Isabelle Boes

An Economic Analysis of HB18-1082

April 30, 2018

Professor Jeffrey Zax

HB18-1082 proposes the creation of the Women's Reproductive Information Guarantee for Health and Transparency (RIGHT) Act, which increases the amount of information a woman must receive from an abortion provider before the procedure. The bill asserts the medical necessity of this information and states that current barriers exist to its provision, potentially causing dangerous and unnecessary abortions. This paper examines the economic validity of the bill and its implications, ultimately finding no justification for its passage.

This proposal outlines several specific pieces of information that a patient intending to get an abortion must receive. Most centrally, the bill makes it mandatory that the abortion provider offers a woman the opportunity to get an ultrasound and to see or forego seeing its results. If the provider will not or cannot provide the ultrasound, they must provide the patient with a list of all providers within a 10 mile radius who will perform the procedure for free. Further, if a woman does choose to have and view the ultrasound, she must receive an oral description, a print photograph, and a description of the probable gestational age and the development of the fetus' nerve endings and its ability to feel pain.

Regardless of whether a woman choses to have and view an ultrasound, she must receive several pieces of information from her provider at least 24 hours before the scheduled procedure. This information includes a description of any risks associated with the procedure, the potential of reversal, a description of alternatives and a description of the prenatal and maternal care available. A failure to provide this information at least 24 hours prior is considered a crime.

The government should intervene in imperfect markets, aiming to enhance efficiency. This paper considers the existence of a market failure in the provision of information, potential externalities associated with abortions, and the costs associated with the bill.

The bill implies that women face barriers in receiving important information before abortions. Presently, federal informed consent laws require that patients receive a baseline of information about

their procedure so that they can make an informed decision. General guidelines involve physician provision of information regarding the diagnosis, nature of the procedure, risks and benefits associated with it, and alternatives and their risks and benefits[1]. Some states have more specific requirements about the level of detail required[2] but Colorado appears to have no law further specifying the requirements for a medical procedure in general. The information provision suggested by this bill does not have sufficient relevance to abortion procedures to justify further regulation beyond existing informed consent laws.

The bill states some women are denied the opportunity to have an ultrasound. In reality, women always have the choice to attend a clinic that provides an ultrasound and to avoid those that do not. However, the American College of Obstetricians and Gynecologists advises against the performance of casual ultrasounds for non-medical purposes[3]. Legislation therefore should not encourage the provision of ultrasounds that are not medically necessary according to established medical standards.

The provision of information regarding the risks associated with abortions also does not warrant further regulation beyond general informed consent. According to the American Journal of Public Health, abortion is an extremely safe procedure, with only 0.05% of patients experiencing a major complication[4]. A risk factor this low does not merit a legally required provision beyond standard procedure.

Further, medical reality does not support the regulation of the provision of information about abortion reversal. According to a reproductive health journal, existing evidence on the effectiveness and safety of the procedure is insufficient and inconclusive.[5] Legislation should not promote the provision of inconclusive and potentially misleading information, as doing so would cause informational asymmetry, a market failure.

Finally, while the bill would require that providers offer to discuss a fetus' ability to feel pain, scientific consensus soundly rejects the basis of this proposal. According to the American Medical Association, fetal capacity to feel pain doesn't occur until about 29 weeks[6]. Since outpatient abortions for non-medical reasons must be performed within 26 weeks of pregnancy, this information is irrelevant[7]. To provide different information would be misleading.

Since no barriers to pertinent information currently exist for abortion patients and the regulation of additional information could be irrelevant or misleading, an imperfect information market cannot justify this bill. Another possible justification for it would be the provision of positive externalities or the mitigation of negative externalities.

The bill aims to "[protect] the unborn child from a woman's uninformed decision," implying personhood and suggesting the ability of these persons to be impacted by the choices of others. However, Colorado law states that personhood does not apply at any point before birth[7]. This means that economically and legally, the choices that a woman makes regarding her pregnancy solely impact her. Therefore, she cannot impose an externality on the fetus. Additionally, the language of this bill is inconsistent with existing Colorado law and its passage would not resolve the inconsistency.

Since this bill does not correct for an inefficiency such as a market imperfection or externality, economics cannot justify it. Further, if passed, it would inefficiently impose costs. First of all, in requiring providers to perform ultrasounds for free or direct the patient to a free provider if they desire, this bill inefficiently interferes with market prices. If a clinic already provides ultrasounds for free or if the patients' insurance covers the cost, no regulation is necessary. The market efficiently provides a variety of prices in response to demand, allowing for greater consumer choice. If a provider that normally charges for ultrasounds provides them for free due to this proposal, the market becomes inefficient.

These costs will be offset by virtually no benefits. The bill aims to "reduce the risk that a woman may elect an abortion, only to discover later . . . that her decision was not fully informed," assuming that women who have ultrasounds might continue their pregnancies. However, several studies on the effects of ultrasound viewings on a woman's decision to abort found no statistically significant relationship between the two. One study notes that of the 42.5% of the sample who decided to view the ultrasound, 98.4% of them continued with the abortion procedure, only .6% less than those who did not view the ultrasound[8].

The time period requirement in this proposal further creates inefficiency instead of mitigating it. Since Colorado law does not currently require mandatory waiting periods, doctors typically perform all aspects of the procedure in one day.[7] The bill's requirement that providers share information with clients at least 24 hours before the abortion procedure creates a need for two separate appointments.

For any patient, this process raises costs in terms of both time and money. Since 78% of counties in the state do not have abortion providers, women from these areas will need to travel significant distances to and from appointments[9]. This could create barriers to any sort of procedure and cause an inefficient interruption of sovereign choices. For lower-income women, these costs may represent a larger portion of their budgeted time and money. This means that poor women may be disproportionately priced out of the market, leading them to drop their abortion appointments and continue their pregnancies at higher frequencies than other groups. Given that unintended pregnancy rates are highest among poor women, this action only artificially furthers the discrepancy.

Though this aspect of the policy may technically support the bill's likely intention to reduce abortion rates in Colorado, the bill imposes high social costs and promotes economic immobility. Many of the poor women that carry out their pregnancies receive some form of government assistance, as shown by the fact that public insurance programs such as Medicaid pay for two-thirds of unplanned

births.[10] There is a social cost to their pregnancies, so an increase in these types of births will raise costs for the government and tax payers.

If legislators want to more effectively achieve their goal of reducing the prevalence of abortion in the state, better policies exist. Most notably, numerous studies show a significant correlation between comprehensive sex-education for adolescents and decreased rates of pregnancy among young people[11]. Given that the prevalence of unintended pregnancy and therefore demand for abortions decreases with age, policies that specifically target this demographic group could significantly reduce the need for abortions.

Sex-education that includes information about contraceptives and sexually transmitted disease prevention combats negative externalities for society by reducing the public health risks of STDs. Further, only 40% of teenage mothers graduate high school[12]. Compared to the national graduation rate of 83%, it is evident that young women are less likely to graduate high school if they become pregnant[13]. A high school education imposes positive externalities, because students with a complete k-12 education are more likely to engage efficiently in society and the economy. Promoting preventative measures against unplanned pregnancies will help maximize the number of high school graduates and their generation of positive externalities. This type of preventative measure could still influence the abortion rate in the state, but in an economically efficient way that doesn't create barriers to markets and choices.

In conclusion, this bill causes inefficiency in a private market. The information and services it tries to regulate are already readily available and do not merit mandated provision. This bill's unjustified creation of obstacles will not reduce the prevalence of abortion but instead wastes resources and incurs costs as women continue to make their own choices in a more regulated system.

[1] "Understanding Informed Consent – A Primer." *Find Law.* Thomas Reuters, 2018.
[2] "What are the legal requirements of informed consent?" *Cancer.org.* The American Cancer Society, Inc. 2014.
[3] "Ultrasound Exams." *Frequently Asked Questions: Special Procedures.* The American College of Obstetricians and Gynecologists, 2017.
[4] Weitz TA et al. "Safety of aspiration abortion performed by nurse practitioners, certified nurse midwives, and physician assistants under a California legal waiver." *American Journal of Public Health*, 2013, 103(3):454–46.
[5] Grossman, Daniel, Kari White, Lisa Harris, Matthew Reeves, Paul D. Blumenthal, Beverly Winikoff, and David A. Grimes. "Continuing pregnancy after mifepristone and "reversal" of first-trimester medical abortion: a systematic review." Contraception 92, no. 3 (2015): 206-211.
[6] Lee, Sudan D et al. "Fetal pain" A systematic multidisciplinary review of the evidence." JAMA. 2005;294(8):947-954.
[7] "Colorado Abortion Laws." *Find Law.* Thompson Reuters, 2018.
[8] Gatter, Mary, et al. "Relationship between ultrasound viewing and proceeding to abortion." Obstetrics & Gynecology 123.1 (2014): 81-87.
[9] "State Facts about Abortion: Colorado." *Guttmacher.org.* Guttmacher Institute, 2018.
[10] "Unintended Pregnancy in the United States." *Guttmacher.org.* Guttmacher Institute, 2018.
[11]Kohler, Pamela K., Lisa E. Manhart, and William E. Lafferty. "Abstinence-only and comprehensive sex education and the initiation of sexual activity and teen pregnancy." *Journal of Adolescent Health,* 42.4 (2008): 344-351.
[12] "Postcard: Teen Pregnancy Affects Graduation Rates." *National Conference of State Legislatures.* NCSL, 2013.
[13] "Public High School Graduation Rates." *The Condition of Education.* National Center for Education Statistics, 2017.