION 3. 20.9275 (2m) (c) of the statutes is repealed.

SECTION 4. 20.9275 (2n) of the statutes is created to read:

20.9275 (2n) None of the funds specified under sub. (2) (intro.) may be paid to an organization or affiliate of an organization that engages in an activity that is specified under sub. (2) (a) 1. to 3.

Notwithstanding s. 20.927 (1) and (2)

SECTION 5. 20.9275 (3) of the statutes is amended to read:

20.9275 (3) Subject to sub. (3m), no organization that receives funds specified under sub. (2) (intro.) may use program funds or, notwithstanding 20.927 (a) and (b), any other public funds for an activity that is specified under sub. (2) (a) 1. to 3. No organization that receives funds specified under sub. (2) (intro.) may transfer any program funds or any other public funds to an organization or affiliate of an organization that engages in an activity that is specified under sub. (2) (a) 1. to 3.

RESTORE TO PLAINTEXT

BILL

1 **SECTION 6.** 20.9275 (3m) of the statutes is repealed.

2 **SECTION 7.** 253.02 (2m) (intro.) of the statutes is amended to read:

3 253.02 **(2m)** (intro.) Nothing in this section authorizes the performance,
4 promotion, encouragement, or counseling in favor of, or referral either directly or
5 through an intermediary for, voluntary termination of pregnancy. Nothing in this
6 section prohibits the providing of nondirective information explaining promotion,
7 encouragement, or counseling in favor of, or referral either directly or through an
8 intermediary for, any of the following:

9 **SECTION 8.** 253.02 (2m) (c) of the statutes is repealed.

10 **SECTION 9.** 253.07 (1) (a) (intro.) of the statutes is amended to read:

11 253.07 **(1)** (a) (intro.) “Family planning” means voluntary action by individuals
12 to prevent or aid conception. “Family planning” does not include the performance,
13 promotion, encouragement, or counseling in favor of, or referral either directly or
14 through an intermediary for, voluntary termination of pregnancy, but may include
15 the providing of nondirective information explaining promotion, encouragement, or
16 counseling in favor of, or referral either directly or through an intermediary for, any
17 of the following:

18 **SECTION 10.** 253.07 (1) (a) 3. of the statutes is repealed.

19 **SECTION 11.** 253.07 (1) (b) (intro.) of the statutes is amended to read:

20 253.07 **(1)** (b) (intro.) “Family planning services” ~~mean~~ means counseling by
21 trained personnel regarding family planning; distribution of information relating to
22 family planning; and referral to licensed nurse practitioners within the scope of their
23 practice, licensed physicians, or local health departments for consultation,
24 examination, medical treatment, and prescriptions for the purpose of family
25 planning. “Family planning” does not include the performance, promotion,

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BILL

1 encouragement, or counseling in favor of, or referral either directly or through an
2 intermediary for, voluntary termination of pregnancy, but may include the ~~providing~~
3 ~~of nondirective information explaining~~ promotion, encouragement, or counseling in
4 favor of, or referral either directly or through an intermediary for, any of the
5 following:

6 **SECTION 12.** 253.07 (1) (b) 3. of the statutes is repealed.

7 (END)

INSERT
5-6

D-NOTE

INSERT A

This bill expands the prohibition on payment of public funds to an organization that engages in abortion-related activities, in the following ways:

1. The bill applies the prohibition to all public funds for, among other things, prenatal care, pregnancy services, and reproductive health care services that are related to pregnancy.

2. The bill prohibits payment to an organization^{ies} that is affiliated with an organization that engages in abortion-related activities unless the organizations are physically and financially independent from each other. Specifically, the two organizations may not share the same or a similar name; medical or nonmedical facilities, equipment, or supplies; services; income, grants, donations, and other revenue; fund-raising activities; expenses; employees; employee wages or salaries; or databases. They also may not be located in the same building, must be separately incorporated, and must maintain financial and database records that demonstrate that the affiliate receives no economic or marketing benefit from the funded organization.

3. The bill prohibits a publicly-funded organization from transferring public funds to another organization or to an affiliate of the organization that provides abortion-related activities.

The bill also specifies prohibited abortion-related activities related to promoting, encouraging, or counseling in favor of abortion services, including acting to assist women to obtain abortions; acting to increase the availability or accessibility of abortion for family planning purposes; lobbying for passage of legislation to increase the availability of abortion; providing speakers to promote the use of abortion; paying dues to a group that advocates abortion; using legal action to make abortion available; and developing or disseminating materials advocating abortion.

The bill authorizes the filing of a petition for a writ of mandamus or prohibition with the circuit court of the county where a violation of the prohibitions is alleged to have occurred or is proposed to occur. The bill also requires the legislative audit bureau to conduct an audit of each organization receiving the public funds to determine if the organization or the state agency or local governmental unit has strictly complied with the requirements or prohibitions. If the publicly-funded organization is an affiliate of an organization that engages in abortion-related activities, the audit must be conducted annually.

Lastly

INSERT 3-1

1 SECTION 1. 20.9275 (1) (intro.) of the statutes is amended to read:

2 20.9275 (1) (intro.) In this section, except as otherwise specified:

3 History: 1997 a. 27, 237; 1999 a. 9
SECTION 2. 20.9275 (1) (am) of the statutes is created to read:

1 20.9275 (1) (am) "Family planning" means the process of establishing
 2 objectives for the number and spacing of one's children and selecting the means by
 3 which those objectives may be achieved, including a broad range of acceptable and
 4 effective methods and services to limit or enhance fertility, including contraceptive
 5 methods, including natural family planning and abstinence; the management of
 6 infertility, including adoption; and preconceptional counseling, education, and
 7 general reproductive health care, including diagnosis and treatment of infections
 8 that threaten reproductive capability. "Family planning" does not include pregnancy
 9 care, including obstetric or prenatal care.

10 ~~SECTION 4.~~ 20.9275 (1) (em)^v of the statutes is created to read:

11 20.9275 (1) (em) "Prenatal care" means medical services provided to a pregnant
 12 woman to promote maternal and fetal health.

INSERT 3-8

13 **SECTION 4.** 20.9275 (2) (a) 2.^v of the statutes is renumbered 20.9275 (2) (a) 2.
 14 (intro.) and amended to read:

15 20.9275 (2) (a) 2. (intro.) Promotes, encourages or counsels in favor of abortion
 16 services, including by doing any of the following:

History: 1997 a. 27, 237; 1999 a. 9.

17 **SECTION 5.** 20.9275 (2) (a) 2. a.^v of the statutes is created to read:

18 20.9275 (2) (a) 2. a. Act^{ing} to assist women to obtain abortions.

19 **SECTION 6.** 20.9275 (2) (a) 2. b. of the statutes is created to read:

20 20.9275 (2) (a) 2. b. Act^{ing} to increase the availability or accessibility of abortion
 21 for family planning purposes.

22 **SECTION 7.** 20.9275 (2) (a) 2. c. of the statutes is created to read:

23 20.9275 (2) (a) 2. c. Lobby^{ing} for the passage of legislation to increase in any way
 24 the availability of abortion as a method of family planning.

1 SECTION 8. 20.9275 (2) (a) 2. d. of the statutes is created to read:

2 20.9275 (2) (a) 2. d. Provide speakers to promote the use of abortion as a method
3 of family planning.

4 SECTION 9. 20.9275 (2) (a) 2. e. of the statutes is created to read:

5 20.9275 (2) (a) 2. e. Pay dues to a group that as a significant part of its activities
6 advocates abortion as a method of family planning.

7 SECTION 10. 20.9275 (2) (a) 2. f. of the statutes is created to read:

8 20.9275 (2) (a) 2. f. Use legal action to make abortion available in any way as
9 a method of family planning.

10 SECTION 11. 20.9275 (2) (a) 2. g. of the statutes is created to read:

11 20.9275 (2) (a) 2. g. Develop or disseminate in any way materials, including
12 printed matter and audiovisual materials, advocating abortion as a method of family
13 planning.

INSERT 4-1

14 SECTION 12. 20.9275 (6) of the statutes is created to read:

15 20.9275 (6) Subsection (2) does not apply to an organization that otherwise
16 meets the requirements of sub. (2) and that is affiliated with an organization that
17 engages in an activity that is specified under sub. (2) (a) 1. to 3. if the organizations
18 are physically and financially independent from each other under all of the following
19 criteria:

20 (a) The organization that receives funds specified under sub. (2) (intro.) and its
21 independent affiliate that engages in an activity that is specified under sub. (2) (a)
22 1. to 3. are not located in the same building and do not share any of the following:

23 1. The same or a similar name.

1 2. Medical or nonmedical facilities, including treatment, consultation,
2 examination, and waiting rooms and business offices.

3 3. Equipment or supplies, including computers, telephone systems,
4 telecommunications equipment, vehicles, office supplies, and medical supplies.

5 4. Services, including management, accounting, and payroll services and
6 equipment and facility maintenance.

7 5. Income, grants, donations of cash or property, in-kind gifts, and other
8 revenue.

9 6. Fund raising activities.

10 7. Expenses.

11 8. Employees.

12 9. Employee wages or salaries.

13 10. Databases, including client lists.

14 (b) The organization that receives funds specified under sub. (2) (intro.) is
15 separately incorporated from its independent affiliate that engages in an activity
16 that is specified under sub. (2) (a) 1. to 3.

17 (c) The organization that receives funds specified under sub. (2) (intro.)
18 maintains financial records and database records that demonstrate that its
19 independent affiliate that engages in an activity that is specified under sub. (2) (a)
20 1. to 3. receives no direct or indirect economic or marketing benefit from the program
21 funds. Separation of program funds from other moneys by means of bookkeeping
22 alone is not sufficient to meet the requirement of this paragraph.

23 SECTION 13. 20.9275 (7)¹ of the statutes is created to read:

24 20.9275 (7) At least once every 3 years, the legislative audit bureau shall
25 conduct an audit of each organization that receives the funds specified under sub. (2)

1 (intro.) and the state agency or local governmental unit that authorizes payment of
2 the funds to the organization, to determine if the organization, state agency, or local
3 governmental unit has strictly complied with this section. If the organization is an
4 affiliate of an organization that engages in an activity that is specified under sub. (2)
5 (a) 1. to 3., the legislative audit bureau shall conduct the audit at least annually.

6 **SECTION 14.** 20.9275 (8)^v of the statutes is created to read:

7 20.9275 (8) A person may file a petition for a writ of mandamus or prohibition
8 with the circuit court for the county where a violation of this section is alleged to have
9 occurred or is proposed to occur.