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A Bill

HOUSE BILL 1572

4
5 By: Representatives Lundstrum, Bentley, Cloud, Coleman, Crawford, Dotson, Ladyman, Lowery, Miller,
6 Payton, Penzo, Pilkington, Speaks, Wardlaw
7 By: Senators Flippo, Bledsoe, Gilmore, D. Sullivan, D. Wallace

For An Act To Be Entitled

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9
10 AN ACT TO CREATE THE INFORMED CONSENT FOR CHEMICAL
11 ABORTION ACT; AND FOR OTHER PURPOSES.

Subtitle

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15 TO CREATE THE INFORMED CONSENT FOR
16 CHEMICAL ABORTION ACT.

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

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

23 Subchapter 24 – Informed Consent for Chemical Abortion Act

24
25 20-16-2401. Title.

26 This subchapter shall be known and may be cited as the "Informed
27 Consent for Chemical Abortion Act".

28
29 20-16-2402. Definitions.

30 As used in this subchapter:

31 (1)(A) "Chemical abortion" means the use, provision,
32 prescription, or dispensation of a medicine, drug, or any other substance
33 used, provided, prescribed, or dispensed with the intent of terminating the
34 clinically diagnosable pregnancy of a woman, with knowledge that the
35 termination will with reasonable likelihood cause the death of the unborn
36 child.



1 (B) "Chemical abortion" includes the off-label use of
2 drugs known to have abortion-inducing properties, which are prescribed
3 specifically with the intent of causing an abortion, such as misoprostol and
4 methotrexate.

5 (C) "Chemical abortion" does not apply to drugs that may
6 be known to cause an abortion but which are prescribed for other medical
7 indication; and

8 (2) "Medical emergency" means a condition that, on the basis of
9 the physician's good-faith clinical judgment, complicates the medical
10 condition of a pregnant woman and necessitates the immediate termination of
11 her pregnancy to avert her death or for which a delay will create serious
12 risk of substantial and irreversible impairment of a major bodily function.

13
14 20-16-2403. Informed consent for chemical abortions.

15 (a) A chemical abortion shall not be performed or induced without the
16 voluntary and informed consent of the pregnant woman upon whom the chemical
17 abortion is to be performed or induced.

18 (b) Except in the case of a medical emergency, consent to a chemical
19 abortion is voluntary and informational only if at least seventy-two (72)
20 hours before the abortion, the healthcare provider who is to perform the
21 chemical abortion or the referring healthcare provider has informed the
22 pregnant woman, orally and in person, of the following:

23 (1) The probable gestational age of the unborn child as
24 determined by patient history and ultrasound results used to confirm the
25 gestational age;

26 (2) A detailed description of the chemical abortion regimen to
27 be used;

28 (3) A detailed list of the risks and complications related to
29 the specific chemical abortion regimen to be used, including without
30 limitation hemorrhage, failure to remove all pregnancy tissue which may
31 require an additional procedure, sepsis or other infections, sterility,
32 possible continuation of pregnancy, and death;

33 (4) Information about Rh incompatibility, including that if the
34 pregnant woman has an Rh negative blood type, she should receive an injection
35 of Rh immunoglobulin at the time of the chemical abortion to prevent Rh
36 incompatibility in future pregnancies, which can lead to complications and

1 miscarriage;

2 (5) The risks of complications from a chemical abortion increase
3 with advancing gestational age;

4 (6) Information on reversing the effects of the chemical
5 abortion if the pregnant woman changes her mind, but that time is of the
6 essence;

7 (7) Human trafficking literature, also known as "Laura's Card",
8 as described in § 16-90-1107;

9 (8) Information about post-abortion care, including how to
10 handle and respond to and report complications from the chemical abortion;
11 and

12 (9) Information on scheduling post-abortion medical visits to
13 ensure completion of the abortion, assess the need for additional procedures
14 or care, and assess bleeding or other potential complications.

15 (c)(1) Except in the case of a medical emergency, before a chemical
16 abortion, a pregnant woman shall certify on a written checklist form provided
17 or approved by the Department of Health that the information described in
18 subsection (b) of this section has been provided.

19 (2)(A) The healthcare provider who is to perform the chemical
20 abortion shall receive, sign, and date a copy of the written certification
21 described in subdivision (c)(1) of this section before performing a chemical
22 abortion.

23 (B) The healthcare provider shall retain a copy of the
24 written certification form in the pregnant woman's medical record.

25
26 20-16-2404. Individual reporting – Aggregate reporting.

27 (a)(1) A healthcare provider or healthcare facility shall submit an
28 individual reporting form to the Department of Health within fifteen (15)
29 days after each month's end.

30 (2) The healthcare provider shall sign each individual reporting
31 form.

32 (b)(1) A report submitted as described in subsection (a) of this
33 section is not a public record and shall remain confidential except that a
34 disclosure may be made to law enforcement officials upon an order of a court
35 after an application showing good cause.

36 (2) The court may condition disclosure of information upon any

1 appropriate safeguards the court may impose.

2 (c) The department shall prepare an individual reporting form, which
3 shall include the following information:

4 (1) The date of the chemical abortion;

5 (2) The specific chemical abortion regimen used;

6 (3) The probable gestational age of the unborn child;

7 (4) The age of the pregnant woman at the time the chemical
8 abortion was performed or induced;

9 (5) The pregnant woman's state and county of residence;

10 (6) Whether, before seeking a chemical abortion, the pregnant
11 woman received any other verbal or written counseling related to potential
12 risks or complications and alternatives to a chemical abortion;

13 (7) The specific reason for the chemical abortion, including
14 without limitation:

15 (A) The pregnancy is the result of rape or incest;

16 (B) Economic reasons;

17 (C) The pregnant woman does not want a pregnancy or child
18 at this time;

19 (D) The pregnant woman's physical health is endangered,
20 specifically identifying the reason her physical health is endangered,
21 including any preexisting condition;

22 (E) The pregnant woman's psychological, mental, or
23 emotional health is endangered, specifically identifying the reason her
24 psychological, mental, or emotional health is endangered, including any
25 preexisting condition;

26 (F) The pregnant woman will suffer substantial and
27 irreversible impairment of a major bodily function if the pregnancy
28 continues, specifically identifying the potential impairment;

29 (G) The diagnosis, presence, or presumed presence of a
30 genetic anomaly, specifically identifying the anomaly; or

31 (I) Refusal of the pregnant woman to answer;

32 (8) The number of prior pregnancies, live births, induced
33 abortions, and spontaneous abortions of the pregnant woman;

34 (9) Whether the chemical abortion was paid for by:

35 (A) Private health coverage;

36 (B) Public assistance health coverage; or

1 (C) Self-pay; and
2 (10) Complications, if any and whenever known, from the chemical
3 abortion.

4 (d)(1) A healthcare facility in which a chemical abortion is performed
5 during any quarter year shall file with the Department of Health a report
6 showing the total number of chemical abortions performed in the facility
7 during that quarter year.

8 (2) The aggregate report shall include the total number of
9 chemical abortions performed in each trimester of pregnancy.

10 (3) The department shall prepare an aggregate reporting form.

11 (e) The reporting forms under this section shall not contain:

12 (A) The name of the pregnant woman;

13 (B) Common identifiers of the pregnant woman, including her
14 Social Security number or her driver's license number; or

15 (C) Any other information that would make it possible to
16 identify the pregnant woman.

17 (f)(1) The department shall report comprehensive annual statistical
18 data based upon data gathered from the reports under this section to the
19 General Assembly.

20 (2) The annual report shall not disclose or lead to the
21 disclosure of the identity of any healthcare provider or person filing a
22 report under this section or of any woman who is the subject of a report.

23 (3) The annual report shall be made available to the public in a
24 downloadable format on the department's website.

25 (g)(1) The department shall summarize the data collected from the
26 reports required by this section and submit the summary to the Centers for
27 Medicare and Medicaid Services.

28 (2) The summary shall be made available to the public in a
29 downloadable format on the department's website.

30 (h) This section does not preclude the voluntary or required
31 submission of other reports or forms regarding chemical abortion.

32
33 20-16-2405. Collection and reporting of information.

34 (a) The Arkansas Center for Health Statistics shall ensure that all
35 information collected by the center regarding chemical abortions performed in
36 this state shall be available to the public in printed form and on a twenty-

1 four-hour basis on the center's website.

2 (b) In no case shall the privacy of a patient or doctor be
3 compromised.

4 (c) The information collected by the center regarding abortions
5 performed in this state shall be continually updated.

6 (d)(1)(A) By June 3 of each year, the department shall issue a public
7 report providing statistics on the number of women who were provided
8 information and materials pursuant to this subchapter during the previous
9 calendar year.

10 (B) Each report shall also provide the statistics for all
11 previous calendar years, adjusted to reflect any additional information
12 received after the deadline.

13 (2) The department shall take care to ensure that none of the
14 information included in the public reports could reasonably lead to the
15 identification of any individual who received information or materials in
16 accordance with § 20-16-1703.

17
18 20-16-2406. Rules.

19 (a)(1) The Department of Health shall adopt rules to implement this
20 subchapter.

21 (2) The department may add by rule additional examples of
22 complications to supplement those in § 20-16-1703.

23 (b) The Arkansas State Medical Board shall promulgate rules to ensure
24 that physicians who perform abortions, referring physicians, or agents of
25 either physician comply with all the requirements of this subchapter.

26
27 20-16-2407. Criminal penalty.

28 A person who intentionally, knowingly, or recklessly violates this
29 subchapter commits a Class A misdemeanor.

30
31 20-16-2408. Civil penalties.

32 (a) In addition to any remedies available under the common law or
33 statutory law of this state, failure to comply with the requirements of this
34 subchapter shall provide a basis for a:

35 (1) Civil malpractice action for actual and punitive damages;
36 and

1 (2) Professional disciplinary action under the Arkansas Medical
2 Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et
3 seq.

4 (b) A civil liability shall not be assessed against the woman upon
5 whom the abortion is performed.

6 (c) When requested, the court shall allow a woman to proceed using
7 solely her initials or a pseudonym and may close the proceedings in the case
8 and enter other protective orders to preserve the privacy of the woman upon
9 whom the abortion was performed or attempted.

10 (d) If judgment is rendered in favor of the plaintiff, the court shall
11 also render judgment for a reasonable attorney's fee in favor of the
12 plaintiff against the defendant.

13 (e) If judgment is rendered in favor of the defendant and the court
14 finds that the plaintiff's suit was frivolous and brought in bad faith, the
15 court shall also render judgment for a reasonable attorney's fee in favor of
16 the defendant against the plaintiff.

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18 20-16-2409. Construction.

19 (a) This subchapter does not create or recognize a right to abortion.

20 (b) This subchapter is not intended to make lawful an abortion that is
21 currently unlawful.

22
23 SECTION 2. DO NOT CODIFY. Implementation of forms.

24 (a) The Department of Health shall create the forms required by
25 Section 1 of this act within thirty (30) days after the effective date of
26 this act.

27 (b) This act does not require reporting of information on the forms
28 published by the department to be applicable until ten (10) days after the
29 forms are first created or until the effective date of this act, whichever is
30 later.