

HB0364S03 compared with HB0364S02

~~deleted text~~ shows text that was in HB0364S02 but was deleted in HB0364S03.

inserted text shows text that was not in HB0364S02 but was inserted into HB0364S03.

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Representative Steve R. Christiansen proposes the following substitute bill:

ABORTION REVISIONS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve R. Christiansen

Senate Sponsor: _____

LONG TITLE

General Description:

This bill creates requirements relating to abortion procedures.

Highlighted Provisions:

This bill:

- ▶ requires a medical professional to do the following before a pregnant woman may give informed consent to an abortion:
 - perform an ultrasound on the pregnant woman;
 - describe the images produced by the ultrasound;
 - make audible the fetal heartbeat, if possible; and
 - provide written confirmation to the pregnant woman stating that the medical professional complied with the requirements;
- ▶ provides that a pregnant woman may choose not to view the images produced by the

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ultrasound and not to listen to the fetal heartbeat;

- ▶ adds certain record keeping requirements for a physician performing an abortion;
- ▶ imposes a fine on a physician that performs an abortion on a pregnant woman who has not received an ultrasound;
- ▶ requires the Department of Health to:
 - create, and make available online, a form to be signed by a physician or qualified technician performing the mandatory ultrasound; and
 - provide a list of organizations that offer a free or low cost ultrasound; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-21-6.5, as last amended by Laws of Utah 2018, Chapter 282

76-7-305, as last amended by Laws of Utah 2019, Chapters 124 and 189

76-7-305.5, as last amended by Laws of Utah 2018, Chapter 282

78B-3-406, as last amended by Laws of Utah 2019, Chapter 346

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

Section 1. Section **26-21-6.5** is amended to read:

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

(1) A type I abortion clinic may not operate in the state without a license issued by the department to operate a type I abortion 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) The department shall make rules establishing minimum health, safety, sanitary, and recordkeeping requirements for:

- (a) a type I abortion clinic; and
- (b) a type II abortion clinic.

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- (4) 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 established under Subsection (3) that relate to the type of abortion clinic licensed;
 - (c) comply with the recordkeeping and reporting requirements of Section 76-7-313 and Subsection 76-7-305(3);
 - (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 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 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 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 2. Section **76-7-305** is amended to read:

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 from the woman on whom the abortion is to be performed a voluntary and informed written consent 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 [~~(8)~~ (9)], consent to an abortion is voluntary and informed only if, at least 72 hours before the abortion:

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(a) a staff member of an abortion clinic or hospital, physician, registered nurse, nurse practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or physician's assistant presents the information module to the pregnant woman;

(b) the pregnant woman views the entire information module and presents evidence to the individual described in Subsection (2)(a) that the pregnant woman viewed the entire information module;

(c) after receiving the evidence described in Subsection (2)(b), the individual described in Subsection (2)(a):

(i) documents that the pregnant woman viewed the entire information module;

(ii) gives the pregnant woman, upon her request, a copy of the documentation described in Subsection (2)(c)(i); and

(iii) provides a copy of the statement described in Subsection (2)(c)(i) to the physician who is to perform the abortion, upon request of that physician or the pregnant woman;

(d) after the pregnant woman views the entire information module, 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 of:

(i) the nature of the proposed abortion procedure;

(ii) specifically how the procedure described in Subsection (2)(d)(i) will affect the fetus;

(iii) the risks and alternatives to the abortion procedure or treatment;

(iv) the options and consequences of aborting a medication-induced abortion, if the proposed abortion procedure is a medication-induced abortion;

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

(vi) the medical risks associated with carrying her child to term; and

~~[(vii) the right to view an ultrasound of the unborn child, at no expense to the pregnant woman, upon her request, and]~~

~~[(viii)]~~ (vii) when the result of a prenatal screening or diagnostic test indicates that the unborn child has or may have Down syndrome, the Department of Health website containing

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the information described in Section 26-10-14, including the information on the informational support sheet; ~~and~~

(e) after the pregnant woman views the entire information module, a staff member of the abortion clinic or hospital provides to the pregnant woman:

(i) on a document that the pregnant woman may take home:

(A) the address for the department's website described in Section 76-7-305.5; and

(B) a statement that the woman may request, from a staff member of the abortion clinic or hospital where the woman viewed the information module, a printed copy of the material on the department's website; and

(ii) a printed copy of the material on the department's website described in Section 76-7-305.5, if requested by the pregnant woman~~[-]; and~~

(f) a qualified physician or technician performs a transabdominal ultrasound on the pregnant woman in accordance with Subsection (5).

(3) (a) Before performing an abortion, the physician who is to perform the abortion shall:

~~(a)~~ (i) in a face-to-face consultation, provide the information described in Subsection (2)(d), unless the attending physician or referring physician is the individual who provided the information required under Subsection (2)(d); and

~~(b)(i) obtain from the pregnant woman~~

(ii) obtain:

(A) a written certification from the pregnant woman that the information required to be provided under Subsection (2) and this Subsection (3) was provided in accordance with the requirements of Subsection (2) and this Subsection (3); ~~and~~

(B) the signed form or copy of the signed form described in Subsection (5)(c); and

~~(ii) obtain~~ (C) a copy of the statement described in Subsection (2)(c)(i).

(b) The treating physician shall retain a copy of each document described in Subsection (3)(a) in the pregnant woman's medical record.

(4) 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.

~~(5) If an ultrasound is performed on a woman before an abortion is performed, the~~

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~~individual who performs the ultrasound, or another qualified individual, 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]~~

(5) (a) A physician, or a qualified technician, performing an ultrasound required under Subsection (2)(f) shall:

(i) provide a simultaneous detailed description of the ultrasound images, including:

(A) the presence and location of each unborn child within the uterus;

(B) the number of unborn children within the uterus;

~~(+)~~ (C) the dimensions of [the] each unborn child;

~~(+)~~ (D) the presence of cardiac activity in [the] each unborn child, if present and viewable; and

~~(+)~~ (E) the presence of external body parts or internal organs, if present and viewable; [and]

~~(d) provide the detailed description described in Subsection (5)(c), if the woman requests it.]~~

(ii) display the ultrasound images so that the pregnant woman may view the images; and

(iii) make each unborn child's heartbeat audible to the pregnant woman ~~if~~ if:

(A) a heartbeat is audible; and

(B) the procedure described in Subsection (5)(a)(iii) is medically safe.

(b) (i) This section does not prevent a pregnant woman from:

(A) averting her eyes from the ultrasound images; or

(B) requesting the volume of a heartbeat be reduced or turned off.

(ii) The physician or qualified technician performing the ultrasound and the pregnant

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woman are not subject to any civil or criminal penalty if the pregnant woman refuses to look at the displayed ultrasound images or listen to the heartbeat of an unborn child.

(c) The physician or qualified technician who performs a required ultrasound in accordance with this Subsection (5) shall:

(i) sign the form described in Subsection(5)(d) certifying that the physician or qualified technician completed each of the requirements described in Subsection (5)(a); and

(ii) provide the signed form to the pregnant woman.

(d) The department shall:

(i) create a form to be signed by a physician or qualified technician who performs an ultrasound required under Subsection (2)(f) that, when signed by the physician or qualified technician, certifies that the physician or qualified technician complied with each requirement described in Subsection (5)(a); and

(ii) make the form described in Subsection (5)(d)(i) available for download on the department's website.

(e) A pregnant woman obtaining an ultrasound required under Subsection (2)(f) may obtain the ultrasound from any physician or qualified technician.

(6) The information described in Subsections (2), (3), and (5) 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).

(7) 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

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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.

(8) In addition to the penalties described in this part, a physician who fails to comply with Subsection (3)(a)(ii)(B) is subject to a fine not to exceed \$100,000 for a first offense or \$250,000 for each subsequent offense.

~~[(8)]~~ (9) A physician is not guilty of violating this section for failure to furnish any of the information described in Subsection (2) or (3), or for failing to comply with Subsection (5), 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(2)(j) and Section 76-7-102; or

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

~~[(9)]~~ (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.

~~[(10)]~~ (11) (a) The department shall provide ~~[an ultrasound, in accordance with the provisions of Subsection (5)(b), at no expense to the pregnant woman.]~~ a low cost option to a pregnant woman seeking an ultrasound required under Subsection (2)(f).

(b) The department may charge a reasonable fee to offset the administrative costs associated with coordinating and performing an ultrasound provided under Subsection (11)(a).

(c) Before charging a fee described in Subsection (11)(a), the department shall inform the pregnant woman of the resources described in Subsection 76-7-305.5(2)(g).

~~[(b)]~~ (d) A local health department shall refer a pregnant woman who requests an

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ultrasound described in Subsection [~~(10)~~] (11)(a) to the department.

[~~(11)~~] (12) A physician is not guilty of violating this section if:

(a) the information described in Subsection (2) is provided less than 72 hours before the physician performs 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.

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

76-7-305.5. Requirements for information module and website.

(1) In order to ensure that a woman's consent to an abortion is truly an informed consent, the department shall, in accordance with the requirements of this section, develop an information module and maintain a public website.

(2) The information module and public website described in Subsection (1) shall:

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

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

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

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

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

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

(g) provide a geographically indexed list of resources and public and private services available to assist, financially or otherwise, a pregnant woman during pregnancy, at childbirth, and while the child is dependent, including:

(i) medical assistance benefits for prenatal care, childbirth, and neonatal care;

(ii) organizations that offer a free or low-cost ultrasound;

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~~[(ii)]~~ (iii) services and supports available under Section 35A-3-308;

~~[(iii)]~~ (iv) other financial aid that may be available during an adoption;

~~[(iv)]~~ (v) services available from public adoption agencies, private adoption agencies, and private attorneys whose practice includes adoption; and

~~[(v)]~~ (vi) the names, addresses, and telephone numbers of each person listed under this Subsection (2)(g);

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

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

(j) except as provided in Subsection (4), describe the legal responsibility of the father of a child to assist in child support, even if the father has agreed to pay for an abortion;

(k) except as provided in Subsection (4), describe the services available through the Office of Recovery Services, within the Department of Human Services, to establish and collect the support described in Subsection (2)(j);

(l) state that private adoption is legal;

(m) describe and depict, with pictures or video segments, the probable anatomical and physiological characteristics of an unborn child at two-week gestational increments from fertilization to full term, including:

(i) brain and heart function;

(ii) the presence and development of external members and internal organs; and

(iii) the dimensions of the fetus;

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

(i) four weeks from conception;

(ii) six to eight weeks from conception; and

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

(o) describe abortion procedures used in current medical practice at the various stages of growth of the unborn child, including:

(i) the medical risks associated with each procedure;

(ii) the risk related to subsequent childbearing that are associated with each procedure; and

(iii) the consequences of each procedure to the unborn child at various stages of fetal

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development;

(p) describe the possible detrimental psychological effects of abortion;

(q) describe the medical risks associated with carrying a child to term;

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

(s) except as provided in Subsection (5), include:

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

(ii) the measures that will be taken in accordance with Section 76-7-308.5;

(t) explain the options and consequences of aborting a medication-induced abortion;

(u) include the following statement regarding a medication-induced abortion,

"Research indicates that mifepristone alone is not always effective in ending a pregnancy. You may still have a viable pregnancy after taking mifepristone. If you have taken mifepristone but have not yet taken the second drug and have questions regarding the health of your fetus or are questioning your decision to terminate your pregnancy, you should consult a physician immediately."; and

~~[(v) inform a pregnant woman that she has the right to view an ultrasound of the unborn child, at no expense to her, upon her request; and]~~

~~[(w)]~~ (v) be in a typeface large enough to be clearly legible.

(3) The information module and website described in Subsection (1) may include a toll-free 24-hour telephone number that may be called in order to obtain, orally, a list and description of services, agencies, and adoption attorneys in the locality of the caller.

(4) The department may develop a version of the information module and website that omits the information in Subsections (2)(j) and (k) for a viewer who is pregnant as the result of rape.

(5) The department may develop a version of the information module and website that omits the information described in Subsection (2)(s) for a viewer who will have an abortion performed:

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

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(b) on an unborn child who is at least 20 weeks gestational age at the time of the abortion, if:

(i) the abortion is being performed for a reason described in Subsection 76-7-302(3)(b)(i) or (ii); and

(ii) due to a serious medical emergency, time does not permit compliance with the requirement to provide the information described in Subsection (2)(s).

(6) The department and each local health department shall make the information module and the website described in Subsection (1) available at no cost to any person.

(7) The department shall make the website described in Subsection (1) available for viewing on the department's website by clicking on a conspicuous link on the home page of the website.

(8) The department shall ensure that the information module is:

(a) available to be viewed at all facilities where an abortion may be performed;

(b) interactive for the individual viewing the module, including the provision of opportunities to answer questions and manually engage with the module before the module transitions from one substantive section to the next;

(c) produced in English and may include subtitles in Spanish or another language; and

(d) capable of being viewed on a tablet or other portable device.

(9) The department shall present the information module to the Health and Human Services Interim Committee for the committee's review and recommendation before November 1, 2018.

(10) The department shall release the information module, for the use described in Section 76-7-305, before January 1, 2019.

(11) After the department releases the initial version of the information module, for the use described in Section 76-7-305, the department shall:

(a) update the information module, as required by law; and

(b) present an updated version of the information module to the Health and Human Services Interim Committee for the committee's review and recommendation before releasing the updated version for the use described in Section 76-7-305.

Section 4. Section **78B-3-406** is amended to read:

78B-3-406. Failure to obtain informed consent -- Proof required of patient --

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Defenses -- Consent to health care.

(1) (a) When a person submits to health care rendered by a health care provider, it is presumed that actions taken by the health care provider are either expressly or impliedly authorized to be done.

(b) For a patient to recover damages from a health care provider in an action based upon the provider's failure to obtain informed consent, the patient must prove the following:

(i) that a provider-patient relationship existed between the patient and health care provider;

(ii) the health care provider rendered health care to the patient;

(iii) the patient suffered personal injuries arising out of the health care rendered;

(iv) the health care rendered carried with it a substantial and significant risk of causing the patient serious harm;

(v) the patient was not informed of the substantial and significant risk;

(vi) a reasonable, prudent person in the patient's position would not have consented to the health care rendered after having been fully informed as to all facts relevant to the decision to give consent; and

(vii) the unauthorized part of the health care rendered was the proximate cause of personal injuries suffered by the patient.

(2) In determining what a reasonable, prudent person in the patient's position would do under the circumstances, the finder of fact shall use the viewpoint of the patient before health care was provided and before the occurrence of any personal injuries alleged to have arisen from said health care.

(3) It shall be a defense to any malpractice action against a health care provider based upon alleged failure to obtain informed consent if:

(a) the risk of the serious harm which the patient actually suffered was relatively minor;

(b) the risk of serious harm to the patient from the health care provider was commonly known to the public;

(c) the patient stated, prior to receiving the health care complained of, that he would accept the health care involved regardless of the risk; or that he did not want to be informed of the matters to which he would be entitled to be informed;

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(d) the health care provider, after considering all of the attendant facts and circumstances, used reasonable discretion as to the manner and extent to which risks were disclosed, if the health care provider reasonably believed that additional disclosures could be expected to have a substantial and adverse effect on the patient's condition; or

(e) the patient or the patient's representative executed a written consent which sets forth the nature and purpose of the intended health care and which contains a declaration that the patient accepts the risk of substantial and serious harm, if any, in hopes of obtaining desired beneficial results of health care and which acknowledges that health care providers involved have explained the patient's condition and the proposed health care in a satisfactory manner and that all questions asked about the health care and its attendant risks have been answered in a manner satisfactory to the patient or the patient's representative.

(4) The written consent shall be a defense to an action against a health care provider based upon failure to obtain informed consent unless the patient proves that the person giving the consent lacked capacity to consent or shows by clear and convincing evidence that the execution of the written consent was induced by the defendant's affirmative acts of fraudulent misrepresentation or fraudulent omission to state material facts.

(5) This act may not be construed to prevent any person 18 years of age or over from refusing to consent to health care for the patient's own person upon personal or religious grounds.

(6) Except as provided in Section 76-7-304.5, the following persons are authorized and empowered to consent to any health care not prohibited by law:

- (a) any parent, whether an adult or a minor, for the parent's minor child;
- (b) any married person, for a spouse;
- (c) any person temporarily standing in loco parentis, whether formally serving or not, for the minor under that person's care and any guardian for the guardian's ward;
- (d) any person 18 years of age or over for that person's parent who is unable by reason of age, physical or mental condition, to provide such consent;
- (e) any patient 18 years of age or over;
- (f) any female regardless of age or marital status, when given in connection with her pregnancy or childbirth;
- (g) in the absence of a parent, any adult for the adult's minor brother or sister;

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- (h) in the absence of a parent, any grandparent for the grandparent's minor grandchild;
- (i) an emancipated minor as provided in Section 78A-6-805;
- (j) a minor who has contracted a lawful marriage; and
- (k) an unaccompanied homeless minor, as that term is defined in the McKinney-Vento Homeless Assistance Act of 1987, Pub. L. 100-77, as amended, who is 15 years of age or older.

(7) A person who in good faith consents or authorizes health care treatment or procedures for another as provided by this act may not be subject to civil liability.

(8) Notwithstanding any other provision of this section, if a health care provider fails to comply with the requirement in Section 58-1-509, the health care provider is presumed to have lacked informed consent with respect to the patient examination, as defined in Section 58-1-509.

(9) (a) Notwithstanding any other provision of this section, if a health care provider fails to comply with Subsection 76-7-305(2) before performing an abortion, the health care provider is presumed to have lacked the informed consent of the pregnant woman to perform an abortion.

(b) A health care provider may reverse the presumption described in Subsection (9)(a) if the health care provider produces a signed copy of the certificate described in Subsection 76-7-305(3)(a)(ii)(A).