

BILL ANALYSIS

C.S.H.B. 2313
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been reported that roughly three-quarters of women seeking an abortion would prefer to keep and parent their child if their individual circumstances were different. Abortions are predominantly driven by socioeconomic concerns that exist before pregnancy, and women equipped with various resources often decide to keep their children. While communities already provide significant resources to support those needs, many women seeking an abortion are unaware of the resources available to them and face difficulty accessing the maze of programs and organizations. Most abortions are driven by fear, lack of support, and insufficient resources, as obtaining support services can be complicated and difficult to navigate, especially when in crisis. C.S.H.B. 2313 seeks to create a system of tangible support for women considering abortion by ensuring that these women have a meaningful opportunity to learn about and access a variety of services through a pre-abortion resource access assistance offer.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 3 of this bill.

ANALYSIS

C.S.H.B. 2313 amends the Health and Safety Code to require a physician who is to perform or induce an abortion to confirm, before the abortion is performed or induced, that the pregnant woman received a pre-abortion resource access assistance offer by verifying a unique identifying number, devoid of the woman's personally identifiable information, as provided by the Health and Human Services Commission (HHSC) under the bill's provisions. This requirement is in addition to the informed consent requirements for an abortion and does not apply during a medical emergency.

C.S.H.B. 2313 sets out the following standards for a care agent providing a resource access assistance offer:

- requires the agent to be licensed in Texas as a counselor, physician, psychologist, social worker, nurse, advanced practice registered nurse, community health worker, physician's assistant, or marriage and family therapist or acting under the supervision of such a licensee;
- requires the agent to be authorized under a contract with HHSC to provide resource access assistance offers and support services on behalf of the state;

- requires the agent to complete a training program on identifying and assisting victims of human trafficking using a standardized curriculum created by the human trafficking prevention task force;
- requires the agent to comply with state medical records privacy laws;
- disqualifies an agent who has done the following in the two years preceding the resource access assistance offer:
 - performed or induced an abortion; or
 - served as a director, board member, officer, volunteer, or employee for a licensed abortion facility; and
- prohibits the agent from referring a woman to an abortion provider.

C.S.H.B. 2313 requires the resource access assistance offer to be provided by and on behalf of the state at no charge to a pregnant woman; sets out certain information, assessment of eligibility for appropriate services, education, and screening that the care agent must provide during the offer; and provides for the discretionary actions of an agent who obtains information that the pregnant woman is a victim of human trafficking or coercion of abortion.

C.S.H.B. 2313 requires HHSC to develop and maintain an authentication system that provides the pregnant woman a unique identifying number and requires the system to do the following:

- allow a care agent to request a unique identifying number for the pregnant woman;
- allow a physician who is to perform or induce an abortion to verify the unique identifying number;
- ensure that the identity of an individual pregnant woman, care agent, or physician who is to perform or induce the abortion is not disclosed in the authentication system; and
- remove any individually identifying information of the pregnant woman, care agent, or physician as soon as the information is not needed to verify the unique identifying number.

The bill requires an agent to request a unique identifying number, devoid of the pregnant woman's personally identifiable information, from the system to certify that the woman received the resource access assistance offer.

C.S.H.B. 2313 requires HHSC to establish a single toll-free telephone number through which a woman seeking an abortion in Texas may receive an offer on a 24-hour basis and to ensure the placed call automatically routes the woman to an agent at a contracting agency to provide the offer. The bill sets out the following rights of a pregnant woman regarding a resource access assistance offer:

- establishes that the woman is not required to provide any information to the agent or contracting agency;
- establishes that the woman is not required to initiate or complete services to obtain an abortion;
- authorizes the woman to decline services at any time; and
- establishes that the woman retains access to an accepted offer until the second anniversary of the date of acceptance, regardless of the woman's pregnancy.

C.S.H.B. 2313 requires documentation of the receipt of the resource access assistance offer to be placed in a pregnant woman's medical records before the abortion begins. The bill requires the documentation to be retained by the facility where the abortion is performed until the seventh anniversary of the date it is signed, or, if the pregnant woman is a minor, until that anniversary or the woman's 21st birthday, whichever is later.

C.S.H.B. 2313 requires the executive commissioner of HHSC, not later than August 31, 2022, to adopt rules as necessary to implement the bill's provisions. The bill establishes that its provisions apply only to an abortion performed or induced on or after April 1, 2023, and that a physician is not required to comply with those provisions before that date. The bill requires HHSC, not later than April 1, 2023, to contract with one or more contracting agencies that employ care agents throughout Texas to provide the pre-abortion resource access assistance

offer and associated services prescribed by the bill. Implementation of the bill's provisions by HHSC is mandatory only if a specific appropriation is made for that purpose.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2313 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute replaces references throughout the bill to performing an abortion with references to performing or inducing an abortion.

The substitute makes the following revisions to the original regarding the care agent providing a resource access assistance offer:

- includes a specification that the agent must be licensed in Texas;
- does not include language prohibiting the agent from recommending abortion or taking any other action that directly or indirectly advises or assists a woman in obtaining an abortion;
- includes a requirement for the agent to comply with medical records privacy laws;
- limits the preceding period during which the agent must not have served in certain capacities for a licensed abortion facility to two years;
- includes authorization for an agent who obtains information that a pregnant woman is a victim of human trafficking or coercion of abortion to take certain actions; and
- does not include a requirement for the agent to report certain de-identified demographic information to HHSC.

The substitute, with regard to the requisite unique identifying number, differs from the original as follows:

- replaces the original's requirement for a secure database to store the number with a requirement for an authentication system that provides the number, including further specifications regarding the capabilities of the system;
- does not include a requirement for the physician who is to perform or induce the abortion to document the number in the woman's medical record; and
- removes the requirement for a care agent to provide the number to the woman.

The substitute clarifies that the original's provision establishing the continuing availability of an accepted offer for a two-year period means that access to the offer is retained until the second anniversary of the date of acceptance.

The substitute includes a procedural provision absent from the original that makes the implementation of the bill's provisions by HHSC mandatory only if a specific appropriation is made for that purpose.