ENROLLED

2018 Regular Session

HOUSE BILL NO. 891 (Substitute for House Bill No. 338 by Representative Hoffmann)

BY REPRESENTATIVES HOFFMANN, ABRAHAM, AMEDEE, BACALA, BAGLEY, BAGNERIS, BARRAS, BERTHELOT, BILLIOT, CHAD BROWN, TERRY BROWN, CARMODY, CARPENTER, STEVE CARTER, CHANEY, CONNICK, COUSSAN, COX, CREWS, CROMER, DANAHAY, DAVIS, DEVILLIER, DWIGHT, EDMONDS, EMERSON, FALCONER, GAROFALO, GISCLAIR, GUINN, HENSGENS, HILFERTY, HODGES, HORTON, HOWARD, IVEY, JACKSON, JOHNSON, NANCY LANDRY, LEBAS, MAGEE, MIGUEZ, PIERRE, POPE, PYLANT, REYNOLDS, RICHARD, SCHEXNAYDER, SIMON, STAGNI, STOKES, THOMAS, WHITE, WRIGHT, AND ZERINGUE AND SENATORS ERDEY, MILLS, AND THOMPSON

AN ACT

To amend and reenact R.S. 36:21(B) and R.S. 40:1061.6(A)(2) and 2175.4(B), relative to a prohibition on public funding for entities that perform abortions; to provide for applicability of and exceptions to the prohibition; to provide relative to the validity of outpatient abortion facility licenses; to provide for legislative findings; to provide for the redesignation of certain statutes; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 36:21(B) is hereby amended and reenacted to read as follows:

§21. Public funding for abortion providers; prohibition

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B.(1) No institution, board, commission, department, agency, official, or employee of the state, or of any local political subdivision thereof, shall contract with, award any grant to, or otherwise bestow any funding upon, an entity or organization that performs abortions, or that contracts with an entity or organization

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that performs abortions in this state. The prohibition provided in this Section shall apply to state funds, federal funds, and any other funds that may be used for purposes of contracting for services, providing reimbursements, or grant issuance. The Louisiana Department of Health shall not enter into any provider agreement for medical assistance program funding, as defined in R.S. 46:437.3, with any healthcare provider, entity, or organization that does any of the following:

(a) Performs abortions in this state.
(b) Provides its own facilities where reimbursable medical assistance program services are performed for the use of another healthcare provider, entity, or organization for the purpose of performing abortions in this state.
(c) Hires or retains another healthcare provider, entity, or organization for the purpose of performing abortions in this state.
(d) Provides reimbursable medical assistance program services in the same physical facility as a licensed outpatient abortion facility.

(2)(a) The prohibition provided in this Section shall apply to state funds, federal funds, and any other public funds administered by the Louisiana Department of Health through a medical assistance program provider agreement. In the instance that a state or federal funding grant is denied to a healthcare provider, entity, or organization under this Section, such grant shall be redirected to qualified providers in the same geographical region as the healthcare provider, entity, or organization that was disqualified from such grant.
(b) For purposes of this Paragraph, "medical assistance program" and "provider agreement" shall have the meaning ascribed in R.S. 46:437.3.

(3) The prohibition provided in this Section shall not be construed to prohibit provision of public protections, such as fire, police, or emergency medical services, public utilities, or other such services to any entity or organization in the same manner as provided to the general public.

(4) The prohibition in this Section shall not be construed to restrict funding to an entity that may perform be engaged in performing the following types of

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abortions, exclusively, provided such abortions are performed in accordance with applicable state and federal laws:

(a) An abortion which is medically necessary to prevent the death of the mother.

(b) An abortion in a case when the mother is a victim of rape or incest.

(c) An abortion performed when the pregnancy is diagnosed as medically futile. For purposes of this Subparagraph, “medically futile” means that, in reasonable medical judgment, the unborn child has a profound and irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth. This diagnosis shall be a medical judgment certified in the pregnant woman's medical record by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

Section 2. R.S. 40:1061.6(A)(2) and 2175.4(B) are hereby amended and reenacted to read as follows:

§1061.6. Use of public funds

   A.
       * * *

(2)(a) As more specifically provided in R.S. 49:200.51, No institution, board, commission, department, agency, official, or employee of the state, or of any local political subdivision thereof, shall contract with, award any grant to, or otherwise bestow any funding upon, an entity or organization that performs abortions, or that contracts with an entity or organization that performs abortions, in this state, as more specifically provided in Chapter 1-A of Title 36 of the Louisiana Revised Statutes of 1950; the Louisiana Department of Health shall not enter into any provider agreement for medical assistance program funding, as defined in R.S. 46:437.3, with any healthcare provider, entity, or organization that does any of the following:

   (i) Performs abortions in this state.

   (ii) Provides its own facilities where reimbursable medical assistance program services are performed for the use of another healthcare provider, entity, or organization for the purpose of performing abortions in this state.
(iii) Hires or retains another healthcare provider, entity, or organization for the purpose of performing abortions in this state.

(iv) Provides reimbursable medical assistance program services in the same physical facility as a licensed outpatient abortion facility.

(b)(i) The prohibitions provided in this Subsection shall apply to state funds, federal funds, and any other public funds administered by the Louisiana Department of Health through a medical assistance program provider agreement, but shall not be construed to prohibit provision of public protections, such as fire, police, or emergency medical services, public utilities, or other such services to any entity or organization in the same manner as provided to the general public.

(ii) For purposes of this Subparagraph, "medical assistance program" and "provider agreement" shall have the meaning ascribed in R.S. 46:437.3.

§2175.4. License required

B. A license issued to an outpatient abortion facility is valid for only one location that shall be physically and financially separate from any facility where publicly funded medical assistance program services are provided, in accordance with R.S. 49:200.51.

Section 3.(A) The legislature hereby finds and declares all of the following:

(i) Abortion providers that operate in the same facility with publicly funded medical providers create a high risk of misappropriation of public funds that could be used to directly or indirectly subsidize abortion, in violation of the longstanding policy of this state to prohibit the public funding of abortion-related services.

(ii) This Act is necessary pursuant to the intent and purpose of the Medical Assistance Programs Integrity Law, R.S. 46:437.1 et seq., "to combat and prevent fraud and abuse" in light of the fungible nature of medical assistance program funding granted under circumstances where there is no practicable method to verify the strict segregation from subsidizing the overhead costs of abortion-related activities.

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(iii) It is the longstanding policy of this state to "express a preference for childbirth over abortion", Planned Parenthood v. Casey, 505 U.S. 833, 883 (1992); see also R.S. 40:1061.8., because, as the U.S. Supreme Court has made clear, abortion is a "unique act", Casey, 505 U.S. at 852, that is "inherently different from other medical procedures", Harris v. McRae, 448 U.S. 297, 325 (1980), because in abortion "the fetus will be killed", Gonzales v. Carhart, 550 U.S. 124, 159 (2007). The procedure is also unique because of the impact of the abortion on the woman herself. Id. at 159 ("Whether to have an abortion requires a difficult and painful moral decision which some women come to regret").

(iv) It is a well-established principle recognized by the United States Supreme Court that government need not be neutral between abortion providers and other medical providers in the context of governmental decisions regarding the use of public funds. See Harris v. McRae, 448 U.S. 297, 316 (1980) (". . .it simply does not follow that a woman's freedom of choice carries with it a constitutional entitlement to the financial resources to avail herself of the full range of protected choices").

(B) Based on these findings, it is the purpose and intent of the legislature to set reasonable standards for the fiscal integrity qualifications of medical assistance program providers in accordance with federal and state laws, rules, and regulations concerning appropriation and expenditure of public funding.

Section 4. Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding is one of utter invalidity or unenforceability, in which event such provision shall be deemed severable in accordance with R.S. 24:175, and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other dissimilar circumstances.

Section 5. The Louisiana State Law Institute is hereby directed to redesignate Chapter 1-A of Title 36 of the Louisiana Revised Statutes of 1950, comprised of R.S. 36:21, as amended by Section 1 of this Act, as Chapter 1-A of Title 49 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 49:200.51, and to retain the heading of the Chapter.
Section 6. This Act shall become effective thirty days after the date upon which an Act of Congress or administrative action by the Centers for Medicare and Medicaid Services or other federal regulation authorizes this state to condition funding provided through medical assistance program provider agreements to a potential recipient based upon the provider's status as an abortion provider as specified in this Act.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: ____________________

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