

HB0171S01 compared with HB0171

~~{deleted text}~~ shows text that was in HB0171 but was deleted in HB0171S01.

inserted text shows text that was not in HB0171 but was inserted into HB0171S01.

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Representative Carl Wimmer proposes the following substitute bill:

ABORTION CLINIC LICENSING

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl Wimmer

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Health Care Facility Licensing and Inspection Act in relation to abortion clinics.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires annual licensing for abortion clinics that provide abortions during the first and second trimesters of pregnancy;
- ▶ grants rulemaking authority to the Department of Health (department) in relation to licensing of abortion clinics;
- ▶ requires, in order for an abortion clinic to obtain and maintain a license, that the abortion clinic comply with statutory requirements, rules, health and safety

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standards, and recordkeeping requirements;

- ▶ requires inspection of abortion clinics;
- ▶ requires the department to establish a fee on abortion clinics to pay for the costs relating to this bill;
- ▶ modifies exemptions from the Health Care Facility Licensing and Inspection Act;
- ▶ in order to assist the department in fulfilling the requirements of this bill, requires the Division of Occupational and Professional Licensing to provide the department with the name and address of each physician who reports that they perform abortions in Utah in a location other than a hospital;
- ▶ provides intent language; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

AMENDS:

26-21-2, as last amended by Laws of Utah 2005, Chapter 31

26-21-7, as last amended by Laws of Utah 2004, Chapter 141

26-21-8, as last amended by Laws of Utah 2003, Chapter 155

58-67-304, as last amended by Laws of Utah 2005, Chapter 94

58-68-304, as last amended by Laws of Utah 2005, Chapter 94

ENACTS:

26-21-6.5, Utah Code Annotated 1953

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 26-21-2 is amended to read:

26-21-2. Definitions.

As used in this chapter:

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~~[(1) "Abortion clinic" means a facility, other than a general acute or specialty hospital, that performs abortions and provides abortion services during the second trimester of pregnancy.]~~

(1) "Abortion clinic" means a type I abortion clinic or a type II abortion clinic.

(2) "Activities of daily living" means essential activities including:

(a) dressing;

(b) eating;

(c) grooming;

(d) bathing;

(e) toileting;

(f) ambulation;

(g) transferring; and

(h) self-administration of medication.

(3) "Ambulatory surgical facility" means a freestanding facility, which provides surgical services to patients not requiring hospitalization.

(4) "Assistance with activities of daily living" means providing of or arranging for the provision of assistance with activities of daily living.

(5) (a) "Assisted living facility" means:

(i) a type I assisted living facility, which is a residential facility that provides assistance with activities of daily living and social care to two or more residents who:

(A) require protected living arrangements; and

(B) are capable of achieving mobility sufficient to exit the facility without the assistance of another person; and

(ii) a type II assisted living facility, which is a residential facility with a home-like setting that provides an array of coordinated supportive personal and health care services available 24 hours per day to residents who have been assessed under department rule to need any of these services.

(b) Each resident in a type I or type II assisted living facility shall have a service plan based on the assessment, which may include:

(i) specified services of intermittent nursing care;

(ii) administration of medication; and

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(iii) support services promoting residents' independence and self sufficiency.

(6) "Birthing center" means a freestanding facility, receiving maternal clients and providing care during pregnancy, delivery, and immediately after delivery.

(7) "Committee" means the Health Facility Committee created in Section 26-1-7.

(8) "Consumer" means any person not primarily engaged in the provision of health care to individuals or in the administration of facilities or institutions in which such care is provided and who does not hold a fiduciary position, or have a fiduciary interest in any entity involved in the provision of health care, and does not receive, either directly or through his spouse, more than 1/10 of his gross income from any entity or activity relating to health care.

(9) "End stage renal disease facility" means a facility which furnishes staff-assisted kidney dialysis services, self-dialysis services, or home-dialysis services on an outpatient basis.

(10) "Freestanding" means existing independently or physically separated from another health care facility by fire walls and doors and administrated by separate staff with separate records.

(11) "General acute hospital" means a facility which provides diagnostic, therapeutic, and rehabilitative services to both inpatients and outpatients by or under the supervision of physicians.

(12) "Governmental unit" means the state, or any county, municipality, or other political subdivision or any department, division, board, or agency of the state, a county, municipality, or other political subdivision.

(13) (a) "Health care facility" means general acute hospitals, specialty hospitals, home health agencies, hospices, nursing care facilities, residential-assisted living facilities, birthing centers, ambulatory surgical facilities, small health care facilities, abortion clinics, facilities owned or operated by health maintenance organizations, end stage renal disease facilities, and any other health care facility which the committee designates by rule.

(b) "Health care facility" does not include the offices of private physicians or dentists, whether for individual or group practice, except that it does include an abortion clinic.

(14) "Health maintenance organization" means an organization, organized under the laws of any state which:

(a) is a qualified health maintenance organization under 42 U.S.C. Sec. 300e-9; or

(b) (i) provides or otherwise makes available to enrolled participants at least the

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following basic health care services: usual physician services, hospitalization, laboratory, x-ray, emergency, and preventive services and out-of-area coverage;

(ii) is compensated, except for copayments, for the provision of the basic health services listed in Subsection (14)(b)(i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health services are provided and which is fixed without regard to the frequency, extent, or kind of health services actually provided; and

(iii) provides physicians' services primarily directly through physicians who are either employees or partners of such organizations, or through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.

(15) (a) "Home health agency" means an agency, organization, or facility or a subdivision of an agency, organization, or facility which employs two or more direct care staff persons who provide licensed nursing services, therapeutic services of physical therapy, speech therapy, occupational therapy, medical social services, or home health aide services on a visiting basis.

(b) "Home health agency" does not mean an individual who provides services under the authority of a private license.

(16) "Hospice" means a program of care for the terminally ill and their families which occurs in a home or in a health care facility and which provides medical, palliative, psychological, spiritual, and supportive care and treatment.

(17) "Nursing care facility" means a health care facility, other than a general acute or specialty hospital, constructed, licensed, and operated to provide patient living accommodations, 24-hour staff availability, and at least two of the following patient services:

(a) a selection of patient care services, under the direction and supervision of a registered nurse, ranging from continuous medical, skilled nursing, psychological, or other professional therapies to intermittent health-related or paraprofessional personal care services;

(b) a structured, supportive social living environment based on a professionally designed and supervised treatment plan, oriented to the individual's habilitation or rehabilitation needs; or

(c) a supervised living environment that provides support, training, or assistance with individual activities of daily living.

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(18) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(19) "Resident" means a person 21 years of age or older who:

(a) as a result of physical or mental limitations or age requires or requests services provided in an assisted living facility; and

(b) does not require intensive medical or nursing services as provided in a hospital or nursing care facility.

(20) "Small health care facility" means a four to 16 bed facility that provides licensed health care programs and services to residents.

(21) "Specialty hospital" means a facility which provides specialized diagnostic, therapeutic, or rehabilitative services in the recognized specialty or specialties for which the hospital is licensed.

(22) "Substantial compliance" means in a department survey of a licensee, the department determines there is an absence of deficiencies which would harm the physical health, mental health, safety, or welfare of patients or residents of a licensee.

(23) "Type I abortion clinic" means a facility, including a physician's office, but not including a general acute or specialty hospital, that:

(a) performs abortions, as defined in Section 76-7-301, during the first trimester of pregnancy; and

(b) does not perform abortions ~~during~~, as defined in Section 76-7-301, after the ~~second~~ first trimester of pregnancy.

(24) "Type II abortion clinic" means a facility, ~~other than~~ including a physician's office, but not including a general acute or specialty hospital, that:

(a) performs abortions ~~during~~, as defined in Section 76-7-301, after the ~~second~~ first trimester of pregnancy; or

(b) performs abortions, as defined in Section 76-7-301, during the first trimester of pregnancy and ~~second~~ after the first trimester of pregnancy.

Section 2. Section **26-21-6.5** is enacted to read:

26-21-6.5. Licensing of an abortion clinic -- Rulemaking authority -- Fee.

(1) Beginning on ~~September~~ April 1, ~~2011~~ 2012, a type I abortion clinic may not operate in the state without a license issued by the department to operate a type I abortion

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clinic.

(2) A type II abortion clinic may not operate in the state without a license issued by the department to operate a type II abortion clinic.

(3) (a) The department shall make rules establishing minimum health, safety, sanitary, and recordkeeping requirements for:

(~~fa~~i) a type I abortion clinic; and

(~~fb~~ii) a type II abortion clinic.

(b) The rules established under Subsection (3)(a) shall take effect on April 1, 2012.

(4) ~~fn~~Beginning on April 1, 2012, in order to receive and maintain a license described in this section, an abortion clinic shall:

(a) apply for a license on a form prescribed by the department;

(b) satisfy and maintain the minimum health, safety, sanitary, and recordkeeping requirements ~~described in~~ established under Subsection (3)(a) that relate to the type of abortion clinic licensed;

(c) comply with the recordkeeping and reporting requirements of Subsection 76-7-305.6(4) and Section 76-7-313;

(d) comply with the requirements of Title 76, Chapter 7, Part 3, Abortion;

(e) pay the annual licensing fee; and

(f) cooperate with inspections conducted by the department.

(5) ~~The~~Beginning on April 1, 2012, the department shall, at least twice per year, inspect each abortion clinic in the state to ensure that the abortion clinic is complying with all statutory and licensing requirements relating to the abortion clinic. At least one of the inspections shall be made without providing notice to the abortion clinic.

(6) ~~The~~Beginning on April 1, 2012, the department shall charge an annual license fee, set by the department in accordance with the procedures described in Section 63J-1-504, to an abortion clinic in an amount that will pay for the cost of the licensing ~~and inspection~~ requirements described in this section and the cost of inspecting abortion clinics.

(7) The department shall deposit the licensing fees described in this section in the General Fund as a dedicated credit to be used solely to pay for the cost of the licensing requirements described in this section and the cost of inspecting abortion clinics.

Section 3. Section 26-21-7 is amended to read:

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26-21-7. Exempt facilities.

This chapter does not apply to:

- (1) a dispensary or first aid facility maintained by any commercial or industrial plant, educational institution, or convent;
- (2) a health care facility owned or operated by an agency of the United States;
- (3) the office of a physician or dentist whether it is an individual or group practice, except that it does apply to an abortion clinic;
- (4) a health care facility established or operated by any recognized church or denomination for the practice of religious tenets administered by mental or spiritual means without the use of drugs, whether gratuitously or for compensation, if it complies with statutes and rules on environmental protection and life safety;
- (5) any health care facility owned or operated by the Department of Corrections, created in Section 64-13-2; and
- (6) a residential facility providing 24-hour care:
 - (a) that does not employ direct care staff;
 - (b) in which the residents of the facility contract with a licensed hospice agency to receive end-of-life medical care; and
 - (c) that meets other requirements for an exemption as designated by administrative rule.

Section 4. Section 26-21-8 is amended to read:

26-21-8. License required -- Not assignable or transferable -- Posting -- Expiration and renewal -- Time for compliance by operating facilities.

- (1) (a) A person or governmental unit acting severally or jointly with any other person or governmental unit, may not establish, conduct, or maintain a health care facility in this state without receiving a license from the department as provided by this chapter and the rules of the committee.
- (b) This Subsection (1) does not apply to facilities that are exempt under Section 26-21-7.
- (2) A license issued under this chapter is not assignable or transferable.
- (3) The current license shall at all times be posted in each health care facility in a place readily visible and accessible to the public.

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(4) (a) The department may issue a license for a period of time not to exceed 12 months from the date of issuance for an abortion clinic~~(f)~~ and not to exceed 24 months from the date of issuance ~~[to]~~ for other health care facilities~~(f)~~ that meet the provisions of this chapter and department rules adopted pursuant to this chapter.

(b) Each license expires at midnight on the day designated on the license as the expiration date, unless previously revoked by the department.

(c) The license shall be renewed upon completion of the application requirements, unless the department finds the health care facility has not complied with the provisions of this chapter or the rules adopted pursuant to this chapter.

(5) A license may be issued under this section only for the operation of a specific facility at a specific site by a specific person.

(6) Any health care facility in operation at the time of adoption of any applicable rules as provided under this chapter shall be given a reasonable time for compliance as determined by the committee.

Section 5. Section 58-67-304 is amended to read:

58-67-304. License renewal requirements.

(1) As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule:

(a) complete qualified continuing professional education requirements in accordance with the number of hours and standards defined by division rule made in collaboration with the board;

(b) appoint a contact person for access to medical records and an alternate contact person for access to medical records in accordance with Subsection 58-67-302(1)(j); and

(c) if the licensee practices medicine in a location with no other persons licensed under this chapter, provide some method of notice to the licensee's patients of the identity and location of the contact person and alternate contact person for the licensee.

(2) If a renewal period is extended or shortened under Section 58-67-303, the continuing education hours required for license renewal under this section are increased or decreased proportionally.

(3) An application to renew a license under this chapter shall require a physician to answer the following question: "Do you perform abortions in Utah in a location other than a

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hospital?"

(4) In order to assist the Department of Health in fulfilling its responsibilities relating to the licensing of an abortion clinic, if a physician responds positively to the question described in Subsection (3), the division shall, within 30 days after the day on which it renews the physician's license under this chapter, inform the Department of Health in writing:

(a) of the name and address of the physician; and

(b) that the physician responded positively to the question described in Subsection (3).

Section 6. Section 58-68-304 is amended to read:

58-68-304. License renewal requirements.

(1) As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule:

(a) complete qualified continuing professional education requirements in accordance with the number of hours and standards defined by division rule in collaboration with the board;

(b) appoint a contact person for access to medical records and an alternate contact person for access to medical records in accordance with Subsection 58-68-302(1)(j); and

(c) if the licensee practices osteopathic medicine in a location with no other persons licensed under this chapter, provide some method of notice to the licensee's patients of the identity and location of the contact person and alternate contact person for access to medical records for the licensee in accordance with Subsection 58-68-302(1)(k).

(2) If a renewal period is extended or shortened under Section 58-68-303, the continuing education hours required for license renewal under this section are increased or decreased proportionally.

(3) An application to renew a license under this chapter shall require a physician to answer the following question: "Do you perform abortions in Utah in a location other than a hospital?"

(4) In order to assist the Department of Health in fulfilling its responsibilities relating to the licensing of an abortion clinic, if a physician responds positively to the question described in Subsection (3), the division shall, within 30 days after the day on which it renews the physician's license under this chapter, inform the Department of Health in writing:

(a) of the name and address of the physician; and

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(b) that the physician responded positively to the question described in Subsection (3).

Section ~~{5}~~7. **Legislative intent.**

The Legislature is aware of the discovery, nationwide, of abortion clinics that operate in unsafe and unsanitary conditions, risking the health and safety of women. The Legislature is very concerned of the risks posed to women in these circumstances and intends to take action to help ensure that these conditions do not exist in Utah. The purpose of this bill is to protect women in Utah from these risks in a manner that does not conflict with the rights, held by state and federal courts to be protected by the United States Constitution, in relation to abortion. The Legislature intends that the department enact rules, and enforce those rules and the provisions of this bill, in a manner that does not place an undue burden on these rights.

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Legislative Review Note

~~as of 2-3-11 12:31 PM~~

~~Office of Legislative Research and General Counsel~~ Section 8. Effective date.

This bill takes effect on July 1, 2011.