

## CHAPTER 2016-150

### Committee Substitute for Committee Substitute for House Bill No. 1411

An act relating to termination of pregnancies; amending s. 390.011, F.S.; defining the term “gestation” and revising the term “third trimester”; amending s. 390.0111, F.S.; revising the requirements for disposal of fetal remains; revising the criminal punishment for failure to properly dispose of fetal remains; prohibiting state agencies, local governmental entities, and Medicaid managed care plans from expending or paying funds to or initiating or renewing contracts under certain circumstances with certain organizations that perform abortions; providing exceptions; amending s. 390.0112, F.S.; requiring directors of certain hospitals and physicians’ offices and licensed abortion clinics to submit monthly reports to the Agency for Health Care Administration on a specified form; prohibiting the agency to submit certain data to the Centers for Disease Control and Prevention on a quarterly basis; amending s. 390.012, F.S.; requiring the agency to develop and enforce rules relating to license inspections and investigations of certain clinics; requiring the agency to adopt rules to require all physicians performing abortions to have admitting privileges at a hospital within a reasonable proximity unless the clinic has a transfer agreement with the hospital; revising requirements for rules that prescribe minimum recovery room standards; revising requirements for the disposal of fetal remains; requiring the agency to submit an annual report to the Legislature; amending s. 390.014, F.S.; providing a different limitation on the amount of a fee; amending s. 390.025, F.S.; requiring certain organizations that provide abortion referral services or abortion counseling services to register with the agency, pay a specified fee, and include certain information in advertisements; requiring biennial renewal of a registration; providing exemptions from the registration requirement; requiring the agency to adopt rules; providing for the assessment of costs in certain circumstances; amending s. 873.05, F.S.; prohibiting an offer to purchase, sell, donate, or transfer fetal remains obtained from an abortion and the purchase, sale, donation, or transfer of such remains, excluding costs associated with certain transportation of remains; providing an appropriation; providing effective dates.

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

Section 1. Present subsections (6) through (12) of section 390.011, Florida Statutes, are redesignated as subsections (7) through (13), respectively, a new subsection (6) is added to that section, and present subsection (11) of that section is amended, to read:

390.011 Definitions.—As used in this chapter, the term:

(6) “Gestation” means the development of a human embryo or fetus between fertilization and birth.

(12)(11) “Third Trimester” means one of the following three distinct periods of time in the duration of a pregnancy:

(a) “First trimester,” which is the period of time from fertilization through the end of the 11th week of gestation.

(b) “Second trimester,” which is the period of time from the beginning of the 12th week of gestation through the end of the 23rd week of gestation.

(c) “Third trimester,” which is the period of time from the beginning of the 24th week of gestation through birth the weeks of pregnancy after the 24th week of pregnancy.

Section 2. Subsection (7) of section 390.0111, Florida Statutes, is amended, and subsection (15) is added to that section, to read:

390.0111 Termination of pregnancies.—

(7) FETAL REMAINS.—Fetal remains shall be disposed of in a sanitary and appropriate manner pursuant to s. 381.0098 and rules adopted thereunder and in accordance with standard health practices, as provided by rule of the Department of Health. Failure to dispose of fetal remains in accordance with this subsection department rules is a misdemeanor of the first second degree, punishable as provided in s. 775.082 or s. 775.083.

(15) USE OF PUBLIC FUNDS RESTRICTED.—A state agency, a local governmental entity, or a managed care plan providing services under part IV of chapter 409 may not expend funds for the benefit of, pay funds to, or initiate or renew a contract with an organization that owns, operates, or is affiliated with one or more clinics that are licensed under this chapter and perform abortions unless one or more of the following applies:

(a) All abortions performed by such clinics are:

1. On fetuses that are conceived through rape or incest; or

2. Are medically necessary to preserve the life of the pregnant woman or to avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman, other than a psychological condition.

(b) The funds must be expended to fulfill the terms of a contract entered into before July 1, 2016.

(c) The funds must be expended as reimbursement for Medicaid services provided on a fee-for-service basis.

Section 3. Subsection (1) of section 390.0112, Florida Statutes, is amended, present subsections (2), (3), and (4) of that section are

redesignated as subsections (3), (4), and (5), respectively, and a new subsection (2) is added to that section, to read:

390.0112 Termination of pregnancies; reporting.—

(1) ~~The director of any medical facility in which abortions are performed, including a physician’s office, any pregnancy is terminated shall submit a monthly report each month to the agency. The report may be submitted electronically, may not include personal identifying information, and must include:~~

(a) Until the agency begins collecting data under paragraph (e), the number of abortions performed.

(b) The reasons such abortions were performed.

(c) For each abortion, the period of gestation at the time the abortion was performed.

~~(d) which contains the number of procedures performed, the reason for same, the period of gestation at the time such procedures were performed, and The number of infants born alive or alive during or immediately after an attempted abortion.~~

(e) Beginning no later than January 1, 2017, information consistent with the United States Standard Report of Induced Termination of Pregnancy adopted by the Centers for Disease Control and Prevention.

~~(2) The agency shall keep be responsible for keeping such reports in a central location for the purpose of compiling and analyzing place from which statistical data and shall submit data reported pursuant to paragraph (1)(e) to the Division of Reproductive Health within the Centers for Disease Control and Prevention, as requested by the Centers for Disease Control and Prevention analysis can be made.~~

Section 4. Paragraph (c) of subsection (1), subsection (2), paragraphs (c) and (f) of subsection (3), and subsection (7) of section 390.012, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

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

(1) The agency may develop and enforce rules pursuant to ss. 390.011-390.018 and part II of chapter 408 for the health, care, and treatment of persons in abortion clinics and for the safe operation of such clinics.

(c) The rules shall provide for:

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

2. The making, protection, and preservation of patient records, which shall be treated as medical records under chapter 458. When performing a

license inspection of a clinic, the agency shall inspect at least 50 percent of patient records generated since the clinic's last license inspection.

3. Annual inspections by the agency of all clinics licensed under this chapter to ensure that such clinics are in compliance with this chapter and agency rules.

4. The prompt investigation of credible allegations of abortions being performed at a clinic that is not licensed to perform such procedures.

(2) For clinics that perform abortions in the first trimester of pregnancy only, these rules ~~must~~ 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 and must require:

(a) Clinics to have a written patient transfer agreement with a hospital within reasonable proximity to the clinic which includes the transfer of the patient's medical records held by the clinic and the treating physician to the licensed hospital; or

(b) Physicians who perform abortions at the clinic to have admitting privileges at a hospital within reasonable proximity to the clinic.

(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:

(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 all physicians who perform abortions in the clinic have who has admitting privileges at a licensed hospital within reasonable proximity to the clinic, unless the clinic in this state or has a written patient transfer agreement with a licensed hospital within reasonable proximity to of the clinic which includes the transfer of the patient's medical records held by both the clinic and the treating physician.

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.

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

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

2. Immediate postprocedure care consist ~~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.~~

3.4. 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 remain ~~remains~~ on the premises of the abortion clinic until all patients are discharged.

4.5. 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.

5.6. A physician discuss ~~discusses~~ Rho(D) immune globulin with each patient for whom it is indicated and ensure ~~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, she and a witness must sign a refusal form approved by the agency which must be ~~shall be signed by the patient and a witness and~~ included in the medical record.

6.7. Written instructions with regard to postabortion coitus, signs of possible problems, and general aftercare which are specific to the patient be ~~are given to each patient.~~ The instructions must include information ~~Each patient shall have specific written instructions regarding access to medical care for complications, including a telephone number for use in the event of a to-call for medical emergency emergencies.~~

7.8. ~~There is~~ A specified minimum length of time be specified, by type of abortion procedure and duration of gestation, during which ~~that~~ a patient must remain ~~remains~~ in the recovery room ~~by type of abortion procedure and duration of gestation.~~

8.9. The physician ensure ~~ensures~~ that, with the patient's consent, 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.

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

(7) If ~~an any~~ owner, operator, or employee of an abortion clinic fails to dispose of fetal remains and tissue in a sanitary manner pursuant to s. 381.0098, rules adopted thereunder, and rules adopted by the agency pursuant to this section 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 commits ~~is guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(8) Beginning February 1, 2017, and annually thereafter, the agency shall submit a report to the President of the Senate and the Speaker of the House of Representatives which summarizes all regulatory actions taken during the prior year by the agency under this chapter.

Section 5. Subsection (3) of section 390.014, Florida Statutes, is amended to read:

390.014 Licenses; fees.—

(3) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this chapter and part II of chapter 408. The amount of the fee shall be established by rule and may not be more than required to pay for the costs incurred by the agency in administering this chapter less than \$70 or more than \$500.

Section 6. Effective January 1, 2017, present subsection (3) of section 390.025, Florida Statutes, is amended, and new subsections (3), (4), and (5) are added to that section, to read:

390.025 Abortion referral or counseling agencies; penalties.—

(3) An abortion referral or counseling agency, as defined in subsection (1), shall register with the Agency for Health Care Administration. To register or renew a registration an applicant must pay an initial or renewal registration fee established by rule, which must not exceed the costs incurred by the agency in administering this section. Registrants must include in any advertising materials the registration number issued by the agency and must renew their registration biennially.

(4) The following are exempt from the requirement to register pursuant to subsection (3):

(a) Facilities licensed pursuant to this chapter, chapter 395, chapter 400, or chapter 408;

(b) Facilities that are exempt from licensure as a clinic under s. 400.9905(4) and that refer five or fewer patients for abortions per month; and

(c) Health care practitioners, as defined in s. 456.001, who, in the course of their practice outside of a facility licensed pursuant to this chapter, chapter 395, chapter 400, or chapter 408, refer five or fewer patients for abortions each month.

(5) The agency shall adopt rules to administer this section and part II of chapter 408.

(6)(3) Any person who violates the provisions of subsection (2) commits this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In addition to any other penalties imposed pursuant to this chapter, the Agency for Health Care Administration may assess costs related to an investigation of violations of this section which results in a successful prosecution. Such costs may not include attorney fees.

Section 7. Section 873.05, Florida Statutes, is amended to read:

873.05 Advertising, purchase, or sale, or transfer of human embryos or fetal remains prohibited.—

(1) A No person may not shall knowingly advertise or offer to purchase or sell, or purchase, sell, or otherwise transfer, a any human embryo for valuable consideration.

(2) As used in this subsection section, the term “valuable consideration” does not include the reasonable costs associated with the removal, storage, and transportation of a human embryo.

(2) A person may not advertise or offer to purchase, sell, donate, or transfer, or purchase, sell, donate, or transfer, fetal remains obtained from an abortion, as defined in s. 390.011. This subsection does not prohibit the transportation or transfer of fetal remains for disposal pursuant to s. 381.0098 or rules adopted thereunder.

(3) A person who violates the provisions of this section commits is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 8. For the 2016-2017 fiscal year, 0.5 full-time equivalent positions, with associated salary rate of 39,230, are authorized and the sums of \$59,951 in recurring funds and \$185,213 in nonrecurring funds from the Health Care Trust Fund are appropriated to the Agency for Health Care Administration for the purpose of implementing this act.

Section 9. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2016.

Approved by the Governor March 25, 2016.

Filed in Office Secretary of State March 25, 2016.