

House Bill No. 1041

An act relating to women's health care; providing a popular name; amending s. 390.012, F.S.; revising requirements for rules of the Agency for Health Care Administration relating to abortion clinics performing abortions after the first trimester of pregnancy; requiring rules that prescribe standards for physical facilities, supplies and equipment, personnel, screening and evaluation, the abortion procedure, recovery, follow-up care, and incident reporting; providing that rules regulating abortion clinics may not impose an unconstitutional burden rather than a legally significant burden on a woman's right to choose to terminate her pregnancy; providing for severability; providing an effective date.

WHEREAS, abortion is an invasive surgical procedure that can lead to numerous and serious medical complications, including, but not limited to, bleeding, hemorrhage, infection, uterine perforation, blood clots, cervical tears, incomplete abortion and retained tissue, failure to actually terminate the pregnancy, free fluid in the abdomen, missed ectopic pregnancies, cardiac arrest, sepsis, respiratory arrest, reactions to anesthesia, fertility problems, emotional problems, and even death, and

WHEREAS, the state has a legitimate interest in ensuring that abortions, like any other medical procedure, be performed under circumstances that ensure maximum safety for the patient, and

WHEREAS, the risks for abortion are greater after the first trimester of pregnancy, and

WHEREAS, the risk of hemorrhage, in particular, is greater after the first trimester of pregnancy, and the resultant complications may require a hysterectomy, other reparative surgery, or a blood transfusion, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Women's Health and Safety Act."

Section 2. Section 390.012, Florida Statutes, is amended to read:

390.012 Powers of agency; rules; disposal of fetal remains.—

(1) The agency shall have the authority to develop and enforce rules for the health, care, and treatment of persons in abortion clinics and for the safe operation of such clinics. ~~These rules shall be comparable to rules which apply to all surgical procedures requiring approximately the same degree of skill and care as the performance of first trimester abortions.~~

(a) The rules shall be reasonably related to the preservation of maternal health of the clients.

(b) The rules shall be in accordance with s. 797.03 and may not impose an unconstitutional a legally significant burden on a woman's freedom to decide whether to terminate her pregnancy.

(c) The rules shall provide for:

1.(a) The performance of pregnancy termination procedures only by a licensed physician.

2.(b) The making, protection, and preservation of patient records, which shall be treated as medical records under chapter 458.

(2) For clinics that perform abortions in the first trimester of pregnancy only, these rules shall be comparable to rules that apply to all surgical procedures requiring approximately the same degree of skill and care as the performance of first trimester abortions.

(3) For clinics that perform or claim to perform abortions after the first trimester of pregnancy, the agency shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter, including the following:

(a) Rules for an abortion clinic's physical facilities. At a minimum, these rules shall prescribe standards for:

1. Adequate private space that is specifically designated for interviewing, counseling, and medical evaluations.

2. Dressing rooms for staff and patients.

3. Appropriate lavatory areas.

4. Areas for preprocedure hand washing.

5. Private procedure rooms.

6. Adequate lighting and ventilation for abortion procedures.

7. Surgical or gynecological examination tables and other fixed equipment.

8. Postprocedure recovery rooms that are equipped to meet the patients' needs.

9. Emergency exits to accommodate a stretcher or gurney.

10. Areas for cleaning and sterilizing instruments.

11. Adequate areas for the secure storage of medical records and necessary equipment and supplies.

12. The display in the abortion clinic, in a place that is conspicuous to all patients, of the clinic's current license issued by the agency.

(b) Rules to prescribe abortion clinic supplies and equipment standards, including supplies and equipment that are required to be immediately available for use or in an emergency. At a minimum, these rules shall:

1. Prescribe required clean and sterilized equipment and supplies, including medications, required for the conduct, in an appropriate fashion, of any abortion procedure that the medical staff of the clinic anticipates performing and for monitoring the progress of each patient throughout the procedure and recovery period.

2. Prescribe required equipment, supplies, and medications that shall be available and ready for immediate use in an emergency and requirements for written protocols and procedures to be followed by staff in an emergency, such as the loss of electrical power.

3. Prescribe equipment and supplies for required laboratory tests and requirements for protocols to calibrate and maintain laboratory equipment or equipment operated by clinic staff at the abortion clinic.

4. Require ultrasound equipment.

5. Require that all equipment is safe for the patient and the staff, meets applicable federal standards, and is checked annually to ensure safety and appropriate calibration.

(c) Rules relating to abortion clinic personnel. At a minimum, these rules shall require that:

1. The abortion clinic designate a medical director who is licensed to practice medicine in this state and who has admitting privileges at a licensed hospital in this state or has a transfer agreement with a licensed hospital within reasonable proximity of the clinic.

2. If a physician is not present after an abortion is performed, a registered nurse, licensed practical nurse, advanced registered nurse practitioner, or physician assistant shall be present and remain at the clinic to provide postoperative monitoring and care until the patient is discharged.

3. Surgical assistants receive training in counseling, patient advocacy, and the specific responsibilities associated with the services the surgical assistants provide.

4. Volunteers receive training in the specific responsibilities associated with the services the volunteers provide, including counseling and patient advocacy as provided in the rules adopted by the director for different types of volunteers based on their responsibilities.

(d) Rules relating to the medical screening and evaluation of each abortion clinic patient. At a minimum, these rules shall require:

1. A medical history including reported allergies to medications, antiseptic solutions, or latex; past surgeries; and an obstetric and gynecological history.

2. A physical examination, including a bimanual examination estimating uterine size and palpation of the adnexa.

3. The appropriate laboratory tests, including:

a. For an abortion in which an ultrasound examination is not performed before the abortion procedure, urine or blood tests for pregnancy performed before the abortion procedure.

b. A test for anemia.

c. Rh typing, unless reliable written documentation of blood type is available.

d. Other tests as indicated from the physical examination.

4. An ultrasound evaluation for all patients who elect to have an abortion after the first trimester. The rules shall require that if a person who is not a physician performs an ultrasound examination, that person shall have documented evidence that he or she has completed a course in the operation of ultrasound equipment as prescribed in rule. The physician, registered nurse, licensed practical nurse, advanced registered nurse practitioner, or physician assistant shall review, at the request of the patient, the ultrasound evaluation results, including an estimate of the probable gestational age of the fetus, with the patient before the abortion procedure is performed.

5. That the physician is responsible for estimating the gestational age of the fetus based on the ultrasound examination and obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rule and shall write the estimate in the patient's medical history. The physician shall keep original prints of each ultrasound examination of a patient in the patient's medical history file.

(e) Rules relating to the abortion procedure. At a minimum, these rules shall require:

1. That a physician, registered nurse, licensed practical nurse, advanced registered nurse practitioner, or physician assistant is available to all patients throughout the abortion procedure.

2. Standards for the safe conduct of abortion procedures that conform to obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rule.

3. Appropriate use of general and local anesthesia, analgesia, and sedation if ordered by the physician.

4. Appropriate precautions, such as the establishment of intravenous access at least for patients undergoing post-first trimester abortions.

5. Appropriate monitoring of the vital signs and other defined signs and markers of the patient's status throughout the abortion procedure and during the recovery period until the patient's condition is deemed to be stable in the recovery room.

(f) Rules that prescribe minimum recovery room standards. At a minimum, these rules shall require that:

1. Postprocedure recovery rooms are supervised and staffed to meet the patients' needs.

2. Immediate postprocedure care consists of observation in a supervised recovery room for as long as the patient's condition warrants.

3. The clinic arranges hospitalization if any complication beyond the medical capability of the staff occurs or is suspected.

4. A registered nurse, licensed practical nurse, advanced registered nurse practitioner, or physician assistant who is trained in the management of the recovery area and is capable of providing basic cardiopulmonary resuscitation and related emergency procedures remains on the premises of the abortion clinic until all patients are discharged.

5. A physician shall sign the discharge order and be readily accessible and available until the last patient is discharged to facilitate the transfer of emergency cases if hospitalization of the patient or viable fetus is necessary.

6. A physician discusses Rho(D) immune globulin with each patient for whom it is indicated and ensures that it is offered to the patient in the immediate postoperative period or that it will be available to her within 72 hours after completion of the abortion procedure. If the patient refuses the Rho(D) immune globulin, a refusal form approved by the agency shall be signed by the patient and a witness and included in the medical record.

7. Written instructions with regard to postabortion coitus, signs of possible problems, and general aftercare are given to each patient. Each patient shall have specific written instructions regarding access to medical care for complications, including a telephone number to call for medical emergencies.

8. There is a specified minimum length of time that a patient remains in the recovery room by type of abortion procedure and duration of gestation.

9. The physician ensures that a registered nurse, licensed practical nurse, advanced registered nurse practitioner, or physician assistant from the abortion clinic makes a good faith effort to contact the patient by telephone, with the patient's consent, within 24 hours after surgery to assess the patient's recovery.

10. Equipment and services are readily accessible to provide appropriate emergency resuscitative and life support procedures pending the transfer of the patient or viable fetus to the hospital.

(g) Rules that prescribe standards for followup care. At a minimum, these rules shall require that:

1. A postabortion medical visit that includes a medical examination and a review of the results of all laboratory tests is offered.

2. A urine pregnancy test is obtained at the time of the followup visit to rule out continuing pregnancy.

3. If a continuing pregnancy is suspected, the patient shall be evaluated and a physician who performs abortions shall be consulted.

(h) Rules to prescribe minimum abortion clinic incident reporting. At a minimum, these rules shall require that:

1. The abortion clinic records each incident that results in serious injury to a patient or a viable fetus at an abortion clinic and shall report an incident in writing to the agency within 10 days after the incident occurs. For the purposes of this paragraph, "serious injury" means an injury that occurs at an abortion clinic and that creates a serious risk of substantial impairment of a major bodily organ.

2. If a patient's death occurs, other than a fetal death properly reported pursuant to law, the abortion clinic reports it to the department not later than the next department workday.

(4) The rules adopted pursuant to this section shall not limit the ability of a physician to advise a patient on any health issue.

(5) The provisions of this section and the rules adopted pursuant hereto shall be in addition to any other laws, rules, and regulations which are applicable to facilities defined as abortion clinics under this section.

(6)(2) The agency may adopt and enforce rules, in the interest of protecting the public health, to ensure the prompt and proper disposal of fetal remains and tissue resulting from pregnancy termination.

(7)(3) If any owner, operator, or employee of an abortion clinic fails to dispose of fetal remains and tissue in a manner consistent with the disposal of other human tissue in a competent professional manner, the license of such clinic may be suspended or revoked, and such person is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application. To this end, the provisions of this act are declared severable.

Section 4. This act shall take effect July 1, 2005.

Approved by the Governor May 31, 2005.

Filed in Office Secretary of State May 31, 2005.