State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HB 2093

Introduced by
Representatives Salman, Butler, Cano, Hernandez D, Liguori, Senator Terán

AN ACT

AMENDING SECTIONS 36-449.03, 36-2156 AND 36-2301.02, ARIZONA REVISED STATUTES; REPEALING SECTION 36-3604, 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 36-449.03, Arizona Revised Statutes, is amended to read:

36-449.03. Abortion clinics; rules; civil penalties
A. The director shall adopt rules for an abortion clinic's physical facilities. At a minimum these rules shall prescribe standards for:
1. Adequate private space that is specifically designated for interviewing, counseling and medical evaluations.
2. Dressing rooms for staff and patients.
3. Appropriate lavatory areas.
4. Areas for preprocedure hand washing.
5. Private procedure rooms.
6. Adequate lighting and ventilation for abortion procedures.
7. Surgical or gynecologic examination tables and other fixed equipment.
8. Postprocedure recovery rooms that are supervised, staffed and equipped to meet the patients' needs.
9. Emergency exits to accommodate a stretcher or gurney.
10. Areas for cleaning and sterilizing instruments.
11. Adequate areas to securely store medical records and necessary equipment and supplies.
12. The display in the abortion clinic, in a place that is conspicuous to all patients, of the clinic's current license issued by the department.

B. The director shall adopt rules to prescribe abortion clinic supplies and equipment standards, including supplies and equipment that are required to be immediately available for use or in an emergency. At a minimum these rules shall:
1. Prescribe required equipment and supplies, including medications, required to conduct, in an appropriate fashion, any abortion procedure that the medical staff of the clinic anticipates performing and to monitor the progress of each patient throughout the procedure and recovery period.
2. Require that the number or amount of equipment and supplies at the clinic be adequate at all times to ensure sufficient quantities of clean and sterilized durable equipment and supplies to meet the needs of each patient.
3. Prescribe required equipment, supplies and medications that shall be available and ready for immediate use in an emergency and requirements for written protocols and procedures to be followed by staff in an emergency, such as the loss of electrical power.
4. Prescribe required equipment and supplies for required laboratory tests and requirements for protocols to calibrate and maintain laboratory equipment at the abortion clinic or operated by clinic staff.
5. Require ultrasound equipment.
6. Require that all equipment is safe for the patient and the staff, meets applicable federal standards and is checked annually to ensure safety and appropriate calibration.

C. The director shall adopt rules relating to abortion clinic personnel. At a minimum these rules shall require that:

1. The abortion clinic designate a medical director of the abortion clinic who is licensed pursuant to title 32, chapter 13, 17 or 29.

2. Physicians performing abortions are licensed pursuant to title 32, chapter 13 or 17, demonstrate competence in the procedure involved and are acceptable to the medical director of the abortion clinic.

3. A physician is available:
   (a) For a surgical abortion who has admitting privileges at a health care institution that is classified by the director as a hospital pursuant to section 36-405, subsection B and that is within thirty miles of the abortion clinic.
   (b) For a medication abortion who has admitting privileges at a health care institution that is classified by the director as a hospital pursuant to section 36-405, subsection B.

4. If a physician is not present, a registered nurse, nurse practitioner, licensed practical nurse or physician assistant is present and remains at the clinic when abortions are performed to provide postoperative monitoring and care, or monitoring and care after inducing a medication abortion, until each patient who had an abortion that day is discharged.

5. Surgical assistants receive training in counseling, patient advocacy and the specific responsibilities of the services the surgical assistants provide.

6. Volunteers receive training in the specific responsibilities of the services the volunteers provide, including counseling and patient advocacy as provided in the rules adopted by the director for different types of volunteers based on their responsibilities.

D. The director shall adopt rules relating to the medical screening and evaluation of each abortion clinic patient. At a minimum these rules shall require:

1. A medical history, including the following:
   (a) Reported allergies to medications, antiseptic solutions or latex.
   (b) Obstetric and gynecologic history.
   (c) Past surgeries.

2. A physical examination, including:
   (a) A bimanual examination estimating uterine size and palpation of the adnexa.
   (b) A DETERMINATION OF LAST MENSTRUAL PERIOD.

3. The appropriate laboratory tests, including.
(a) (c) Urine or blood tests for pregnancy performed before the abortion procedure.
(b) (d) A test for anemia.
(c) (e) Rh typing, unless reliable written documentation of blood type is available.
(f) AN ULTRASOUND, IF INDICATED FROM THE CLINICAL ASSESSMENT.
(d) (g) Other tests as indicated from the physical examination CLINICAL ASSESSMENT FOR INTERNAL CONSISTENCY.

3. An ultrasound evaluation for all patients WHO ARE EXPECTED TO BE AT LEAST ELEVEN WEEKS' GESTATION BY MEDICAL HISTORY AND LAST MENSTRUAL PERIOD, EXCEPT IN THE CASE OF A PATIENT USING A TELEHEALTH ENCOUNTER FOR A MEDICATION ABORTION OR A DETERMINATION OF LAST MENSTRUAL PERIOD. The rules shall require that if a person who is not a physician performs an ultrasound examination, that person shall have documented evidence that the person completed a course in operating ultrasound equipment as prescribed in rule. The physician or other health care professional shall review, at the request of the patient, the ultrasound evaluation results with the patient before the abortion procedure is performed, including the probable gestational age of the fetus.

4. That the physician is responsible for estimating the gestational age of the fetus based on the ultrasound examination, IF INDICATED, OR THE DETERMINATION OF LAST MENSTRUAL PERIOD and BASED ON obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rule. and THE PHYSICIAN shall write the estimate in the patient's medical history. The physician AND shall keep original prints of each ultrasound examination of a patient in the patient's medical history file.

The director shall adopt rules relating to the abortion procedure. At a minimum these rules shall require:
1. That medical personnel is available to all patients throughout the abortion procedure.
2. Standards for the safe conduct of abortion procedures that conform to obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rule.
3. Appropriate use of local anesthesia, analgesia and sedation if ordered by the physician.
4. The use of appropriate precautions, such as establishing intravenous access at least for patients undergoing second or third trimester abortions.
5. The use of appropriate monitoring of the vital signs and other defined signs and markers of the patient's status throughout the abortion procedure and during the recovery period until the patient's condition is deemed to be stable in the recovery room.
6. For abortion clinics performing or inducing an abortion for a woman whose unborn child is the gestational age of twenty weeks or more,
minimum equipment standards to assist the physician in complying with section 36-2301. For the purposes of this paragraph, "abortion" and "gestational age" have the same meanings prescribed in section 36-2151.

F. The director shall adopt rules relating to the final disposition of bodily remains. At a minimum these rules shall require that:
   1. The final disposition of bodily remains from a surgical abortion be by cremation or interment.
   2. For a surgical abortion, the woman on whom the abortion is performed has the right to determine the method and location for final disposition of bodily remains.

G. The director shall adopt rules that prescribe minimum recovery room standards. At a minimum these rules shall require that:
   1. For a surgical abortion, immediate postprocedure care, or care provided after inducing a medication abortion, consists of observation in a supervised recovery room for as long as the patient's condition warrants.
   2. The clinic arrange hospitalization if any complication beyond the management capability of the staff occurs or is suspected.
   3. A licensed health professional who is trained in managing the recovery area and who is capable of providing basic cardiopulmonary resuscitation and related emergency procedures remains on the premises of the abortion clinic until all patients are discharged.
   4. For a surgical abortion, a physician with admitting privileges at a health care institution that is classified by the director as a hospital pursuant to section 36-405, subsection B and that is within thirty miles of the abortion clinic remains on the premises of the abortion clinic until all patients are stable and are ready to leave the recovery room and to facilitate the transfer of emergency cases if hospitalization of the patient or viable fetus is necessary. A physician shall sign the discharge order and be readily accessible and available until the last patient is discharged.
   5. A physician discusses RhO(d) immune globulin with each patient for whom it is indicated and ensures that it is offered to the patient in the immediate postoperative period or that it will be available to her within seventy-two hours after completion of the abortion procedure. If the patient refuses, a refusal form approved by the department shall be signed by the patient and a witness and included in the medical record.
   6. Written instructions with regard to postabortion coitus, signs of possible problems and general aftercare are given to each patient. Each patient shall have specific instructions regarding access to medical care for complications, including a telephone number to call for medical emergencies.
7. There is a specified minimum length of time that a patient remains in the recovery room by type of abortion procedure and duration of gestation.

8. The physician ensures that a licensed health professional from the abortion clinic makes a good faith effort to contact the patient by telephone, with the patient's consent, within twenty-four hours after a surgical abortion to assess the patient's recovery.

9. Equipment and services are located in the recovery room to provide appropriate emergency resuscitative and life support procedures pending the transfer of the patient or viable fetus to the hospital.

H. The director shall adopt rules that prescribe standards for follow-up visits. At a minimum these rules shall require that:

   1. For a surgical abortion, a postabortion medical visit is offered and, if requested, scheduled for three weeks after the abortion, including a medical examination and a review of the results of all laboratory tests. For a medication abortion, the rules shall require that a postabortion medical visit is scheduled between one week and three weeks after the initial dose for a medication abortion to confirm the pregnancy is completely terminated and to assess the degree of bleeding.

   2. A urine pregnancy test is obtained at the time of the follow-up visit to rule out continuing pregnancy. If a continuing pregnancy is suspected, the patient shall be evaluated and a physician who performs abortions shall be consulted.

I. The director shall adopt rules to prescribe minimum abortion clinic incident reporting. At a minimum these rules shall require that:

   1. The abortion clinic records each incident resulting in a patient's or viable fetus' serious injury occurring at an abortion clinic and shall report them in writing to the department within ten days after the incident occurs. For the purposes of this paragraph, "serious injury" means an injury that occurs at an abortion clinic and that creates a serious risk of substantial impairment of a major body organ and includes any injury or condition that requires ambulance transportation of the patient.

   2. If a patient's death occurs, other than a fetal death properly reported pursuant to law, the abortion clinic reports it to the department not later than the next department work day.

   3. Incident reports are filed with the department and appropriate professional regulatory boards.

J. The director shall adopt rules relating to enforcement of this article. At a minimum, these rules shall require that:

   1. For an abortion clinic that is not in substantial compliance with this article and the rules adopted pursuant to this article and section 36-2301 or that is in substantial compliance but refuses to carry out a plan of correction acceptable to the department of any deficiencies
that are listed on the department's statement of deficiency, the department may do any of the following:

(a) Assess a civil penalty pursuant to section 36-431.01.
(b) Impose an intermediate sanction pursuant to section 36-427.
(c) Suspend or revoke a license pursuant to section 36-427.
(d) Deny a license.
(e) Bring an action for an injunction pursuant to section 36-430.

2. In determining the appropriate enforcement action, the department consider the threat to the health, safety and welfare of the abortion clinic's patients or the general public, including:

(a) Whether the abortion clinic has repeated violations of statutes or rules.
(b) Whether the abortion clinic has engaged in a pattern of noncompliance.
(c) The type, severity and number of violations.

K. The department shall not release personally identifiable patient or physician information.

L. The rules adopted by the director pursuant to this section do not limit the ability of a physician or other health professional to advise a patient on any health issue.

Sec. 2. Section 36-2156, Arizona Revised Statutes, is amended to read:

36-2156. Informed consent; ultrasound required; 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 OR A TELEHEALTH ENCOUNTER FOR A MEDICATION ABORTION and in addition to the other requirements of this chapter, consent to an abortion is voluntary and informed only if both of the following are true:

1. At least twenty-four hours before the woman having any part of an abortion performed or induced, and before the administration of any anesthesia or medication in preparation for the abortion on the woman, the physician who is to perform the abortion, the referring physician or a qualified person working in conjunction with either physician shall:

(a) Perform fetal ultrasound imaging and auscultation of fetal heart tone services on the woman undergoing the abortion.
(b) Offer to provide the woman with an opportunity to view the active ultrasound image of the unborn child and hear the heartbeat of the unborn child if the heartbeat is audible. The active ultrasound image must be of a quality consistent with standard medical practice in the community, contain the dimensions of the unborn child and accurately portray the presence of external members and internal organs, if present or viewable, of the unborn child. The auscultation of fetal heart tone
must be of a quality consistent with standard medical practice in the
community.
(c) Offer to provide the woman with a simultaneous explanation of
what the ultrasound is depicting, including the presence and location of
the unborn child within the uterus, the number of unborn children
depicted, the dimensions of the unborn child and the presence of any
external members and internal organs, if present or viewable.
(d) Offer to provide the patient with a physical picture of the
ultrasound image of the unborn child.

2. The woman certifies in writing before the abortion that she has
been given the opportunity to view the active ultrasound image and hear
the heartbeat of the unborn child if the heartbeat is audible and that she
opted to view or not view the active ultrasound image and hear or not hear
the heartbeat of the unborn child.

B. 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.

C. 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 THE FATHER WAS 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 GRANDPARENT 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.

D. A civil action filed pursuant to subsection C 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 C of this section
includes any of 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
      $5,000 or three times the cost of the abortion, whichever is greater.
   3. Reasonable attorney fees and costs.

E. A civil action brought pursuant to this section must be
initiated within six years after the violation occurred.
Sec. 3. Section 36-2301.02, Arizona Revised Statutes, is amended to read:

36-2301.02. Review of ultrasound results

A. Beginning on January 1, 2001, except in the case of a telehealth encounter for a medication abortion, a person shall not knowingly perform an abortion after twelve weeks' gestation unless the person estimates the gestational age of the fetus based on biparietal diameter and femur length according to the Hadlok measurement system or other equivalent measurement systems using ultrasound examination as provided in rule.

B. Beginning on January 1, 2001, except in the case of a telehealth encounter for a medication abortion, a person shall not knowingly perform an abortion after twelve weeks' gestation unless the person ensures that a copy of each ultrasound result taken of a fetus of a woman as a result of a second or third trimester abortion is sent to persons or corporations contracted pursuant to this section. The person performing the abortion shall ensure that the ultrasound result or results from the woman are sent in a manner that is distinguishable from, and not mixed with, any other set of ultrasound results and are accompanied with a copy of any report that notes the estimate of the fetus' gestational age that was made before the abortion.

C. The department of health services shall contract with qualified public or private persons or corporations for review of ultrasound results to determine compliance with this section. The department shall issue requests for proposals for the purpose of establishing contracts pursuant to this section. At a minimum, the contracts shall require the contractor to review ultrasound results to verify the accuracy of the fetus' estimated gestational age made before the abortion and to verify that the estimate was made in reasonable compliance with the Hadlok measurement system or another equivalent measurement system as provided in rule.

D. The contractor shall use a statistically valid method of sampling to conduct the review of ultrasound results from a woman as a result of a second trimester abortion of a fetus of up to eighteen weeks' gestation. The contractor shall conduct a review of all ultrasound results from a woman as a result of an abortion of a fetus of eighteen or more weeks' gestation.

E. Beginning on January 1, 2001. On a monthly basis, persons or corporations providing ultrasound review services to the department pursuant to this section shall file a report with the director regarding ultrasound results, noting:

1. Any instances in which the contractor believes there was a significant inaccuracy in the estimated gestational age of the fetus made before the abortion.
2. Any circumstances that, based on the contractor's professional judgment, might explain a significant inaccuracy reported pursuant to paragraph 1 of this subsection.

3. Whether there was reasonable compliance pursuant to subsection C of this section.

4. Whether, based on the results of the review of each ultrasound, the physician should have filed a fetal death certificate with the department of health services as required by section 36-329, subsection C.

F. The department of health services shall forward the report or portions of the report within thirty working days to the appropriate professional regulatory boards for their review and appropriate action.

G. Except as provided by subsection F of this section, the reports required by this section are confidential and disclosable by the department or its contractor only in aggregate form for statistical or research purposes. Except as provided by subsection F of this section, information relating to any physician, hospital, clinic or other institution shall not be released. Personally identifiable patient information shall not be released by the department or its contractor.

Sec. 4. Repeal

Section 36-3604, Arizona Revised Statutes, is repealed.