

PERINATAL HOSPICE

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen G. Handy

Senate Sponsor: _____

LONG TITLE

General Description:

This bill requires that a woman receive information about perinatal hospice before an abortion when the unborn child has been diagnosed with a lethal fetal anomaly.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires that a woman receive information about perinatal hospice before an abortion when the unborn child has been diagnosed with a lethal fetal anomaly;
- ▶ requires the Department of Health to include, in the information the department provides before an abortion, information regarding perinatal hospice; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 76-7-301**, as last amended by Laws of Utah 2010, Chapter 13
- 76-7-305**, as last amended by Laws of Utah 2016, Chapter 362
- 76-7-305.5**, as last amended by Laws of Utah 2016, Chapter 362



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

Section 1. Section **76-7-301** is amended to read:

76-7-301. Definitions.

As used in this part:

(1) (a) "Abortion" means:

(i) the intentional termination or attempted termination of human pregnancy after implantation of a fertilized ovum through a medical procedure carried out by a physician or through a substance used under the direction of a physician;

(ii) the intentional killing or attempted killing of a live unborn child through a medical procedure carried out by a physician or through a substance used under the direction of a physician; or

(iii) the intentional causing or attempted causing of a miscarriage through a medical procedure carried out by a physician or through a substance used under the direction of a physician.

(b) "Abortion" does not include:

(i) removal of a dead unborn child;

(ii) removal of an ectopic pregnancy; or

(iii) the killing or attempted killing of an unborn child without the consent of the pregnant woman, unless:

(A) the killing or attempted killing is done through a medical procedure carried out by a physician or through a substance used under the direction of a physician; and

(B) the physician is unable to obtain the consent due to a medical emergency.

~~[(5)]~~ (2) "Hospital" means:

(a) a general hospital licensed by the Department of Health according to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; and

(b) a clinic or other medical facility to the extent that such clinic or other medical facility is certified by the Department of Health as providing equipment and personnel sufficient in quantity and quality to provide the same degree of safety to the pregnant woman and the unborn child as would be provided for the particular medical procedures undertaken by a general hospital licensed by the Department of Health.

59 (3) "Lethal fetal anomaly" means an illness, disease, or defect that:

60 (a) is diagnosed before birth;

61 (b) cannot be treated to sustain life; and

62 (c) will with reasonable certainty result in the death of the unborn child before birth or

63 within three months after the day the child is born.

64 [~~(2)~~] (4) "Medical emergency" means that condition which, on the basis of the
65 physician's good faith clinical judgment, so threatens the life of a pregnant woman as to
66 necessitate the immediate abortion of her pregnancy to avert her death, or for which a delay
67 will create serious risk of substantial and irreversible impairment of major bodily function.

68 [~~(3)~~] (5) (a) "Partial birth abortion" means an abortion in which the person performing
69 the abortion:

70 (i) deliberately and intentionally vaginally delivers a living fetus until, in the case of a
71 head first presentation, the entire fetal head is outside the body of the mother, or, in the case of
72 breech presentation, any part of the fetal trunk past the navel is outside the body of the mother,
73 for the purpose of performing an overt act that the person knows will kill the partially delivered
74 living fetus; and

75 (ii) performs the overt act, other than completion of delivery, that kills the partially
76 living fetus.

77 (b) "Partial birth abortion" does not include the dilation and evacuation procedure
78 involving dismemberment prior to removal, the suction curettage procedure, or the suction
79 aspiration procedure for abortion.

80 (6) "Perinatal hospice" means comprehensive support to the mother and her family
81 from the time of the diagnosis of a lethal fetal anomaly, through the time of the child's birth,
82 and through the postpartum period, that:

83 (a) focuses on alleviating fear and ensuring that the woman and her family experience
84 the life and death of the child in a comfortable and supportive environment; and

85 (b) may include counseling or medical care by:

86 (i) maternal-fetal medical specialists;

87 (ii) obstetricians;

88 (iii) neonatologists;

89 (iv) anesthesia specialists;

90 (v) psychiatrists, psychologists, or other mental health providers;

91 (vi) clergy;

92 (vii) social workers; or

93 (viii) specialty nurses.

94 [~~4~~] (7) "Physician" means:

95 (a) a medical doctor licensed to practice medicine and surgery under Title 58, Chapter
96 67, Utah Medical Practice Act;

97 (b) an osteopathic physician licensed to practice osteopathic medicine under Title 58,
98 Chapter 68, Utah Osteopathic Medical Practice Act; or

99 (c) a physician employed by the federal government who has qualifications similar to a
100 person described in Subsection [~~4~~] (7)(a) or (b).

101 Section 2. Section **76-7-305** is amended to read:

102 **76-7-305. Informed consent requirements for abortion -- 72-hour wait mandatory**
103 **-- Exceptions.**

104 (1) A person may not perform an abortion, unless, before performing the abortion, the
105 physician who will perform the abortion obtains a voluntary and informed written consent from
106 the woman on whom the abortion is performed, that is consistent with:

107 (a) Section 8.08 of the American Medical Association's Code of Medical Ethics,
108 Current Opinions; and

109 (b) the provisions of this section.

110 (2) Except as provided in Subsection (9), consent to an abortion is voluntary and
111 informed only if:

112 (a) at least 72 hours before the abortion, the physician who is to perform the abortion,
113 the referring physician, a physician, a registered nurse, nurse practitioner, advanced practice
114 registered nurse, certified nurse midwife, genetic counselor, or physician's assistant, in a
115 face-to-face consultation in any location in the state, orally informs the woman:

116 (i) consistent with Subsection (3)(a), of:

117 (A) the nature of the proposed abortion procedure;

118 (B) specifically how the procedure described in Subsection (2)(a)(i)(A) will affect the
119 fetus; and

120 (C) the risks and alternatives to an abortion procedure or treatment;

121 (ii) of the probable gestational age and a description of the development of the unborn
122 child at the time the abortion would be performed;

123 (iii) of the medical risks associated with carrying her child to term; [~~and~~]

124 (iv) if the abortion is to be performed on an unborn child who is at least 20 weeks
125 gestational age:

126 (A) that substantial medical evidence from studies concludes that an unborn child who
127 is at least 20 weeks gestational age may be capable of experiencing pain during an abortion
128 procedure; and

129 (B) the measures that shall be taken in accordance with Section [76-7-308.5](#); and

130 (v) if the unborn child has been diagnosed with a lethal fetal anomaly, that:

131 (A) perinatal hospice is available;

132 (B) perinatal hospice is an alternative to abortion; and

133 (C) the woman has the right to review, and should review, the perinatal hospice
134 information that the Department of Health provides in accordance with Subsection
135 [76-7-305.5\(9\)](#);

136 (b) at least 72 hours prior to the abortion the physician who is to perform the abortion,
137 the referring physician, or, as specifically delegated by either of those physicians, a physician, a
138 registered nurse, licensed practical nurse, certified nurse-midwife, advanced practice registered
139 nurse, clinical laboratory technologist, psychologist, marriage and family therapist, clinical
140 social worker, genetic counselor, or certified social worker orally, in a face-to-face consultation
141 in any location in the state, informs the pregnant woman that:

142 (i) the Department of Health, in accordance with Section [76-7-305.5](#), publishes printed
143 material and an informational video that:

144 (A) provides medically accurate information regarding all abortion procedures that may
145 be used;

146 (B) describes the gestational stages of an unborn child; and

147 (C) includes information regarding public and private services and agencies available
148 to assist her through pregnancy, at childbirth, and while the child is dependent, including
149 private and agency adoption alternatives;

150 (ii) the printed material and a viewing of or a copy of the informational video shall be
151 made available to her, free of charge, on the Department of Health's website;

152 (iii) medical assistance benefits may be available for prenatal care, childbirth, and
153 neonatal care, and that more detailed information on the availability of that assistance is
154 contained in the printed materials and the informational video published by the Department of
155 Health;

156 (iv) except as provided in Subsection (3)(b):

157 (A) the father of the unborn child is legally required to assist in the support of her
158 child, even if he has offered to pay for the abortion; and

159 (B) the Office of Recovery Services within the Department of Human Services will
160 assist her in collecting child support; and

161 (v) she has the right to view an ultrasound of the unborn child, at no expense to her,
162 upon her request;

163 (c) the information required to be provided to the pregnant woman under Subsection
164 (2)(a) is also provided by the physician who is to perform the abortion, in a face-to-face
165 consultation, prior to performance of the abortion, unless the attending or referring physician is
166 the individual who provides the information required under Subsection (2)(a);

167 (d) a copy of the printed materials published by the Department of Health has been
168 provided to the pregnant woman;

169 (e) the informational video, published by the Department of Health, has been provided
170 to the pregnant woman in accordance with Subsection (4); and

171 (f) the pregnant woman has certified in writing, prior to the abortion, that the
172 information required to be provided under Subsections (2)(a) through (e) was provided, in
173 accordance with the requirements of those subsections.

174 (3) (a) The alternatives required to be provided under Subsection (2)(a)(i) include:

175 (i) a description of adoption services, including private and agency adoption methods;
176 and

177 (ii) a statement that it is legal for adoptive parents to financially assist in pregnancy and
178 birth expenses.

179 (b) The information described in Subsection (2)(b)(iv) may be omitted from the
180 information required to be provided to a pregnant woman under this section if the woman is
181 pregnant as the result of rape.

182 (c) Nothing in this section shall be construed to prohibit a person described in

183 Subsection (2)(a) from, when providing the information described in Subsection (2)(a)(iv),
184 informing a woman of the person's own opinion regarding the capacity of an unborn child to
185 experience pain.

186 (4) When the informational video described in Section 76-7-305.5 is provided to a
187 pregnant woman, the person providing the information shall:

188 (a) request that the woman view the video at that time or at another specifically
189 designated time and location; or

190 (b) if the woman chooses not to view the video at a time described in Subsection (4)(a),
191 inform the woman that she can access the video on the Department of Health's website.

192 (5) When a serious medical emergency compels the performance of an abortion, the
193 physician shall inform the woman prior to the abortion, if possible, of the medical indications
194 supporting the physician's judgment that an abortion is necessary.

195 (6) If an ultrasound is performed on a woman before an abortion is performed, the
196 person who performs the ultrasound, or another qualified person, shall:

197 (a) inform the woman that the ultrasound images will be simultaneously displayed in a
198 manner to permit her to:

199 (i) view the images, if she chooses to view the images; or

200 (ii) not view the images, if she chooses not to view the images;

201 (b) simultaneously display the ultrasound images in order to permit the woman to:

202 (i) view the images, if she chooses to view the images; or

203 (ii) not view the images, if she chooses not to view the images;

204 (c) inform the woman that, if she desires, the person performing the ultrasound, or
205 another qualified person shall provide a detailed description of the ultrasound images,

206 including:

207 (i) the dimensions of the unborn child;

208 (ii) the presence of cardiac activity in the unborn child, if present and viewable; and

209 (iii) the presence of external body parts or internal organs, if present and viewable; and

210 (d) provide the detailed description described in Subsection (6)(c), if the woman
211 requests it.

212 (7) The information described in Subsections (2), (3), (4), and (6) is not required to be
213 provided to a pregnant woman under this section if the abortion is performed for a reason

214 described in:

215 (a) Subsection 76-7-302(3)(b)(i), if the treating physician and one other physician
216 concur, in writing, that the abortion is necessary to avert:

- 217 (i) the death of the woman on whom the abortion is performed; or
- 218 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
219 of the woman on whom the abortion is performed; or

220 (b) Subsection 76-7-302(3)(b)(ii).

221 (8) In addition to the criminal penalties described in this part, a physician who violates
222 the provisions of this section:

223 (a) is guilty of unprofessional conduct as defined in Section 58-67-102 or 58-68-102;

224 and

225 (b) shall be subject to:

226 (i) suspension or revocation of the physician's license for the practice of medicine and
227 surgery in accordance with Section 58-67-401 or 58-68-401; and

228 (ii) administrative penalties in accordance with Section 58-67-402 or 58-68-402.

229 (9) A physician is not guilty of violating this section for failure to furnish any of the
230 information described in Subsection (2), or for failing to comply with Subsection (6), if:

231 (a) the physician can demonstrate by a preponderance of the evidence that the
232 physician reasonably believed that furnishing the information would have resulted in a severely
233 adverse effect on the physical or mental health of the pregnant woman;

234 (b) in the physician's professional judgment, the abortion was necessary to avert:

- 235 (i) the death of the woman on whom the abortion is performed; or
- 236 (ii) a serious risk of substantial and irreversible impairment of a major bodily function
237 of the woman on whom the abortion is performed;

238 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections
239 76-5-402 and 76-5-402.1;

240 (d) the pregnancy was the result of incest, as defined in Subsection 76-5-406(10) and
241 Section 76-7-102; or

242 (e) at the time of the abortion, the pregnant woman was 14 years of age or younger.

243 (10) A physician who complies with the provisions of this section and Section
244 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain

245 informed consent under Section 78B-3-406.

246 (11) (a) The Department of Health shall provide an ultrasound, in accordance with the
247 provisions of Subsection (2)(b), at no expense to the pregnant woman.

248 (b) A local health department shall refer a person who requests an ultrasound described
249 in Subsection (11)(a) to the Department of Health.

250 (12) A physician is not guilty of violating this section if:

251 (a) the physician provides the information described in Subsection (2) less than 72
252 hours before performing the abortion; and

253 (b) in the physician's professional judgment, the abortion was necessary in a case
254 where:

255 (i) a ruptured membrane, documented by the attending or referring physician, will
256 cause a serious infection; or

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

259 Section 3. Section 76-7-305.5 is amended to read:

260 **76-7-305.5. Requirements for printed materials and informational video.**

261 (1) In order to ensure that a woman's consent to an abortion is truly an informed
262 consent, the Department of Health shall, in accordance with the requirements of this section:

263 (a) publish printed materials; and

264 (b) produce an informational video.

265 (2) The printed materials and the informational video described in Subsection (1) shall:

266 (a) be scientifically accurate, comprehensible, and presented in a truthful,
267 nonmisleading manner;

268 (b) present adoption as a preferred and positive choice and alternative to abortion;

269 (c) be printed and produced in a manner that conveys the state's preference for
270 childbirth over abortion;

271 (d) state that the state prefers childbirth over abortion;

272 (e) state that it is unlawful for any person to coerce a woman to undergo an abortion;

273 (f) state that any physician who performs an abortion without obtaining the woman's
274 informed consent or without providing her a private medical consultation in accordance with
275 the requirements of this section, may be liable to her for damages in a civil action at law;

276 (g) provide information on resources and public and private services available to assist
277 a pregnant woman, financially or otherwise, during pregnancy, at childbirth, and while the
278 child is dependent, including:

- 279 (i) medical assistance benefits for prenatal care, childbirth, and neonatal care;
- 280 (ii) services and supports available under Section [35A-3-308](#);
- 281 (iii) other financial aid that may be available during an adoption; and
- 282 (iv) services available from public adoption agencies, private adoption agencies, and
283 private attorneys whose practice includes adoption;

284 (h) describe the adoption-related expenses that may be paid under Section [76-7-203](#);

285 (i) describe the persons who may pay the adoption related expenses described in
286 Subsection (2)(h);

287 (j) describe the legal responsibility of the father of a child to assist in child support,
288 even if the father has agreed to pay for an abortion;

289 (k) describe the services available through the Office of Recovery Services, within the
290 Department of Human Services, to establish and collect the support described in Subsection
291 (2)(j);

292 (l) state that private adoption is legal;

293 (m) in accordance with Subsection (3), describe the probable anatomical and
294 physiological characteristics of an unborn child at two-week gestational increments from
295 fertilization to full term, including:

- 296 (i) brain and heart function; and
- 297 (ii) the presence and development of external members and internal organs;
- 298 (n) describe abortion procedures used in current medical practice at the various stages
299 of growth of the unborn child, including:

- 300 (i) the medical risks associated with each procedure;
- 301 (ii) the risk related to subsequent childbearing that are associated with each procedure;

302 and

303 (iii) the consequences of each procedure to the unborn child at various stages of fetal
304 development;

305 (o) describe the possible detrimental psychological effects of abortion;

306 (p) describe the medical risks associated with carrying a child to term; and

307 (q) include relevant information on the possibility of an unborn child's survival at the
308 two-week gestational increments described in Subsection (2)(m).

309 (3) The information described in Subsection (2)(m) shall be accompanied by the
310 following for each gestational increment described in Subsection (2)(m):

311 (a) pictures or video segments that accurately represent the normal development of an
312 unborn child at that stage of development; and

313 (b) the dimensions of the fetus at that stage of development.

314 (4) The printed material and video described in Subsection (1) may include a toll-free
315 24-hour telephone number that may be called in order to obtain, orally, a list and description of
316 services, agencies, and adoption attorneys in the locality of the caller.

317 (5) In addition to the requirements described in Subsection (2), the printed material
318 described in Subsection (1)(a) shall:

319 (a) be printed in a typeface large enough to be clearly legible;

320 (b) in accordance with Subsection (6), include a geographically indexed list of public
321 and private services and agencies available to assist a woman, financially or otherwise, through
322 pregnancy, at childbirth, and while the child is dependent; ~~and~~

323 (c) except as provided in Subsection (7), include a separate brochure that contains
324 truthful, nonmisleading information regarding:

325 (i) substantial medical evidence from studies concluding that an unborn child who is at
326 least 20 weeks gestational age may be capable of experiencing pain during an abortion
327 procedure; and

328 (ii) the measures that shall be taken in accordance with Section [76-7-308.5](#)[-]; and

329 (d) include a separate brochure, available in both hard copy and electronically, that:

330 (i) presents perinatal hospice as the state's preferred alternative to abortion of an
331 unborn child diagnosed with a lethal fetal anomaly; and

332 (ii) includes annually updated information regarding:

333 (A) contact information for local perinatal hospice services, counseling assistance for
334 medically challenging pregnancies, and grief counseling;

335 (B) a list of websites for national perinatal hospice assistance; and

336 (C) entities that provide perinatal hospice services free of charge, and medical
337 assistance benefits that are commonly available for prenatal care, childbirth, and perinatal

338 hospice.

339 (6) The list described in Subsection (5)(b) shall include:

340 (a) private attorneys whose practice includes adoption; and

341 (b) the names, addresses, and telephone numbers of each person listed under

342 Subsection (5)(b) or (6)(a).

343 (7) A person or facility is not required to provide the information described in

344 Subsection (5)(c) to a patient or potential patient, if the abortion is to be performed:

345 (a) on an unborn child who is less than 20 weeks gestational age at the time of the

346 abortion; or

347 (b) on an unborn child who is at least 20 weeks gestational age at the time of the

348 abortion, if:

349 (i) the abortion is being performed for a reason described in Subsection

350 [76-7-302\(3\)\(b\)\(i\)](#) or (ii); and

351 (ii) due to a serious medical emergency, time does not permit compliance with the

352 requirement to provide the information described in Subsection (5)(c).

353 (8) In addition to the requirements described in Subsection (2), the video described in

354 Subsection (1)(b) shall:

355 (a) make reference to the list described in Subsection (5)(b); and

356 (b) show an ultrasound of the heartbeat of an unborn child at:

357 (i) four weeks from conception;

358 (ii) six to eight weeks from conception; and

359 (iii) each month after 10 weeks gestational age, up to 14 weeks gestational age.