

Effective 5/10/2016

76-7-305 Informed consent requirements for abortion -- 72-hour wait mandatory --

Exceptions.

- (1) A person may not perform an abortion, unless, before performing the abortion, the physician who will perform the abortion obtains a voluntary and informed written consent from the woman on whom the abortion is performed, that is consistent with:
 - (a) Section 8.08 of the American Medical Association's Code of Medical Ethics, Current Opinions; and
 - (b) the provisions of this section.
- (2) Except as provided in Subsection (9), consent to an abortion is voluntary and informed only if:
 - (a) at least 72 hours before the abortion, the physician who is to perform the abortion, the referring physician, a physician, a registered nurse, nurse practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or physician's assistant, in a face-to-face consultation in any location in the state, orally informs the woman:
 - (i) consistent with Subsection (3)(a), of:
 - (A) the nature of the proposed abortion procedure;
 - (B) specifically how the procedure described in Subsection (2)(a)(i)(A) will affect the fetus; and
 - (C) the risks and alternatives to an abortion procedure or treatment;
 - (ii) of the probable gestational age and a description of the development of the unborn child at the time the abortion would be performed;
 - (iii) of the medical risks associated with carrying her child to term; and
 - (iv) if the abortion is to be performed on an unborn child who is at least 20 weeks gestational age:
 - (A) that substantial medical evidence from studies concludes that an unborn child who is at least 20 weeks gestational age may be capable of experiencing pain during an abortion procedure; and
 - (B) the measures that shall be taken in accordance with Section 76-7-308.5;
 - (b) at least 72 hours prior to the abortion the physician who is to perform the abortion, the referring physician, or, as specifically delegated by either of those physicians, a physician, a registered nurse, licensed practical nurse, certified nurse-midwife, advanced practice registered nurse, clinical laboratory technologist, psychologist, marriage and family therapist, clinical social worker, genetic counselor, or certified social worker orally, in a face-to-face consultation in any location in the state, informs the pregnant woman that:
 - (i) the Department of Health, in accordance with Section 76-7-305.5, publishes printed material and an informational video that:
 - (A) provides medically accurate information regarding all abortion procedures that may be used;
 - (B) describes the gestational stages of an unborn child; and
 - (C) includes information regarding public and private services and agencies available to assist her through pregnancy, at childbirth, and while the child is dependent, including private and agency adoption alternatives;
 - (ii) the printed material and a viewing of or a copy of the informational video shall be made available to her, free of charge, on the Department of Health's website;
 - (iii) medical assistance benefits may be available for prenatal care, childbirth, and neonatal care, and that more detailed information on the availability of that assistance is contained in the printed materials and the informational video published by the Department of Health;
 - (iv) except as provided in Subsection (3)(b):

- (A) the father of the unborn child is legally required to assist in the support of her child, even if he has offered to pay for the abortion; and
 - (B) the Office of Recovery Services within the Department of Human Services will assist her in collecting child support; and
 - (v) she has the right to view an ultrasound of the unborn child, at no expense to her, upon her request;
 - (c) the information required to be provided to the pregnant woman under Subsection (2)(a) is also provided by the physician who is to perform the abortion, in a face-to-face consultation, prior to performance of the abortion, unless the attending or referring physician is the individual who provides the information required under Subsection (2)(a);
 - (d) a copy of the printed materials published by the Department of Health has been provided to the pregnant woman;
 - (e) the informational video, published by the Department of Health, has been provided to the pregnant woman in accordance with Subsection (4); and
 - (f) the pregnant woman has certified in writing, prior to the abortion, that the information required to be provided under Subsections (2)(a) through (e) was provided, in accordance with the requirements of those subsections.
- (3)
- (a) The alternatives required to be provided under Subsection (2)(a)(i) include:
 - (i) a description of adoption services, including private and agency adoption methods; and
 - (ii) a statement that it is legal for adoptive parents to financially assist in pregnancy and birth expenses.
 - (b) The information described in Subsection (2)(b)(iv) may be omitted from the information required to be provided to a pregnant woman under this section if the woman is pregnant as the result of rape.
 - (c) Nothing in this section shall be construed to prohibit a person described in Subsection (2)(a) from, when providing the information described in Subsection (2)(a)(iv), informing a woman of the person's own opinion regarding the capacity of an unborn child to experience pain.
- (4) When the informational video described in Section 76-7-305.5 is provided to a pregnant woman, the person providing the information shall:
- (a) request that the woman view the video at that time or at another specifically designated time and location; or
 - (b) if the woman chooses not to view the video at a time described in Subsection (4)(a), inform the woman that she can access the video on the Department of Health's website.
- (5) When a serious medical emergency compels the performance of an abortion, the physician shall inform the woman prior to the abortion, if possible, of the medical indications supporting the physician's judgment that an abortion is necessary.
- (6) If an ultrasound is performed on a woman before an abortion is performed, the person who performs the ultrasound, or another qualified person, shall:
- (a) inform the woman that the ultrasound images will be simultaneously displayed in a manner to permit her to:
 - (i) view the images, if she chooses to view the images; or
 - (ii) not view the images, if she chooses not to view the images;
 - (b) simultaneously display the ultrasound images in order to permit the woman to:
 - (i) view the images, if she chooses to view the images; or
 - (ii) not view the images, if she chooses not to view the images;
 - (c) inform the woman that, if she desires, the person performing the ultrasound, or another qualified person shall provide a detailed description of the ultrasound images, including:

- (i) the dimensions of the unborn child;
 - (ii) the presence of cardiac activity in the unborn child, if present and viewable; and
 - (iii) the presence of external body parts or internal organs, if present and viewable; and
- (d) provide the detailed description described in Subsection (6)(c), if the woman requests it.
- (7) The information described in Subsections (2), (3), (4), and (6) is not required to be provided to a pregnant woman under this section if the abortion is performed for a reason described in:
 - (a) Subsection 76-7-302(3)(b)(i), if the treating physician and one other physician concur, in writing, that the abortion is necessary to avert:
 - (i) the death of the woman on whom the abortion is performed; or
 - (ii) a serious risk of substantial and irreversible impairment of a major bodily function of the woman on whom the abortion is performed; or
 - (b) Subsection 76-7-302(3)(b)(ii).
- (8) In addition to the criminal penalties described in this part, a physician who violates the provisions of this section:
 - (a) is guilty of unprofessional conduct as defined in Section 58-67-102 or 58-68-102; and
 - (b) shall be subject to:
 - (i) suspension or revocation of the physician's license for the practice of medicine and surgery in accordance with Section 58-67-401 or 58-68-401; and
 - (ii) administrative penalties in accordance with Section 58-67-402 or 58-68-402.
- (9) A physician is not guilty of violating this section for failure to furnish any of the information described in Subsection (2), or for failing to comply with Subsection (6), if:
 - (a) the physician can demonstrate by a preponderance of the evidence that the physician reasonably believed that furnishing the information would have resulted in a severely adverse effect on the physical or mental health of the pregnant woman;
 - (b) in the physician's professional judgment, the abortion was necessary to avert:
 - (i) the death of the woman on whom the abortion is performed; or
 - (ii) a serious risk of substantial and irreversible impairment of a major bodily function of the woman on whom the abortion is performed;
 - (c) the pregnancy was the result of rape or rape of a child, as defined in Sections 76-5-402 and 76-5-402.1;
 - (d) the pregnancy was the result of incest, as defined in Subsection 76-5-406(10) and Section 76-7-102; or
 - (e) at the time of the abortion, the pregnant woman was 14 years of age or younger.
- (10) A physician who complies with the provisions of this section and Section 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain informed consent under Section 78B-3-406.
- (11)
 - (a) The Department of Health shall provide an ultrasound, in accordance with the provisions of Subsection (2)(b), at no expense to the pregnant woman.
 - (b) A local health department shall refer a person who requests an ultrasound described in Subsection (11)(a) to the Department of Health.
- (12) A physician is not guilty of violating this section if:
 - (a) the physician provides the information described in Subsection (2) less than 72 hours before performing the abortion; and
 - (b) in the physician's professional judgment, the abortion was necessary in a case where:
 - (i) a ruptured membrane, documented by the attending or referring physician, will cause a serious infection; or

(ii) a serious infection, documented by the attending or referring physician, will cause a ruptured membrane.

Amended by Chapter 362, 2016 General Session