

2001 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-SB55)

Received: 06/24/2001

Received By: **kenneda**

Wanted: As time permits

Identical to LRB:

For: Assembly Republican Caucus 7-4887

By/Representing: **Hughes**

This file may be shown to any legislator: NO

Drafter: **kenneda**

May Contact: **LFB**

Addl. Drafters:

Subject: **Health - abortion**

Extra Copies: **ISR**

Submit via email: NO

Requester's email:

Pre Topic:

ARC:.....Hughes -

Topic:

AM105--Prohibit receipt of public funds by organization or affiliate of organization that engages in abortion-related activities

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 06/24/2001	chanaman 06/24/2001		_____			
/1			kfollet 06/25/2001	_____	lrb_docadmin 06/25/2001		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2	kenneda 06/28/2001	csicilia 06/28/2001	pgreensl 06/28/2001	_____	lrb_docadmin 06/28/2001		

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FE Sent For:

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Budget Amendments 2001 - 2003

Prepared by the Assembly Republican Caucus

Statement of Intent Prohibit Organizations that Engage in Abortion-Related Activities from Receiving Public Funds for Pregnancy Programs

Legislator Gundrum

Amendment 105

Legislator 2

Pass or Fail Pass

Legislator 3

Spending Cut

Legislator 4

Withdrawn

OAK

Staff contact Jolene

Package

Agency Health and Family Services

Summary Prohibit any organization that engages in abortion-related activities from receiving public funds for pregnancy programs; require the legislative audit bureau to conduct an audit to determine if the organization receiving the public funds or the state agency or local governmental unit granting the public funds has strictly complied with the requirements and prohibitions; and change the types of information that may be provided by organizations that receive the public funds.

The amendment would prohibit an organization that engages in abortion-related activities from receiving public funds for pregnancy programs. Any organization that receives public funds for pregnancy programs would be prohibited from using any of the program funds for an abortion-related activity or transferring any program funds or any other public funds to an organization that engages in abortion-related activities.

If the organization applying for public funds for pregnancy programs is affiliated with an organization that engages in abortion-related activities, then the applying organization can receive the public funds only if the two organizations are physically and financially independent from each other.

The amendment would also change the type of information that may be provided by organizations that receive public funds for pregnancy programs. The amendment eliminates authorization to provide nondirective information about pregnancy termination and, instead, specifies that an organization that receives these funds is permitted to promote, encourage, or counsel in favor of, or refer directly or through an intermediary for, prenatal care and delivery, infant care, foster care, and adoption.

Abortion related activities include providing abortion services; promoting, encouraging, or counseling in favor of abortion services; or making abortion referrals either directly or through an intermediary.

Pregnancy program is defined as a program for pregnancy prevention, family planning, pregnancy testing, pregnancy counseling, prenatal care, pregnancy services and reproductive health care services that are related to pregnancy.

Fiscal Impact According to the LFB, there could be an increase in costs but those costs could be absorbed by the agencies.

Drafting Inst

Request # 59

2001

Date (time) needed SOON

LRB b 1722/1

**ARC CAUCUS BUDGET AMENDMENT
[ONLY FOR CAUCUS]**

DAK: cmt: 1

See form **AMENDMENTS — COMPONENTS & ITEMS.**

D-NOTE

**CAUCUS AMENDMENT
TO ASSEMBLY SUBSTITUTE AMENDMENT 1
TO 2001 SENATE BILL 55**

>>FOR CAUCUS SUPERAMENDMENT — NOT FOR INTRODUCTION<<

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

#. Page 428, line 20: after that line insert

#. Page, line:

#. Page, line:

#. Page, line:

#. Page, line:

#. Page, line:

2001 BILL

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 renumber and amend** 20.9275 (1) and 20.9275 (2)
3 (a) 2.; **to amend** 20.9275 (2) (intro.), 20.9275 (2m) (intro.), 20.9275 (3), 253.02
4 (2m) (intro.), 253.07 (1) (a) (intro.) and 253.07 (1) (b) (intro.); and **to create**
5 20.9275 (1g), 20.9275 (1r) (am), 20.9275 (1r) (em), 20.9275 (2) (a) 2. a., 20.9275
6 (2) (a) 2. b., 20.9275 (2) (a) 2. c., 20.9275 (2) (a) 2. d., 20.9275 (2) (a) 2. e., 20.9275
7 (2) (a) 2. f., 20.9275 (2) (a) 2. g., 20.9275 (2n), 20.9275 (6), 20.9275 (7) and
8 20.9275 (8) of the statutes; **relating to:** prohibiting an organization or affiliate
9 of an organization that engages in abortion-related activities from receiving
10 certain public funds, prohibiting an organization that receives certain public
11 funds from using other public and private funds for abortion-related activities,
12 specifying restrictions on affiliation between certain organizations, changing
13 the types of information that may be provided by organizations that receive the

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1 funds, changing requirements related to the maternal and child health
2 program and family planning services, and requiring audits.

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 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 funds also may not be paid if the pregnancy program, project, or service is funded from another source that requires performance of the abortion-related activities. 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.

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 that is affiliated with an organization that engages in abortion-related activities or that receives funds from any source that requires, for receipt of the funds that the affiliate engage in abortion-related activities, unless the organizations are physically and financially independent from each other. Specifically, the two organizations may not share the

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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 or that receives funds from any source that requires, for receipt of the funds, that the affiliate engage in 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 or that receives funds from any source that requires, for receipt of the funds, that the affiliate engage in abortion-related activities, the audit must be conducted annually.

Lastly, 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. The bill eliminates the provision that specifies that the prohibitions on the use of the funds apply only to the extent that applying them 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:

① " SECTION 1. 20.9275 (1) of the statutes is renumbered 20.9275 (1r), and 20.9275
2 (1r) (intro.), as renumbered, is amended to read:

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

2 **SECTION 4.** 20.9275 (1g) of the statutes is created to read: 995pc

3 20.9275 (1g) It is the intent of the legislature that this section shall further the
4 profound and compelling state interest in all of the following:

5 (a) To protect the life of an unborn child throughout pregnancy by favoring
6 childbirth over abortion and implementing that value judgment through the
7 allocation of public resources.

8 (b) To ensure that the state, state agencies, and local governmental units do not
9 lend their imprimatur to abortion-related activities.

10 (c) To ensure that organizations that engage in abortion-related activities do
11 not receive a direct or indirect economic or marketing benefit from public funds.

12 **SECTION 4.** 20.9275 (1r) (am) of the statutes is created to read: 995pd

13 20.9275 (1r) (am) "Family planning" means the process of establishing
14 objectives for the number and spacing of one's children and selecting the means by
15 which those objectives may be achieved, including a broad range of acceptable and
16 effective methods and services to limit or enhance fertility, including contraceptive
17 methods, including natural family planning and abstinence; the management of
18 infertility, including adoption; and preconceptional counseling, education, and
19 general reproductive health care, including diagnosis and treatment of infections
20 that threaten reproductive capability. "Family planning" does not include pregnancy
21 care, including obstetric or prenatal care.

22 **SECTION 4.** 20.9275 (1r) (em) of the statutes is created to read: 995pe

23 20.9275 (1r) (em) "Prenatal care" means medical services provided to a
24 pregnant woman to promote maternal and fetal health.

25 **SECTION 4.** 20.9275 (2) (intro.) of the statutes is amended to read: 995pf

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1 20.9275 (2) (intro.) No Except as provided in sub. (2m) and notwithstanding
 2 s. 20.927 (2), no state agency or local governmental unit may authorize payment of
 3 funds of this state, of any local governmental unit or, ~~subject to sub. (3m)~~, of federal
 4 funds passing through the state treasury as a grant, subsidy, or other funding that
 5 wholly or partially or directly or indirectly involves pregnancy programs, projects,
 6 or services, ~~that is~~ including a grant, subsidy, or other funding under s. 46.93, 46.99,
 7 46.995, 253.02 (2), 253.05, 253.07, 253.08, or 253.085 or 42 USC 701 to 710, if any of
 8 the following applies: 995pg

9 **SECTION 4.** 20.9275 (2) (a) 2. of the statutes is renumbered 20.9275 (2) (a) 2.
 10 (intro.) and amended to read:

11 20.9275 (2) (a) 2. (intro.) Promotes, encourages, or counsels in favor of abortion
 12 services, including by doing any of the following: 995ph

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

14 20.9275 (2) (a) 2. a. Acting to assist women to obtain abortions. 995pi

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

16 20.9275 (2) (a) 2. b. Acting to increase the availability or accessibility of
 17 abortion for family planning purposes. 995pj

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

19 20.9275 (2) (a) 2. c. Lobbying for the passage of legislation to increase in any
 20 way the availability of abortion as a method of family planning. 995pk

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

22 20.9275 (2) (a) 2. d. Providing speakers to promote the use of abortion as a
 23 method of family planning. 995pl

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

BILL

1 20.9275 (2) (a) 2. e. Paying dues to a group that as a significant part of its
2 activities advocates abortion as a method of family planning. 995pm

3 SECTION 12. 20.9275 (2) (a) 2. f. of the statutes is created to read:

4 20.9275 (2) (a) 2. f. Using legal action to make abortion available in any way
5 as a method of family planning. 995pn

6 SECTION 13. 20.9275 (2) (a) 2. g. of the statutes is created to read:

7 20.9275 (2) (a) 2. g. Developing or disseminating in any way materials,
8 including printed matter and audiovisual materials, advocating abortion as a
9 method of family planning. 995pp

10 SECTION 14. 20.9275 (2m) (intro.) of the statutes is amended to read:

11 20.9275 (2m) (intro.) Nothing in sub. (2) prohibits the ~~providing of nondirective~~
12 ~~information explaining promotion, encouragement, or counseling in favor of, or~~
13 ~~referral either directly or through an intermediary for,~~ any of the following:

14 SECTION 15. 20.9275 (2m) (c) of the statutes is repealed. 995pp

15 SECTION 16. 20.9275 (2n) of the statutes is created to read: 995pr

16 20.9275 (2n) Except as provided in sub. (6), none of the funds specified under
17 sub. (2) (intro.) may be paid to an organization or affiliate of an organization that does
18 any of the following:

19 (a) Engages in an activity that is specified under sub. (2) (a) 1. to 3.

20 (b) Receives funds from any source that requires, as a condition for receipt of
21 the funds, that the organization or affiliate perform any of the activities specified in
22 sub. (2) (a) 1. to 3. 995ps

23 SECTION 17. 20.9275 (3) of the statutes is amended to read:

24 20.9275 (3) ~~Subject to sub. (3m)~~ Notwithstanding s. 20.927 (2), no organization
25 that receives funds specified under sub. (2) (intro.) may use program funds for an

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1 activity that is specified under sub. (2) (a) 1. to 3. No organization that receives funds
2 specified under sub. (2) (intro.) may transfer any program funds or any other public
3 funds to an organization or affiliate of an organization to which sub. (2n) (a) or (b)
4 applies.

5 **SECTION 18.** 20.9275 (3m) of the statutes is repealed. 995pt

6 **SECTION 19.** 20.9275 (6) of the statutes is created to read: 995pu

7 20.9275 (6) Subsection (2n) does not apply to an organization that otherwise
8 is qualified to receive funding under sub. (2) and that is affiliated with an
9 organization to which sub. (2n) (a) or (b) applies if the organizations are physically
10 and financially independent from each other under all of the following criteria:

11 (a) The organization that receives funds specified under sub. (2) (intro.) and its
12 independent affiliate to which sub. (2n) (a) or (b) applies are not located in the same
13 building and do not share any of the following:

- 14 1. The same or a similar name.
- 15 2. Medical or nonmedical facilities, including treatment, consultation,
16 examination, or waiting rooms or business offices.
- 17 3. Equipment or supplies, including computers, telephone systems,
18 telecommunications equipment, vehicles, office supplies, or medical supplies.
- 19 4. Services, including management, accounting, or payroll services or
20 equipment or facility maintenance.
- 21 5. Income, grants, donations of cash or property, in-kind gifts, or other revenue.
- 22 6. Fund-raising activities.
- 23 7. Expenses.
- 24 8. Employees.
- 25 9. Employee wages or salaries.

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1 10. Databases, including client lists.

2 (b) The organization that receives funds specified under sub. (2) (intro.) is
3 separately incorporated from its independent affiliate to which sub. (2n) (a) or (b)
4 applies.

5 (c) The organization that receives funds specified under sub. (2) (intro.)
6 maintains financial records and database records that demonstrate that its
7 independent affiliate to which sub. (2n) (a) or (b) applies receives no direct or indirect
8 economic or marketing benefit from the program funds. Separation of program funds
9 from other moneys by means of bookkeeping alone is not sufficient to meet the
10 requirement of this paragraph.

11 **SECTION 20.** 20.9275 (7) of the statutes is created to read:

12 20.9275 (7) At least once every 3 years, the legislative audit bureau shall
13 conduct an audit of each organization that receives the funds specified under sub. (2)
14 (intro.) and the state agency or local governmental unit that authorizes payment of
15 the funds to the organization, to determine if the organization, state agency, or local
16 governmental unit has strictly complied with this section. If the organization is an
17 affiliate of an organization to which sub. (2n) (a) or (b) applies, the legislative audit
18 bureau shall conduct the audit at least annually.

19 **SECTION 21.** 20.9275 (8) of the statutes is created to read:

20 20.9275 (8) A person may file a petition for a writ of mandamus or prohibition
21 with the circuit court for the county where a violation of this section is alleged to have
22 occurred or is proposed to occur. "

#. Page 1035, line 2 : after that line insert :

23 **SECTION 22.** 253.02 (2m) (intro.) of the statutes is amended to read:

24 253.02 (2m) (intro.) Nothing in this section authorizes the performance,
25 promotion, encouragement, or counseling in favor of, or referral either directly or

3142hb

BILL

Page 1035, line 8: after that line insert:

1 through an intermediary for, voluntary termination of pregnancy. Nothing in this
2 section prohibits the ~~providing of nondirective information explaining promotion,~~
3 encouragement, or counseling in favor of, or referral either directly or through an
4 intermediary for, any of the following: 3142hc

5 SECTION 23. 253.02 (2m) (c) of the statutes is repealed. 3142hd

6 SECTION 24. 253.07 (1) (a) (intro.) of the statutes is amended to read:

7 253.07 (1) (a) (intro.) "Family planning" means voluntary action by individuals
8 to prevent or aid conception. "Family planning" does not include the performance,
9 promotion, encouragement, or counseling in favor of, or referral either directly or
10 through an intermediary for, voluntary termination of pregnancy, but may include
11 the ~~providing of nondirective information explaining promotion, encouragement, or~~
12 counseling in favor of, or referral either directly or through an intermediary for, any
13 of the following: 3142he

14 SECTION 25. 253.07 (1) (a) 3. of the statutes is repealed. 3142hf

15 SECTION 26. 253.07 (1) (b) (intro.) of the statutes is amended to read:

16 253.07 (1) (b) (intro.) "Family planning services" ~~mean~~ means counseling by
17 trained personnel regarding family planning; distribution of information relating to
18 family planning; and referral to licensed nurse practitioners within the scope of their
19 practice, licensed physicians, or local health departments for consultation,
20 examination, medical treatment, and prescriptions for the purpose of family
21 planning. "Family planning" does not include the performance, promotion,
22 encouragement, or counseling in favor of, or referral either directly or through an
23 intermediary for, voluntary termination of pregnancy, but may include the ~~providing~~
24 of nondirective information explaining promotion, encouragement, or counseling in

BILL

1 favor of, or referral either directly or through an intermediary for, any of the
2 following:

3142ng

3 SECTION 27. 253.07 (1) (b) 3. of the statutes is repealed. "

4 ~~SECTION 28. Initial applicability.~~
Page 1399, line 20: after that line insert:

5 (5) PUBLICLY-FUNDED ORGANIZATIONS. The treatment of sections 20.9275 (1)
6 (intro.), (am), and (em), (2) (intro.), (a) 2. ~~and a. to g.~~ (2m) (intro.) and (c), (2n), (3),
7 (3m), and (6) to (8) of the statutes first applies to contracts on the day on which the
8 contract expires or is extended, modified, or renewed, whichever first occurs and to
9 employees who are affected by a collective bargaining agreement that contains
10 provisions inconsistent with that treatment on the day on which the collective
11 bargaining agreement expires or is extended, modified, or renewed, whichever first
12 occurs. "

mutual app

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(intro.) (am) (em)

(END)

stat.
~~scribble~~

D-NOTE

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

61722/1 dn
LRB-1628/3 dr
DAK:wjt/et

UmH

May 7 2001

~~To Representative Gundrum~~

amendment

1. Section 20.9275 (6) in this ~~redraft~~ ^{bill} permits the provision of public funding to an organization that is affiliated with an organization that engages in abortion-related activities, under specified restrictions. This language is, according to Ms. Klaver, current Missouri law. Several of the specific restrictions proposed and drafted appear to exceed the limit specified in *Planned Parenthood of Mid-Missouri v. Dempsey*, 167 F.3d 458 (8th Cir. 1999), U.S. cert. den., 120 S. Ct. 501 (1999), however. The *Dempsey* court specified these restrictions as follows:

"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." *Id.*, at 463.

In s. 20.9275 (6) (a), as proposed and drafted, the publicly funded organization and its affiliate are prohibited from occupying the same building and sharing, among other things, the same or a similar name; equipment or supplies; services; employees; and databases. Further, s. 20.9275 (6) (c) prohibits separation of program funds from other moneys by means of bookkeeping alone; the language is not specific as to what other methods must be employed to demonstrate that the financial independence exists. *Dempsey* required only separate incorporation and facilities and "adequate" financial records; the restrictions appear to go beyond those requirements and, with respect to s. 20.9275 (6) (c), are vague.

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 under s. 20.9275, stats., result in a loss of federal funds. Further, this ~~redraft~~ eliminates the words "that is" from s. 20.9275 (2) (intro.), stats., and substitutes the word "including." Because the change, in effect, broadens the applicability of s. 20.9275 (2) (intro.), stats., to any federal funds, and because the definition of "program funds" under s. 20.9275 (1) (f), stats., encompasses funds specified under s. 20.9275 (2)

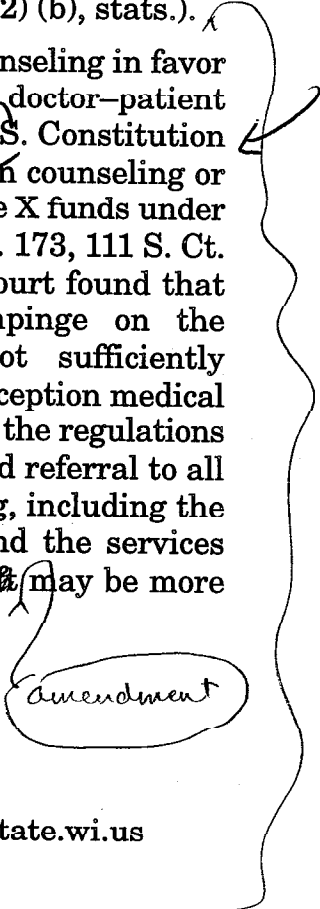
amendment

(intro.), stats., an organization that receives public funds may not use the funds for an abortion-related activity.

The effect of the amendments to s. 20.9275 (2) (intro.) and (3) appears to exceed the federal restrictions on the provision of medical assistance under the Hyde Amendment, since no exception is made for abortions in the case of rape; therefore, the prohibitions would place the state out of compliance with federal Title XIX (medicaid) requirements; although potential loss to the state of federal medicaid money would not have occurred, under operation of s. 20.9275 (3m), stats., that provision, as noted, is eliminated.

Secondly, as proposed, the language is in conflict with s. 20.927 (2), stats., 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 prohibitions, 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 under the 1988 federal regulations 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 the panoply of health care offered women under medical assistance and the services provided under s. 253.02, stats., the prohibitions created in this ~~draft~~ may be more susceptible to a free speech challenge.



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Therefore, s. 20.927 (2), stats., is not withstood in s. 20.9275 (2) (intro.), stats., in this amendment.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1722/1dn
DAK:cmh:kjf

June 25, 2001

1. Section 20.9275 (6) in this amendment permits the provision of public funding to an organization that is affiliated with an organization that engages in abortion-related activities, under specified restrictions. This language is, according to Ms. Klaver, current Missouri law. Several of the specific restrictions proposed and drafted appear to exceed the limit specified in *Planned Parenthood of Mid-Missouri v. Dempsey*, 167 F.3d 458 (8th Cir. 1999), U.S. cert. den., 120 S. Ct. 501 (1999), however. The *Dempsey* court specified these restrictions as follows:

“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.” *Id.*, at 463.

In s. 20.9275 (6) (a), as proposed and drafted, the publicly funded organization and its affiliate are prohibited from occupying the same building and sharing, among other things, the same or a similar name; equipment or supplies; services; employees; and databases. Further, s. 20.9275 (6) (c) prohibits separation of program funds from other moneys by means of bookkeeping alone; the language is not specific as to what other methods must be employed to demonstrate that the financial independence exists. *Dempsey* required only separate incorporation and facilities and “adequate” financial records; the restrictions appear to go beyond those requirements and, with respect to s. 20.9275 (6) (c), are vague.

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 amendment eliminates protection to the state if the restrictions under s. 20.9275, stats., result in a loss of federal funds. Further, this amendment eliminates the words “that is” from s. 20.9275 (2) (intro.), stats., and substitutes the word “including.” Because the change, in effect, broadens the applicability of s. 20.9275 (2) (intro.), stats., to any federal funds, and because the definition of “program funds” under s. 20.9275 (1) (f), stats., encompasses funds specified under s. 20.9275 (2) (intro.), stats., an organization that receives public funds may not use the funds for an abortion-related activity.

The effect of the amendments to s. 20.9275 (2) (intro.) and (3) appears to exceed the federal restrictions on the provision of medical assistance under the Hyde Amendment, since no exception is made for abortions in the case of rapc; therefore, the prohibitions would place the state out of compliance with federal Title XIX (medicaid) requirements; although potential loss to the state of federal medicaid money would not have occurred, under operation of s. 20.9275 (3m), stats., that provision, as noted, is eliminated.

Secondly, as proposed, the language is in conflict with s. 20.927 (2), stats., 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.). Therefore, s. 20.927 (2), stats., is notwithstanding in s. 20.9275 (2) (intro.), stats., in this amendment.

Lastly, the breadth of the prohibitions, 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 under the 1988 federal regulations 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 the panoply of health care offered women under medical assistance and the services provided under s. 253.02, stats., the prohibitions created in this amendment may be more susceptible to a free speech challenge.

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(Now)
State of Wisconsin
2001 - 2002 LEGISLATURE

LRBb1722/2

DAK:cmh:lj

D-NOTE

ARC:.....Hughes – AM105—Prohibit receipt of public funds by organization or affiliate of organization that engages in abortion-related activities

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS ASSEMBLY AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

- 1 At the locations indicated, amend the substitute amendment as follows:
- 2 **1.** Page 428, line 20: after that line insert:
- 3 **“SECTION 995pb.** 20.9275 (1) of the statutes is renumbered 20.9275 (1r), and
- 4 20.9275 (1r) (intro.), as renumbered, is amended to read:
- 5 20.9275 (1r) (intro.) In this section, except as otherwise specified:
- 6 **SECTION 995pc.** 20.9275 (1g) of the statutes is created to read:
- 7 20.9275 (1g) It is the intent of the legislature that this section shall further the
- 8 profound and compelling state interest in all of the following:

1 (a) To protect the life of an unborn child throughout pregnancy by favoring
2 childbirth over abortion and implementing that value judgment through the
3 allocation of public resources.

4 (b) To ensure that the state, state agencies, and local governmental units do not
5 lend their imprimatur to abortion-related activities.

6 (c) To ensure that organizations that engage in abortion-related activities do
7 not receive a direct or indirect economic or marketing benefit from public funds.

8 **SECTION 995pd.** 20.9275 (1r) (am) of the statutes is created to read:

9 20.9275 (1r) (am) “Family planning” means the process of establishing
10 objectives for the number and spacing of one’s children and selecting the means by
11 which those objectives may be achieved, including a broad range of acceptable and
12 effective methods and services to limit or enhance fertility, including contraceptive
13 methods, including natural family planning and abstinence; the management of
14 infertility, including adoption; and preconceptional counseling, education, and
15 general reproductive health care, including diagnosis and treatment of infections
16 that threaten reproductive capability. “Family planning” does not include pregnancy
17 care, including obstetric or prenatal care.

18 **SECTION 995pe.** 20.9275 (1r) (em) of the statutes is created to read:

19 20.9275 (1r) (em) “Prenatal care” means medical services provided to a
20 pregnant woman to promote maternal and fetal health.

21 **SECTION 995pf.** 20.9275 (2) (intro.) of the statutes is amended to read:

22 20.9275 (2) (intro.) ~~Ne~~ Except as provided in sub. (2m) and notwithstanding
23 s. 20.927 (2), no state agency or local governmental unit may authorize payment of
24 funds of this state, of any local governmental unit or, ~~subject to sub. (3m),~~ of federal
25 funds passing through the state treasury as a grant, subsidy, or other funding that

1 wholly or partially or directly or indirectly involves pregnancy programs, projects,
2 or services, ~~that is including~~ a grant, subsidy, or other funding under s. 46.93, 46.99,
3 46.995, 253.02 (2), 253.05, 253.07, 253.08, or 253.085 or 42 USC 701 to 710, if any of
4 the following applies:

5 **SECTION 995pg.** 20.9275 (2) (a) 2. of the statutes is renumbered 20.9275 (2) (a)
6 2. (intro.) and amended to read:

7 20.9275 (2) (a) 2. (intro.) Promotes, encourages, or counsels in favor of abortion
8 services, including by doing any of the following:

9 **SECTION 995ph.** 20.9275 (2) (a) 2. a. of the statutes is created to read:

10 20.9275 (2) (a) 2. a. Acting to assist women to obtain abortions.

11 **SECTION 995pi.** 20.9275 (2) (a) 2. b. of the statutes is created to read:

12 20.9275 (2) (a) 2. b. Acting to increase the availability or accessibility of
13 abortion for family planning purposes.

14 **SECTION 995pj.** 20.9275 (2) (a) 2. c. of the statutes is created to read:

15 20.9275 (2) (a) 2. c. Lobbying for the passage of legislation to increase in any
16 way the availability of abortion as a method of family planning.

17 **SECTION 995pk.** 20.9275 (2) (a) 2. d. of the statutes is created to read:

18 20.9275 (2) (a) 2. d. Providing speakers to promote the use of abortion as a
19 method of family planning.

20 **SECTION 995pL.** 20.9275 (2) (a) 2. e. of the statutes is created to read:

21 20.9275 (2) (a) 2. e. Paying dues to a group that as a significant part of its
22 activities advocates abortion as a method of family planning.

23 **SECTION 995pm.** 20.9275 (2) (a) 2. f. of the statutes is created to read:

24 20.9275 (2) (a) 2. f. Using legal action to make abortion available in any way
25 as a method of family planning.

1 **SECTION 995pn.** 20.9275 (2) (a) 2. g. of the statutes is created to read:

2 20.9275 (2) (a) 2. g. Developing or disseminating in any way materials,
3 including printed matter and audiovisual materials, advocating abortion as a
4 method of family planning.

5 **SECTION 995pp.** 20.9275 (2m) (intro.) of the statutes is amended to read:

6 20.9275 (2m) (intro.) Nothing in sub. (2) prohibits the ~~providing of nondirective~~
7 information explaining promotion, encouragement, or counseling in favor of, or
8 referral either directly or through an intermediary for, any of the following:

9 **SECTION 995pq.** 20.9275 (2m) (c) of the statutes is repealed.

10 **SECTION 995pr.** 20.9275 (2n) of the statutes is created to read:

11 20.9275 (2n) Except as provided in sub. (6), none of the funds specified under
12 sub. (2) (intro.) may be paid to an organization or affiliate of an organization that does
13 any of the following:

14 (a) Engages in an activity that is specified under sub. (2) (a) 1. to 3.

15 (b) Receives funds from any source that requires, as a condition for receipt of
16 the funds, that the organization or affiliate perform any of the activities specified in
17 sub. (2) (a) 1. to 3.

18 **SECTION 995ps.** 20.9275 (3) of the statutes is amended to read:

19 20.9275 (3) ~~Subject to sub. (3m)~~ Notwithstanding s. 20.927 (2), no organization
20 that receives funds specified under sub. (2) (intro.) may use program funds for an
21 activity that is specified under sub. (2) (a) 1. to 3. No organization that receives funds
22 specified under sub. (2) (intro.) may transfer any program funds or any other public
23 funds to an organization or affiliate of an organization to which sub. (2n) (a) or (b)
24 applies.

25 **SECTION 995pt.** 20.9275 (3m) of the statutes is repealed.

1 **SECTION 995pu.** 20.9275 (6) of the statutes is created to read:

2 20.9275 (6) Subsection (2n) does not apply to an organization that otherwise
3 is qualified to receive funding under sub. (2) and that is affiliated with an
4 organization to which sub. (2n) (a) or (b) applies if the organizations are physically
5 and financially independent from each other under all of the following criteria:

6 (a) The organization that receives funds specified under sub. (2) (intro.) and its
7 independent affiliate to which sub. (2n) (a) or (b) applies are not located in the same
8 building and do not share any of the following:

- 9 1. The same or a similar name.
- 10 2. Medical or nonmedical facilities, including treatment, consultation,
11 examination, or waiting rooms or business offices.
- 12 3. Equipment or supplies, including computers, telephone systems,
13 telecommunications equipment, vehicles, office supplies, or medical supplies.
- 14 4. Services, including management, accounting, or payroll services or
15 equipment or facility maintenance.
- 16 5. Income, grants, donations of cash or property, in-kind gifts, or other revenue.
- 17 6. Fund-raising activities.
- 18 7. Expenses.
- 19 8. Employees.
- 20 9. Employee wages or salaries.
- 21 10. Databases, including client lists.

22 (b) The organization that receives funds specified under sub. (2) (intro.) is
23 separately incorporated from its independent affiliate to which sub. (2n) (a) or (b)
24 applies.

1 (c) The organization that receives funds specified under sub. (2) (intro.)
2 maintains financial records and database records that demonstrate that its
3 independent affiliate to which sub. (2n) (a) or (b) applies receives no direct or indirect
4 economic or marketing benefit from the program funds. Separation of program funds
5 from other moneys by means of bookkeeping alone is not sufficient to meet the
6 requirement of this paragraph.

7 **SECTION 995pv.** 20.9275 (7) of the statutes is created to read:

8 20.9275 (7) At least once every 3 years, the legislative audit bureau shall
9 conduct an audit of each organization that receives the funds specified under sub. (2)
10 (intro.) and the state agency or local governmental unit that authorizes payment of
11 the funds to the organization, to determine if the organization, state agency, or local
12 governmental unit has strictly complied with this section. If the organization is an
13 affiliate of an organization to which sub. (2n) (a) or (b) applies, the legislative audit
14 bureau shall conduct the audit at least annually.

15 **SECTION 995pw.** 20.9275 (8) of the statutes is created to read:

16 20.9275 (8) A person may file a petition for a writ of mandamus or prohibition
17 with the circuit court for the county where a violation of this section is alleged to have
18 occurred or is proposed to occur.”.

19 **2.** Page 1035, line 2: after that line insert:

20 **“SECTION 3142hb.** 253.02 (2m) (intro.) of the statutes is amended to read:

21 253.02 (**2m**) (intro.) Nothing in this section authorizes the performance,
22 promotion, encouragement, or counseling in favor of, or referral either directly or
23 through an intermediary for, voluntary termination of pregnancy. Nothing in this
24 section prohibits the ~~providing of nondirective information explaining~~ promotion.

1 encouragement, or counseling in favor of, or referral either directly or through an
2 intermediary for, any of the following:

3 **SECTION 3142hc.** 253.02 (2m) (c) of the statutes is repealed.”.

4 **3.** Page 1035, line 8: after that line insert:

5 “**SECTION 3142nd.** 253.07 (1) (a) (intro.) of the statutes is amended to read:

6 253.07 (1) (a) (intro.) “Family planning” means voluntary action by individuals
7 to prevent or aid conception. “Family planning” does not include the performance,
8 promotion, encouragement, or counseling in favor of, or referral either directly or
9 through an intermediary for, voluntary termination of pregnancy, but may include
10 the ~~providing of nondirective information explaining~~ promotion, encouragement, or
11 counseling in favor of, or referral either directly or through an intermediary for, any
12 of the following:

13 **SECTION 3142ne.** 253.07 (1) (a) 3. of the statutes is repealed.

14 **SECTION 3142nf.** 253.07 (1) (b) (intro.) of the statutes is amended to read:

15 253.07 (1) (b) (intro.) “Family planning services” ~~mean~~ means counseling by
16 trained personnel regarding family planning; distribution of information relating to
17 family planning; and referral to licensed nurse practitioners within the scope of their
18 practice, licensed physicians, or local health departments for consultation,
19 examination, medical treatment, and prescriptions for the purpose of family
20 planning. “Family planning” does not include the performance, promotion,
21 encouragement, or counseling in favor of, or referral either directly or through an
22 intermediary for, voluntary termination of pregnancy, but may include the ~~providing~~
23 ~~of nondirective information explaining~~ promotion, encouragement, or counseling in

1 favor of, or referral either directly or through an intermediary for, any of the
2 following:

3 **SECTION 3142ng.** 253.07 (1) (b) 3. of the statutes is repealed.”.

4 **4.** Page 1399, line 20: after that line insert:

5 “(16p) PUBLICLY-FUNDED ORGANIZATIONS. The treatment of sections 20.9275 (1)
6 ~~(intro.)~~, (1r) (am) and (em), (2) (intro.), (a) 2., (2m) (intro.) and (c), (2n), (3), (3m), and
7 (6) to (8) of the statutes first applies to contracts on the day on which the contract
8 expires or is extended, modified, or renewed, whichever first occurs and to employees
9 who are affected by a collective bargaining agreement that contains provisions
10 inconsistent with that treatment on the day on which the collective bargaining
11 agreement expires or is extended, modified, or renewed, whichever first occurs.”.

12 (END)

(1g) ✓

D-NOTE

D-NOTE.

This draft corrects an incorrect reference
in the ~~effective date~~ section. It makes no
other changes.

DAK

~~Initial Applicability~~

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBb1722/2dn
DAK:cmh:pg

June 28, 2001

This redraft corrects an incorrect reference in the initial applicability section. It makes no other changes.

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ARC:.....Hughes – AM105—Prohibit receipt of public funds by organization or affiliate of organization that engages in abortion-related activities

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS ASSEMBLY AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

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

2 **1.** Page 428, line 20: after that line insert:

3 “**SECTION 995pb.** 20.9275 (1) of the statutes is renumbered 20.9275 (1r), and

4 20.9275 (1r) (intro.), as renumbered, is amended to read:

5 20.9275 (1r) (intro.) In this section, except as otherwise specified:

6 **SECTION 995pc.** 20.9275 (1g) of the statutes is created to read:

7 20.9275 (1g) It is the intent of the legislature that this section shall further the

8 profound and compelling state interest in all of the following:

1 (a) To protect the life of an unborn child throughout pregnancy by favoring
2 childbirth over abortion and implementing that value judgment through the
3 allocation of public resources.

4 (b) To ensure that the state, state agencies, and local governmental units do not
5 lend their imprimatur to abortion-related activities.

6 (c) To ensure that organizations that engage in abortion-related activities do
7 not receive a direct or indirect economic or marketing benefit from public funds.

8 **SECTION 995pd.** 20.9275 (1r) (am) of the statutes is created to read:

9 20.9275 (1r) (am) “Family planning” means the process of establishing
10 objectives for the number and spacing of one’s children and selecting the means by
11 which those objectives may be achieved, including a broad range of acceptable and
12 effective methods and services to limit or enhance fertility, including contraceptive
13 methods, including natural family planning and abstinence; the management of
14 infertility, including adoption; and preconceptional counseling, education, and
15 general reproductive health care, including diagnosis and treatment of infections
16 that threaten reproductive capability. “Family planning” does not include pregnancy
17 care, including obstetric or prenatal care.

18 **SECTION 995pe.** 20.9275 (1r) (em) of the statutes is created to read:

19 20.9275 (1r) (em) “Prenatal care” means medical services provided to a
20 pregnant woman to promote maternal and fetal health.

21 **SECTION 995pf.** 20.9275 (2) (intro.) of the statutes is amended to read:

22 20.9275 (2) (intro.) ~~No~~ Except as provided in sub. (2m) and notwithstanding
23 s. 20.927 (2), no state agency or local governmental unit may authorize payment of
24 funds of this state, of any local governmental unit or, ~~subject to sub. (3m),~~ of federal
25 funds passing through the state treasury as a grant, subsidy, or other funding that

1 wholly or partially or directly or indirectly involves pregnancy programs, projects,
2 or services, ~~that is~~ including a grant, subsidy, or other funding under s. 46.93, 46.99,
3 46.995, 253.02 (2), 253.05, 253.07, 253.08, or 253.085 or 42 USC 701 to 710, if any of
4 the following applies:

5 **SECTION 995pg.** 20.9275 (2) (a) 2. of the statutes is renumbered 20.9275 (2) (a)
6 2. (intro.) and amended to read:

7 20.9275 (2) (a) 2. (intro.) Promotes, encourages, or counsels in favor of abortion
8 services, including by doing any of the following:

9 **SECTION 995ph.** 20.9275 (2) (a) 2. a. of the statutes is created to read:

10 20.9275 (2) (a) 2. a. Acting to assist women to obtain abortions.

11 **SECTION 995pi.** 20.9275 (2) (a) 2. b. of the statutes is created to read:

12 20.9275 (2) (a) 2. b. Acting to increase the availability or accessibility of
13 abortion for family planning purposes.

14 **SECTION 995pj.** 20.9275 (2) (a) 2. c. of the statutes is created to read:

15 20.9275 (2) (a) 2. c. Lobbying for the passage of legislation to increase in any
16 way the availability of abortion as a method of family planning.

17 **SECTION 995pk.** 20.9275 (2) (a) 2. d. of the statutes is created to read:

18 20.9275 (2) (a) 2. d. Providing speakers to promote the use of abortion as a
19 method of family planning.

20 **SECTION 995pL.** 20.9275 (2) (a) 2. e. of the statutes is created to read:

21 20.9275 (2) (a) 2. e. Paying dues to a group that as a significant part of its
22 activities advocates abortion as a method of family planning.

23 **SECTION 995pm.** 20.9275 (2) (a) 2. f. of the statutes is created to read:

24 20.9275 (2) (a) 2. f. Using legal action to make abortion available in any way
25 as a method of family planning.

1 **SECTION 995pn.** 20.9275 (2) (a) 2. g. of the statutes is created to read:

2 20.9275 (2) (a) 2. g. Developing or disseminating in any way materials,
3 including printed matter and audiovisual materials, advocating abortion as a
4 method of family planning.

5 **SECTION 995pp.** 20.9275 (2m) (intro.) of the statutes is amended to read:

6 20.9275 (2m) (intro.) Nothing in sub. (2) prohibits the ~~providing of nondirective~~
7 ~~information explaining promotion, encouragement, or counseling in favor of, or~~
8 ~~referral either directly or through an intermediary for,~~ any of the following:

9 **SECTION 995pq.** 20.9275 (2m) (c) of the statutes is repealed.

10 **SECTION 995pr.** 20.9275 (2n) of the statutes is created to read:

11 20.9275 (2n) Except as provided in sub. (6), none of the funds specified under
12 sub. (2) (intro.) may be paid to an organization or affiliate of an organization that does
13 any of the following:

14 (a) Engages in an activity that is specified under sub. (2) (a) 1. to 3.

15 (b) Receives funds from any source that requires, as a condition for receipt of
16 the funds, that the organization or affiliate perform any of the activities specified in
17 sub. (2) (a) 1. to 3.

18 **SECTION 995ps.** 20.9275 (3) of the statutes is amended to read:

19 20.9275 (3) ~~Subject to sub. (3m) Notwithstanding s. 20.927 (2),~~ no organization
20 that receives funds specified under sub. (2) (intro.) may use program funds for an
21 activity that is specified under sub. (2) (a) 1. to 3. No organization that receives funds
22 specified under sub. (2) (intro.) may transfer any program funds or any other public
23 funds to an organization or affiliate of an organization to which sub. (2n) (a) or (b)
24 applies.

25 **SECTION 995pt.** 20.9275 (3m) of the statutes is repealed.

1 **SECTION 995pu.** 20.9275 (6) of the statutes is created to read:

2 20.9275 (6) Subsection (2n) does not apply to an organization that otherwise
3 is qualified to receive funding under sub. (2) and that is affiliated with an
4 organization to which sub. (2n) (a) or (b) applies if the organizations are physically
5 and financially independent from each other under all of the following criteria:

6 (a) The organization that receives funds specified under sub. (2) (intro.) and its
7 independent affiliate to which sub. (2n) (a) or (b) applies are not located in the same
8 building and do not share any of the following:

- 9 1. The same or a similar name.
- 10 2. Medical or nonmedical facilities, including treatment, consultation,
11 examination, or waiting rooms or business offices.
- 12 3. Equipment or supplies, including computers, telephone systems,
13 telecommunications equipment, vehicles, office supplies, or medical supplies.
- 14 4. Services, including management, accounting, or payroll services or
15 equipment or facility maintenance.
- 16 5. Income, grants, donations of cash or property, in-kind gifts, or other revenue.
- 17 6. Fund-raising activities.
- 18 7. Expenses.
- 19 8. Employees.
- 20 9. Employee wages or salaries.
- 21 10. Databases, including client lists.

22 (b) The organization that receives funds specified under sub. (2) (intro.) is
23 separately incorporated from its independent affiliate to which sub. (2n) (a) or (b)
24 applies.

1 (c) The organization that receives funds specified under sub. (2) (intro.)
2 maintains financial records and database records that demonstrate that its
3 independent affiliate to which sub. (2n) (a) or (b) applies receives no direct or indirect
4 economic or marketing benefit from the program funds. Separation of program funds
5 from other moneys by means of bookkeeping alone is not sufficient to meet the
6 requirement of this paragraph.

7 **SECTION 995pv.** 20.9275 (7) of the statutes is created to read:

8 20.9275 (7) At least once every 3 years, the legislative audit bureau shall
9 conduct an audit of each organization that receives the funds specified under sub. (2)
10 (intro.) and the state agency or local governmental unit that authorizes payment of
11 the funds to the organization, to determine if the organization, state agency, or local
12 governmental unit has strictly complied with this section. If the organization is an
13 affiliate of an organization to which sub. (2n) (a) or (b) applies, the legislative audit
14 bureau shall conduct the audit at least annually.

15 **SECTION 995pw.** 20.9275 (8) of the statutes is created to read:

16 20.9275 (8) A person may file a petition for a writ of mandamus or prohibition
17 with the circuit court for the county where a violation of this section is alleged to have
18 occurred or is proposed to occur.”

19 **2.** Page 1035, line 2: after that line insert:

20 **“SECTION 3142hb.** 253.02 (2m) (intro.) of the statutes is amended to read:

21 253.02 (2m) (intro.) Nothing in this section authorizes the performance,
22 promotion, encouragement, or counseling in favor of, or referral either directly or
23 through an intermediary for, voluntary termination of pregnancy. Nothing in this
24 section prohibits the ~~providing of nondirective information explaining promotion.~~

1 encouragement, or counseling in favor of, or referral either directly or through an
2 intermediary for, any of the following:

3 **SECTION 3142hc.** 253.02 (2m) (c) of the statutes is repealed.”.

4 **3.** Page 1035, line 8: after that line insert:

5 “**SECTION 3142nd.** 253.07 (1) (a) (intro.) of the statutes is amended to read:

6 253.07 (1) (a) (intro.) “Family planning” means voluntary action by individuals
7 to prevent or aid conception. “Family planning” does not include the performance,
8 promotion, encouragement, or counseling in favor of, or referral either directly or
9 through an intermediary for, voluntary termination of pregnancy, but may include
10 the ~~providing of nondirective information explaining~~ promotion, encouragement, or
11 counseling in favor of, or referral either directly or through an intermediary for, any
12 of the following:

13 **SECTION 3142ne.** 253.07 (1) (a) 3. of the statutes is repealed.

14 **SECTION 3142nf.** 253.07 (1) (b) (intro.) of the statutes is amended to read:

15 253.07 (1) (b) (intro.) “Family planning services” ~~mean~~ means counseling by
16 trained personnel regarding family planning; distribution of information relating to
17 family planning; and referral to licensed nurse practitioners within the scope of their
18 practice, licensed physicians, or local health departments for consultation,
19 examination, medical treatment, and prescriptions for the purpose of family
20 planning. “Family planning” does not include the performance, promotion,
21 encouragement, or counseling in favor of, or referral either directly or through an
22 intermediary for, voluntary termination of pregnancy, but may include the ~~providing~~
23 ~~of nondirective information explaining~~ promotion, encouragement, or counseling in

1 favor of, or referral either directly or through an intermediary for, any of the
2 following:

3 **SECTION 3142ng.** 253.07 (1) (b) 3. of the statutes is repealed.”.

4 **4.** Page 1399, line 20: after that line insert:

5 “(16p) ~~PUBLICLY-FUNDED ORGANIZATIONS.~~ The treatment of sections 20.9275 (1),
6 (1g), (1r) (am) and (em), (2) (intro.), (a) 2., (2m) (intro.) and (c), (2n), (3), (3m), and (6)
7 to (8) of the statutes first applies to contracts on the day on which the contract expires
8 or is extended, modified, or renewed, whichever first occurs and to employees who
9 are affected by a collective bargaining agreement that contains provisions
10 inconsistent with that treatment on the day on which the collective bargaining
11 agreement expires or is extended, modified, or renewed, whichever first occurs.”.

12

(END)