STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 778

By: Daniels, Bullard and Stephens of the Senate

and

Lepak of the House

COMMITTEE SUBSTITUTE

An Act relating to abortion; creating the Oklahoma Abortion-Inducing Drug Risk Protocol Act; defining terms; limiting provision of abortion-inducing drugs to certain practitioners and procedures; prohibiting provision through certain methods; requiring certain examination; stating criteria of examination; providing for complication management; requiring scheduling and certain efforts of follow-up visit; prohibiting provision of abortion-inducing drugs in certain locations; requiring informed consent within certain time period except under specified conditions; directing use of certain form; stating criteria of valid form; stating additional criteria; requiring State Board of Medical Licensure and Supervision to publish and update certain materials; requiring qualified physician to provide certain information; requiring completion and submission of certain report; stating required inclusions and exclusions of report; requiring certain reporting of adverse event; stating criteria of report; requiring Department to prepare and submit certain report; deeming reports public records; prohibiting certain actions relating to identity of woman; directing reports to be made available to certain entities; requiring Department to communicate reporting requirements; specifying additional reporting requirements; requiring Department to create and distribute certain forms; providing criminal penalties; providing for certain civil remedies,

disciplinary sanctions and injunctive relief; specifying certain judicial procedures; providing certain construction and intent; authorizing certain intervention; providing severability; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-756.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Abortion-Inducing Drug Risk Protocol Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-756.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to remove an ectopic pregnancy or to remove a dead unborn child who died as the result of a spontaneous miscarriage, accidental trauma or a criminal assault on the pregnant female or her unborn child;

2. “Abortion-inducing drug” means a medicine, drug or any other substance prescribed or dispensed with the intent of terminating the pregnancy of a woman known to be pregnant, with knowledge that the termination will with reasonable likelihood cause the death of the unborn child. This includes the off-label use of drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion, such as mifepristone (Mifeprex), 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 and diagnostic drugs. The use of such drugs to induce abortion is also known as “medical”, “medication”, “RU-486”, “chemical”, “Mifeprex regimen” or “drug-induced” abortion;

3. “Adverse Event”, according to the Food and Drug Administration, means any untoward medical occurrence associated with the use of a drug in humans, whether or not considered drug-related. It does not include an adverse event or suspected adverse reaction that, had it occurred in a more severe form, might have caused death;

4. “Associated physician” means a person licensed to practice medicine in the state including medical doctors and doctors of osteopathy, that has entered into an associated physician agreement;

5. “Complication” means any adverse physical or psychological condition arising from the performance of an abortion which

includes, but is not limited to, uterine perforation, cervical perforation, infection, heavy or uncontrolled bleeding, hemorrhage, blood clots resulting in pulmonary embolism or deep vein thrombosis, failure to actually terminate the pregnancy, incomplete abortion (retained tissue), pelvic inflammatory disease, endometritis, missed ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure, metabolic disorder, shock, embolism, coma, placenta previa in subsequent pregnancies, preterm delivery in subsequent pregnancies, free fluid in the abdomen, hemolytic reaction due to the administration of ABO-incompatible blood or blood products, adverse reactions to anesthesia and other drugs, subsequent development of breast cancer, psychological complications such as depression, suicidal ideation, anxiety, sleeping disorders, death and any other adverse event as defined by the Food and Drug Administration criteria provided in the Medwatch Reporting System;

6. "Gestational age" means the time that has elapsed since the first day of the woman's last menstrual period, also known as "last menstrual period" or "LMP";

7. "Hospital" means an institution providing medical and surgical treatment and nursing care for sick or injured people, or institutions defined under Section 1-701 of Title 63 of the Oklahoma Statutes;

8. “Physician” means any person licensed to practice medicine in this state. The term includes medical doctors and doctors of osteopathy;

9. “Pregnant” or “pregnancy” means that female reproductive condition of having an unborn child in the mother’s uterus;

10. “Provide” or “provision” means, when used regarding abortion-inducing drugs, any act of giving, selling, dispensing, administering, transferring possession to or otherwise providing or prescribing an abortion-inducing drug;

11. “Qualified physician” means a physician licensed in this state who has the ability to:

a. identify and document a viable intrauterine pregnancy,

b. assess the gestational age of pregnancy and to inform the patient of gestational age-specific risks,

c. diagnose ectopic pregnancy,

d. determine blood type and administer RhoGAM if a woman is Rh negative,

e. assess for signs of domestic abuse, reproductive control, human trafficking and other signals of coerced abortion,

f. provide surgical intervention or has entered into a contract with another qualified physician to provide surgical intervention, and

g. supervise and bear legal responsibility for any agent, employee or contractor who is participating in any part of procedure including, but not limited to, pre-procedure evaluation and care;

12. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved; and

13. "Unborn child" means an individual organism of the species homo sapiens, beginning at fertilization, until the point of being born-alive as defined in Title 1 U.S.C., Section 8(b).

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-756.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

Abortion-inducing drugs shall only be provided by a qualified physician following procedures laid out in this act. It shall be unlawful for any manufacturer, supplier, physician, qualified physician or any other person to provide any abortion-inducing drug via courier, delivery or mail service.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-756.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The qualified physician providing an abortion-inducing drug shall examine the woman in person, and prior to providing an abortion-inducing drug, shall:

1. Independently verify that a pregnancy exists;

2. Determine the woman's blood type, and if she is Rh negative, be able to and offer to administer RhoGAM at the time of the abortion;

3. Inform the patient that she may see the remains of her unborn child in the process of completing the abortion; and

4. Document, in the woman's medical chart, the gestational age and intrauterine location of the pregnancy, and whether she received treatment for Rh negativity, as diagnosed by the most accurate standard of medical care.

B. A qualified physician providing an abortion-inducing drug shall be credentialed and competent to handle complication management including emergency transfer, or shall have a signed contract with an associated physician who is credentialed to handle complications and be able to produce that signed contract on demand by the pregnant woman, by the State Board of Medical Licensure and Supervision or by the State Department of Health. Every pregnant woman to whom a qualified physician provides any abortion-inducing drug shall be given the name and phone number of the associated physician.

C. The qualified physician providing any abortion-inducing drug or an agent of the qualified physician shall schedule a follow-up visit for the woman at approximately seven (7) to fourteen (14) days after administration of the abortion-inducing drug to confirm that the pregnancy is completely terminated and to assess the degree of bleeding. The qualified physician shall make all reasonable efforts to ensure that the woman returns for the scheduled appointment. A brief description of the efforts made to comply with this subsection including the date, time and identification by name of the person making such efforts, shall be included in the woman's medical record.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-756.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision of this act or the laws of this state, abortion-inducing drugs shall not be provided in any school facility or on state grounds including, but not limited to, elementary, secondary and institutions of higher education in this state.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-756.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. No abortion-inducing drug shall be provided without the informed consent of the pregnant woman as described in this section to whom the abortion-inducing drug is provided.

B. Informed consent to a chemical abortion shall be obtained at least seventy-two (72) hours before the abortion-inducing drug is provided to the pregnant woman, except if in reasonable medical judgment, compliance with this subsection would pose a greater risk of:

1. The death of the pregnant woman; or

2. The substantial and irreversible physical impairment of a major bodily function not including psychological or emotional conditions, of the pregnant woman.

C. A form created by the State Department of Health shall be used by a qualified physician to obtain the consent required prior to providing an abortion-inducing drug.

D. A consent form is not valid and consent is not sufficient, unless:

1. The patient initials each entry, list, description or declaration required to be on the consent form as detailed in paragraphs 1 through 6 of subsection E of this section;

2. The patient signs the “consent statement” described in paragraph 11 of subsection E of this section; and

3. The qualified physician signs the "qualified physician declaration" described in paragraph 12 of subsection E of this section.

E. The consent form shall include, but is not limited to, the following:

1. The probable gestational age of the unborn child as determined by both patient history and by ultrasound results used to confirm gestational age;

2. A detailed description of the steps to complete the chemical abortion;

3. A detailed list of the risks related to the specific abortion-inducing drug or drugs to be used including, but not limited to, hemorrhaging, failure to remove all tissue of the unborn child which may require an additional procedure, sepsis, sterility and possible continuation of pregnancy;

4. Information about Rh incompatibility including that if she has an Rh-negative blood type, she should receive an injection of Rh immunoglobulin at the time of the abortion to prevent Rh incompatibility in future pregnancies;

5. That the risks of complications from a chemical abortion including incomplete abortion, increase with advancing gestational age;

6. That it may be possible to reverse the effects of the chemical abortion should she change her mind, but that time is of the essence;

7. That she may see the remains of her unborn child in the process of completing the abortion;

8. That initial studies suggest that children born after reversing the effects of Mifeprex/mifepristone have no greater risk of birth defects than the general population;

9. That initial studies suggest there is no increased risk of maternal mortality after reversing the effects of Mifeprex/mifepristone;

10. That information on and assistance with reversing the effects of abortion-inducing drugs are available in the state-prepared materials;

11. An "acknowledgment of risks and consent statement" which shall be signed by the patient. The statement shall include, but is not limited to, the following declarations, which shall be individually initialed by the patient:

a. that the patient understands that the abortion-inducing drug regimen or procedure is intended to end her pregnancy and will result in the death of her unborn child,

b. that the patient is not being forced to have an abortion, that she has the choice not to have the

abortion and that she may withdraw her consent to the abortion-inducing drug regimen even after she has begun the abortion-inducing drug regimen,

c. that the patient understands that the chemical abortion regimen or procedure to be used has specific risks and may result in specific complications,

d. that the patient has been given the opportunity to ask questions about her pregnancy, the development of her unborn child, alternatives to abortion, the abortion-inducing drug or drugs to be used and the risks and complications inherent to the abortion-inducing drug or drugs to be used,

e. that she was specifically told that "Information on the potential ability of qualified medical professionals to reverse the effects of an abortion obtained through the use of abortion-inducing drugs is available at www.abortionpillreversal.com, or you can contact (877) 558-0333 for assistance in locating a medical professional that can aide in the reversal of an abortion.",

f. that she has been provided access to state-prepared, printed materials on informed consent for abortion and the state-prepared and maintained website on informed consent for abortion,

g. if applicable, that she has been given the name and phone number of the associated physician who has agreed to provide medical care and treatment in the event of complications associated with the abortion-inducing drug regimen or procedure,

h. that the qualified physician will schedule an in-person follow-up visit for the patient at approximately seven (7) to fourteen (14) days after providing the abortion-inducing drug or drugs to confirm that the pregnancy is completely terminated and to assess the degree of bleeding and other complications, and

i. that the patient has received or been given sufficient information to give her informed consent to the abortion-inducing drug regimen or procedure, and

j. that the patient has a private right of action to sue the qualified physician under the laws of this state if she feels that she has been coerced or misled prior to obtaining an abortion, and how to access state resources regarding her legal right to obtain relief; and

12. A "qualified physician declaration", which shall be signed by the qualified physician, stating that the qualified physician has explained the abortion-inducing drug or drugs to be used, has

provided all of the information required in subsection E of this section, and has answered all of the woman's questions.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-756.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Medical Licensure and Supervision shall cause to be published in the state-prepared, printed materials on informed consent for abortion and the state-prepared and maintained website on informed consent for abortion the following statement:

"Information on the potential ability of qualified medical professionals to reverse the effects of an abortion obtained through the use of abortion-inducing drugs is available at www.abortionpillreversal.com, or you can contact (877) 558-0333 for assistance in locating a medical professional that can aid in the reversal of an abortion."

B. On an annual basis, the State Board of Medical Licensure and Supervision shall review and update, if necessary, the statement required in subsection A of this Section.

C. As part of the informed consent counseling required in Section 5 of this act, the qualified physician shall inform the pregnant woman about abortion pill reversal and provide her with the state-prepared materials and website link as proscribed by Section 6 of this act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-756.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. For the purpose of promoting maternal health and adding to the sum of medical and public health knowledge through the compilation of relevant data, a report of each drug-induced abortion performed shall be made to the State Department of Health on forms prescribed by it. The reports shall be completed by the hospital or other licensed facility in which the abortion-inducing drug was given, sold, dispensed, administered or otherwise provided or prescribed; signed by the qualified physician who gave, sold, dispensed, administered or otherwise provided or prescribed the abortion-inducing drug; and transmitted to the Department within fifteen (15) days after each reporting month.

B. Each report shall include, at minimum, the following information:

1. Identification of the qualified physician who provided the abortion-inducing drug;

2. Whether the chemical abortion was completed at the hospital or licensed facility in which the abortion-inducing drug was provided or at an alternative location;

3. The referring physician, agency or service, if any;

4. The pregnant woman’s age and race;

5. The number of previous pregnancies, number of live births and number of previous abortions of the pregnant woman;

6. The probable gestational age of the unborn child as determined by both patient history and by ultrasound results used to confirm the gestational age. The report shall include the date of the ultrasound and gestational age determined on that date;

7. The abortion-inducing drug or drugs used, the date each was provided to the pregnant woman and the reason for the abortion, if known;

8. Preexisting medical conditions of the pregnant woman which would complicate her pregnancy, if any;

9. Whether the woman returned for a follow-up examination to determine completion of the abortion procedure and to assess bleeding and the date and results of any such follow-up examination, and what reasonable efforts were made by the qualified physician to encourage that she return for a follow-up examination if she did not;

10. Whether the woman suffered any complications, and what specific complications arose and any follow-up treatment needed; and

11. The amount billed to cover the treatment for specific complications including whether the treatment was billed to Medicaid, private insurance, private pay or other method. This shall include charges for any physician, hospital, emergency room,

prescription or other drugs, laboratory tests and any other costs for treatment rendered.

C. Reports required under this subsection shall not contain:

1. The name of the pregnant woman;

2. Common identifiers such as her social security number or driver license number; or

3. Other information or identifiers that would make it possible to identify, in any manner or under any circumstances, a woman who has obtained or seeks to obtain a chemical abortion.

D. If a qualified physician provides an abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion as authorized in Sections 2 and 3 of this act, and if the qualified physician knows that the woman who uses the abortion-inducing drug for the purpose of inducing an abortion experiences, during or after the use of the abortion-inducing drug, an adverse event, the qualified physician shall provide a written report of the adverse event within three (3) days of the event to the Food and Drug Administration via the Medwatch Reporting System, and to the Department and to the State Board of Medical Licensure and Supervision.

E. Any physician, qualified physician, associated physician or other healthcare provider who treats a woman, either contemporaneously to or at any time after the procedure, for an adverse event or complication related to a chemical abortion shall

make a report of the adverse event to the Department on forms prescribed by it. The reports shall be completed by the hospital or other facility in which the adverse event treatment was provided; signed by the physician, qualified physician or other healthcare provider who treated the adverse event; and transmitted to the Department within (15) days after each reporting month.

F. The Department shall prepare a comprehensive annual statistical report for the Legislature based upon the data gathered from reports under this section. The aggregated data shall also be made available to the public by the Department in a downloadable format.

G. The Department shall summarize aggregate data from the reports required under this act and submit the data to the Centers for Disease Control and Prevention.

H. Reports filed pursuant to this section shall be public records and shall be available to the public in accordance with the confidentiality and public records reporting laws of this state. Copies of all reports filed under this subsection shall be available to the State Board of Medical Licensure and Supervision, State Board of Pharmacy, state law enforcement offices and child protective services for use in the performance of their official duties.

I. Absent a valid court order or judicial subpoena, neither the Department, any other state department, agency or office nor any employees thereof shall compare data concerning abortions or

abortion complications maintained in an electronic or other information system file with data in any other electronic or other information system with the intention of identifying, in any manner or under any circumstances, a woman obtaining or seeking to obtain a drug-induced abortion.

J. Statistical information that may reveal the identity of a woman obtaining or seeking to obtain a drug-induced abortion shall not be publicly disclosed by the Department, any other state department, agency, office or any employee or contractor thereof.

K. Copies of all reports filed under this section shall be available to the Department and the State Board of Medical Licensure and Supervision for use in the performance of its official duties.

L. The Department shall communicate the reporting requirements in this section to all medical professional organizations, licensed physicians, hospitals, emergency rooms, abortion facilities, clinics, ambulatory surgical facilities and other healthcare facilities operating in this state.

M. Any physician including emergency medical personnel, who treats a woman for complications or adverse event arising from an abortion, shall file a written report as required by this section of this act with the Department.

N. A physician filing a written report with the Department after treating a woman for complications or otherwise in an emergency capacity shall make reasonable efforts to include all of

the required information that may be obtained without violating the privacy of the woman.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-756.9 of Title 63, unless there is created a duplication in numbering, reads as follows:

The State Department of Health shall create and distribute the forms required by this act within sixty (60) days after the effective date of this act. No provision of this act requiring the reporting of information on forms published by the Department shall be applicable until ten (10) days after the requisite forms are first created and distributed or until the effective date of this act, whichever is later.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-756.10 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A person who intentionally, knowingly or recklessly violates any provision of this act is guilty of a misdemeanor.

B. A person who intentionally, knowingly or recklessly violates any provision of this act by fraudulent use of an abortion-inducing drug, with or without the knowledge of the pregnant woman, is guilty of a felony.

C. No criminal penalty may be assessed against the pregnant woman upon whom the drug-induced abortion is attempted, induced or performed.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-756.11 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. In addition to whatever remedies are available under the common or statutory law of this state, failure to comply with the requirements of this act shall:

1. Provide a basis for a civil malpractice action for actual and punitive damages;

2. Provide a basis for a professional disciplinary action;

3. Provide a basis for recovery for the woman's survivors for the wrongful death of the woman; and

4. Provide a basis for a cause of action for injunctive relief against a person who has provided an abortion-inducing drug in violation of this act. Such an action may be maintained by:

a. a woman to whom such an abortion-inducing drug was provided,

b. a person who is the spouse, parent or guardian of, or a current or former licensed health care provider of, a woman to whom an abortion-producing drug was provided, or

c. a prosecuting attorney with appropriate jurisdiction.

The injunction shall prevent the defendant from providing further abortion-inducing drugs in violation of this act.

B. No civil liability may be assessed against the pregnant woman upon whom the drug-induced abortion is attempted, induced or performed.

C. When requested, the court shall allow a woman to proceed using solely her initials or a pseudonym and may close any proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the drug-induced abortion was attempted, induced or performed.

D. If judgment is rendered in favor of the plaintiff, the court shall also render judgment for reasonable attorney fees in favor of the plaintiff against the defendant.

E. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court may render judgment for reasonable attorney fees in favor of the defendant against the plaintiff.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-756.12 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Nothing in this act shall be construed as creating or recognizing a right to abortion.

B. It is not the intention of this act to make lawful an abortion that is otherwise unlawful.

C. Nothing in this act repeals, replaces or otherwise invalidates existing federal or state laws, regulations or policies.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-756.13 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Legislature, by joint resolution, may appoint one or more of its members, who sponsored or cosponsored this act in his or her official capacity, to intervene as a matter of right in any case in which the constitutionality of this act is challenged.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-756.14 of Title 63, unless there is created a duplication in numbering, reads as follows:

If any one or more provisions, sections, subsections, sentences, clauses, phrases or words of this act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed this act, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases or words be declared unconstitutional.

SECTION 15. This act shall become effective November 1, 2021.

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