

ARKANSAS  
STATE BOARD OF HEALTH

**RULES FOR  
ABORTION FACILITIES IN ARKANSAS**



Promulgated under the Authority of Acts 509 of 1983 and  
1176 of 2011, as amended, and other laws of the State of Arkansas.

**Revision effective date:**

ARKANSAS DEPARTMENT OF HEALTH  
HEALTH FACILITY SERVICES

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**Rules for Abortion Facilities 2021**

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## **Rules for Abortion Facilities 2021**

### **SECTION 1. PREFACE.**

These Rules have been prepared for the purpose of establishing criteria for minimum standards for licensure, operation and maintenance of Abortion Facilities. By necessity they are of a regulatory nature but are considered to be practical minimum design and operational standards for their facility type. These standards are not static and are subject to periodic revisions. It is expected Abortion Facilities will exceed these minimum requirements and will not be dependent upon future revisions as a necessary prerequisite for improved services.

## **Rules for Abortion Facilities 2021**

### **SECTION 2. AUTHORITY.**

These Rules for Abortion Facilities in Arkansas are duly adopted and promulgated by the Arkansas State Board of Health pursuant to the authority expressly conferred by Acts 509 of 1983 and 1176 of 2011; Ark. Code Ann. § 20-9-302 as amended, and other laws of the State of Arkansas.

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### SECTION 3. DEFINITIONS.

**Note: see Section 12 for additional definitions for Physical Facilities requirements**

- A. **1. Abortion** - the act of using or prescribing any instrument, medicine, drug, or other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child.
2. An act under paragraph (A)(1) above is not an abortion if the act is performed with the intent to:
- save the life or preserve the health of the unborn child;
  - remove a dead unborn child caused by a spontaneous abortion; or
  - remove an ectopic pregnancy.
- Note:** Abortions are prohibited during and after the twentieth (20) week of a woman's pregnancy except as authorized by law. See Ark. Code Ann. § 20-16-1405;
- B. **Abortion Complication** - any harmful event or adverse outcome with respect to a patient related to an abortion that is performed on the patient and that is diagnosed or treated by a physician or at a healthcare facility, including but not limited to shock, uterine perforation, cervical laceration, hemorrhage, aspiration or allergic response, infection, sepsis, death, incomplete abortion, damage to the uterus, and an infant born alive after an abortion.
- C. **Abortion facility** - A clinic, health center, or other facility in which the pregnancies of ten (10) or more women known to be pregnant are willfully terminated or aborted in any month, including nonsurgical abortions.
- D. **Abortion-inducing drug** – a medicine, drug, or any other substance prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman with knowledge that the termination will with reasonable likelihood cause the death of the unborn child.
- “Abortion-inducing drugs” include off-label use of drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion, such as misoprostol, Cytotec, and methotrexate.
  - This definition does not apply to drugs that may be known to cause an abortion, but which are prescribed for other medical indications such as chemotherapeutic agents or diagnostic drugs.
  - Use of drugs to induce abortion is also known as a medical, drug-induced, or chemical abortion.
- E. **Act** - Act 509 of 1983 as amended by Act 1176 of 2011.

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- F. **Administrator** - an individual designated to provide daily supervision and administration of the Abortion Facility.
- G. **Adverse event** – an undesirable experience associated with the use of a medical product in a patient, including without limitation an event that causes:
1. death;
  2. threat to life;
  3. hospitalization;
  4. disability or permanent damage;
  5. congenital anomaly or birth defect, or both;
  6. required intervention to prevent permanent impairment or damage;
  7. other serious important medical events, including without limitation:
    - a. allergic bronchospasm requiring treatment in an emergency room;
    - b. serious blood dyscrasias;
    - c. seizures or convulsions that do not result in hospitalization; and
    - d. the development of drug dependence or drug abuse.
- H. **Born-alive infant** – the complete expulsion or extraction of an infant from a mother, regardless of the state of gestational development, who shows any evidence of life, including without limitation:
1. breathing;
  2. heartbeat;
  3. umbilical cord pulsation; or
  4. definite movement of voluntary muscles.
- I. **Consent** - a signed and witnessed voluntary agreement for the performance of an abortion; or
1. in the case of a pregnant woman who is less than eighteen (18) years of age, a notarized written statement signed by the pregnant woman and her mother, father, or legal guardian declaring that the pregnant woman intends to seek an abortion and that her mother, father, or legal guardian consents to the abortion; or
  2. in the case of a pregnant woman who is an incompetent person, a notarized written statement signed by the pregnant woman's guardian declaring that the guardian

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consents to the performance of an abortion upon the pregnant woman.

- J. **Dead fetus or fetal remains** – a product of human conception exclusive of its placenta or connective tissue, which has suffered death prior to its complete expulsion or extraction from the mother as established by the fact that, after the expulsion or extraction the fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.
- K. **Department** - the Arkansas Department of Health.
- M. **Division** - the Division of Health Facility Services.
- N. **Director** - the Chief Administrative Officer in the Division of Health Facility Services.
- O. **Emancipated minor** means a person less than eighteen (18) years of age who is or has been married or who has been legally emancipated.
- P. **External member of the human body** means an arm or one (1) or more joints of the arm, a hand, a finger or one (1) or more joints of the finger, a leg or one (1) or more joints of the leg, a foot, a toe or one (1) or more joints of the toe, an ear or the greater part of the ear, or the nose or the greater part of the nose.
- Q. **Fertilization** – the fusion of a human spermatozoon with a human ovum.
- R. **Final printed labeling** – the United States Food and Drug Administration (“USFDA”)-approved informational document for an abortion-inducing drug which outlines the protocol authorized by the USFDA and agreed upon by the drug company applying for USFDA authorization of that drug.
- S. **General abortion facility** - an abortion facility that provides surgical abortions or both medical and surgical abortions.
- T. **Hospital** - Any acute care facility established for the purpose of providing inpatient diagnostic care and treatment.
- U. **Gestational age**– the time that has elapsed since the first day of the woman’s last menstrual period.
- V. **Human tissue** means any tissue of the human body, including without limitation an external member of the human body, placenta, or fetal connective tissue.
- W. **Incompetent person** means a person who has been adjudged a disabled person and has had a guardian appointed for her.
- X. **Lethal fetal anomaly** means a fetal condition diagnosed before birth that will result in the death of the unborn child with reasonable certainty within three (3) months of the birth.

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- Y. **Local anesthesia** – Elimination or reduction of sensation, especially pain, in one part of the body by topical application or local injection of a drug.
- Z. **Medical abortion** - a non-surgical abortion for which abortifacient pharmaceutical drugs are used to induce the abortion.
- AA. **Medical-only abortion facility** - an abortion facility in which no surgical abortions are performed.
- BB. **Minimal sedation (anxiolysis)** – a drug-induced state during which patients respond normally to verbal commands. Although cognitive function and physical coordination may be impaired, airway reflexes, and ventilator and cardiovascular functions are unaffected.
- CC. **Minor** means an individual under eighteen (18) years of age.
- DD. **Moderate sedation/analgesia (“Conscious Sedation”)** – a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate.
- EE. **Parent** means:
1. Either parent of the pregnant woman if both parents are living;
  2. One (1) parent of the pregnant woman if only one (1) is living or if the second parent cannot be located through reasonably diligent effort; or
  3. The court-appointed guardian or custodian if the pregnant woman has one.
- FF. **Patient** - any woman receiving services in the facility and any born-alive infant.
- GG. **Physician** – a person licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathy.
- HH. **Post-fertilization age** – the age of the unborn child as calculated from the fertilization of the human ovum.
- JJ. **Probable post-fertilization age of the unborn child** – what, in reasonable medical judgment, will, with reasonable probability, be the post-fertilization age of the unborn child at the time the abortion is planned to be performed or induced.
- KK. **Reasonable medical judgment** - a medical judgment that would be made by a reasonably prudent physician knowledgeable about the case and treatment possibilities with respect to



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the medical conditions involved.

- LL. **Respectful and proper manner** means either releasing the human tissue to the patient or authorized person, incineration, burial, or cremation.
- NN. **Surgical abortion** means a pregnancy is ended by surgically removing the contents of the uterus through use of suction device or other instrument(s).

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### SECTION 4. LICENSING.

- A. Application for License. Application for a license or renewal of a license shall be made on forms provided by the Arkansas Department of Health. The application shall set forth:
1. The complete name and address of the Abortion Facility
  2. The facility type:
    - a) General Abortion Facility; or
    - b) Medical-Only Abortion Facility; and
  3. Additional information as required by the Arkansas Department of Health.
- B. Grandfather provisions.
1. A facility, in existence on January 1, 2012 and in substantial compliance with the physical facility requirements in Section 12, submitting initial application for licensure by July 1, 2012 is exempted from the physical facility requirements in Section 12 of these Rules for its existing physical structure. Notwithstanding this provision, a facility must be in compliance with these rules after January 1, 2014, unless the modifications would be impracticable.
  2. Except as otherwise provided in Section (4)(B)(1), Abortion Facilities shall comply with all requirements set forth in these Rules and Regulations. The Rules and Regulations shall become effective on January 1, 2012.
- C. Availability of Emergency Services. A General Abortion Facility shall be within thirty (30) miles of a hospital which provides gynecological or surgical services.
- D. Fee. Each application for initial licensure of an Abortion Facility shall be accompanied by a fee of five hundred dollars (\$500). The fee shall be payable to the Arkansas Department of Health.
- E. Renewal of License. A license, unless revoked, shall be renewable annually upon payment of a fee of five hundred dollars (\$500) to the Arkansas Department of Health accompanied by an application for re-licensure. The application for annual license renewal along with the fee shall be postmarked no later than January 2 of the year for which the license is issued.
- F. Issuance of License. A license shall be issued only for the premises, services, and person or persons reflected in the application. The license shall be posted in a conspicuous place in the Abortion Facility. The license shall be effective on a calendar year basis and shall expire on December 31 of each calendar year. The license shall not be transferrable and

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shall expire if a change of ownership occurs.

- G. Change of Ownership. It shall be the responsibility of the Abortion Facility to notify the Division of Health Facility Services in writing at least thirty (30) days prior to the effective date of a change of ownership. The following information shall be submitted for review and approval:
1. license application;
  2. five hundred dollars (\$500) change of ownership fee; and
  3. legal documents, ownership agreements, and other information to support re-licensure requirements.
- H. Management Contract. It shall be the responsibility of the Abortion Facility to notify the Division of Health Facility Services in writing at least thirty (30) days prior to entering into a management contract or agreement with an organization or firm. A copy of the contract or agreement shall be submitted for review to assure the arrangement does not affect the license status.
- I. Closure. Once an Abortion Facility closes, it shall no longer be considered licensed. The license issued to the Abortion Facility shall be returned to the Division of Health Facility Services. To be eligible for re-licensure, the Abortion Facility shall meet requirements for new construction and all the current life safety and health regulations.
- J. Inspection. Any authorized representative of the Arkansas Department of Health shall have the right to enter upon or into the premises of any Abortion Facility at any time in order to make whatever inspection it deems necessary in order to assure minimum standards and regulations are met.
- K. Denial, Suspension or Revocation. The Department may deny, suspend or revoke the license of any Abortion Facility on the following grounds: violation of any of the provisions of the Act or Rules lawfully promulgated hereunder; and/or conduct or practices detrimental to the health or safety of patients and employees of any such facilities. This provision shall not be construed to have any reference to healing practices authorized by law.

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### SECTION 5. GOVERNING BODY.

An Abortion Facility shall have an organized Governing Body, consisting of at least one (1) member, which may be the Medical Director, with local representation which shall be legally responsible for maintaining patient care and establishing policies for the facility and shall be legally responsible for the conduct of the facility.

- A. The Governing Body Bylaws. The Governing Body shall adopt written bylaws which shall ensure the following:
  - 1. Maintenance of professional standards of practice;
  - 2. Terms, responsibilities and methods of selecting members and officers;
  - 3. Methods by which Quality Improvement is established; and
  - 4. Compliance with federal, state and local laws.
  
- B. Governing Body Minutes. The Governing Body minutes shall include at least the following information:
  - 1. Review, approval and revision of the Governing Body bylaws, rules, regulations and protocols;
  - 2. Review and approval of the Quality Improvement Plan for the facility at least annually, and review of Quality Improvement summaries at least quarterly.
  
- C. Quality Improvement (QI) Program.
  - 1. The Abortion Facility shall develop, implement, and maintain a QI program to include:
    - a) Collection of data on the functional activities identified as priorities in QI and benchmark against past performance and national or local standards; and
    - b) Development and implementation of improvement plans for identified issues, with monitoring, evaluation and documentation of effectiveness.
  - 2. The scope of the QI Program shall include, but not be limited to, activities regarding the following:
    - a) Assessment of processes and outcomes utilizing facility-specific clinical data;

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- b) Evaluation of patient satisfaction;
  - c) Evaluation of staff performance according to facility protocols; and
  - d) Complaint resolution.
3. The facility shall evaluate the effectiveness of the QI Program annually and establish priorities for the QI Program.

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### SECTION 6. GENERAL ADMINISTRATION.

- A. Each facility shall have an Administrator responsible for the management of the facility. The Medical Director may also function as facility administrator.
- B. Policies and procedures shall be provided for the general administration of the facility and for each service. All policies and procedures shall have evidence of ongoing review and/or revision. The first page of each manual shall have the annual review date and signatures of the person(s) conducting the review.
- C. Provisions shall be made for safe storage of patients' valuables.
- D. Each facility shall develop and maintain a written disaster plan which includes provisions for complete evacuation of the facility. The plan shall provide for widespread disasters as well as for a disaster occurring within the local community or the facility. The disaster plan shall be rehearsed at least twice a year. One (1) drill shall simulate a disaster of internal nature and the other external. Written reports and evaluation of all drills shall be maintained.
- E. There shall be posted a list of names, telephone numbers, and addresses available for emergency use. The list shall include the key facility personnel and staff, the local police department, the fire department, ambulance service, blood services vendor, and other available emergency units. The list shall be reviewed and updated at least every six (6) months.
- F. There shall be current reference material available onsite to meet the professional and technical needs of Abortion Facility personnel including current books, periodicals, and other pertinent materials.
- G. All employees shall be required to have annual in-services on safety, fire safety, back safety, infection prevention and control, universal precautions, disaster preparedness and confidential information.
- H. Procedures shall be developed for the retention and accessibility of the patients' medical records if the Abortion Facility closes.
- I. Any Abortion Facility that closes shall meet the requirements for new construction in order to be eligible for re-licensure. Once a facility closes, it is no longer licensed. The license shall be immediately returned to Health Facility Services. To be eligible for licensure, all the referenced National Fire Codes (NFPA) and health regulations shall be met.
- J. 1. Signed and witnessed written consent for the performance of an induced abortion must be obtained and signed by the patient prior to the abortion and after counseling by a qualified professional.

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2.
  - a. In case of a minor, notarized written consent for the performance of an induced abortion must be obtained and signed by both the patient and the parent or legal guardian or custodian.
  - b. In case of a woman under legal guardianship or custodianship for incompetency, notarized written consent for the performance of an induced abortion must be obtained and signed by the parent or legal guardian or custodian.
3. Written or verbal consent shall not release the facility or its personnel from upholding the rights of patients including, but not limited to, the right to privacy, dignity, security, confidentiality, and freedom from abuse or neglect.
- K. Each facility shall have a Medical Director who shall be a physician currently licensed to practice medicine in Arkansas, and who shall be responsible for the direct coordination of all medical aspects of the facility program.
- L. There shall be written policies and procedures developed and approved by the Medical Director and Administrator which define the care provided at the facility.
- M. Policies and procedures shall include, but not be limited to the following:
  1. personnel policies;
  2. provision of medical and clinical services;
  3. provision of laboratory services;
  4. examination of fetal tissue;
  5. disposition of medical waste;
  6. emergency services, including but not limited to:
    - a. written procedure for emergency transfer to an acute care facility; and
    - b. a medical record form that contains information required for an emergency transfer to an acute care facility;
  7. criteria for discharge;
  8. health information systems (including electronic records);
  9. provision of pharmacy services;
  10. medication administration;
  11. anesthesia/analgesia/sedation administration as applicable;

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12. counseling services;
13. patient education;
14. infection prevention and control;
15. fire, safety, and disaster preparedness;
16. housekeeping;
17. laundry;
18. preventive maintenance;
19. processing and/or storage of sterile supplies;
20. patient care;
  - a. pregnant and post-abortion women clients; and
  - b. born-alive infants;
21. probable post-fertilization age determination;
22. proper disposition of dead fetuses and fetal remains;
23. follow-up appointments for medical abortion patients 12-18 days, or as recommended in the final printed labeling, following abortion services, including administration of abortion-inducing drugs;
24. patient receipt of:
  - a. USFDA label(s) for abortion-inducing drugs;
  - b. written notice on reversing the effects of abortion-inducing drugs for patients receiving such drugs as required by Act 522 of 2019;
25. ultrasound (abdominal) heartbeat detection;
26. consent including but not limited to items specified in §9 (B)(2);
27. child maltreatment and/or abuse reporting; and
28. providing printed materials and answering the woman's questions in a language that she can understand;
29. pre-procedure; and
30. process to insure that perinatal palliative care information is provided to the mother of unborn child diagnosed with lethal fetal anomaly 72 hours before the



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abortion as required by Act 953 of 2019, the Perinatal Palliative Care Information Act.

- N. Administrative Reports. The Administrator or his/her designee shall report:
1. Infectious or communicable diseases, including sexually transmitted diseases, to the Arkansas Department of Health, as required by:
    - a. the Rules and Regulations Pertaining to Communicable Disease in Arkansas (Ark. Code Ann. §§ 20-7-109, 110.); and
    - b. the Rules Pertaining to the Control of Communicable Diseases-Tuberculosis.
  2. Induced Terminations of Pregnancy. Each induced termination of pregnancy which occurs in Arkansas shall be reported to the Division of Health Statistics on a monthly basis.
  3. Adverse events associated with abortion-inducing drugs to:
    - a. USFDA via Medwatch reporting system; and b. Arkansas State Medical Board.
  4. Abortion complications. Each abortion facility shall report each abortion complication (including live birth) diagnosed or treated by the facility. Reports shall be submitted to the Arkansas Department of Health, Division of Vital Statistics.
    - a. not later than the 30th day after the date on which the abortion complication was diagnosed or treated;
    - c. in the form and manner prescribed by the Department;
    - d. not identify by any means the physician performing the abortion;
    - e. not identify by any means the patient upon whom the abortion was performed nor the patient; and
    - f. containing:
      1. the most specific, accurate, and complete reporting for the highest level of specificity;
      2. the date of the abortion that caused or may have caused the abortion complication;
      3. the type of abortion that cause or may have caused the abortion

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- complication;
4. the gestational age of the fetus at the time that the abortion was performed;
  5. the name and type of healthcare facility in which the abortion was performed;
  6. the date the abortion complication was diagnosed or treated;
  7. the name and type of any healthcare facility other than the reporting healthcare facility in which the abortion complication was diagnosed or treated;
  8. a description of the abortion complication;
  9. the patient's year of birth, race, marital status, state of residence, and county of residence;
  10. the date of the first day of the patient's last menstrual period that occurred before the date of the abortion that caused or may have caused the abortion complication, if known;
  11. the number of previous live births of the patient; and
  12. the number of previous induced abortions of the patient.
- g. An event associated with a medical procedure performed after a natural miscarriage, spontaneous abortion, or fetal death is not subject to reporting under this rule.
- O. Each facility shall ensure that each dead fetus or fetal remains are disposed of in accordance with the provisions of Ark. Code. Ann. § 20-17-102.<sup>1</sup>
1. The requirements of this subsection shall not apply to abortions induced by the administration of medications when the evacuation of any human remains occurs at a later time and not in the presence of the inducing physician nor at the facility in which the physician administered the inducing medications.
- P. **Seventy-two (72) Hour Reflection Period.** A physician, facility, employee or volunteer of a facility, or any other person or entity shall not require or obtain payment for a service provided in relation to abortion to a patient who has inquired about an abortion or scheduled an abortion until the expiration of the 72-hour reflection period required by Act 383 of 2017 as amended by Act 801 of 2019, Ark. Code Ann. § 20-16-1703(d).

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<sup>1</sup> Section 6(O) was promulgated in 2017. At the time of filing this Rule Section 6(O) is enjoined by [Hopkins v. Jegley, No. 4:17-cv-00404-KGB, 2021 U.S. Dist. LEXIS 1602 \(E.D. Ark. Jan. 5, 2021\)](#).

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### SECTION 7. PATIENT CARE SERVICES.

An Abortion Facility shall have an adequate number of personnel qualified under this section available to provide direct patient care as needed.

#### A. Qualifications.

1. Only physicians who are currently licensed to practice medicine in Arkansas may perform abortions.
2. All facility personnel, medical and others, shall be licensed to perform the services they render when such services require licensure under the laws of the State of Arkansas. Documentation of current licensure shall be maintained in the personnel file for each employee.
3. Providers of patient counseling shall, at a minimum, possess current licensure as a nurse, Social Worker, or documented experience and training in a related field. Special training in counseling which is deemed acceptable by the Department shall be required.
4. All clinical staff of the facility shall be required to provide documentation of training and continued competence in cardiopulmonary resuscitation (CPR) or its equivalent.

#### B. Staffing Requirements.

1. There shall be a sufficient number of Registered Nurses in the facility at all times when patients are present.
2. Registered Nurses shall be on duty to supply or supervise all nursing care of patients.

#### C. Authority and responsibilities of all patient care staff shall be clearly defined in written policies, including periodic monitoring and assessment of patients.

#### D. Services shall be organized to ensure management functions are effectively conducted. These functions shall include, but are not limited to:

1. review of policies and procedures at least annually to reflect current standards of care;
2. establishment of a mechanism for review and evaluation of care and services provided at the facility;
3. orientation and maintenance of qualified staff for provision of patient care;

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4. annual in-service education programs for professional staff; and
  5. provision of current nursing literature and reference materials.
- E. Patients shall have access to twenty-four (24) hour telephone consultation with either a Registered Nurse or physician associated with the facility.
- F. Follow-up appointments – medical abortions.
1. Facility personnel shall schedule a follow-up appointment for the patient to return 12-18 days, or as recommended in the final printed labeling, after a medical abortion.
  2. Facility personnel shall make reasonable efforts to ensure that the patient returns for the follow-up appointment.
- G. A Registered Nurse shall plan, supervise, and evaluate the nursing care of each patient from admission to the facility through discharge.
- H. Counseling services.
1. Seventy two (72)- hours prior to the abortion, the patient shall be counseled regarding the abortion procedure, alternatives to abortion, informed consent (including consent for unemancipated minors and women under legal guardianship or custodianship), medical risks associated with the procedure, potential post-abortion complications, community resources, family planning, and ADH printed materials and DVD available on the ADH website at: [www.healthy.arkansas.gov](http://www.healthy.arkansas.gov). and patient shall be given a copy of the most current ADH printed materials and DVD.
  2. Documentation of counseling shall be included in the patient's medical record.
  3. The patient shall meet individually and in a private room with the physician, referring physician, or a qualified person.
  4. Each patient shall be assessed by a Registered Nurse for counseling needs post-abortion;
  5. Written instructions for post-abortion care shall be given to the patient at discharge, to include at least the following:
    - a) signs and symptoms of possible complications;
    - b) activities allowed and to be avoided;
    - c) hygienic and other post-discharge procedures to be followed;

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- d) abortion Facility emergency telephone numbers available on a twenty-four (24) hour basis; and
  - e) follow up appointment, if indicated.
6. The patient shall be counseled regarding Rh typing and shall be given Rh immune globulin, if indicated.
- I. Drug-induced, chemical and surgical abortions shall not be performed by telemedicine.
  - J. Initial administration of abortion-inducing drugs shall occur in the same room and physical presence of the physician who prescribed, dispensed, or otherwise provided the drug(s) to the patient.
  - K. Patient shall receive and acknowledge a copy of the USFDA label(s) for any abortion-inducing drugs(s) she receives.

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### SECTION 8. PROGRAM REQUIREMENTS.

- A. Admission Evaluation. Every woman seeking to have an abortion shall be registered by the facility and evaluated by means of a history, physical examination, counseling, and laboratory tests.
1. Verification of Pregnancy. Pregnancy testing shall be available to the patient and may precede actual registration by the facility. No abortion shall be performed unless the examining physician verifies the patient is pregnant. Pregnancy test results shall be filed in the patient's medical record.
  2. History and Physical Examination. Prior to the abortion, a medical history shall be obtained and recorded. The patient shall be given an appropriate physical examination, as determined by the physician, and may include testing for sexually transmitted diseases.
    - a. Physical examinations preceding medical abortions shall include a determination of gestational age and location of pregnancy.
    - b. Pelvic examinations shall be performed only by qualified personnel, as defined by their Practice Acts.
  3. Pre-abortion Tests. The following are required prior to an abortion: hematocrit or hemoglobin, Rh typing, and abdominal ultrasound for fetal heartbeat detection. Other onsite proof of pregnancy, such as pregnancy test, copy of a pregnancy test or ultrasound may also be performed according to facility policy.
  4. Counseling. Patient counseling services shall be offered prior to initiation of any abortion and if indicated following the abortion. In addition to verbal counseling, patients shall be given and allowed to keep the most current ADH printed materials and DVD.
- B. Anesthetic agents.
1. Anesthesia, analgesia and anoxiolysis shall be administered only by a qualified professional acting within the scope of his or her Arkansas license.
  2. Anesthesia administration in Abortion Facilities shall be limited to local anesthesia, minimal sedation, and moderate sedation.
- C. Discharge criteria, developed by the clinical staff and approved by the Governing Body, may be utilized to evaluate patients' medical stability for discharge. Patients may be discharged only on the order of a physician. Patients receiving sedation shall be discharged in the company of a responsible adult.
- D. Complications.

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1. General Abortion Facilities shall have emergency drugs, oxygen, intravenous fluids, and other emergency equipment on site and readily available to stabilize a patient if necessary.

2. All clinical staff shall have documented current competency in cardiopulmonary resuscitation (CPR).

### E. Human/Fetal Tissue Disposal.

1. A physician or facility that performs an abortion shall ensure that fetal remains and all parts are disposed of in a fashion similar to that in which other tissue is disposed

**NOTE:** Act 535 of 2015, Ark. Code Ann. §20-17-802 provides:

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*(b) A person shall not perform any biomedical or behavioral research on:*

*(1) a fetus born alive as the result of a legal abortion unless the research is for the exclusive benefit of the fetus so born;  
or*

*(2) a fetus born dead as the result of a legal abortion or any fetal tissue produced by the abortion.*

*(c) a person shall not buy, sell, give, exchange, or barter or offer to buy, sell, give, exchange, or barter any fetus born dead as a result of a legal abortion or any organ, member, or tissue of fetal material resulting from a legal abortion.*

*(d) a person shall not possess either a fetus born dead as a result of a legal abortion or any organ, member, or tissue of fetal material resulting from a legal abortion.*

*(e) This section does not apply to:*

*(1) a physician performing a legal abortion or a pathologist performing a pathological examination as the result of a legal abortion;*

*(2) an employee, agent, or servant of a physician performing a legal abortion or pathologist performing a pathological exam as the result of a legal abortion;*

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- (3) the staff, faculty, students, or governing body of any institution of higher learning or institution of secondary education to the extent of courses of instruction taught and research conducted at the institutions;*
  - (4) licensed physicians or their employees, agents, and servants while in the conduct of medical research;*
  - (5) any licensed physician when performing a standard autopsy examination; or*
2. An external member of the human body shall not be disposed of within forty-eight (48) hours of its removal or acquisition unless consent is obtained in writing from the patient or the person authorizing the medical or surgical treatment of the patient.
  3. All human tissue shall be disposed of in a respectful and proper manner in compliance with the Arkansas Department of Health Rules Pertaining to The Management of Medical Waste from Generators and Health Care Related Facilities.



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### SECTION 9. HEALTH INFORMATION SERVICES.

The Abortion Facility shall maintain a system for the completion and storage of the medical record. The record shall provide a format for continuity and documentation of legible, uniform, complete, and accurate patient information readily accessible and maintained in a system that ensures confidentiality.

#### A. General Requirements.

1. The Abortion Facility shall adopt a record form for use that contains information required for transfer to an acute care facility.
2. Record reviews with criteria for identification of problems and follow up shall be reported to the Medical Director at least quarterly.
3. Responsibility for the processing of records is assigned to an individual employed by the Abortion Facility.
4. All medical records shall be retained in either the original, microfilm, or other acceptable methods for ten (10) years after the last discharge.
5. The original or a copy of the original (when the original is not available) of all reports shall be filed in the medical record.
6. The record shall be permanent and shall be either typewritten or legibly written in blue or black ink.
7. All typewritten reports shall include the date of dictation and the date of transcription.
8. All dictated records shall be transcribed within forty-eight (48) hours.
9. Errors shall be corrected by drawing a single line through the incorrect data, labeling it as "error", initialing, and dating the entry.
10. Policies and procedures for Health Information Services shall be developed. The manual shall have evidence of ongoing review and/or revision. The first page of the manual(s) shall have the annual review date and signatures of the person(s) conducting the review.
11. Medical records shall be protected to ensure confidentiality, prevent loss, and ensure reasonable availability.
12. All medical records, whether stored within the facility or away from the facility shall be protected from destruction by fire, water, vermin, dust, etc.

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13. Medical records shall be considered confidential. All medical records (including those filed outside the facility) shall be secured at all times. Records shall be available to authorized personnel from the Arkansas Department of Health.
  14. Written consent of the patient and/or parent, legal guardian or custodian shall be presented as authority for release of medical information. There shall be policies and procedures developed concerning all phases of release of information.
  15. Original medical records shall not be removed from the facility except upon receipt of a subpoena duces tecum by a court having authority for issuing such an order.
  16. Medical records shall be complete and contain all required signed documentation no later than thirty (30) days following the patient's discharge.
  17. After the required retention period, medical records may be destroyed by burning or shredding. Medical records shall not be disposed of in landfills or other refuse collection sites.
  18. Each entry into the medical record shall be authenticated by the individual who is the source of the information. Entries shall include all observations, notes, and any other information included in the record.
  19. Signatures shall be, at least, the first initial, last name, and title. Computerized signatures may be either by code, number, initials, or the method developed by the facility.
  20. There shall be policies and procedures for use of electronic medical records. The policies and procedures shall provide for the use, exchange, security, and privacy of electronic health information. The policies and procedures shall provide for standardized and authorized availability of electronic health information for patient care and administrative purposes. The policies and procedures will be in compliance with current guidelines and standards as established in federal and state statutes.
- B. Record Content. Each record shall include but not be limited to documentation of:
1. demographic and patient information;
  2. informed consent:
    - a. Informed Consent Checklist form AS-4010;
    - b. Documented evidence statistical probability of bringing unborn human individual to term based on gestational age of the unborn individual

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- possessing a detectable heartbeat was reviewed and signed by the pregnant woman;
- c. Fetal Pain Checklist in cases where woman's pregnancy has progressed to twenty (20) weeks gestation or more (form AS-4010A);
  - d. For unemancipated minors and women under legal guardianship or custodianship for incompetence, Abortion Disclosure and Consent Form for Minors and Women under Legal Guardianship or Custodianship for Incompetency form AS-4011; and
  - e. In cases of medical emergency where informed consent is not obtained, physician's written certification of:
    - 1) nature of the emergency;
    - 2) waiver of consent; and
    - 3) circumstances that necessitated the waiver;
3. complete family, medical, social, reproductive, nutrition, and behavioral history;
- a. initial physical examination;
  - b. evaluation of risk status;
  - c. laboratory test results;
  - d. gestational age;
  - e. ultrasound image;
    - 1) opportunity for patient to view ultrasound;
    - 2) patient acceptance or rejection of viewing ultrasound;
  - f. testing for fetal heartbeat and if heartbeat detected, an acknowledgment form as required by Ark. Code Ann. § 20-16-1303(e); and
  - g. for medical abortions, intrauterine location of pregnancy.
4. appropriate referral of patients, as indicated;

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5. documentation of each periodic examination, including any follow-up appointment;
6. patient counseling regarding the abortion, alternatives to abortion, informed consent (including consent for unemancipated minors and women under legal guardianship or custodianship), medical risks associated with the abortion, potential post-abortion complications, available community resources, and family planning, and most current ADH printed materials and DVD;
7. patient education regarding post-abortion signs and symptoms of possible complications, activities allowed and to be avoided, hygienic and other post-discharge procedures to be followed, telephone numbers to access emergency care, and follow-up appointments;
8. abortion and post-abortion records;
  - a. for surgical abortions, a written report describing surgical instruments used, surgical techniques, findings and tissues removed or altered;
  - b. for medical abortions, documentation of date, time, name of individual(s), and description of efforts made regarding patient follow-up appointment;
9. copies of proof of parent or guardian identification and relationship in cases where pregnant woman is an unemancipated minor or an incompetent woman under legal guardianship or custodianship, including:
  - a. photocopy of government-issued photo identification card; and
  - b. photocopy of written documentation that establishes that the parent or legal guardian is the lawful parent or legal guardian of the pregnant woman;
  - c. documentation required by (9)(B)(11)(a) shall be maintained for five (5) years past the patient's age of majority and no less than seven (7) years; and
10. physician affidavit when abortion is performed after receiving parental or legal guardian or custodian consent ("Abortion Disclosure and Consent form for Unemancipated Minors and Women under Legal Guardianship or Custodianship for Incompetency" ADH form AS4011).

**SECTION 10. INFECTION CONTROL FOR ABORTION FACILITIES.**

A. General.

1. The facility shall develop and use a coordinated process that effectively reduces the risk of endemic and epidemic healthcare associated infections in patients and health care workers.
2. The facility shall follow nationally recognized guidelines and manufacturer's instructions.
3. There shall be a designated infection prevention and control officer for the facility.
4. There shall be policies and procedures establishing and defining the Infection Prevention and Control Program including:
  - a. Definitions of healthcare associated infections which conform to the current CDC definitions;
  - b. Methods for obtaining reports of infections in abortion patients and health care workers in a manner and time sufficient to limit the spread of infections;
  - c. Measures for assessing and identifying abortion patients and health care workers at risk for healthcare associated infections and communicable diseases;
  - d. Measures for prevention and control of infections;
  - e. Provisions for education of patients and family concerning infections and communicable diseases including hand hygiene and isolation precautions;
  - f. Plans for monitoring and evaluating all infection prevention and control policies and procedures;
  - g. Techniques for hand hygiene including procedures for soap and water as well as alcohol based hand rub if used;
  - h. Scrub technique (applies only to General Abortion Facilities);
  - i. Asepsis/sterile technique;
  - j. Sterilization to include:
    - 1) Evaluating effectiveness of sterilization;

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- 2) Receiving, decontaminating, cleaning, preparing, disinfecting and sterilizing reusable items;
- 3) Specifications for cold-liquid sterilization, steam sterilization, and gas sterilization (if used);
- 4) Sterilization techniques (steam, plasma, ethylene oxide, chemical, etc.) shall follow the manufacturer's directions and meet all state and federal regulations;
- 5) Assembling and wrapping of packs (to include the double-wrapped techniques);
- 6) Autoclaves to include:
  - i. Records shall be maintained of all autoclave loads, both routine and immediate use which shall include the date, time, lot number (on routine loads), the time at temperature (where a recorder is not available), item(s) sterilized and shall identify the person performing the task;
  - ii. The efficacy of autoclaves, both for routine and immediate use shall be determined weekly through the use of biological spore monitors;
  - iii. The results of all biological spore monitoring shall be reported to the infection prevention and control officer;
  - iv. Failures of the biological spore test shall be brought to the attention of the infection prevention and control officer or designee immediately so the appropriate surveillance measures can be initiated;
  - v. All materials sterilized from the date of the biological spore monitor failure to the last successful biological spore monitor shall be re-sterilized before use;
  - vi. Autoclaves within the facility shall be maintained in accordance with manufacturer's written directions. Records shall be maintained of all maintenance and repairs for the life of the equipment;
  - vii. Chemical indicators for sterility shall be used with each cycle;

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- viii. Compliance and efficacy of the sterilization policies shall describe the mechanism used to determine the shelf life of sterilized packages;
- ix. Products used to contain or wrap instrument sets/pans for sterilization shall follow the manufacturers' directions or nationally recognized standards (such as CDC or AORN) in determining the shelf life of the sterilized items(s);
- x. All items which are to be sterilized, whether for immediate use or to be stored, shall be cleaned and decontaminated before the sterilization process;
- xi. Immediate use (autoclaving) shall be restricted to unplanned or emergency situations and never used as a convenience to compensate for inadequate inventories of instruments; and
- xii. Procedures for unloading and transporting immediate use sterilized items, which provide for the aseptic transfer within the physical constraints of the facility.
- k. Disinfection to include;
  - 1) Cleaning of equipment;
  - 2) Evaluating effectiveness of cleaning;
  - 3) Cleaning and disinfecting of surfaces, utensils, and equipment;
  - 4) Receiving, decontaminating, cleaning, preparing, disinfecting and sterilizing reusable items; and
  - 5) A requirement that disinfectants, antiseptics, and germicides be used in accordance with the manufacturer's directions;
- l. Housekeeping;
- m. Linen care;
- n. Liquid and solid waste disposal of both infectious and regular waste. Disposal of infectious waste shall conform to the latest edition of the Rules Pertaining to the Management of Medical Waste from Generators and Health Care Related Facilities;
- o. Disposal of human and fetal tissue;

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- p. Sharps safety;
- q. Separation of clean from dirty processes; and
- r. Other means of limiting the spread of contagion;
- s. Supplies and storage to include:
  - 1) Storage and distribution of sterile equipment/medical supplies;
  - 2) Recalling and disposing/reprocessing of outdated sterile supplies;
  - 3) Collection and disposal of supplies recalled by the manufacturer;
  - 4) Precautions to prevent the mixing of sterile and unsterile supplies and equipment;
  - 5) Items previously packaged, sterilized and issued but not used may be returned to the sterile storage area if the integrity of the packaging has not been compromised and there is no evidence of contamination; and
  - 6) Sterile materials shall be stored eight to ten inches from the floor and at least 18 inches from the ceiling and at least two inches from outside walls. Items shall be positioned so that packages are not crushed, bent, compressed or punctured and sterility is not compromised.

### B. Employee Health.

- 1. There shall be an orientation program for all new health care workers concerning the importance of infection control and each health care worker's responsibility in the facility's Infection Prevention and Control Program.
- 2. There shall be a plan for each employee to receive annual in-services and educational programs, as indicated, based upon assessment of the infection control process.
- 3. The facility shall develop policies and procedures for screening health care workers for communicable diseases and monitoring health care workers exposed to patients with any communicable diseases.
- 4. There shall be policies regarding health care workers with infectious diseases or carrier states. The policies shall clearly state when health care workers shall not render direct patient care.

NOTE: Health care workers employed by the facility who are afflicted with any disease in a communicable stage, or while afflicted with boils, jaundice, infected



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wounds, diarrhea, or acute respiratory infections, shall not work in any area in any capacity in which there is a likelihood of such person contaminating food, food contact surfaces, supplies, or any surface with pathogenic organisms or transmitting disease to patients, facility personnel or other individuals within the facility.

5. There shall be Measures for prevention of communicable disease outbreaks, especially mycobacterium tuberculosis (TB). All plans for the prevention of transmission of TB shall conform to the most current CDC Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Health Care Facilities.
6. There shall be a plan for ensuring that all health care workers who are frequently exposed to blood and other potentially infectious body fluids are offered immunizations for hepatitis B.

## SECTION 11. PHARMACEUTICAL SERVICES.

- A. Organization.
1. Abortion Facilities shall have provisions for pharmaceutical services regarding the procurement, storage, distribution and control of all medications. The Abortion Facility shall be in compliance with all state and federal regulations.
  2. Pharmaceutical services shall be under the direction of a licensed pharmacist if required by State law. In case the Abortion Facility does not require a licensed pharmacist, the Medical Director shall assume the responsibility of directing Pharmaceutical Services. A licensed pharmacist means any person licensed to practice pharmacy by the Arkansas State Board of Pharmacy who provides pharmaceutical services as defined in the Pharmacy Practice Act. The pharmacist or Medical Director shall make provisions that shall include, but not be limited to:
    - a. development and implementation of pharmacy policies and procedures;
    - b. annual review and revisions of pharmacy policies and procedures, with documentation of dates of review;
    - c. maintenance of medications in the Abortion Facility to meet the needs of the population served;
    - d. maintenance of medications in the Abortion Facility to ensure accountability; and
    - e. proper storage of medications.
- B. Staffing. Pharmaceutical services shall be provided by a licensed pharmacist or Medical Director as required by State law. If the service is provided by a consulting pharmacist, it may be done so on a consulting basis. Onsite consultation by the pharmacist shall be required at least monthly. Documentation of each consultation visit shall be recorded and maintained at the Abortion Facility. Documentation of each visit shall include compliance with, but not be limited to:
1. proper storage of drugs;
  2. disposal of medications no longer needed, discontinued, or outdated;
  3. proof of receipt and administration of controlled substances and proper

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- storage of such medications;
  - 4. verification that medications in stock conform to the specified quantities on posted lists;
  - 5. proper labeling; and
  - 6. maintenance of emergency carts or kits.
  - 7. If the service is under the direction of the Medical Director, he/she may designate the above required monthly documentation to a licensed nurse.
- C. Policies and Procedures. There shall be pharmacy policies and procedures to include, but not be limited to:
- 1. detailed job description of the licensed pharmacist and/or Medical Director;
  - 2. procurement of medications;
  - 3. distribution and storage of medications;
  - 4. a listing of stock medications with minimum and maximum quantities to be maintained in the Abortion Facility;
  - 5. a listing of medications with exact quantities to be maintained in emergency kits;
  - 6. destruction of deteriorated, non-sterile, unlabeled, or damaged medications;
  - 7. listing controlled substances to be destroyed on the proper forms and either sending a copy of the form with the medications to the Arkansas Department of Health by registered mail or delivering the form and medications in person;
  - 8. maintenance of all drug records for a minimum of two (2) years;
  - 9. maintenance of medications brought to the Abortion Facility;
  - 10. drug recalls;

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11. reporting of adverse drug reactions and medication errors to the attending physician and the Governing Body;
  12. accountability of controlled substances;
  13. reporting of suspected drug loss, misuse, or diversion, according to state law;
  14. use of Automatic Medication Dispensing Devices, if applicable.
- D. Drug storage and security. Medications maintained at the Abortion Facility shall be properly stored and safeguarded to ensure:
1. locked storage of all medications;
  2. proper lighting and ventilation, as required by the manufacturer;
  3. proper temperature controls with daily temperature documentation of medication refrigerators to ensure storage between thirty-six (36) and forty-six (46) degrees Fahrenheit, or two (2) to eight (8) degrees Centigrade;
  4. separate storage of biologicals and medications from food;
  5. accessibility to licensed personnel only; and
  6. proper use of any Automatic Medication Dispensing Devices.
- E. Controlled Substances.
1. Controlled drugs shall be double locked.
  2. A record of the procurement and disposition of each controlled substance shall be maintained in the Abortion Facility and be readily retrievable. Each entry on the disposition record shall reflect the actual dosage administered to the patient, the patient's name, date, time, and signature of the licensed person administering the medication. The signature shall consist of a first initial, last name, and title. (Licensed personnel who may legally administer controlled substances shall include only those personnel authorized by their current Practice Act and licensed by the Arkansas State Medical Board or Arkansas State Board of Nursing.) Any error of entry on the disposition record shall follow a policy for correction of errors and accurate accountability. If

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the licensed person who procures medication from the double locked security is not the licensed person who administers the medication, then both persons shall sign the disposition record;

3. When breakage or wastage of a controlled substance occurs, the amount given and amount wasted shall be recorded by the licensed person who wasted the medication and verified by the signature of a licensed person who witnessed the wastage. Documentation shall include how the medication was wasted. In addition to the above referenced licensed personnel, licensed pharmacists shall be allowed to witness wastage of controlled substances. When a licensed person is not available to witness wastage, the partial dose shall be sent to the Arkansas Department of Health, Division of Pharmacy Services and Drug Control for destruction;
4. There shall be an audit each shift change of all controlled substances stocked in the Abortion Facility which shall be recorded by an oncoming nurse and witnessed by an off-going nurse. If only one (1) shift exists, an audit shall be conducted at the opening and closing of the abortion facility daily. If discrepancies are noted, the Director of Nursing, Pharmacy Consultant and/or Medical Director shall be notified. As with the witnessing of wastage, licensed pharmacists shall be allowed to witness controlled
5. substance audits;
6. Records generated by Automatic Dispensing Devices shall comply with these requirements.

### F. Medications.

1. All verbal or telephone orders for medications shall be received by a licensed nurse or Registered Pharmacist and reduced to writing into the patient's medical record. Verbal or telephone orders shall be countersigned by the practitioner within twenty-four (24) hours. Signed facsimile orders are acceptable, provided the facsimile paper is of a permanent nature.
2. The Abortion Facility may procure medications for its patients through community pharmacists, or medications may be procured through the facility's physician.

**SECTION 12. PHYSICAL FACILITIES, ABORTION FACILITIES.**

A. Definitions.

1. **Accessible** - barrier free; approachable by all peoples including those with physical disabilities.
2. **Addition** - an extension or increase in floor area and/or height of an existing building, or structure.
3. **Alter or Alteration** - any change(s) and modification in construction, occupancy, installation, or assembly of any new structural components, and any change(s) to the existing structural component, in a system, building, and structure.
4. **And/Or** (in a choice of two (2) code provisions) - signifies use of both provisions shall satisfy the code requirements and use of either provision is acceptable, also. The most restrictive provision shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific or restrictive requirement shall be applicable.
5. **Architect** - a duly registered professional licensed by the Arkansas State Board of Architects to use the title "architect."
6. **Corridor** - a passage way into which compartments or rooms open and which is enclosed by partitions and/or walls and a ceiling, or a floor/roof deck above.
7. **Engineer** - duly registered professional licensed by the Arkansas Board of Registration for Professional Engineers and Land Surveyors to use the title "engineer."
8. **New construction** - the assembly of a new free standing structure.
9. **Renovation** - construction performed within an existing facility.
10. **Room** - a separate, enclosed space, with doorway(s), for the one (1) named function.
11. **Toilet** - a room designed exclusively for a water closet and lavatory.

B. Plan Review. Plans for all new construction and/or alterations shall include site requirements, preliminary drawings, submission of plan review fee, final construction documents, letter of approval for construction documents, site observation and final site observation.

1. No new mechanical, electrical, plumbing, fire protection, or medical gas system shall be installed, nor any such existing system materially altered or extended,

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until complete drawings and specifications for installation, alteration, or extensions have been submitted to the Division for review and approval.

2. Site Requirements.
  - a. The site location shall be easily accessible to the community and to service vehicles such as fire protection apparatus.
  - b. The Abortion Facility shall have security measures for patients, personnel, and the public consistent with the conditions and risks inherent in the location of the facility.
  - c. Site utilities shall be reliable (water, natural gas, sewer, electricity and communication). The water supply shall have the capacity to provide normal usage plus fire-fighting requirements. The electricity shall be of stable voltage and frequency.
  - d. The site shall afford good drainage and shall not be subject to flooding.
  - e. Soil bearing capacity shall be sufficient to support the building and paved areas.
  - f. Paved access roads and walks shall be provided within the boundary of the property to public service and emergency entrances.
  - g. Paved parking spaces shall be provided to satisfy the needs of patients, employees, staff, and visitors. In the absence of a formal parking study, each facility shall provide not less than one (1) space for each day shift staff member and employee plus one (1) space for each patient bed/recliner. Parking spaces shall be provided for emergency and delivery vehicles.
3. Preliminary Drawings. Schematic drawings for the Abortion Facility shall be submitted to the Division. These drawings shall illustrate a basic understanding of the architectural, mechanical, electrical and plumbing systems. Schematic drawings shall include schematic plans, building sections, exterior elevations (all sides), preliminary finish schedule, and general notes. Code criteria shall be submitted that is specific to the proposed facility and exhibits knowledge of the building and fire code requirements including but not limited to construction type, fire protection ratings, means of egress and smoke compartmentalization. Drawings shall be at a scale to clearly represent the intent. A graphic and/or written scale and directional arrow shall be on each drawing.
4. Submission of Plan Review Fee. A plan review fee in the amount of one (1) percent of the total cost of construction or five hundred dollars (\$500.00), whichever is less, shall be paid for the review of drawings and specifications. The

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plan review fee check is to be made payable to the Division of Accounting, Arkansas Department of Health. A detailed estimate must accompany the plans unless the maximum fee of five-hundred dollars (\$500.00) is paid. The Division will coordinate review of plans for all Arkansas Department of Health offices.

5. Final Construction Documents.
  - a. Plans and specifications shall be prepared by an architect and/or engineer licensed by the State of Arkansas. The architect and engineer shall prepare and submit construction documents with the respective seals for each professional discipline. Architectural construction documents shall be prepared by an architect, and engineering (mechanical, electrical, civil and structural) construction documents shall be prepared by an (mechanical, electrical, civil and structural) engineer. Periodic observations of construction shall be provided and documented by each design professional to assure that the plans and specifications are followed by the contractor, and that “as build” prints are kept current. The interval for periodic observation shall be determined and approved by the Division prior to beginning construction.
  - b. Working drawings and specifications shall be prepared in a manner that clearly defines the scope of the work and is consistent with the professional standard of practice for architects and engineers. Working drawings and specifications shall be complete for contract purposes.
  - c. Final construction documents shall be reviewed and approved by the Division prior to the beginning of construction. The Division shall have a minimum of six (6) weeks to review final construction documents after which time an approval letter shall be issued. Plan review with other Health Department Divisions shall be coordinated by the Division.
6. Site Observation During Construction. The Abortion Facility shall be observed during construction and before occupancy.
  - a. The Division shall be notified when construction begins and a construction schedule shall be submitted to determine inspection dates.
  - b. Representatives from the Division shall have access to the construction premises and the construction project for purposes of making whatever inspections deemed necessary throughout the course of construction.
  - c. Any deviation from the approved construction documents shall not be permitted until a written construction addenda or change order is approved by the Division.
7. Final Site Observation.



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- a. Upon completion of construction and prior to occupancy approval by the Division, the owner shall be furnished one (1) complete set of contract documents, plans and specifications showing all construction, fixed equipment, and mechanical and electrical systems as installed or built. In addition, the owner shall be furnished a complete set of installation, operation, and maintenance manuals and parts lists for the installed equipment.
- b. No Abortion Facility shall occupy any new construction, addition, renovation and/or alteration until approval has been granted from all city, county, and other state regulatory agencies in addition to the Division.

### C. General Considerations.

1. The requirements set forth herein have been established as minimum requirements for new construction, addition(s), renovation(s) and alteration(s) in Abortion Facilities requiring licensure under these regulations.
2. Abortion Facilities undertaking new construction, an addition, renovation, and/or alteration shall minimize disruption of existing functions. Access, exits and fire protection shall be maintained for occupancy safety.
3. The building and equipment shall be maintained in a state of good repair at all times.
4. The premises shall be kept clean, neat, free of litter and rubbish.

### D. Codes and Standards.

1. Nothing stated herein shall relieve the owner from compliance with building, fire, subdivision and zoning codes, ordinances, and regulations of city, county and other state agencies.
2. Compliance with referenced codes and standards shall be that of the latest edition(s).
3. Accessibility requirements shall be those set forth by the Arkansas State Building Services, Minimum Standards and Criteria - Accessibility for the Physically Disabled Standards.
4. Electrical Systems. Electrical devices shall be installed in accordance with NFPA 70, National Electrical Code.
5. Mechanical Systems.

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- a. HVAC systems shall be installed in accordance with the Arkansas State Mechanical Code.
  - b. Air ventilation and filtering requirements shall be in accordance with ASHRAE Standard 62, Ventilation for Acceptable Indoor Air Quality and ASHRAE 52, Filter Efficiencies.
6. Plumbing and Gas Systems.
- a. Plumbing systems shall be installed in accordance with the Arkansas State Plumbing Code.
  - b. Gas systems shall be installed in accordance with the Arkansas State Gas Code.
7. New Abortion Facilities shall meet the criteria of NFPA 101, Life Safety Code, Chapter 26, New Business Occupancies. Existing buildings proposed for use as Abortion Facilities shall meet the criteria of NFPA 101, Life Safety Code, Chapter 27, Existing Business Occupancies. Both new Abortion Facilities and existing buildings proposed for use as Abortion Facilities shall meet the following additional requirements:
- a. Emergency lighting shall be connected to rechargeable back-up (ninety (90) minute minimum duration) batteries as a means of emergency illumination for procedure rooms, corridors, stairways, exit signs and at the exterior of each exit.
  - b. A protected premises fire alarm system as defined in NFPA 72, National Fire Alarm Code, Chapter 3 shall be required.
  - c. Fire extinguisher(s) shall be easily accessible and shall be provided, located, and inspected as defined in NFPA 10, Standard for Portable Fire Extinguishers.
  - d. At least two (2) separate exits that are remote from each other shall be provided on every story of Abortion Facility use.
  - e. The minimum clear door opening for patient use shall be two (2) feet eight (8) inches.
  - f. Gas fired equipment rooms shall be separated with one (1) hour fire resistance partitions.
  - g. No operable fireplace shall be permitted. Inoperable fireplace(s) shall be sealed at the upper and lower portions of the flue.

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- h. Cabinets or casework in patient use areas shall be furred to the ceiling above or provided with sloping tops to facilitate cleaning.
- i. A panic bar releasing device shall be provided for all required exit doors subject to patient traffic.
- j. Medical gas, air and vacuum systems, if provided, shall meet installation, testing, maintenance and certification criteria of NFPA 99, Standard for Health Care Facilities.

### E. Design Considerations

1. Each Abortion Facility design shall ensure patient acoustic and visual privacy during interview, examination, treatment and recovery.
2. The premises shall be kept free from insect and vermin infestation.
3. The building shall be well ventilated at all times with a comfortable temperature maintained.
4. Space and facilities shall be provided for the sanitary storage and disposal of waste by incineration, containment or removal, or by a combination of these techniques.
5. Waiting/Reception area(s) shall be provided with sufficient seating for the maximum number of people that may be waiting at any one (1) time. A reception and information counter or desk shall be provided.
6. A barrier free public toilet rooms shall be provided. This room may be conveniently located outside the Abortion Facility as part of shared tenant spaces in the same building.
7. Public telephone(s) shall be provided.
8. A housekeeping room with mop sink shall be provided.
9. Storage space shall be provided for both administrative and clinical needs.
10. A business office room shall be provided.
11. A medical records storage room shall be provided. This room shall protect records against undue destruction from dust, vermin, water, smoke and fire. It shall be constructed as a one (1) hour fire resistance rated enclosure and protected by a smoke detection system connected to the fire alarm. Storage for records shall be accessible and at least six (6) inches above the floor.

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12. A consultation room shall be provided.
  13. An examination room shall be provided. The examination room shall have a minimum floor area of eighty (80) square feet excluding fixed millwork, vestibule, toilet and closets. The room shall contain an examination table and chair, charting counter or desk, instrument table and shelves, hand-washing sink and equipment storage as needed. Room arrangement shall permit at least three (3) feet clearance at each side and at the foot of the examination table. Entry door swing and view angles shall maximize patient privacy. This room may be combined with the procedure room.
- F. Interior Finishes.
1. Interior finishes shall meet the flame spread and smoke development requirements of NFPA 101, Life Safety code.
  2. Finished floors, ceilings and walls shall be provided for all rooms and spaces except mechanical and electrical rooms.
  3. Procedure rooms and soiled work rooms shall have a monolithic finish floor and base, stain resistant for its intended use and integral with each other (i.e., sheet vinyl floor with continuous sheet vinyl base). Seams in the monolithic floor and base shall be chemically welded.
  4. Toilet rooms, clean work rooms, housekeeping rooms and examination rooms (when combined with the procedure room) shall not have a carpeted floor finish.
  5. Procedure rooms, soiled work rooms and clean work rooms shall have smooth, washable, moisture resistant, ceilings of gypsum board, plaster or mylar faced lay-in ceiling tiles.
  6. Wall finishes for all rooms shall be smooth, moisture resistant and washable.
- G. Storage of fetal remains. Each facility shall have refrigerated storage for holding fetal bodies for 48 (forty-eight) hours.
- H. General Abortion Facilities: additional requirements. In addition to the preceding requirements, General Abortion Facilities shall also meet the requirements below.
1. A procedure room shall be provided. The procedure room shall have a minimum floor area of one-hundred-twenty (120) square feet excluding fixed millwork, vestibule, toilet and closets. The minimum room dimension shall be ten (10) feet. The room shall contain a hand-wash sink with hands-free controls, soap dispenser and single service towel dispenser.

## Rules for Abortion Facilities 2021

2. One (1) or more recovery rooms shall be provided. A recovery room shall have a minimum of sixty (60) square feet per patient excluding fixed millwork, vestibule, toilet and closets. The room shall contain a bed or a washable, reclining chair. Multi-patient recovery rooms shall be provided with cubicle curtains for patient privacy.
  3. A clean work room shall be provided sufficient in size to process clean and sterilize supply materials and equipment. This room shall contain a hand-wash sink, work counter and autoclave adequate in size to sterilize the equipment in use.
  4. A soiled work room shall be provided. This room shall contain a hand-wash sink and work counter.
  5. At least one (1) barrier free, patient toilet room shall be provided for each recovery room.
- I. Signage: Text of Signs.
1. A sign shall be conspicuously posted in each waiting room, patient consultation room, and procedure room used by patients for whom abortions are performed, induced, prescribed or for whom the means for an abortion are provided.
  2. The signs shall display the following text:

“It is against the law for anyone, regardless of his or her relationship to you, to force you to have an abortion. You have the right to contact any local or state law enforcement or any social service agency to receive protection from any actual or threatened physical, emotional, or psychological abuse. It is against the law to perform, induce, prescribe for, or provide you with the means for an abortion without your voluntary consent.”

**SECTION 13. FORMS**

- 1. Form AS-4010 Informed Consent Checklist**
- 2. Form AS-4010A Fetal Pain Checklist**
- 3. Form AS-4011 Abortion Disclosure and Consent Form for Unemancipated Minors and Women under Legal Guardianship or Custodianship for Incompetency**

# Informed Consent Checklist

## NOTICE TO ALL PATIENTS

Arkansas law provides that abortions may be performed only with the voluntary and informed consent of the patient. In compliance with Act 1086 of 2015 and Act 1696 of 2005, this form is important to ensure that you have been provided all of the information you need to make a fully informed decision.

## Certification of Receipt of Abortion Information

I certify that I have received the printed materials entitled "Abortion – Making a Decision" and "Arkansas Directory of Services" and a copy of the DVD entitled "Abortion – Making a Decision".

I understand that Arkansas law requires that I am provided these materials at least 72 hours before I undergo an abortion. I also understand that if I am unable to read the materials, the materials must be read to me in a language I can understand. I certify that this requirement of the law has been met for me.

\_\_\_\_\_  
Signature of Patient

\_\_\_\_\_  
Date

\_\_\_\_\_  
Time

## Certification of Voluntary and Informed Consent for Abortion

On \_\_\_\_\_ (date) at \_\_\_\_\_ (time), I was informed orally and in person by \_\_\_\_\_ (name of physician who is to perform the abortion, or the referring physician) of the following:

- \_\_\_ The name of the physician who will perform the abortion
- \_\_\_ A description of the proposed abortion method
- \_\_\_ The immediate and long-term medical risks associated with the particular abortion procedure
- \_\_\_ Alternatives to the abortion
- \_\_\_ The probable gestational age of the unborn child at the time the abortion is to be performed
- \_\_\_ The probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed
- \_\_\_ The medical risks associated with carrying the unborn child to term
- \_\_\_ Any need for anti-Rh immune globulin therapy if I am Rh negative, the likely consequences of refusing such therapy and the cost of the therapy
- \_\_\_ Information on reversing the effects of abortion-inducing drugs



On \_\_\_\_\_ (date) at \_\_\_\_\_ (time), I was informed orally and in person by \_\_\_\_\_  
(name of physician who is to perform the abortion, the referring physician or a qualified person) of the following:

- \_\_\_\_\_ Medical assistance benefits may be available for prenatal care, childbirth, and neonatal care and that more detailed information on the availability of such assistance is contained in the printed materials and informational DVD provided to me
- \_\_\_\_\_ The printed informational material and informational DVD describe the unborn child and list agencies that offer alternatives to abortion
- \_\_\_\_\_ The father of the unborn child is liable to assist in support of the child, even in instances in which the father has offered to pay for the abortion
- \_\_\_\_\_ I am free to withhold or withdraw my consent to the abortion at any time without affecting my right to future care or treatment and without the loss of any state or federally funded benefits to which I might be entitled
- \_\_\_\_\_ The information contained in the printed materials and the DVD, including the Directory of Services, is available on the Arkansas Department of Health website ([www.healthy.arkansas.gov](http://www.healthy.arkansas.gov))

I certify and affirm that I have received the above information at least 72 hours before I undergo an abortion, the information was given to me in a private room and I was given the opportunity to ask questions. I do hereby voluntarily give my fully informed consent to the abortion.

\_\_\_\_\_  
Signature of Patient

\_\_\_\_\_  
Date

\_\_\_\_\_  
Time

\_\_\_\_\_  
witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Time





**Fetal Pain Checklist**  
**Twenty (20) Weeks or More Gestational Age**  
Act 1696 of 2005 and Act 1086 of 2015

On \_\_\_\_\_ (date) at \_\_\_\_\_, I was informed orally and in person by \_\_\_\_\_  
(name of physician who is performing the abortion or the physician's agent) of the following:

- \_\_\_\_\_ By 20 weeks gestational age, the unborn child possesses all anatomical links in its nervous system that are necessary in order to feel pain
- \_\_\_\_\_ An unborn child of 20 weeks gestation or more is fully capable of experiencing pain
- \_\_\_\_\_ A description of the actual steps of the procedures to be performed or induced and at which steps in the procedure the unborn child is capable of feeling pain
- \_\_\_\_\_ Maternal anesthesia typically offers little pain prevention for the unborn child
- \_\_\_\_\_ An anesthetic, analgesic or both are available so that pain to the fetus is minimized or alleviated and I have been informed of the medical risks associated with the particular anesthetic or analgesic that is available
- \_\_\_\_\_ I have a right to view the printed materials related to unborn child pain awareness
- \_\_\_\_\_ I understand that the information related to unborn child pain awareness is contained in the provided printed materials and on the Arkansas Department of Health website ([www.healthy.arkansas.gov](http://www.healthy.arkansas.gov)).
- \_\_\_\_\_ I understand the information contained in the printed materials was provided by the State of Arkansas

I certify and affirm that I have received the above information at least 72 hours before I undergo an abortion and that I do hereby voluntarily give my fully informed consent to the abortion.

\_\_\_\_\_  
Signature of Patient

\_\_\_\_\_  
Date

\_\_\_\_\_  
Time

\_\_\_\_\_  
witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Time



**Abortion Disclosure and Consent Form for Unemancipated Minors and Women under Legal Guardianship or Custodianship for Incompetency**

Source: Act 934 of 2015, Parental Involvement Enhancement Act, Ark. Code Ann. §20-16-810(a); 20-16-804

**1. Name and birthdate of minor or incompetent woman**

20-16-805(b)(1)

\_\_\_\_\_  
Name

\_\_\_\_\_  
date of birth

**2. Name of parent of minor or legal guardian or custodian of incompetent woman:** 20-16-805(b)(2); 20-16-804

\_\_\_\_\_  
Name

**3. Pregnant woman’s list of rights** 20-16-810(b)(3)&(c)(1-2); 20-16-808,809; 20-16-1701

You have the right to:

- a. know the name of the doctor who will perform your abortion;
- b. know medical risks associated with the procedure;
- c. know medical risks of carrying the fetus to term;
- d. know the probable age of your fetus;
- e. know a spouse, boyfriend, parent, friend or other person cannot force you to have an abortion;
- f. know medical assistance benefits may be available for prenatal care and childbirth;
- g. know the father is liable to assist in supporting your child, even when the father has offered to pay for an abortion;
- h. know that printed and/or electronic materials describing the fetus are available for you to view, along with a list of agencies that offer alternatives to abortion; the printed materials can be mailed to you or you can view them on the internet; and
- i. petition a circuit court in the county of your residence for a waiver of the consent requirement and you may participate in the proceedings on your own behalf.

**4. Describe the surgical procedures or medical procedures or both, that are planned to be performed on the pregnant woman (COMPLETED BY PROVIDER):** 20-16-810(c)(3)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I have read and I understand the information included on this page:

\_\_\_\_\_  
Initials of parent or legal guardian



**5. List of risks and hazards** 20-16-810(c)(4)

- a. infection;
- b. blood clots;
- c. hemorrhage;
- d. allergic reactions;
- e. a hole in the uterus or other damage to the uterus;
- f. sterility;
- g. injury to the bowel or bladder;
- h. possible hysterectomy as a result of complication or injury during the procedure;
- i. failure to remove all products of conception;
- j. possible continuation of pregnancy;
- k. cramping of the uterus or pelvic pain;
- l. cervical laceration;
- m. incompetent cervix;
- n. emergency treatment for any complications; or
- o. death.
- p. other \_\_\_\_\_

\_\_\_\_\_  
Initials of pregnant woman

**6. Additional information provided by physician to pregnant woman under state law (COMPLETED BY PROVIDER):** 20-16-810(c)(5)

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**7. Pregnant woman's consent statement** 20-16-810(b)(4); 20-16-810(c)(6)

- a. I understand that the doctor is going to perform an abortion on me that will end my pregnancy and will result in the death of my unborn child. Initial \_\_\_\_\_  
20-16-810(c)(6)(A)
- b. I am not being forced to have an abortion. I understand that I may choose not to have the abortion, and that I may withdraw my consent prior to the abortion. Initial \_\_\_\_\_  
20-16-810(c)(6)(B)
- c. I give my permission for the procedure. 20-16-810(c)(6)(C) Initial \_\_\_\_\_

I have read and I understand the information included on this page:

\_\_\_\_\_  
Initials of parent or legal guardian



- d. I understand that there are risks and hazards that could affect me if I have the planned surgical or medical procedures. 20-16-810(c)(6)(D) Initial \_\_\_\_\_
- e. I have been given the opportunity to ask questions about my condition, alternative forms of treatment, risk of non-treatment, the procedures to be used, and the risks and hazards involved. 20-16-810(c)(6)(E) Initial \_\_\_\_\_
- f. I have been given information required by statute; 20-16-810(c)(6)(F) Initial \_\_\_\_\_
- g. I have sufficient information to give informed consent. 20-16-810(c)(6)(F) Initial \_\_\_\_\_

**8. Physician Declaration**

Ark. Code Ann. 20-16-810(b)(5); 20-16-810(c)(7)

- a. Either I or my assistant has, as required, explained the procedure and the contents of this form to the pregnant woman and to her parent or legal guardian and have answered all questions. 20-16-810(c)(7)(A)
- b. According to my best information and belief, a reasonable person under similar circumstances would rely on the information presented by both the pregnant woman and her parent or legal guardian as sufficient evidence of identity and relationship. 20-16-806(c)
- c. To the best of my knowledge, the patient and her parent or legal guardian have been adequately informed and have consented to the procedure. 20-16-810(c)(7)(B)

\_\_\_\_\_  
Signature of Physician 20-16-810(c)(7)

**9. Parental Consent Statement**

Ark. Code Ann. 20-16-805 (b)(3); 20-16-810(c)(8)

- a. I am the parent or legal guardian of the pregnant minor or pregnant incompetent woman. 20-16-805(b)(3)
- b. I am aware that the pregnant minor or pregnant incompetent woman desires an abortion and I consent to the abortion. 20-16-805(b)(3)

I have read and I understand the information included on this page:

\_\_\_\_\_  
Initials of parent or legal guardian



- c. I understand that the physician who signed the Physician Declaration is going to perform an abortion on the pregnant minor or pregnant incompetent woman, which will end her pregnancy and result in the death of her unborn child.  
20-16-810(c)(8)(A)
- d. I have had the opportunity to read the Physician Declaration or have had it read to me and have initialed each page. 20-16-810(c)(8)(B)
- e. I have had the opportunity to ask questions of the physician or the physician's assistant about the information in the Physician Declaration and the surgical and medical procedures to be performed on the pregnant minor or pregnant incompetent woman. 20-16-810(c)(8)(C)
- f. I believe that I have sufficient information to give informed consent. 20-16-810(c)(8)(D)

\_\_\_\_\_  
Signature Parent or Legal guardian

\_\_\_\_\_  
Date 20-16-810(c)(8)(E)

## 10. Notarized signatures

20-16-810(b)(2)

\_\_\_\_\_  
Parent or Legal Guardian 20-16-803(3)(A); 20-16-803(3)(B); 20-16-810(b)(2)

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Minor 20-16-803(3)(A)

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public

I have read and I understand the information included on this page:

\_\_\_\_\_  
Initials of parent or legal guardian



## **Rules for Abortion Facilities 2021**

### **SECTION 14. SEVERABILITY.**

If any provision of these Rules, or the application thereof to any person or circumstances is held invalid, such provisions or applications of these Rules that can give effect without the invalid provisions or applications will be enforced, and to this end the provisions hereto are declared to be severable.

**Rules for Abortion Facilities 2021**

CERTIFICATION

This will certify that the foregoing revisions to the Rules for Abortion Facilities in Arkansas 2021 were adopted by the State Board of Health of Arkansas at a regular session of said Board held in Little Rock, Arkansas, on the 28th day of January 2021.

\_\_\_\_\_  
José R. Romero, MD, FAAP, FIDSA, FPIDS, FAAAS  
Secretary of Health  
Arkansas Board of Health

\_\_\_\_\_  
Date

1 State of Arkansas  
2 92nd General Assembly  
3 Regular Session, 2019  
4

# A Bill

SENATE BILL 341

5 By: Senator Irvin  
6 By: Representative Cloud  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND THE WOMAN'S RIGHT-TO-KNOW ACT; TO  
10 PROVIDE INFORMATION ON REVERSING THE EFFECTS OF  
11 ABORTION-INDUCING DRUGS; AND FOR OTHER PURPOSES.  
12  
13

## Subtitle

15 TO AMEND THE WOMAN'S RIGHT-TO-KNOW ACT;  
16 AND TO PROVIDE INFORMATION ON REVERSING  
17 THE EFFECTS OF ABORTION-INDUCING DRUGS.  
18  
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
21

22 SECTION 1. Arkansas Code § 20-16-1703(b), concerning informed consent  
23 requirements under the Woman's Right-to-Know Act, is amended to add an  
24 additional subdivision to read as follows:

25 (9)(A) After dispensing the first dose of abortion-inducing  
26 drugs to a woman, the physician who is to perform the abortion, the referring  
27 physician, or a qualified person shall provide a written notice to the  
28 patient that states:

29 "Notice to Patients Having Medication Abortions That Use Mifepristone:  
30 Mifepristone, also known as RU-486 or Mifeprex, alone is not always effective  
31 in ending a pregnancy. It may be possible to reverse its intended effect if  
32 the second pill or tablet has not been taken or administered. If you change  
33 your mind and wish to try to continue the pregnancy, you can locate immediate  
34 help by searching the term "abortion pill reversal" on the internet."

35 (B) The notice shall also include directions to access the  
36 department website that is required to be maintained under § 20-16-1704 and





1 other appropriate telephone and internet resources.

2  
3 SECTION 2. Arkansas Code § 20-16-1704(b)(6), concerning publication of  
4 materials under the Woman’s Right-to-Know Act, is amended to read as follows:

5 (6)(A) Materials that include information on the potential  
6 ability of a qualified person to reverse the effects of abortion-inducing  
7 drugs, such as mifepristone, Mifeprex, and misoprostol, including without  
8 limitation information directing a woman to obtain further information at  
9 appropriate websites and by contacting appropriate agencies for assistance in  
10 locating a healthcare professional to aid in the reversal of an abortion.

11 (B) The materials shall include a notice to the patient  
12 that states:

13 "Notice to Patients Having Medication Abortions That Use Mifepristone:  
14 Mifepristone, also known as RU-486 or Mifeprex, alone is not always effective  
15 in ending a pregnancy. It may be possible to reverse its intended effect if  
16 the second pill or tablet has not been taken or administered. If you change  
17 your mind and wish to try to continue the pregnancy, you can locate immediate  
18 help by searching the term "abortion pill reversal" on the internet."

19 (C) The notice shall also include directions to access the  
20 department website and other appropriate telephone and internet resources;

21 and

22  
23 SECTION 3. DO NOT CODIFY. SEVERABILITY CLAUSE. If any provision of  
24 this act or the application of this act to any person or circumstance is held  
25 invalid, the invalidity shall not affect other provisions or applications of  
26 this act which can be given effect without the invalid provision or  
27 application, and to this end, the provisions of this act are declared  
28 severable.

29  
30  
31 **APPROVED: 3/20/19**

1 State of Arkansas As Engrossed: S2/19/19 S2/28/19

2 92nd General Assembly

# A Bill

3 Regular Session, 2019

SENATE BILL 3

4

5 By: Senators T. Garner, B. Ballinger, Bledsoe, A. Clark, J. Cooper, B. Davis, L. Eads, J. English, Flipppo,  
6 K. Hammer, Hester, Hill, Irvin, B. Johnson, M. Johnson, Rapert, Rice, G. Stubblefield, J. Sturch, D.

7 Wallace

8 By: Representatives Barker, Beck, Bentley, Breaux, Brown, Capp, Christiansen, Cloud, C. Cooper,  
9 Crawford, Della Rosa, Evans, M. Gray, Hawks, Kelly, Maddox, J. Mayberry, Penzo, Petty, Rye, B. Smith,  
10 S. Smith, Speaks, Vaught

11

12

## For An Act To Be Entitled

13

AN ACT TO REQUIRE ADDITIONAL REPORTING REQUIREMENTS  
14 BY CERTAIN PHYSICIANS AND HEALTHCARE FACILITIES FOR  
15 ABORTION COMPLICATIONS; AND FOR OTHER PURPOSES.

16

17

18

## Subtitle

19

TO REQUIRE ADDITIONAL REPORTING  
20 REQUIREMENTS BY CERTAIN PHYSICIANS AND  
21 HEALTHCARE FACILITIES FOR ABORTION  
22 COMPLICATIONS.

23

24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

26

27 SECTION 1. Arkansas Code Title 20, Chapter 16, Subchapter 6, is  
28 amended to add an additional section to read as follows:

29 20-16-605. Reporting requirements for abortion complications.

30 (a) As used in this section:

31 (1)(A) "Abortion complication" means any harmful event or  
32 adverse outcome with respect to a patient related to an abortion that is  
33 performed on the patient and that is diagnosed or treated by a physician or  
34 at a healthcare facility.

35

(B) "Abortion complication" includes without limitation:

36

(i) Shock;



1                   (ii) Uterine perforation;  
2                   (iii) Cervical laceration;  
3                   (iv) Hemorrhage;  
4                   (v) Aspiration or allergic response;  
5                   (vi) Infection;  
6                   (vii) Sepsis;  
7                   (viii) Death;  
8                   (ix) Incomplete abortion;  
9                   (x) Damage to the uterus; and  
10                   (xi) An infant born alive after an abortion  
11 procedure; and

12                   (2) "Healthcare facility" means a hospital, abortion facility,  
13 or healthcare facility that provides emergency medical care.

14                   (b) This section applies only to:

15                   (1) A physician who:

16                   (A) Performs at an abortion facility an abortion that  
17 results in an abortion complication diagnosed or treated by the physician; or

18                   (B) Diagnoses or treats at an abortion facility an  
19 abortion complication that is the result of an abortion performed by another  
20 physician at the abortion facility; and

21                   (2) A healthcare facility.

22                   (c)(1)(A) A physician described under subdivision (b)(1) of this  
23 section shall electronically submit to the Department of Health a report on  
24 each abortion complication diagnosed or treated by the physician not later  
25 than the end of the third business day after the date on which the abortion  
26 complication was diagnosed or treated.

27                   (B) A healthcare facility described under subdivision  
28 (b)(2) of this section shall electronically submit to the department a report  
29 on each abortion complication diagnosed or treated by the healthcare facility  
30 not later than the thirtieth day after the date on which the abortion  
31 complication was diagnosed or treated.

32                   (2) The reports described in subdivision (c)(1) of this section  
33 shall:

34                   (A) Be submitted in the form and manner prescribed by rule  
35 of the department;

36                   (B) Identify the name of the physician submitting the

1 report or the name and type of healthcare facility submitting the report;

2 (C) Not identify by any means the physician performing the  
3 abortion or the patient on whom the abortion was performed;

4 (D) Include the most specific, accurate, and complete  
5 reporting for the highest level of specificity; and

6 (E) Include the following information, if known, for each  
7 abortion complication:

8 (i) The date of the abortion that caused or may have  
9 caused the abortion complication;

10 (ii) The type of abortion that caused or may have  
11 caused the abortion complication;

12 (iii) The gestational age of the fetus at the time  
13 that the abortion was performed;

14 (iv) The name and type of healthcare facility in  
15 which the abortion was performed;

16 (v) The date the abortion complication was diagnosed  
17 or treated;

18 (vi) The name and type of any healthcare facility  
19 other than the reporting healthcare facility in which the abortion  
20 complication was diagnosed or treated;

21 (vii) A description of the abortion complication;

22 (viii) The patient's year of birth, race, marital  
23 status, state of residence, and county of residence;

24 (ix) The date of the first day of the patient's last  
25 menstrual period that occurred before the date of the abortion that caused or  
26 may have caused the abortion complication, if known;

27 (x) The number of previous live births of the  
28 patient; and

29 (xi) The number of previous induced abortions of the  
30 patient.

31 (3) An event associated with a medical procedure performed after  
32 a natural miscarriage, spontaneous abortion, or fetal death is not subject to  
33 reporting under this section.

34 (d)(1) The department shall develop and publish on the website of the  
35 department an annual report that aggregates on a statewide basis each  
36 abortion complication reported under this section.

1           (2) The annual report shall not include any duplicative data.

2           (e)(1) The information and records held by the department under this  
3 section are confidential and shall not be disclosed under the Freedom of  
4 Information Act of 1967, § 25-19-101 et seq.

5           (2) The information and records shall be released only in the  
6 following circumstances:

7                   (A) For statistical purposes, but only if a person,  
8 patient, or healthcare facility is not identified;

9                   (B) With the consent of each person, patient, and  
10 healthcare facility identified in the information released;

11                   (C) For the purpose of enforcing this section, to medical  
12 personnel, appropriate state agencies, county courts, or district courts; or

13                   (D) For the purpose of enforcing state licensing laws, to  
14 appropriate state licensing boards.

15           (f)(1) A physician or healthcare facility that violates this section  
16 is subject to a civil penalty of five hundred dollars (\$500) for each  
17 violation.

18           (2) The Attorney General, at the request of the department or  
19 appropriate licensing board, may file an action to recover a civil penalty  
20 assessed under subdivision (f)(1) of this section and may recover attorney's  
21 fees and costs incurred in bringing the civil action.

22           (3) Each day of a continuing violation shall constitute a  
23 separate violation.

24           (4) A third separate violation of this section shall constitute  
25 grounds for:

26                   (A) Revocation or suspension of the physician's or the  
27 healthcare facility's license, permit, registration, certificate, or other  
28 authority; or

29                   (B) Other disciplinary action against the physician or  
30 healthcare facility by the appropriate licensing board.

31           (5) The department shall notify the Arkansas State Medical Board  
32 of any violations of this section by a physician.

33  
34  
35  
36

*/s/T. Garner*

**APPROVED: 4/1/19**

1 State of Arkansas As Engrossed: S3/14/19 H3/27/19

2 92nd General Assembly

# A Bill

3 Regular Session, 2019

SENATE BILL 278

4

5 By: Senators G. Stubblefield, B. Ballinger, Caldwell, L. Eads, J. English, Flipppo, T. Garner, Hickey, Rice

6 By: Representatives Hawks, Bentley, Brown, Cloud, Coleman, C. Cooper, M. Davis, Evans, Gates,

7 Payton, Penzo, Rye, B. Smith, Speaks, Sullivan

8

9

## For An Act To Be Entitled

10 AN ACT TO AMEND LAWS CONCERNING ABORTION FACILITIES  
11 AND ABORTION REPORTING; TO AMEND THE BORN-ALIVE  
12 INFANT PROTECTION LAWS; TO REQUIRE AN ADDITIONAL  
13 ACKNOWLEDGMENT UNDER THE WOMAN'S RIGHT-TO-KNOW ACT;  
14 TO INCREASE PENALTIES AND CLARIFY PENALTIES RELATING  
15 TO ABORTION; AND FOR OTHER PURPOSES.

16

17

18

## Subtitle

19 TO AMEND LAWS CONCERNING ABORTION  
20 FACILITIES AND ABORTION REPORTING; TO  
21 AMEND THE BORN-ALIVE INFANT PROTECTION  
22 LAWS; AND TO REQUIRE AN ADDITIONAL  
23 ACKNOWLEDGMENT UNDER THE WOMAN'S RIGHT-  
24 TO-KNOW ACT.

25

26

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

28

29 SECTION 1. Arkansas Code § 20-9-302(b)(1), concerning the requirements  
30 for abortion facilities, is amended to read as follows:

31 (1) Adopt appropriate rules, regarding without limitation the  
32 facilities, equipment, procedures, techniques, medical records, informed  
33 consent signatures, parental consent signatures, and conditions of ~~clinics,~~  
34 ~~health centers, and other facilities~~ a clinic, health center, or other  
35 facility subject to the provisions of this section to assure at a minimum  
36 that:



1 (A) The facilities, equipment, procedures, techniques, and  
2 conditions of the clinic, health center, or other facility are aseptic and do  
3 not constitute a health hazard; ~~and~~

4 (B) The medical records, informed consent signatures, and  
5 parental consent signatures meet statutory requirements;

6 (C) The clinic, health center, or other facility provides  
7 to the patient on a twenty-four-hour basis telephone consultation with a  
8 registered nurse or physician associated with the clinic, health center, or  
9 other facility;

10 (D) The clinic, health center, or other facility has a  
11 written procedure for emergency transfer of a patient to an acute care  
12 facility, including a medical record form that contains information required  
13 for an emergency transfer to an acute care facility;

14 (E) The clinic, health center, or other facility is within  
15 thirty (30) miles of a hospital that provides gynecological or surgical  
16 services;

17 (F) The clinic, health center, or other facility has  
18 drugs, oxygen, intravenous fluids, and other emergency equipment on-site and  
19 readily available to stabilize a patient if necessary; and

20 (G) All staff at the clinic, health center, or other  
21 facility have documented current competency in cardiopulmonary resuscitation;  
22

23 SECTION 2. Arkansas Code § 20-16-604(e), concerning born-alive infant  
24 protection, is amended to read as follows:

25 (e)(1) A physician performing an abortion shall take all medically  
26 appropriate and reasonable steps to preserve the life and health of an infant  
27 who is born alive.

28 (2) If an abortion performed in a hospital results in a live  
29 birth, the attending physician shall:

30 (A) Provide immediate medical care to the infant;

31 (B) Inform the mother of the live birth; ~~and~~

32 (C) Request transfer of the infant to an on-duty resident  
33 or emergency care physician who shall provide medically appropriate and  
34 reasonable medical care and treatment to the infant; and

35 (D) Report the abortion resulting in a live birth to the  
36 Department of Health.

1 (3) If an abortion performed in a healthcare facility other than  
2 a hospital results in a live birth, the attending physician shall:

3 (A) Provide immediate medical care to the infant; ~~and~~

4 (B) Call 911 for an emergency transfer of the infant to  
5 the hospital for medically appropriate and reasonable care and treatment for  
6 the infant; and

7 (C) Report the abortion resulting in a live birth to the  
8 department.

9 (4) The department shall report and publish the number of  
10 abortions resulting in a live birth annually.

11  
12 SECTION 3. Arkansas Code § 20-16-604(j), concerning born-alive infant  
13 protection, is amended to read as follows:

14 (j) Failure to comply with this section shall provide a basis for:

15 (1) A civil action for compensatory and punitive damages which  
16 may include a medical malpractice action under § 16-114-201 et seq.;

17 (2) Professional disciplinary action by the appropriate  
18 healthcare licensing board for the suspension or revocation of a license for  
19 a healthcare professional for at least one (1) year; ~~and~~

20 (3) Recovery for the parent of the infant or the parent or legal  
21 guardian of the pregnant woman, if the pregnant woman is a minor, for the  
22 wrongful death of the infant under § 16-62-102; and

23 (4) Injunction from future acts prohibited by this section.

24  
25 SECTION 4. Arkansas Code § 20-16-604, concerning born-alive infant  
26 protection, is amended to add an additional subsection to read as follows:

27 (1) A physician or other person who purposefully or recklessly  
28 violates this section is guilty of a Class A misdemeanor.

29  
30 SECTION 5. Arkansas Code § 20-16-811 is amended to read as follows:  
31 20-16-811. Penalty.

32 (a) The performance of an abortion in violation of this subchapter or  
33 failure to report under § 20-16-814 shall be a Class A misdemeanor and shall  
34 be grounds for a civil action by a person whose consent is required.

35 (b) This subchapter does not allow the charging or conviction of a  
36 woman with any criminal offense in the death of her own unborn child in



1 utero.

2 (c) Failure to comply with this subchapter shall provide a basis for:

3 (1) A civil action for compensatory and punitive damages which  
4 may include a medical malpractice action under § 16-114-201 et seq.;

5 (2) Professional disciplinary action by the appropriate  
6 healthcare licensing board for the suspension or revocation of a license for  
7 a healthcare professional for at least one (1) year;

8 (3) Recovery for the parent of the infant or the parent or legal  
9 guardian of the pregnant woman, if the pregnant woman is a minor, for the  
10 wrongful death of the infant under § 16-62-102; and

11 (4) Injunction from future acts prohibited by this section.

12

13 SECTION 6. Arkansas Code § 20-16-1109 is amended to read as follows:

14 20-16-1109. Penalties.

15 (a) A person who knowingly or recklessly performs or attempts to  
16 perform a termination of a pregnancy in violation of this subchapter or  
17 failure to report under § 20-16-1108 shall be subject to disciplinary action  
18 by the Arkansas State Medical Board and is guilty upon conviction of a Class  
19 A misdemeanor.

20 (b) ~~No~~ A penalty ~~may be~~ shall not be assessed against the woman upon  
21 whom the abortion is performed or attempted to be performed.

22 (c) ~~No~~ A penalty or civil liability ~~may~~ shall not be assessed for  
23 failure to comply with any provision of this subchapter unless the Department  
24 of Health has made the printed materials available at the time that the  
25 physician or the physician's agent is required to inform the woman of her  
26 right to review them.

27

28 SECTION 7. Arkansas Code § 20-16-1703(b)(1) and (2), concerning the  
29 informed consent requirement under the Woman's Right-to-Know Act, are amended  
30 to read as follows:

31 (1) At least ~~forty-eight (48)~~ seventy-two (72) hours before the  
32 abortion, the physician who is to perform the abortion or the referring  
33 physician has informed the woman, orally and in person, of the following:

34 (A) The name of the physician who will perform the  
35 abortion;

36 (B) Medically accurate information that a reasonable

1 patient would consider material to the decision concerning whether or not to  
2 undergo the abortion, including:

3 (i) A description of the proposed abortion method;  
4 (ii) The immediate and long-term medical risks  
5 associated with the proposed abortion method, including without limitation  
6 the risks of:

- 7 (a) Cervical or uterine perforation;  
8 (b) Danger to subsequent pregnancies;  
9 (c) Hemorrhage; and  
10 (d) Infection; and

11 (iii) Alternatives to the abortion;  
12 (C) The probable gestational age of the unborn child at  
13 the time the abortion is to be performed;

14 (D) The probable anatomical and physiological  
15 characteristics of the unborn child at the time the abortion is to be  
16 performed;

17 (E) The medical risks associated with carrying the unborn  
18 child to term;

19 (F) Any need for anti-Rh immune globulin therapy if the  
20 woman is Rh negative, the likely consequences of refusing such therapy, and  
21 the cost of the therapy; and

22 (G) Information on reversing the effects of abortion-  
23 inducing drugs;

24 (2) At least ~~forty-eight (48)~~ seventy-two (72) hours before the  
25 abortion, the physician who is to perform the abortion, the referring  
26 physician, or a qualified person informs the woman, orally and in person,  
27 that:

28 (A) Medical assistance benefits may be available for  
29 prenatal care, childbirth, and neonatal care and that more detailed  
30 information on the availability of such assistance is contained in the  
31 printed materials and informational DVD given to her under § 20-16-1704;

32 (B) The printed materials and informational DVD under §  
33 20-16-1704 describe the unborn child and list agencies that offer  
34 alternatives to abortion;

35 (C)(i) The father of the unborn child is liable to assist  
36 in the support of the child, even in instances in which he has offered to pay

1 for the abortion.

2 (ii) In a case of rape or incest, the information  
3 required under subdivision (b)(2)(C)(i) of this section may be omitted;

4 (D) The woman is free to withhold or withdraw her consent  
5 to the abortion at any time without affecting her right to future care or  
6 treatment and without the loss of any state or federally funded benefits to  
7 which she otherwise might be entitled; and

8 (E) The information contained in the printed materials and  
9 informational DVD given to her under § 20-16-1704 is also available on a  
10 state website;

11

12 SECTION 8. Arkansas Code § 20-16-1703(b)(4) and (5), concerning the  
13 informed consent requirement under the Woman's Right-to-Know Act, are amended  
14 to read as follows:

15 (4)(A) At least ~~forty-eight (48)~~ seventy-two (72) hours before  
16 the abortion, the woman is given a copy of the printed materials and  
17 permitted to view and given a copy of the informational DVD under § 20-16-  
18 1704.

19 (B) If the woman is unable to read the materials, the  
20 materials shall be read to her in a language she can understand.

21 (C) If the woman asks questions concerning any of the  
22 information or materials under this subdivision (b)(4), the person who  
23 provides or reads the information or materials shall answer her questions in  
24 a language she can understand;

25 (5)(A) At least ~~forty-eight (48)~~ seventy-two (72) hours before  
26 an abortion is performed or induced on a woman whose pregnancy has progressed  
27 to twenty (20) weeks gestation or more, the physician performing the abortion  
28 on the pregnant woman, the referring physician, or a qualified person  
29 assisting the physician, orally and in person, offers information on fetal  
30 pain to the patient.

31 (B) The information required under subdivision (b)(5)(A)  
32 of this section and counseling related to that information shall include  
33 without limitation the following:

34 (i) That by twenty (20) weeks gestational age, the  
35 unborn child possesses all anatomical links in its nervous system, including  
36 spinal cord, nerve tracts, thalamus, and cortex, that are necessary in order

1 to feel pain;

2 (ii) That an unborn child at twenty (20) weeks  
3 gestation or more is fully capable of experiencing pain;

4 (iii) A description of the actual steps in the  
5 abortion procedure to be performed or induced and at which steps in the  
6 abortion procedure the unborn child is capable of feeling pain;

7 (iv) That maternal anesthesia typically offers  
8 little pain prevention for the unborn child; and

9 (v) That an anesthetic or analgesic, or both, are  
10 available so that pain to the fetus is minimized or alleviated;

11

12 SECTION 9. Arkansas Code § 20-16-1703(b)(8), concerning the informed  
13 consent requirement under the Woman's Right-to-Know Act, is amended to read  
14 as follows:

15 (8) At least ~~forty-eight (48)~~ seventy-two (72) hours before an  
16 abortion that is being performed or induced utilizing abortion-inducing  
17 drugs, the physician who is to perform the abortion, the referring physician,  
18 or a qualified person informs the pregnant woman, orally and in person, that:

19 (A) It may be possible to reverse the effects of the  
20 abortion if the pregnant woman changes her mind, but that time is of the  
21 essence; and

22 (B) Information on reversing the effects of abortion-  
23 inducing drugs is available in materials prepared by the department.

24

25 SECTION 10. Arkansas Code § 20-16-1703(b), concerning the informed  
26 consent requirement under the Woman's Right-to-Know Act, is amended to add an  
27 additional subdivision to read as follows:

28 (9) Except in the case of a medical emergency, at least seventy-  
29 two (72) hours before the abortion, the pregnant woman signs a form that  
30 includes without limitation the following information:

31 (A) A description of the pregnant woman's rights,  
32 including the right to informed consent as granted by this subchapter;

33 (B) A detailed description of the surgical procedures or  
34 medical procedures, or both, that are planned to be performed on the pregnant  
35 woman;

36 (C) A detailed list of the risks and hazards related to

1 the surgical or medical procedures that are planned to be for the pregnant  
2 woman, including without limitation the following risks and hazards that may  
3 occur:

- 4 (i) Infection;
- 5 (ii) Blood clots;
- 6 (iii) Hemorrhage;
- 7 (iv) Allergic reactions;
- 8 (v) Uterine perforation, also known as a hole in the  
9 uterus, or other damage to the uterus;
- 10 (vi) Sterility;
- 11 (vii) Injury to the bowel or bladder;
- 12 (viii) Possible hysterectomy as a result of  
13 complication or injury during the procedure;
- 14 (ix) Failure to remove all products of conception;
- 15 (x) Possible continuation of pregnancy;
- 16 (xi) Cramping of the uterus or pelvic pain;
- 17 (xii) Cervical laceration;
- 18 (xiii) Incompetent cervix;
- 19 (xiv) Emergency treatment for any complications; and
- 20 (xv) Death;

21 (D) A description of additional information that shall be  
22 provided by the physician to the pregnant woman under state law; and

23 (E) Any additional information that may be provided to a  
24 woman under the laws of this state in order for a physician to obtain her  
25 informed consent before performing an abortion.

26  
27 SECTION 11. Arkansas Code § 20-16-1703(d), concerning the informed  
28 consent requirement under the Woman's Right-to-Know Act, is amended to read  
29 as follows:

30 (d) A physician, facility, employee or volunteer of a facility, or any  
31 other person or entity shall not require or obtain payment for a service  
32 provided in relation to abortion to a patient who has inquired about an  
33 abortion or scheduled an abortion until the expiration of the ~~forty-eight-~~  
34 ~~hour~~ seventy-two-hour reflection period required in this section.

35  
36 SECTION 12. Arkansas Code § 20-16-1706 is amended to read as follows:

1 20-16-1706. Medical emergencies.

2 When a medical emergency compels the performance of an abortion, the  
3 physician shall inform the woman before the abortion, if possible, of the  
4 medical indications supporting the physician's judgment that an immediate  
5 abortion is necessary to avert her death or that a ~~forty-eight-hour~~ seventy-  
6 two-hour delay will cause substantial and irreversible impairment of a major  
7 *bodily function.*

8  
9 *SECTION 13. DO NOT CODIFY. Savings clause.*

10 *(a) If a court order holds that any amendment to the Arkansas Code*  
11 *made by this act is invalid or unenforceable, then the relevant portion of*  
12 *the Arkansas Code in effect prior to the enactment of this act shall remain*  
13 *in full force and effect from and after the effective date of this act,*  
14 *notwithstanding the amendment made by this act.*

15 *(b) If a court order holding that an amendment to the Arkansas Code*  
16 *made by this act or a provision of this act is invalid or unenforceable*  
17 *expires or is reversed, vacated, or set aside, then the provision of the*  
18 *Arkansas Code as amended by this act or any provision of this act shall be*  
19 *effective immediately upon the expiration, reversal, vacatur, or setting*  
20 *aside of the court order.*

21  
22  
23 /s/G. Stubblefield

24  
25  
26 **APPROVED: 4/9/19**

1 State of Arkansas  
2 92nd General Assembly  
3 Regular Session, 2019  
4

As Engrossed: H2/20/19

# A Bill

HOUSE BILL 1453

5 By: Representatives Penzo, Lundstrum, Breaux, Brown, Christiansen, Coleman, C. Cooper, Crawford,  
6 Evans, Hollowell, Maddox, J. Mayberry, Payton, Pilkington, Rye, B. Smith, Sullivan  
7 By: Senator K. Hammer  
8

## For An Act To Be Entitled

9  
10 AN ACT TO CREATE THE PERINATAL *PALLIATIVE CARE*  
11 INFORMATION ACT; AND FOR OTHER PURPOSES.  
12  
13

### Subtitle

14  
15 *TO CREATE THE PERINATAL PALLIATIVE CARE*  
16 *INFORMATION ACT.*  
17  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 SECTION 1. Arkansas Code Title 20, Chapter 16, is amended to add an  
22 additional subchapter to read as follows:

23 Subchapter 20 – Perinatal Palliative Care Information Act

24  
25 20-16-2001. Title.

26 This subchapter shall be known and may be cited as the "Perinatal  
27 Palliative Care Information Act".  
28

29 20-16-2002. Legislative findings and purpose.

30 (a) The General Assembly finds that:

31 (1) As diagnosis of prenatal conditions improve, more lethal  
32 fetal anomalies are diagnosed earlier in pregnancy;

33 (2)(A) Currently, parents are often given minimal options.

34 (B) Parents must choose between terminating the pregnancy  
35 or simply waiting for the child to die;

36 (3) The majority of parents in situation as described in



1 subdivision (a)(2) of this section choose to terminate the pregnancy with  
2 only twenty percent (20%) of parents deciding to continue the pregnancy;

3 (4) Studies indicate that choosing to terminate a pregnancy can  
4 pose severe long-term psychological risks for a woman including the risk of  
5 post-traumatic stress, depression, and anxiety;

6 (5) Parents who choose to continue the pregnancy under a  
7 supportive, compassionate care of a perinatal palliative care team report  
8 being emotionally and spiritually prepared for the birth of a child; and

9 (6) Studies reveal that when given the option, at least eighty  
10 to eighty-seven percent (80-87%) of parents choose to continue their  
11 pregnancies in a supportive environment of perinatal palliative care.

12 (b) It is the purpose of this subchapter to:

13 (1) Guarantee that a woman considering an abortion after a  
14 diagnosis of a lethal fetal anomaly is presented with information on the  
15 option of perinatal palliative care; and

16 (2) Ensure that any abortion choice that a woman makes has been  
17 fully informed.

18  
19 20-16-2003. Definitions.

20 As used in this subchapter:

21 (1)(A) "Abortion" means the act of using or prescribing any  
22 instrument, medicine, drug, or any other substance, device, or means with the  
23 intent to terminate the clinically diagnosable pregnancy of a woman, with  
24 knowledge that the termination by any of those means will with reasonable  
25 likelihood cause the death of the unborn child.

26 (B) An act under subdivision (1)(A) of this section is not  
27 an abortion if the act is performed with the intent to:

28 (i) Save the life or preserve the health of the  
29 unborn child;

30 (ii) Remove a dead unborn child caused by  
31 spontaneous abortion; or

32 (iii) Remove an ectopic pregnancy;

33 (2) "Lethal fetal anomaly" means a fetal condition diagnosed  
34 before birth that will result in the death of the unborn child with  
35 reasonable certainty within three (3) months of the birth;

36 (3) "Medical emergency" means based on the good faith clinical



1 judgment of the physician, a condition that complicated the medical condition  
2 of the pregnant woman as to necessitate the immediate termination of the  
3 pregnancy to avert her death or for which a delay will create a serious risk  
4 of substantial and irreversible impairment of a major bodily function;

5 (4)(A) "Perinatal palliative care" means comprehensive support  
6 to the pregnant woman and her family that includes support from the time of  
7 diagnosis, through the time of birth and the death of the infant, and through  
8 the postpartum period.

9 (B) "Perinatal palliative care" may include without  
10 limitation counseling and medical care by maternal-fetal medical specialists,  
11 obstetricians, neonatologists, anesthesia specialists, clergy, social  
12 workers, and specialty nurses focused on alleviating fear and ensuring that  
13 the woman and her family experience the life and death of the child in a  
14 comfortable and supportive environment; and

15 (5) "Physician" means a person licensed to practice medicine in  
16 this state, including a medical doctor and a doctor of osteopathy.

17  
18 20-16-2004. Informed consent for abortion to include perinatal  
19 palliative care information.

20 (a) Except in the case of a medical emergency, consent to an abortion  
21 when the unborn child has been diagnosed with a lethal fetal anomaly is  
22 voluntary and informed only if at least seventy-two (72) hours before the  
23 abortion:

24 (1) The physician performing the abortion has verbally informed  
25 the pregnant woman that perinatal palliative care services are available and  
26 has offered perinatal palliative care services as an alternative to abortion;  
27 and

28 (2) The pregnant woman is given a list of perinatal palliative  
29 care services available both in the state and nationally that is prepared by  
30 the Department of Health and organized geographically by location.

31 (b) If the pregnant woman declines perinatal palliative care services,  
32 the pregnant woman shall certify in writing that:

33 (1) She declines the perinatal palliative care services; and

34 (2) She has received the materials described in subdivision  
35 (a)(2) of this section.

36

