

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas As Engrossed: H1/26/21 H1/27/21

2 93rd General Assembly

A Bill

3 Regular Session, 2021

HOUSE BILL 1195

4

5 By: Representatives Dotson, *Vaught, Breaux, Rye, Haak, M. Berry, Ladyman, Milligan, Cloud, Coleman,*
6 *Lundstrum, McCollum, Hawks, Bentley, Payton, Miller, Richmond*

7 By: Senator B. Ballinger

8

9

For An Act To Be Entitled

10 AN ACT TO CREATE THE EVERY MOM MATTERS ACT; TO
11 PROVIDE HEALTHCARE SUPPORT TO PREGNANT WOMEN IN
12 ARKANSAS; TO STABILIZE FAMILIES AND REDUCE THE NUMBER
13 OF ABORTIONS PERFORMED IN THE STATE; AND FOR OTHER
14 PURPOSES.

15

16

17

Subtitle

18 TO CREATE THE EVERY MOM MATTERS ACT; TO
19 PROVIDE HEALTHCARE SUPPORT TO PREGNANT
20 WOMEN IN ARKANSAS; AND TO STABILIZE
21 FAMILIES AND REDUCE THE NUMBER OF
22 ABORTIONS PERFORMED IN THE STATE.

23

24

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

26

27 SECTION 1. Arkansas Code § 20-8-1001(a), concerning the Life Choices
28 Lifeline Program, is amended to read as follows:

29 (a) The Department of Health may implement the Life Choices Lifeline
30 Program as a statewide care program to provide direct services, support,
31 social services case management, and referrals to ~~biological parents of~~
32 ~~unborn children and biological or adoptive parents of children under two (2)~~
33 ~~years of age~~ individuals listed in subsection (f) of this section.

34

35 SECTION 2. Arkansas Code § 20-8-1001(d)-(f), concerning the Life
36 Choices Lifeline Program, are amended to read as follows:



1 (d) The Life Choices Lifeline Program shall consist of at least the
2 following components:

3 (1) Direct-to-participant marketing within the state;

4 (2) The use of licensed nurses, community health workers, or
5 other individuals of equivalent experience to ~~provide~~ offer healthy pregnancy
6 program services to participants in the Life Choices Lifeline Program,
7 including:

8 (A) An assessment and evaluation of needs related to
9 pregnancy or parenting; ~~and~~

10 (B) Medically accurate pregnancy-related medical
11 information; and

12 (C) Assistance obtaining obstetric care, primary care,
13 mental health or behavioral health counseling, or postpartum care;

14 (3) The use of licensed social workers, nurses, community health
15 workers, licensed professional counselors, or other individuals of equivalent
16 experience, to ~~provide~~ offer care plan coordination services to participants
17 in the Life Choices Lifeline Program, including:

18 (A) Development of a care plan of resources and support to
19 address the needs identified;

20 (B) Referrals to appropriate local resources, including
21 state and federal benefits programs and local charitable organizations;

22 (C) Assistance in applying for state and federal benefits
23 programs; ~~and~~

24 (D) Assistance in accomplishing elements of the care plan;
25 ~~and~~

26 (E) Services related to postpartum depression and related
27 referrals;

28 (F) Assistance obtaining pediatric care and postpartum
29 care; and

30 (G) Assistance obtaining substance abuse treatment and
31 alcohol abuse treatment; and

32 (4) Administrative support and expenses directly attributable to
33 the development of or ongoing support of healthy pregnancy program services
34 and care plan coordination services of the Life Choices Lifeline Program.

35 (e)(1) The Life Choices Lifeline Program shall be available to
36 residents of all counties of the state, including residents in rural areas

1 that may currently lack access to healthy pregnancy program services and care
2 plan coordination services.

3 (2) ~~Services~~ Healthy pregnancy program services and care plan
4 coordination services of the Life Choices Lifeline Program may be provided,
5 as appropriate, in person through existing facilities or remotely through a
6 telephonic system or other comparable technological system.

7 (3) An individual who offers Life Choices Lifeline Program
8 services shall not refer a woman to an abortion provider, recommend abortion,
9 or take any other action that directly or indirectly advises a woman to
10 obtain or assists a woman in obtaining an abortion.

11 (f) To be eligible to receive services under the Life Choices Lifeline
12 Program, an individual shall at the time of initial contact with the Life
13 Choices Lifeline Program be:

14 ~~(1) A resident of the state; and~~

15 ~~(2)~~(1) A resident of this state who is the biological parent of
16 an unborn child or a biological or adoptive parent of a child under two (2)
17 years of age;

18 (2) A pregnant woman seeking to obtain an abortion in this
19 state; or

20 (3) A parent or legal guardian of a pregnant minor residing in
21 this state.

22
23 SECTION 3. Arkansas Code Title 20, Chapter 16, is amended to add an
24 additional subchapter to read as follows:

25
26 Subchapter 24 – Every Mom Matters Act

27
28 20-16-2401. Title.

29 This subchapter shall be known and may be cited as the “Every Mom
30 Matters Act”.

31
32 20-16-2402. Definitions.

33 As used in this subchapter:

34 (1)(A) “Abortion” means the act of using or prescribing any
35 instrument, medicine, drug, or any other substance, device, or means with the
36 intent to terminate the clinically diagnosable pregnancy of a woman, with

1 knowledge that the termination by any of those means will with reasonable
2 likelihood cause the death of the unborn child.

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

5 (i) Save the life or preserve the health of the
6 unborn child;

7 (ii) Remove a dead unborn child caused by
8 spontaneous abortion; or

9 (iii) Remove an ectopic pregnancy;

10 (2) "Abuse" means the same as defined in § 12-18-103;

11 (3) "Agency" means an entity that contracts with the Department
12 of Health to provide the services required under § 20-8-1001 or the resource
13 access assistance offer;

14 (4) "Assault" means the act or offense described in §§ 5-13-204
15 – 5-13-207;

16 (5) "Care agent" means a person employed by an agency to perform
17 the services required by this subchapter;

18 (6) "Human trafficking" means the act or offense described in
19 the Human Trafficking Act of 2013, § 5-18-101 et seq.;

20 (7) "Medical emergency" means a condition that, based on the
21 good faith clinical judgment of the physician, has complicated the medical
22 condition of the pregnant woman so as to necessitate the immediate
23 termination of the pregnancy to avert the woman's death or for which a delay
24 will create a serious risk of substantial and irreversible impairment of a
25 major bodily function;

26 (8) "Neglect" means the same as defined in § 12-18-103; and

27 (9) "Sexual assault" means an act or offense described in § 5-
28 14-101 et seq.

29
30 20-16-2403. Resource access assistance offer.

31 (a) A person shall not perform an abortion unless the person verifies
32 that the woman on whom the abortion is to be performed has received a
33 resource access assistance offer.

34 (b) A resource access assistance offer under subsection (a) of this
35 section shall consist of a care agent:

36 (1) Informing the pregnant woman of the availability of free:

1 (A) Healthy pregnancy program services offered under §
2 20-8-1001(d)(2); and

3 (B) Care plan coordination services offered under § 20-8-
4 1001(d)(3);

5 (2) Providing education on other public and private resources
6 available to address the socioeconomic needs of the pregnant woman or the
7 biological father of the unborn child;

8 (3) Offering screening and assistance for abuse, assault, sexual
9 assault, neglect, coercion, and human trafficking; and

10 (4) Offering medically accurate information using the
11 informational materials described in the Woman's Right-to-Know Act, § 20-16-
12 1701 et seq.

13 (c) The pregnant woman is not required to:

14 (1) Initiate any offered services in order to obtain an
15 abortion; or

16 (2) Provide any information to the care agent except her unique
17 identifying number as described in § 20-16-2407.

18 (d) The resource access assistance offer shall be provided by the
19 state at no cost to the woman.

20 (e) A care agent who provides a resource access assistance offer under
21 this section shall not refer a woman to an abortion provider, recommend
22 abortion, or take any other action that directly or indirectly advises a
23 woman to obtain or assists a woman in obtaining an abortion.

24
25 20-16-2404. Applicability.

26 (a) For healthy pregnancy program services and care plan coordination
27 services offered under § 20-8-1001(d)(2) and (3):

28 (1) A pregnant women is not required to initiate or complete
29 healthy pregnancy program services or care plan coordination services in
30 order to obtain an abortion;

31 (2) A pregnant women who initiates healthy pregnancy program
32 services or care plan coordination services may decline or discontinue the
33 healthy pregnancy program services or care plan coordination services at any
34 time; and

35 (3) An agency shall prioritize care plan coordination services
36 and healthy pregnancy program services for women who have received a resource

1 access assistance offer.

2 (b)(1) This subchapter does not apply in the case of a medical
3 emergency.

4 (2) A person who performs an abortion in a medical emergency
5 shall:

6 (A) Include in the pregnant woman's medical records a
7 statement signed by the physician of the pregnant woman certifying the nature
8 of the medical emergency; and

9 (B) Not later than thirty (30) days after the date that
10 the abortion is performed, certify to the Department of Health the specific
11 medical condition that constituted the medical emergency.

12
13 20-16-2405. Agencies.

14 (a) The Department of Health shall:

15 (1) Contract with a number of agencies sufficient to ensure that
16 each pregnant woman seeking an abortion in Arkansas receives a resource
17 access assistance offer and has the opportunity to receive care plan
18 coordination services and healthy pregnancy program services;

19 (2) Annually, designate the proportion of resource access
20 assistance offers to be provided by each agency's share of participants in
21 care plan coordination services or healthy pregnancy program services; and

22 (3) Contract only with agencies that are capable of offering all
23 of the services required under § 20-8-1001 or the resource access assistance
24 offer.

25 (b) An agency shall be able, at a minimum, to provide resource access
26 assistance offers, care plan coordination services, and healthy pregnancy
27 program services by telephonic means using a toll-free number established by
28 the department.

29 (c) Each agency and any subcontractor or care agent of the agency
30 providing services related to § 20-8-1001 or resource access assistance
31 offers shall not:

32 (1) Be an abortion provider or entity that directly or
33 indirectly assists women in obtaining an abortion;

34 (2) Own, operate, or be affiliated with an abortion provider or
35 an entity that directly or indirectly promotes abortions or assists women in
36 obtaining an abortion;

1 (3) Employ a person who has performed an abortion in the last
2 two (2) years;

3 (4) Have as a director, board member, officer, volunteer, or
4 employee a person who serves in any of these roles for an entity described in
5 subdivisions (c)(1)-(3) of this section; or

6 (5) Refer women to an abortion provider, recommend abortion, or
7 take any other action that directly or indirectly advises or assists a woman
8 in obtaining an abortion.

9
10 20-16-2406. Care agents.

11 A care agent or other person providing healthy pregnancy program
12 services or care plan coordination services through a subcontract with an
13 agency or as a volunteer with an agency shall:

14 (1) Meet the qualifications established by rule of the
15 Department of Health;

16 (2) Have not performed an abortion in the last two (2) years;

17 (3) Have not served as a director, board member, officer,
18 volunteer, or employee for an entity described in § 20-16-2405(c)(1)-(3) in
19 the last two (2) years;

20 (4) Agree to maintain the confidentiality of information the
21 care agent or other person obtains while performing services under § 20-8-
22 1001 or the resource access assistance offer;

23 (5) Complete a training program using a standardized curriculum
24 regarding recognizing signs that a person may have been a victim of human
25 trafficking and providing appropriate assistance to a person who may have
26 been a victim of human trafficking; and

27 (6) Not refer women to an abortion provider, recommend abortion,
28 or take any other action that directly or indirectly advises a woman to
29 obtain or assists a woman in obtaining an abortion.

30
31 20-16-2407. Administration.

32 (a) The Department of Health shall:

33 (1)(A) Before implementation of the services under § 20-8-1001
34 or the resource access assistance offer, create a program-specific website
35 that describes the services offered by § 20-8-1001 and the resource access
36 assistance offer.

1 (B) The department may also create materials using other
2 media, including print and electronic media, to convey information about the
3 services under § 20-8-1001 and the resource access assistance offer to the
4 public;

5 (2)(A) Establish a single toll-free number for pregnant women
6 seeking an abortion in Arkansas to call in order to receive a resource access
7 assistance offer.

8 (B) The toll-free number shall automatically connect the
9 pregnant woman to an agency based on the proportion determined under § 20-16-
10 2405(a)(2);

11 (3)(A) Develop and maintain a secure database.

12 (B) The secure database shall:

13 (i) Generate a unique identifying number;

14 (ii) Be accessible only to a person who is to
15 perform an abortion or an agent of the person performing an abortion,
16 agencies, and the department; and

17 (iii) Not transmit any information to:

18 (a) The agency or care agent concerning the
19 identity or location of the person who performs the abortion or the facility
20 at which the abortion is performed; or

21 (b) The person providing the abortion or the
22 agent of the person performing the abortion concerning the identity of the
23 agency or care agent providing the resource access assistance offer.

24 (C) The unique identifying number shall not contain
25 personally identifiable information; and

26 (4) For each agency, report on the department's website the
27 percentage of pregnant women who received a resource access assistance offer
28 from the agency and subsequently obtained an abortion in the state.

29 (b)(1) Before receiving payment for abortion-related services,
30 administering any sedative or anesthesia, or performing an abortion, a person
31 who is performing an abortion or an agent of the person performing the
32 abortion shall:

33 (A) Register each prospective abortion in the secure
34 database and obtain a unique identifying number for the pregnant woman's
35 prospective abortion;

36 (B) Provide the pregnant woman seeking an abortion with

1 the unique identifying number for her prospective abortion;

2 (C) Record the unique identifying number for the pregnant
3 woman's prospective abortion in the pregnant womans's medical file;

4 (D) Verify through the secure database that the pregnant
5 woman received a resource access assistance offer;

6 (E) Document the verification in the secure database; and

7 (F) Record the verification in the pregnant woman's
8 medical record.

9 (2) Within two (2) business days after performing an abortion,
10 the person who performs the abortion or the person's agent shall report to
11 the department the unique identifying number for each abortion performed and
12 the date and time that the abortion was performed.

13 (c) A care agent shall:

14 (1) Provide the resource access assistance offer, care plan
15 coordination services, and healthy pregnancy program services; and

16 (2) Record the information required under this section.

17 (d) An agency shall:

18 (1) Record and report monthly to the department information
19 pertaining to resource access assistance offers provided by the agency or the
20 care agents employed by the agency, including without limitation:

21 (A) The number of pregnant women who indicated a need for
22 assistance as victims of:

23 (i) Assault, sexual assault, abuse, or neglect;

24 (ii) Coercion; or

25 (iii) Human trafficking;

26 (B) The number of individuals receiving resource access
27 assistance offers who requested care plan coordination services; and

28 (C) The number of individuals receiving resource access
29 assistance offers who requested healthy pregnancy program services;

30 (2) Record and report monthly to the department information
31 pertaining to care plan coordination services and healthy pregnancy program
32 services provided by the agency or the care agents employed by the agency,
33 including without limitation:

34 (A) The number of individuals receiving resource access
35 assistance offers who identified a need for support in one (1) or more of the
36 following areas:

1 (i) Abuse, assault, sexual assault, coercion, or
2 neglect;

3 (ii) Education or training for a professional
4 certification;

5 (iii) Housing assistance;

6 (iv) Employment assistance;

7 (v) Resume development;

8 (vi) Childcare;

9 (vii) Adoption services;

10 (viii) Financial assistance;

11 (ix) Substance abuse treatment and alcohol abuse
12 treatment;

13 (x) Mental health care;

14 (xi) Medical care;

15 (xii) Human trafficking; or

16 (xiii) Health benefit plan coverage; and

17 (B) The resources, services, and referrals provided by the
18 agency or a care agent; and

19 (3)(A) Confirm in the secure database using the unique
20 identifying number that a resource access assistance offer was made.

21 (B) The confirmation required under subdivision (d)(3)(A)
22 of this section shall be completed before 11:59 p.m. on the day that the
23 resource access assistance offer was made.

24
25 20-16-2408. Medical record audit procedure.

26 (a) The Department of Health shall audit abortion facilities and
27 persons performing abortions to ensure compliance with this subchapter.

28 (b) An audit under subsection (a) of this section shall:

29 (1) Be at a random, unannounced, and reasonable time;

30 (2) Occur at least one (1) time each year for each abortion
31 facility and person who performs abortions; and

32 (3) Consist of:

33 (A) A review of the medical records of no less than ten
34 percent (10%) of the women who obtained an abortion since the last audit was
35 performed; and

36 (B) A verification and confirmation that the person

1 performing the abortion fully complied with the requirements of § 20-16-
2 2407(b).

3 (c) If the department finds that more than five percent (5%) of the
4 audited medical records indicate noncompliance with the requirements of § 20-
5 16-2407(b), the department shall audit the remainder of the medical records
6 of the women who received abortions since the last audit was performed.

7
8 20-16-2409. Penalties.

9 (a)(1) A person who performs an abortion shall be subject to a fine of
10 five thousand dollars (\$5,000) for each abortion performed without complying
11 with the requirements of § 20-16-2407.

12 (2) The abortion facility at which the abortion was performed
13 shall be jointly and severally liable for each fine assessed under
14 subdivision (a)(1) of this section.

15 (b) The fine imposed by this section is in addition to the criminal
16 liability under the Woman's Right-to-Know Act, § 20-16-1701 et seq.

17 (c) The Attorney General or the prosecuting attorney of the judicial
18 district in which the abortion was performed may file an action to recover
19 the fine assessed under subdivision (a)(1) of this section as well as
20 reasonable and necessary attorney's fees and costs incurred in bringing the
21 action.

22 (d)(1) Any person may bring a civil action to recover the civil
23 penalty assessed under this section if:

24 (A) An action has not already been initiated by the
25 Attorney General or the prosecuting attorney of the judicial district in
26 which the abortion was performed; and

27 (B) Another person has not already recovered a fine for
28 that specific violation of this subchapter.

29 (2) If the person recovers the fine assessed under this section,
30 the person may also recover attorney's fees and costs incurred in bringing
31 the action.

32 (e) The Department of Health shall revoke the license of an abortion
33 facility if more than five percent (5%) of audited medical records at the
34 abortion facility indicate noncompliance with the requirements of § 20-16-
35 2407(b).

36

1 20-16-2410. Confidentiality and disclosure.

2 (a) All personally identifiable information held by the Department of
3 Health under this subchapter are confidential and are not subject to the
4 Freedom of Information Act of 1967, § 25-19-101 et seq.

5 (b) Disclosure of information and records may be made:

6 (1) For statistical purposes if a care agent, pregnant woman,
7 biological father of the unborn child, physician, or abortion facility is not
8 identified;

9 (2) With the consent of each person, patient, and abortion
10 facility identified in the information released; or

11 (3) To:

12 (A) Appropriate state agencies or courts to enforce this
13 subchapter;

14 (B) Appropriate state licensing boards to enforce
15 licensing laws;

16 (C) Licensed medical or healthcare personnel currently
17 treating the patient; or

18 (D) Physicians providing abortions or agencies, to the
19 extent necessary to fulfill the agencies' obligations under this subchapter.

20 (c) Disclosure of protected health information that is allowed for
21 public health, safety, and law enforcement purposes is not a violation of the
22 Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-
23 191.

24
25 20-16-2411. Conscience protections.

26 The Department of Health shall not require any care agent or agency to
27 refer a woman for any social or medical service to which the care agent or
28 agency has a conscience objection.

29
30 20-16-2412. Construction.

31 This subchapter does not:

32 (1) Create or recognize a right to abortion;

33 (2) Create or recognize a right to a particular method of
34 abortion; or

35 (3) Make lawful an abortion that is currently unlawful under any
36 law of this state.

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SECTION 4. DO NOT CODIFY. Delayed effective date.

The requirements in § 20-16-2403(a) and § 20-16-2407(a) do not apply to a person performing an abortion until January 1, 2023.

SECTION 5. DO NOT CODIFY. SEVERABILITY CLAUSE. If any provision of this act or the application of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end, the provisions of this act are declared severable.

/s/Dotson