REPRODUCTIVE HEALTH AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian S. King

Senate Sponsor: ____________

LONG TITLE

General Description:

This bill enacts provisions related to reproductive health services and education.

Highlighted Provisions:

This bill:

- defines terms;
- directs the Division of Health Care Financing to seek a waiver for family planning services;
- establishes requirements for comprehensive human sexuality education;
- requires the State Instructional Materials Commission to consult with parents and others when evaluating comprehensive human sexuality curriculum;
- prohibits a school from receiving federal abstinence education funding;
- repeals certain criminal provisions regarding contraceptive and abortion services; and
- makes technical and conforming corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:
Be it enacted by the Legislature of the state of Utah:

Section 1. Section 26-18-411 is enacted to read:

**26-18-411. Medicaid waiver for limited family planning services for low-income individuals.**

(1) For purposes of this section:

(a) (i) "Family planning services" includes, at a minimum:

(A) testing, treatment, and counseling for sexually transmitted infections and HIV/AIDS, including follow-up treatment for diagnosed sexually transmitted infections;

(B) well-woman exams, including screening and testing for breast and cervical cancer and other cervical cancer causing abnormalities, and other preventive services related to family planning or provided as part of a family planning visit;

(C) sexual health education and family planning counseling;

(D) contraceptives; and

(E) other medical diagnosis, treatment, or preventive care routinely provided as part of a family planning service visit.

(ii) "Family planning services" does not include an abortion, as that term is defined in Section 76-7-301.

(b) "Low-income individual" means an individual who has an income level that is equal to or below the highest income level for which a pregnant women is eligible for Medicaid coverage under the state plan.

(2) Before July 1, 2016, the division shall seek a waiver that has a duration of at least
three years from the Centers for Medicare and Medicaid Services within the United States Department of Health and Human Services to:

(a) provide family planning services to low-income individuals who do not qualify for full Medicaid coverage; and

(b) receive a federal match rate of 90% of state expenditures for family planning services provided under the waiver.

Section 2. Section 53A-13-101 is amended to read:


-- Political and religious doctrine prohibited.

(1) As used in this section:

(a) "Age appropriate" means topics, messages, and teaching methods suitable to a particular age or age group, based on developing cognitive, emotional, and behavioral capacity typical for the age or age group.

(b) "Board" means the State Board of Education.

(c) (i) "Comprehensive human sexuality" or "comprehensive human sexuality education" means evidence-based information about:

(A) human reproduction, reproductive anatomy, and reproductive physiology;

(B) all methods to prevent unintended pregnancy and sexually transmitted diseases and infections, including HIV and AIDS; and

(C) the link between human papillomavirus and cancer, and other types of cancer involving the human reproductive systems, including prostate, testicular, ovarian, and uterine cancer.

(ii) "Comprehensive human sexuality" includes information about the correct and consistent use of sexual abstinence, contraception, condoms, and other birth control barrier methods.

(d) "Evidence-based information" means information that is evaluated using rigorous research design, including:

(i) measuring knowledge, attitude, and behavior;

(ii) having an adequate sample size;

(iii) using sound research methods and processes;

(iv) replicating in different locations and finding similar evaluation results; and
(v) publishing results in a peer-reviewed journal.

(e) "Positive youth development" means an approach that:

(i) is inclusive of all youth, collaborative, and strength-based; and

(ii) emphasizes the many positive attributes of young people and focuses on developing

inherent strengths and assets to promote health.

(f) "Sexual abstinence" means not engaging in oral, vaginal, or anal intercourse or

genital skin-to-skin contact.

[(1) (a)] (2) The [State Board of Education] board shall establish curriculum

requirements under Section 53A-1-402[;] that include health instruction in:

[(i)] (a) community and personal health;

[(ii)] (b) physiology;

[(iii)] (c) personal hygiene; [and]

[(iv)] (d) prevention of communicable disease[;] and

(e) subject to Subsection (3), comprehensive human sexuality.

[(b) (i) That instruction shall stress:]  

[(A) the importance of abstinence from all sexual activity before marriage and fidelity

after marriage as methods for preventing certain communicable diseases; and]  

[(B) personal skills that encourage individual choice of abstinence and fidelity.]  

[(ii) (A) At no time may instruction be provided, including responses to spontaneous

questions raised by students, regarding any means or methods that facilitate or encourage the

violation of any state or federal criminal law by a minor or an adult.]  

[(B) Subsection (1)(b)(ii)(A) does not preclude an instructor from responding to a

spontaneous question as long as the response is consistent with the provisions of this section.]  

(3) (a) The comprehensive human sexuality education curriculum established under

Subsection (2)(e) shall:

(i) encourage parental or guardian involvement and family communication;

(ii) include instruction to help students develop skills for making responsible and

healthy decisions about human sexuality, personal power, boundary setting, developing safe

and healthy relationships, and resisting peer pressure, including:

(A) not making unwanted verbal, physical, and sexual advances; and

(B) not making assumptions about a person's supposed sexual intentions based on that
person's appearance;

(iii) teach human sexuality as a normal and healthy aspect of human development;
(iv) include information about the physical, social, and emotional changes of adolescence and subsequent stages of human maturation, including how pregnancy happens;
(v) include evidence-based information shown to be effective in changing behaviors that contribute to early pregnancy and sexually transmitted diseases and infections, including:
(A) sexual abstinence and delaying sexual initiation;
(B) reducing the frequency of sexual intercourse;
(C) reducing the number of sexual partners; and
(D) increasing the use of condoms and other contraceptives;
(vi) include discussions and information on how to recognize and respond safely and effectively in situations where sexual or physical violence may be occurring or where there may be a risk for these behaviors to occur;
(vii) include discussions of how alcohol and drug use impair responsible and healthy decision making;
(viii) be comprehensive, age appropriate, rely on evidence-based information, be inclusive of a positive youth development framework, and be medically accurate; and
(ix) provide instruction about the health benefits and potential side effects of using contraceptives and barrier methods to prevent pregnancy, including instruction regarding emergency contraception and the availability of contraceptive methods.

[(c)] (b) (i) The board shall recommend instructional materials for use in the [curricula] curriculum required under Subsection [(1)(a)] (2) after considering evaluations of instructional materials by the State Instructional Materials Commission.

(ii) The State Instructional Materials Commission shall consult with parents, teachers, school nurses, and community members in evaluating instructional materials for comprehensive human sexuality curriculum that comply with this section.

[(d)] (ii) A local school board or charter school governing board may choose to adopt:
(A) the instructional materials recommended under Subsection (1)[(c)](b)(i); or
(B) other instructional materials as provided in [state] board rule.

[(e)] (iv) The [state] board rule made under Subsection (1)[(c)(ii)](b)(iii)(B) shall include, at a minimum:
(A) that the materials adopted by a local school board or charter school governing board under Subsection (1)(e)(ii)(b)(iii)(B) shall be based upon recommendations of the school district's [Curriculum Materials Review Committee] or charter school's curriculum materials review committee that comply with state law and [state] board rules [emphasizing abstinence before marriage and fidelity after marriage, and prohibiting instruction in:];

[(I) the intricacies of intercourse, sexual stimulation, or erotic behavior;]

[(II) the advocacy of homosexuality;]

[(III) the advocacy or encouragement of the use of contraceptive methods or devices; or]

[(IV) the advocacy of sexual activity outside of marriage;]

(B) that the adoption of instructional materials shall take place in an open and regular meeting of the local school board or charter school governing board for which prior notice is given to parents and guardians of students attending schools in the district and an opportunity for them to express their views and opinions on the materials at the meeting;

(C) provision for an appeal and review process of the local school board's or charter school governing board's decision; and

(D) provision for a report to the board by the local school board [to the State Board of Education] or charter school governing board of the action taken and the materials adopted by the local school board or charter school governing board under Subsections (1)(e)(ii)(b)(iii)(B) and (1)(e)(iii)(b)(iv).

[(2) (4) (a) Instruction in the courses described in Subsection [(3) (a)] (2):

(i) shall be consistent and systematic in grades [eight] 8 through 12[; and

(ii) may not be taught in kindergarten through grade 3.

(b) At the request of the board, the Department of Health shall cooperate with the board in [developing programs to provide instruction in those areas] establishing curriculum requirements as described in Subsection (2).

[(3) (a) The board shall adopt rules that:

[(a) provide that the parental consent requirements of [Sections 76-7-322 and 76-7-323] Section 53A-13-101.2 are complied with; and

[(b) require a student's parent or legal guardian to be notified in advance and have an opportunity to review the information for which parental consent is required under [Sections...
[(b) The board shall also provide procedures for disciplinary action for violation of Section 76-7-322 or 76-7-323.]

[(4) (a) In keeping with the requirements of Section 53A-13-109, and because school employees and volunteers serve as examples to their students, school employees or volunteers acting in their official capacities may not support or encourage criminal conduct by students; teachers, or volunteers.]

[(b) To ensure the effective performance of school personnel, the limitations described in Subsection (4)(a) also apply to school employees or volunteers acting outside of their official capacities if:]

[(i) they knew or should have known that their action could result in a material and substantial interference or disruption in the normal activities of the school; and]

[(ii) that action does result in a material and substantial interference or disruption in the normal activities of the school.]

[(c) Neither the State Office of Education nor local school districts may provide training of school employees or volunteers that supports or encourages criminal conduct:]

[(d)] (6) The [State Board of Education] board shall adopt rules implementing this section.

[(e) Nothing in this section limits the ability or authority of the State Board of Education and local school boards to enact and enforce rules or take actions that are otherwise lawful, regarding educators', employees', or volunteers' qualifications or behavior evidencing unfitness for duty:]

[(f)] (7) Except as provided in Section 53A-13-101.1, political, atheistic, sectarian, religious, or denominational doctrine may not be taught in the public schools.

[(g)] (8) (a) [Local] A local school [boards] board or charter school governing board and [their] that board's employees shall cooperate and share responsibility in carrying out the purposes of this chapter.

(b) Each school district and charter school shall provide appropriate inservice training for its teachers, counselors, and school administrators to enable them to understand, protect, and properly instruct students in the information, values, and character traits referred to in this section and Sections 53A-13-101.1, 53A-13-101.2, 53A-13-101.3, 53A-13-109, 53A-13-301,
and 53A-13-302 and distribute appropriate written materials on the information, values, character traits, and conduct to each individual receiving the inservice training.

(c) The written materials shall also be made available to classified employees, students, and parents and guardians of students.

(d) In order to assist school districts in providing the inservice training required under Subsection [(6)] (8)(b), the [State Board of Education] board shall, as appropriate, contract with a qualified individual or entity possessing expertise in the areas referred to in Subsection [(6)] (8)(b) to develop and disseminate model teacher inservice programs [which] that districts may use to train the individuals referred to in Subsection [(6)] (8)(b) to effectively teach the values and qualities of character referenced in that subsection.

[(e) In accordance with the provisions of Subsection (4)(c), inservice training may not support or encourage criminal conduct.]

[(7) (9) If any one or more provision, subsection, sentence, clause, phrase, or word of this section, or the application thereof to any person or circumstance, is found to be unconstitutional, the balance of this section shall be given effect without the invalid provision, subsection, sentence, clause, phrase, or word.

(10) (a) A school district or charter school that, before July 1, 2016, is awarded direct or indirect federal funding for the provision of an abstinence education program pursuant to 42 U.S.C. Sec. 710 is not required to adopt requirements for comprehensive human sexuality education for the provision of comprehensive human sexuality education as described in this section for the year or years for which the school district or charter school receives the federal funding awarded before July 1, 2016.

(b) Except as provided in Subsection (10)(a), on or after July 1, 2016, a school district or charter school:

(i) may not use direct or indirect federal funding for the provision of an abstinence education program pursuant to 42 U.S.C. Sec. 710; and

(ii) shall provide comprehensive human sexuality education as described in this section.

Section 3. Section 76-7-324 is amended to read:

76-7-324. Violation of restrictions on public funds for abortion services as misdemeanor.
Any agent of a state agency or political subdivision, acting alone or in concert with others, who violates Section [76-7-322, 76-7-323, or] 76-7-331 is guilty of a class B misdemeanor.

Section 4. Repealer.

This bill repeals:

Section 76-7-321, Contraceptive and abortion services -- Funds -- Minor -- Definitions.

Section 76-7-322, Public funds for provision of contraceptive or abortion services restricted.

Section 76-7-323, Public funds for support entities providing contraceptive or abortion services restricted.

Section 76-7-325, Notice to parent or guardian of minor requesting contraceptives -- Definition of contraceptives -- Penalty for violation.

Section 5. Effective date.

This bill takes effect on July 1, 2016.

Legislative Review Note
Office of Legislative Research and General Counsel