



HOUSE OF REPRESENTATIVES

HB 2036

~~private attorney retention; contingency fees~~

NOW: abortion; procedures; informed consent; requirements

Sponsor: Representative Yee

DPA Committee on Government
DPA Caucus and COW
X As Transmitted to the Governor

OVERVIEW

HB 2036 adds provisions to the abortion statutes relating to rules, parental consent, informed consent and gestational age.

HISTORY

Many of the state laws regulating abortion are found in Arizona Revised Statutes, Title 36. Included in those regulations are consent and mandatory reporting requirements, rights of conscience of health care providers and restrictions of abortions under certain circumstances.

PROVISIONS

Rule Provisions

- Requires the Director of the Arizona Department of Health Services (ADHS) to adopt rules that require a physician is available, for a surgical abortion, who has admitting privileges at a health care institution that is classified by the Director as a hospital that is within 30 miles of the abortion clinic.
- Requires the Director to adopt rules that require a physician is available, for a medication abortion, who has admitting privileges at a health care institution classified by the Director as a hospital.
- Adds language that specifies if a physician is not available a specified health care provider must be present and remain at the clinic to monitor and care for a patient after inducing a medication abortion
- States that for all abortion clinic patients, rather than for patients who elect to have an abortion after 12 weeks gestation, an ultrasound evaluation must be performed.
- Specifies that rules relating to abortion procedures must require that any medication, drug or other substance used to induce an abortion is administered in compliance and with the protocol authorized by the United States Food and Drug Administration (FDA) for that medication, drug or substance and that the information is available on the United States FDA website.
- States that the Director must adopt rules relating to minimum recovery room standards, which must include immediate post procedure care for a surgical abortion, and for care provided after inducing a medical abortion.
- Specifies that for a medication abortion, the rules must require a postabortion medical visit to be scheduled between one week and three weeks after the initial dose of a medication

abortion to confirm the pregnancy is completely terminated and to assess the degree of bleeding.

- Specifies that the rules relating to abortion clinic incident reporting must include any injury or condition that requires ambulance transportation of the patient.
- Specifies that the Director must adopt rules relating to the enforcement of this Article and, at a minimum, these rules must require that:
 - For an abortion clinic that is not in substantial compliance with this Article and the rules adopted pursuant to this Article, or that is in substantial compliance but refuses to carry out a plan of correction acceptable to ADHS, or any deficiencies that are listed on ADHS' state of deficiency, ADHS may do any of the following:
 - Assess a civil penalty.
 - Impose an intermediate sanction.
 - Suspend or revoke a license.
 - Deny a license.
 - Bring an action for an injunction.
 - In determining the appropriate enforcement action, ADHS considers the threat of the health, safety and welfare of the abortion clinic's patients or the general public including:
 - Whether the abortion clinic has repeated violations of statutes or rules.
 - Whether the abortion clinic has engaged in a pattern of noncompliance.
 - The type severity and number of violations.

Parental Consent

- Specifies that, in addition to other remedies available under the common or statutory laws of this state, a civil action may be brought against the person who performs an abortion on a pregnant unemancipated minor and against any person who causes, aids or assists a minor to obtain an abortion without meeting the requirements of this section.
- States that a civil action brought must be initiated within six years after the violation occurred.
- Requires consent to be obtained on a form prescribed by ADHS that:
 - Lists the possible medical risks that may occur with any surgical, medical or diagnostic procedure, including the potential for infection, blood clots, hemorrhage, allergic reactions and death.
 - Lists the possible medical risks that may occur with a surgical abortion, including hemorrhage, uterine perforation, sterility, injury to the bowel or bladder, a possible hysterectomy as a result of a complication injury during the procedure and failure to remove all products of conception that may result in an additional procedure.
 - Lists the possible medical risks that may occur with a medication abortion, including hemorrhage, infection, failure to remove all products of conception that may result in an additional procedure, sterility and possible continuation of the pregnancy.
 - Requires the patient's and the parent's initials on each page of the form and a full signature on the final page of the form.
 - Includes a space for the notary's signature and seal on the final page of the form.
- Provides the physician must maintain the consent form in the patient's records for seven years after the date of the procedure or five years after the date of the minor's maturity, whichever is longer.

Informed Consent/Website

- States at least 24 hours before an abortion, the physician who is to perform the abortion, or a health care provider designated by the physician, must inform the woman, orally and in person that:
 - ADHS maintains a website that describes the unborn child and lists the agencies that offer alternatives to abortion.
 - The woman has the right to review the website and a printed copy of the materials on the website will be provided to the woman free of charge if she chooses to review the materials.
- Requires ADHS to establish a website within 90 days after the effective date of this act and to annually update the website.
- States the website must include a printable version of all materials listed on the website and the materials must be written in an easily understood manner and printed in a typeface that is large enough to be clearly legible.
- Specifies the website must include all of the following materials:
 - Information that is organized geographically by location and designed to inform the woman about public and private agencies and services that are available to assist a woman through pregnancy, at childbirth and while her child is dependent, including adoption agencies. The materials must include a comprehensive list of the agencies, a description of the services they offer and the manner in which these agencies may be contacted, including the agencies' telephone numbers and website addresses.
 - Information on the availability of medical assistance benefits for prenatal care, childbirth and neonatal care.
 - A statement that it is unlawful for any person to coerce a woman to undergo an abortion.
 - A statement that any physician who performs an abortion on a woman without obtaining the woman's voluntary and informed consent or without according her a private medical consultation may be liable to the woman for damages in a civil action.
 - A statement that the father of a child is liable to assist in the support of that child, even if the father has offered to pay for an abortion, and that the law allows adoptive parents to pay costs of prenatal care, childbirth and neonatal care.
 - Information that is designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from fertilization to full term, including pictures or drawings representing the development of unborn children at two-week gestational increments and any relevant information on the possibility of the unborn child's survival. The pictures or drawings must contain the dimensions of the unborn child and must be realistic and appropriate for each stage of pregnancy. The information provided must be objective, nonjudgmental and designed to convey only accurate scientific information about the unborn child at the various gestational ages.
 - Objective information that describes the methods of abortion procedures commonly employed, the medical risks commonly associated with each procedure, the possible detrimental psychological effects of abortion and the medical risks commonly associated with carrying a child to term.
- Requires an abortion clinic that provides abortions to conspicuously post signs visible to all who enter the facility or office, that are clearly readable and that state it is unlawful for any person to force a woman to have an abortion, and that a woman who is being forced to have

an abortion has the right to contact any local or state law enforcement or social service agency to receive protection from any actual or threatened physical, emotional or psychological abuse. The signs must be posted in the waiting room, consultation rooms and procedure rooms.

- Specifies that a person must not require a woman to obtain an abortion as a provision in contract or as a condition of employment.

Informed Consent/Ultrasound Requirements

- States that *24 hours rather than one hour* prior to having any part of an abortion performed or induced and any anesthesia or medication administered, the physician who is to perform the abortion, the referring physician or qualified person working with the physician must perform an ultrasound, offer to provide the woman with the opportunity to view the ultrasound, provide an explanation of what the ultrasound is depicting and provide the patient with a physical picture of the ultrasound image of the unborn child.

Informed Consent/Fetal Condition

- Provides that a person must not perform or induce an abortion without first obtaining the voluntary and informed consent of the woman. Consent to an abortion is voluntary and informed only if all of the following occur:
 - For a woman seeking an abortion diagnosed with a lethal fetal condition, at least 24 hours before the abortion the physician who is perform the abortion or the referring physician has informed the woman, orally and in person that:
 - Perinatal hospice services are available and the physician has offered this care as an alternative to abortion.
 - ADHS maintains a website that lists perinatal hospice programs that are available both in this state and nationally and that are organized geographically by location.
 - The woman has a right to review the website and that a printed copy of the materials on the website will be provided to her free of charge if she chooses to review these materials.
 - For a woman seeking an abortion diagnosed with a nonlethal fetal condition, at least 24 hours before an abortion, the physician who is to perform the abortion or the referring physician has informed the woman, orally and in person:
 - Of up-to-date, evidence based information regarding the range of outcomes for individuals living with the diagnosed condition, including physical, developmental, educational and psychosocial outcomes.
 - That ADHS maintains a website that lists information regarding support services, hotlines, resource centers or clearinghouses, national and local peer support groups and other education and support programs available to assist the woman and her unborn child, any national or local registries of families willing to adopt newborns with the nonlethal fetal condition and contact information for adoption agencies willing to place newborns with the nonlethal fetal condition with families willing to adopt.
 - That the woman has the right to review the website and that a printed copy of the materials on the website will be provided to her free of charge if she chooses to review these materials.
 - The woman certifies in writing before the abortion that the information required to be provided has been provided.

HB 2036

- Requires ADHS to establish a website within 90 days after the effective date of this act and annually update the website. Further, the website must include information relating to the availability of perinatal hospice programs for lethal fetal conditions and information regarding support services for nonlethal fetal conditions.
- Specifies that a physician who knowingly violates this section commits an act of unprofessional conduct and is subject to license suspension or revocation.
- Provides that, in addition to other remedies available under the common or statutory law of this state, any of the following individuals may file a civil action to obtain appropriate relief:
 - A woman on whom an abortion has been performed without her informed consent.
 - The father of the unborn child if the father is married to the mother at the time she received the abortion, unless the pregnancy resulted from the father's criminal conduct.
 - The maternal grandparents of the unborn child if the mother was not at least 18 years of age at the time of the abortion, unless the pregnancy resulted from either of the maternal grandparent's criminal conduct.
- States that a civil action filed must be brought in the superior court in the county in which the woman resides and may be based on a claim that failure to obtain informed consent was a result of simple negligence, gross negligence, wantonness, willfulness, intention or any other legal standard of care. Relief includes the following:
 - Money damages for all psychological, emotional and physical injury resulting from the violation of this section.
 - Statutory damages in an amount equal to \$5,000 or three times the cost of the abortion, whichever is greater.
 - Reasonable attorney fees and costs.
- Specifies that a civil action brought pursuant to this section must be initiated within six years after the violation occurred.

Gestational Age

- Provides that except in a medical emergency, a person must not perform, induce or attempt to perform or induce an abortion unless the physician or referring physician has first made a determination of the probable gestational age of the unborn child.
- States that in making a determination of the gestational age, the physician or referring physician must make any inquiries of the pregnant woman and perform or cause to be performed all medical examinations, imaging studies and tests as a reasonably prudent physician would consider necessary to perform and consider in making an accurate diagnosis with respect to gestational age.
- Specifies that except in a medical emergency, a person must not knowingly perform, induce or attempt to perform or induce an abortion on a pregnant woman if the probable gestation age of the unborn child has been determined to be at least 20 weeks.
- Provides that a person who knowingly violates this section commits a Class 1 misdemeanor.
- States that a physician who knowingly violates this section commits an act of unprofessional conduct and is subject to license suspension or revocation.
- Specifies that, in addition to other remedies available under the common or statutory law of this state, any of the following individuals may file a civil action to obtain appropriate relief:
 - A woman on whom an abortion has been performed.

HB 2036

- The father of the unborn child if the father is married to the mother at the time she received the abortion, unless the pregnancy resulted from the father's criminal conduct.
- The maternal grandparents of the unborn child if the mother was not at least 18 years old at the time of the abortion, unless the pregnancy resulted from either of the maternal grandparent's criminal conduct.
- States that a civil action filed relating to the gestational age of the unborn child must be brought in the superior court in the county in which the woman resides. Relief includes the following:
 - Money damages for all psychological, emotional and physical injuries resulting from a violation of this section.
 - Statutory damages in an amount equal to \$5,000 or three times the cost of the abortion, whichever is greater.
 - Reasonable attorney fees and costs.
- Provides that a civil action brought pursuant to this section must be initiated within six years after the violation occurred.
- Specifies that a woman on whom an abortion is performed or induced in violation of this section may not be prosecuted under this section or for conspiracy to commit a violation of this section.

Miscellaneous

- States that ADHS may assess a civil penalty, impose an intermediate sanction, suspend or revoke a license, deny a license or bring an action for injunction against any licensed health care institution that violates abortion reporting requirements.
- Modifies the definition of *abortion*.
- Defines the terms *medication abortion*, *surgical abortion*, *lethal fetal condition*, *nonlethal fetal condition* and *prenatal hospice*.
- Contains a findings and purposes clause, a construction clause and a severability clause.
- Exempts ADHS from rule making requirements for the purposes of this act for two years after the effective date of this act.
- Makes technical and conforming changes.