State of Arizona
Senate
Fifty-second Legislature
First Regular Session
2015

CHAPTER 87

SENATE BILL 1318

AN ACT

AMENDING SECTIONS 20-121, 36-404, 36-449.02 AND 36-2153, ARIZONA REVISED STATUTES; RELATING TO ABORTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 20-121, Arizona Revised Statutes, is amended to read:

20-121. Health care exchange; abortion coverage; prohibition; exceptions
A. Consistent with the provisions of the patient protection and affordable care act (P.L. 111-148), any qualified health insurance policy, contract or plan offered through any state health care exchange established in this state shall not provide coverage for abortions unless the coverage is offered as a separate optional rider for which an additional insurance premium is charged.

B. Subsection A OF THIS SECTION does not apply to coverage for any abortion that is necessary to either:
1. THAT IS NECESSARY TO save the life of the woman having the abortion.
2. THAT IS NECESSARY TO avert substantial and irreversible impairment of a major bodily function of the woman having the abortion.
3. WHEN THE PREGNANCY IS THE RESULT OF RAPE OR INCEST.

Sec. 2. Section 36-404, Arizona Revised Statutes, is amended to read:

36-404. Limitation of disclosure of information
A. Information received and records kept by the department for the purpose of administering this chapter are available to the public except:
1. Information obtained for purposes of articles 4 and 5 of this chapter.
2. Personally identifiable medical information or any information from which a patient or the patient's family might be identified.
3. Sources of information that cause the department to believe that an inspection of an institution is needed to determine the extent of compliance with this chapter and rules adopted pursuant to this chapter.

4. PERSONALLY IDENTIFIABLE INFORMATION OF A PHYSICIAN THAT IS RECEIVED AND ANY RECORDS KEPT REGARDING THE PHYSICIAN'S ADMITTING PRIVILEGES PURSUANT TO SECTION 36-449.02.

B. The department may release information listed under subsection A OF THIS SECTION to an officer of the court pursuant to a court order, a department or agency of this state or the federal government, a law enforcement agency or a county medical examiner if the release of this information is necessary and pertinent to an investigation or proceeding unless the release of this information is prohibited by federal or state law. The recipient shall maintain patient and source name confidentiality.

Sec. 3. Section 36-449.02, Arizona Revised Statutes, is amended to read:

36-449.02. Abortion clinics; licensure requirements; rules; inspections; standing to intervene; legal counsel
A. Beginning on April 1, 2000, an abortion clinic shall meet the same licensure requirements as prescribed in article 2 of this chapter for health care institutions. ON INITIAL LICENSURE AND ANY SUBSEQUENT RENEWAL, AN
ABORTION CLINIC SHALL SUBMIT TO THE DIRECTOR ALL DOCUMENTATION REQUIRED BY THIS ARTICLE, INCLUDING VERIFICATION THAT THE CLINIC’S PHYSICIANS WHO ARE REQUIRED TO BE AVAILABLE HAVE ADMITTING PRIVILEGES AT A HEALTH CARE INSTITUTION AS REQUIRED BY SECTION 36-449.03, SUBSECTION C, PARAGRAPH 3.

B. An abortion clinic that holds an unclassified health care facility license issued before August 6, 1999 may retain that classification until April 1, 2000 subject to compliance with all laws that relate to unclassified health care facilities.

C. Beginning on April 1, 2000, abortion clinics shall comply with department requirements for abortion clinics and department rules that govern abortion clinics.

D. If the director determines that there is reasonable cause to believe an abortion clinic is not adhering to the licensing requirements of this article or any other law or rule concerning abortion, the director and any duly designated employee or agent of the director, including county health representatives and county or municipal fire inspectors, consistent with standard medical practices, may enter on and into the premises of the abortion clinic that is licensed or required to be licensed pursuant to this article during regular business hours of the abortion clinic to determine compliance with this article, rules adopted pursuant to this article, local fire ordinances or rules and any other law or rule relating to abortion.

E. An application for licensure pursuant to this article constitutes permission for, and complete acquiescence in, an entry or inspection of the premises during the pendency of the application and, if licensed, during the term of the license.

F. If an inspection conducted pursuant to this section reveals that an abortion clinic is not adhering to the licensing requirements prescribed pursuant to this article or any other law or rule concerning abortion, the director may take action authorized by this article.

G. An abortion clinic whose license has been suspended or revoked pursuant to this article or section 36-424 is subject to inspection on application for relicensure or reinstatement of the license.

H. In any proceeding in which the constitutionality, legality or application of this section is challenged, the attorney general or any county or city attorney who wishes to defend the law has the right to intervene as a party and is deemed to have proper standing in the matter. The only objection that may be raised to a motion to intervene as of right pursuant to this subsection is that the proposed intervenor does not have a good faith intention to defend the law. Any party or proposed intervenor may raise this objection. Notwithstanding section 41-192, the department may employ legal counsel and make an expenditure or incur an indebtedness for legal services for the purposes of defending this section.
Sec. 4. Section 36-2153, Arizona Revised Statutes, is amended to read:

36-2153. Informed consent; requirements; information; website; signs; violation; civil relief; statute of limitations

A. An abortion shall not be performed or induced without the voluntary and informed consent of the woman on whom the abortion is to be performed or induced. Except in the case of a medical emergency and in addition to the other requirements of this chapter, consent to an abortion is voluntary and informed only if all of the following are true:

1. At least twenty-four hours before the abortion, the physician who is to perform the abortion or the referring physician has informed the woman, orally and in person, of:
   (a) The name of the physician who will perform the abortion.
   (b) The nature of the proposed procedure or treatment.
   (c) The immediate and long-term medical risks associated with the procedure that a reasonable patient would consider material to the decision of whether or not to undergo the abortion.
   (d) Alternatives to the procedure or treatment that a reasonable patient would consider material to the decision of whether or not to undergo the abortion.
   (e) The probable gestational age of the unborn child at the time the abortion is to be performed.
   (f) The probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed.
   (g) The medical risks associated with carrying the child to term.

2. At least twenty-four hours before the abortion, the physician who is to perform the abortion, the referring physician or a qualified physician, physician assistant, nurse, psychologist or licensed behavioral health professional to whom the responsibility has been delegated by either physician has informed the woman, orally and in person, that:
   (a) Medical assistance benefits may be available for prenatal care, childbirth and neonatal care.
   (b) The father of the unborn child is liable to assist in the support of the child, even if he has offered to pay for the abortion. In the case of rape or incest, this information may be omitted.
   (c) Public and private agencies and services are available to assist the woman during her pregnancy and after the birth of her child if she chooses not to have an abortion, whether she chooses to keep the child or place the child for adoption.
   (d) It is unlawful for any person to coerce a woman to undergo an abortion.
   (e) The woman is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled.
(f) The department of health services maintains a website that
describes the unborn child and lists the agencies that offer alternatives to
abortion.

(g) 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.

(h) IT MAY BE POSSIBLE TO REVERSE THE EFFECTS OF A MEDICATION ABORTION
IF THE WOMAN CHANGES HER MIND BUT THAT TIME IS OF THE ESSENCE.

(i) INFORMATION ON AND ASSISTANCE WITH REVERSING THE EFFECTS OF A
MEDICATION ABORTION IS AVAILABLE ON THE DEPARTMENT OF HEALTH SERVICES' WEBSITE.

3. The information in paragraphs 1 and 2 of this subsection is
provided to the woman individually and in a private room to protect her
privacy and to ensure that the information focuses on her individual
circumstances and that she has adequate opportunity to ask questions.

4. The woman certifies in writing before the abortion that the
information required to be provided pursuant to paragraphs 1 and 2 of this
subsection has been provided.

B. If a medical emergency compels the performance of an abortion, the
physician shall inform the woman, before the abortion if possible, of the
medical indications supporting the physician's judgment that an abortion is
necessary to avert the woman's death or to avert substantial and irreversible
impairment of a major bodily function.

C. The department of health services shall establish a website within
ninety days after the effective date of this amendment to this section
and shall annually update the website. The website must include
a link to a printable version of all materials listed on the website. The
materials must be written in an easily understood manner and printed in a
typeface that is large enough to be clearly legible. The website must
include all of the following materials:

1. Information that is organized geographically by location and that
is 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 shall 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.

2. Information on the availability of medical assistance benefits for
prenatal care, childbirth and neonatal care.

3. A statement that it is unlawful for any person to coerce a woman to
undergo an abortion.

4. A statement that any physician who performs an abortion on a woman
without obtaining the woman's voluntary and informed consent or without
affording her a private medical consultation may be liable to the woman for
damages in a civil action.
5. 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.

6. 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 pursuant to this paragraph must be objective, nonjudgmental and designed to convey only accurate scientific information about the unborn child at the various gestational ages.

7. 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.

8. INFORMATION ON THE POTENTIAL ABILITY OF QUALIFIED MEDICAL PROFESSIONALS TO REVERSE A MEDICATION ABORTION, INCLUDING INFORMATION DIRECTING WOMEN WHERE TO OBTAIN FURTHER INFORMATION AND ASSISTANCE IN LOCATING A MEDICAL PROFESSIONAL WHO CAN AID IN THE REVERSAL OF A MEDICATION ABORTION.

D. An individual who is not a physician shall not perform a surgical abortion.

E. A person shall not write or communicate a prescription for a drug or drugs to induce an abortion or require or obtain payment for a service provided to a patient who has inquired about an abortion or scheduled an abortion until the expiration of the twenty-four-hour reflection period required by subsection A of this section.

F. A person shall not intimidate or coerce in any way any person to obtain an abortion. A parent, a guardian or any other person shall not coerce a minor to obtain an abortion. If a minor is denied financial support by the minor's parents, guardians or custodian due to the minor's refusal to have an abortion performed, the minor is deemed emancipated for the purposes of eligibility for public assistance benefits, except that the emancipated minor may not use these benefits to obtain an abortion.

G. An abortion clinic as defined in section 36-449.01 shall conspicuously post signs that are visible to all who enter the abortion clinic, that are clearly readable and that state it is unlawful for any person to force a woman to have an abortion and 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 shall be posted in the waiting room, consultation rooms and procedure rooms.
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H. A person shall not require a woman to obtain an abortion as a provision in a contract or as a condition of employment.

I. A physician who knowingly violates this section commits an act of unprofessional conduct and is subject to license suspension or revocation pursuant to title 32, chapter 13 or 17.

J. In addition to other remedies available under the common or statutory law of this state, any of the following may file a civil action to obtain appropriate relief for a violation of this section:

1. A woman on whom an abortion has been performed without her informed consent as required by this section.
2. The father of the unborn child if married to the mother at the time she received the abortion, unless the pregnancy resulted from the plaintiff’s criminal conduct.
3. The maternal grandparents of the unborn child if the mother was not at least eighteen years of age at the time of the abortion, unless the pregnancy resulted from the plaintiff’s criminal conduct.

K. A civil action filed pursuant to subsection J of this section shall be brought in the superior court in the county in which the woman on whom the abortion was performed resides and may be based on a claim that failure to obtain informed consent was a result of simple negligence, gross negligence, wantonness, wilfulness, intention or any other legal standard of care. Relief pursuant to subsection J of this section includes the following:

1. Money damages for all psychological, emotional and physical injuries resulting from the violation of this section.
2. Statutory damages in an amount equal to five thousand dollars or three times the cost of the abortion, whichever is greater.
3. Reasonable attorney fees and costs.

L. A civil action brought pursuant to this section must be initiated within six years after the violation occurred.

APPROVED BY THE GOVERNOR MARCH 30, 2015.