SENATE BILL 652

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Lisa A. Torraco

AN ACT

RELATING TO HEALTH CARE; ENACTING THE WOMAN'S INFORMED DECISION ACT; PROVIDING FOR PROCEDURES RELATED TO INDUCED ABORTION SERVICES AND THE PROTECTION OF PRIVACY; ESTABLISHING EDUCATIONAL AND REPORTING REQUIREMENTS FOR THE DEPARTMENT OF HEALTH AND PROVIDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Woman's Informed Decision Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Woman's Informed Decision Act:

A. "induced abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device intentionally to terminate a pregnancy other than to increase the probability of a live birth or to remove an

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ectopic pregnancy;

B. "medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death, or for which a delay will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct that she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function; and

C. "provider" means any person legally qualified to perform an abortion under New Mexico law or the provider's agent.

SECTION 3. [NEW MATERIAL] INFORMED CONSENT--EMERGENCY PROCEDURE.--

A. Except as otherwise provided or waived pursuant to this section, no induced abortion shall be performed in this state except with the voluntary and informed consent of the patient upon whom the induced abortion is to be performed. Except in the case of a medical emergency, consent to an induced abortion is voluntary and informed only if the patient is told the following, by telephone or in person, by the provider or by the referring health care provider at least

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twenty-four hours before the induced abortion:

(1) the name of the provider who will perform the induced abortion;

(2) the particular medical risks associated with the particular induced abortion procedure to be employed, including, when medically accurate, the risks of infection, hemorrhage, breast cancer, danger to subsequent pregnancies and infertility;

(3) the gestational stage of development of the fetus at the time the induced abortion is to be performed; and

(4) the medical risks associated with carrying the fetus to term.

B. The information required by Subsection A of this section may be provided by telephone without conducting a physical examination or tests of the patient, in which case, the information required to be provided may be based on facts supplied to the provider by the patient and whatever other relevant information is reasonably available to the provider.

C. When a medical emergency compels the performance of an induced abortion, the provider shall inform the patient, prior to the induced abortion, if possible, of the medical indications supporting the provider's judgment that an induced abortion is necessary to avert the patient's death or that a twenty-four-hour delay as required pursuant to this section

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will create serious risk of substantial and irreversible physical impairment of a major bodily function, excluding any psychological or emotional condition.

D. The information required by Subsection A of this section shall not be provided by an audio recording, but shall be provided during a consultation in which the provider is able to ask questions of the patient and the patient is able to ask questions of the provider.

E. If a physical examination, tests or the availability of other information to the provider subsequently indicate, in the medical judgment of the provider, a revision of the information previously supplied to the patient, that revised information may be communicated to the patient at any time prior to the performance of the induced abortion.

F. Nothing in this section may be construed to preclude provision of required information in a language understood by the patient through a translator.

G. The patient shall be informed, by telephone or in person, by the provider who is to perform the induced abortion or by a referring health care provider, at least twenty-four hours before the induced abortion that:

(1) medical assistance benefits may be available for prenatal care, childbirth and neonatal care;

(2) the father is legally responsible to assist in the support of her child, even in instances in which

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the father has offered to pay for the induced abortion; and

(3) the patient has the right to review the educational materials described in Section 4 of the Woman's Informed Decision Act, that these materials are available on a state-sponsored web site and what the web site address is.

H. The provider shall verbally inform the patient that the materials have been provided by the state of New Mexico, that they describe the fetus and list agencies that offer alternatives to induced abortion and are available on the department of health web site.

I. If the patient chooses to view the materials other than on the department of health web site, the materials shall either be given to the patient at least twenty-four hours before the induced abortion, or mailed or e-mailed to the patient at least seventy-two hours before the induced abortion.

J. The information required by Subsection G of this section may be provided by an audio recording if provision is made to record or otherwise register specifically whether the patient does or does not choose to have the printed materials given or mailed to the patient.

K. The patient shall certify in writing, prior to the induced abortion, that the information described in Subsections A and G of this section has been furnished to the patient, and that the patient has been informed of the patient's opportunity to review the information referred to in

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Paragraph (3) of Subsection G of this section.

L. Prior to the performance of the induced abortion, the provider who is to perform the induced abortion shall receive a copy of the written certification described by Subsection K of this section.

SECTION 4. [NEW MATERIAL] PUBLIC EDUCATION--DEPARTMENT OF HEALTH--LINK REQUIREMENT.--

A. By September 18, 2015, the secretary of health shall adopt and promulgate rules for the dissemination of the following information in printed form and on the department's web site in a publicly accessible and searchable manner, in English and in each language that is the primary language of two percent or more of the state's population as of the last decennial census:

(1) a listing of the public and private agencies that are available statewide, indexed by region and including current contact information and a description of the services offered, to assist a patient through pregnancy, upon childbirth and while the child is dependent. This information shall include contact information relating to adoption agencies; and

(2) materials designed to educate patients on:

(a) the probable anatomical and physiological characteristics of human gestation at two-week increments from conception through full-term pregnancy; and

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(b) descriptions of the most commonly employed induced abortion procedures, the medical risks commonly associated with these procedures and the medical risks commonly associated with carrying a pregnancy to term.

B. A provider that maintains a publicly accessible web site shall provide a link to the materials listed on the department of health's web site pursuant to Subsection A of this section.

SECTION 5. [NEW MATERIAL] ULTRASOUND--IMAGE INTERPRETATION--PATIENT OPTION.--

A. Before receiving a patient's informed consent to an induced abortion, and prior to the administration of any anesthesia or medication in preparation for the induced abortion, the provider or an individual authorized by law to perform an ultrasound shall provide to the patient a form that the department of health has promulgated certifying that the offer has been made and recording the patient's acceptance or refusal of the offer, an opportunity to:

(1) receive and view an obstetric ultrasound; and

(2) receive a simultaneous verbal explanation of what the ultrasound is depicting, including the presence and location of any embryo or fetus within the uterus and the dimensions of the embryo or fetus and external members and internal organs, if present and visible.

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B. If a patient has consented to receive an ultrasound pursuant to Subsection A of this section and the ultrasound image indicates that fetal demise has occurred, the patient shall be informed of that fact.

C. The provider shall retain in the patient's medical record the form certifying the patient's response to the offer of ultrasound services and interpretation pursuant to this section.

SECTION 6. [NEW MATERIAL] PROVIDERS--REPORTING REQUIREMENTS.--

A. Beginning September 1, 2015, providers operating in the state shall use a form that the department of health promulgates by rule that sets forth the provisions of the Woman's Informed Decision Act and provides for the reporting of the following to the department:

(1) relating to patients that have been provided with the information required pursuant to Subsection A of Section 3 of the Woman's Informed Decision Act:

(a) the number of patients provided the information, with an indication of whether that information was provided in person or via telephone;

(b) an indication of whether the provider or a referring health care provider supplied the information; and

(c) the number of patients who, to the

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best of the reporting provider's belief, elected to undergo an induced abortion; including the number who underwent an induced abortion under emergency circumstances as described in Subsection C of Section 3 of the Woman's Informed Decision Act; and

(2) the number of patients who elected to receive, pursuant to Section 4 of the Woman's Informed Decision Act:

(a) an ultrasound; or

(b) a verbal interpretation of the ultrasound.

B. By September 1 of each year, each provider in the state shall submit the completed forms required pursuant to this section to the department of health in accordance with procedures and in a format that the department has specified by rule.

SECTION 7. SEVERABILITY.--If any part or application of the Woman's Informed Decision Act is held invalid, the remainder or its application to other situations or persons shall not be affected.