

HB0467S01 compared with HB0467

~~text~~ shows text that was in HB0467 but was deleted in HB0467S01.

text shows text that was not in HB0467 but was inserted into HB0467S01.

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Representative Karianne Lisonbee proposes the following substitute bill:

ABORTION CHANGES

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill modifies provisions related to abortion.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ requires abortions to be performed in a hospital with limited exceptions;
- ▶ prohibits licensing of abortion clinics after May 2, 2023;
- ▶ removes certain references to abortion clinics;
- ▶ provides that inducing or performing an abortion contrary to statutory requirements is unprofessional conduct for a physician, osteopathic physician, physician assistant, advanced practice registered nurse, certified nurse midwife, and direct-entry midwife;

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- ▶ modifies provisions that govern what constitutes a medical emergency in relation to an abortion;
- ▶ modifies the conditions under which an abortion may be performed to protect the life or health of the mother;
- ▶ amends language related to medical defects of a fetus;
- ~~▶ establishes that certain abortion methods are preferred in an abortion involving medical defects of a fetus;~~
- ‡ ▶ repeals the statute that established a prohibition on abortions after 18 weeks and incorporates its contents into existing statute, replacing language that established now-superseded viability standards;
- ▶ standardizes language between various statutes that regulate abortion;
- ▶ requires a physician, in the case of a diagnosis of a lethal fetal anomaly, to give notice of the availability of perinatal hospice and perinatal palliative care services as an alternative to abortion;
- ▶ treats an individual who becomes pregnant at a certain age as having the same access to abortion services as rape or incest situations;
- ▶ restricts the ability to receive an abortion due to rape or incest to a pregnancy where the unborn child has not reached 18 weeks gestational age;
- ▶ modifies state of mind standards for criminal act;
- ▶ provides for severability;
- ▶ provides for regulation of drugs that are known to be used in relation to an abortion;
- ▶ creates a criminal offense for prescribing a drug for the purpose of causing an abortion, unless the prescriber is licensed as a physician under the laws of this state; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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26-21-6.5, as last amended by Laws of Utah 2018, Chapter 282
26-21-7, as last amended by Laws of Utah 2019, Chapter 349
26-21-8, as last amended by Laws of Utah 2016, Chapter 74
26-21-11, as last amended by Laws of Utah 1997, Chapter 209
26-21-25, as last amended by Laws of Utah 2010, Chapter 218
58-31b-502, as last amended by Laws of Utah 2022, Chapter 290
58-44a-502, as last amended by Laws of Utah 2020, Chapter 25
58-67-304, as last amended by Laws of Utah 2020, Chapters 12, 339
58-67-502, as last amended by Laws of Utah 2021, Chapter 337
58-68-304, as last amended by Laws of Utah 2020, Chapters 12, 339
58-68-502, as last amended by Laws of Utah 2021, Chapter 337
58-70a-501, as last amended by Laws of Utah 2021, Chapter 312
58-77-603, as enacted by Laws of Utah 2005, Chapter 299
63I-2-276, as last amended by Laws of Utah 2022, Chapter 117
76-7-301, as last amended by Laws of Utah 2021, Chapter 262
76-7-302, as last amended by Laws of Utah 2022, Chapter 335
76-7-302.4, as enacted by Laws of Utah 2019, Chapter 124
76-7-304, as last amended by Laws of Utah 2018, Chapter 282
76-7-304.5, as last amended by Laws of Utah 2022, Chapter 287
76-7-305, as last amended by Laws of Utah 2022, Chapter 181
76-7-314, as last amended by Laws of Utah 2019, Chapter 208
76-7-314.5, as last amended by Laws of Utah 2010, Chapter 13
76-7-317, as enacted by Laws of Utah 1974, Chapter 33
76-7a-101, as last amended by Laws of Utah 2021, Chapter 262
76-7a-201, as enacted by Laws of Utah 2020, Chapter 279

ENACTS:

76-7-332, Utah Code Annotated 1953

REPEALS:

76-7-302.5, as enacted by Laws of Utah 2019, Chapter 208

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

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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) No abortion clinic may operate in the state on or after January 1, 2024, or the last valid date of an abortion clinic license issued under the requirements of this section, whichever date is later.

(b) Notwithstanding Subsection (1)(a), a licensed abortion clinic may not perform an abortion in violation of any provision of state law.

(2) The state may not issue a license for an abortion clinic after May 2, 2023.

(3) For any license that is issued under this section:

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

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

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

~~(4)~~ (d) To receive and maintain a license described in this section, an abortion clinic shall:

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

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

~~(c)~~ (iii) comply with the recordkeeping and reporting requirements of Section 76-7-313;

~~(d)~~ (iv) comply with the requirements of Title 76, Chapter 7, Part 3, Abortion, and Title 76, Chapter 7a, Abortion Prohibition;

~~(e)~~ (v) pay the annual licensing fee; and

~~(f)~~ (vi) cooperate with inspections conducted by the department.

~~(5)~~ (e) 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

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requirements relating to the abortion clinic. At least one of the inspections shall be made without providing notice to the abortion clinic.

~~[(6)]~~ (f) 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)]~~ (g) 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 **26-21-7** is amended to read:

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, physician assistant, 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 3. Section **26-21-8** is amended to read:

26-21-8. License required -- Not assignable or transferable -- Posting --

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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 adopted pursuant to this chapter.

(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.

(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 and~~] not to exceed 24 months from the date of issuance for [~~other~~] health care facilities 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 4. Section **26-21-11** is amended to read:

26-21-11. Violations -- Denial or revocation of license -- Restricting or prohibiting new admissions -- Monitor.

(1) If the department finds a violation of this chapter or any rules adopted pursuant to this chapter the department may take one or more of the following actions:

~~(1)~~ (a) serve a written statement of violation requiring corrective action, which shall include time frames for correction of all violations;

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~~(2)~~ (b) subject to Subsection (2), deny or revoke a license if it finds:

~~(a)~~ (i) there has been a failure to comply with the rules established pursuant to this chapter;

~~(b)~~ (ii) evidence of aiding, abetting, or permitting the commission of any illegal act;

or

~~(c)~~ (iii) conduct adverse to the public health, morals, welfare, and safety of the people of the state;

~~(3)~~ (c) restrict or prohibit new admissions to a health care facility or revoke the license of a health care facility for:

~~(a)~~ (i) violation of any rule adopted under this chapter; or

~~(b)~~ (ii) permitting, aiding, or abetting the commission of any illegal act in the health care facility;

~~(4)~~ (d) place a department representative as a monitor in the facility until corrective action is completed;

~~(5)~~ (e) assess to the facility the cost incurred by the department in placing a monitor;

~~(6)~~ (f) assess an administrative penalty as allowed by Subsection 26-23-6(1)(a); or

~~(7)~~ (g) issue a cease and desist order to the facility.

(2) If the department finds that an abortion has been performed in violation of Section 76-7-314 or 76-7a-201, the department shall deny or revoke the license.

Section 5. Section **26-21-25** is amended to read:

26-21-25. Patient identity protection.

(1) As used in this section:

(a) "EMTALA" means the federal Emergency Medical Treatment and Active Labor Act.

(b) "Health professional office" means:

(i) a physician's office; or

(ii) a dental office.

(c) "Medical facility" means:

(i) a general acute hospital;

(ii) a specialty hospital;

(iii) a home health agency;

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- (iv) a hospice;
- (v) a nursing care facility;
- (vi) a residential-assisted living facility;
- (vii) a birthing center;
- (viii) an ambulatory surgical facility;
- (ix) a small health care facility;
- ~~[(x) an abortion clinic;]~~
- ~~[(xi)]~~ (x) a facility owned or operated by a health maintenance organization;
- ~~[(xii)]~~ (xi) an end stage renal disease facility;
- ~~[(xiii)]~~ (xii) a health care clinic; or
- ~~[(xiv)]~~ (xiii) any other health care facility that the committee designates by rule.

(2) (a) In order to discourage identity theft and health insurance fraud, and to reduce the risk of medical errors caused by incorrect medical records, a medical facility or a health professional office shall request identification from an individual prior to providing in-patient or out-patient services to the individual.

(b) If the individual who will receive services from the medical facility or a health professional office lacks the legal capacity to consent to treatment, the medical facility or a health professional office shall request identification:

- (i) for the individual who lacks the legal capacity to consent to treatment; and
- (ii) from the individual who consents to treatment on behalf of the individual described in Subsection (2)(b)(i).

(3) A medical facility or a health professional office:

- (a) that is subject to EMTALA:
 - (i) may not refuse services to an individual on the basis that the individual did not provide identification when requested; and
 - (ii) shall post notice in its emergency department that informs a patient of the patient's right to treatment for an emergency medical condition under EMTALA;
- (b) may not be penalized for failing to ask for identification;
- (c) is not subject to a private right of action for failing to ask for identification; and
- (d) may document or confirm patient identity by:
 - (i) photograph;

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- (ii) fingerprinting;
 - (iii) palm scan; or
 - (iv) other reasonable means.
- (4) The identification described in this section:
- (a) is intended to be used for medical records purposes only; and
 - (b) shall be kept in accordance with the requirements of the Health Insurance

Portability and Accountability Act of 1996.

Section 6. Section **58-31b-502** is amended to read:

58-31b-502. Unprofessional conduct.

(1) "Unprofessional conduct" includes:

(a) failure to safeguard a patient's right to privacy as to the patient's person, condition, diagnosis, personal effects, or any other matter about which the licensee is privileged to know because of the licensee's or person with a certification's position or practice as a nurse or practice as a medication aide certified;

(b) failure to provide nursing service or service as a medication aide certified in a manner that demonstrates respect for the patient's human dignity and unique personal character and needs without regard to the patient's race, religion, ethnic background, socioeconomic status, age, sex, or the nature of the patient's health problem;

(c) engaging in sexual relations with a patient during any:

(i) period when a generally recognized professional relationship exists between the person licensed or certified under this chapter and the patient; or

(ii) extended period when a patient has reasonable cause to believe a professional relationship exists between the person licensed or certified under the provisions of this chapter and the patient;

(d) (i) as a result of any circumstance under Subsection (1)(c), exploiting or using information about a patient or exploiting the licensee's or the person with a certification's professional relationship between the licensee or holder of a certification under this chapter and the patient; or

(ii) exploiting the patient by use of the licensee's or person with a certification's knowledge of the patient obtained while acting as a nurse or a medication aide certified;

(e) unlawfully obtaining, possessing, or using any prescription drug or illicit drug;

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- (f) unauthorized taking or personal use of nursing supplies from an employer;
- (g) unauthorized taking or personal use of a patient's personal property;
- (h) unlawful or inappropriate delegation of nursing care;
- (i) failure to exercise appropriate supervision of persons providing patient care services under supervision of the licensed nurse;
- (j) employing or aiding and abetting the employment of an unqualified or unlicensed person to practice as a nurse;
- (k) failure to file or record any medical report as required by law, impeding or obstructing the filing or recording of such a report, or inducing another to fail to file or record such a report;
- (l) breach of a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a patient, unless ordered by a court;
- (m) failure to pay a penalty imposed by the division;
- (n) prescribing a Schedule II controlled substance without complying with the requirements in Section 58-31b-803, if applicable;
- (o) violating Section 58-31b-801;
- (p) violating the dispensing requirements of Section 58-17b-309 or Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable;
- (q) performing or inducing an abortion in violation of the requirements of Section 76-7-302 or Section 76-7a-201, regardless of whether the person licensed or certified under the provisions of this chapter is found guilty of a crime in connection with the violation;
- ~~(r)~~ (r) falsely making an entry in, or altering, a medical record with the intent to conceal:
 - (i) a wrongful or negligent act or omission of an individual licensed under this chapter or an individual under the direction or control of an individual licensed under this chapter; or
 - (ii) conduct described in Subsections (1)(a) through (o) or Subsection 58-1-501(1); or
 - ~~(r)~~ (s) violating the requirements of Title 26, Chapter 61a, Utah Medical Cannabis Act.
- (2) "Unprofessional conduct" does not include, in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act, when registered as a qualified medical provider, or acting as

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a limited medical provider, as those terms are defined in Section 26-61a-102, recommending the use of medical cannabis.

(3) Notwithstanding Subsection (2), the division, in consultation with the board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define unprofessional conduct for an advanced practice registered nurse described in Subsection (2).

Section 7. Section **58-44a-502** is amended to read:

58-44a-502. Unprofessional conduct.

"Unprofessional conduct" includes:

(1) disregard for a patient's dignity or right to privacy as to the patient's person, condition, possessions, or medical record;

(2) engaging in an act, practice, or omission which when considered with the duties and responsibilities of a certified nurse midwife does or could jeopardize the health, safety, or welfare of a patient or the public;

(3) failure to confine one's practice as a certified nurse midwife to those acts or practices permitted by law;

(4) failure to file or record any medical report as required by law, impeding or obstructing the filing or recording of such a report, or inducing another to fail to file or record such a report;

(5) breach of a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a patient, unless ordered by the court;

(6) failure to pay a penalty imposed by the division;

(7) prescribing a schedule II-III controlled substance without a consulting physician;

(8) performing or inducing an abortion in violation of the requirements of Section 76-7-302 or Section 76-7a-201, regardless of whether the individual licensed under this chapter is found guilty of a crime in connection with the violation;

~~[(8)]~~ (9) (a) failure to have and maintain a safe mechanism for obtaining medical consultation, collaboration, and referral with a consulting physician, including failure to identify one or more consulting physicians in the written documents required by Subsection 58-44a-102(9)(b)(iii); or

(b) representing that the certified nurse midwife is in compliance with Subsection ~~[(8)(a)]~~ (9)(a) when the certified nurse midwife is not in compliance with Subsection ~~[(8)(a)]~~

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(9)(a); or

~~[(9)]~~ (10) falsely making an entry in, or altering, a medical record with the intent to conceal:

(a) a wrongful or negligent act or omission of an individual licensed under this chapter or an individual under the direction or control of an individual licensed under this chapter; or

(b) conduct described in Subsections (1) through ~~[(8)]~~ (9) or Subsection 58-1-501(1).

Section 8. 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)(i);

(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; and

(d) if the licensee is an associate physician licensed under Section 58-67-302.8, successfully complete the educational methods and programs described in Subsection 58-67-807(4).

(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) (a) An application to renew a license under this chapter shall:

~~[(a)]~~ (i) require a physician to answer the following question: "Do you perform elective abortions in Utah in a location other than a hospital?"; and

~~[(b)]~~ (ii) immediately following the question, contain the following statement: "For purposes of the immediately preceding question, elective abortion means an abortion other than one of the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is necessary to avert the death of a woman, an abortion that is necessary to avert a serious

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physical risk of substantial [~~and irreversible~~] impairment of a major bodily function of a woman, an abortion of a fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where the woman is pregnant as a result of rape or incest."

(b) The statement in Subsection (3)(a)(ii) shall be modified, if necessary, to ensure compliance with the definitions and requirements of Title 76, Chapter 7, Part 3, Abortion, and Title 76, Chapter 7a, Abortion Prohibition.

(4) In order to assist the Department of Health and Human Services in fulfilling [~~its~~] the department's responsibilities relating to the licensing of [~~an abortion clinic~~] a health care facility and the enforcement of Title 76, Chapter 7, Part 3, Abortion, and Title 76, Chapter 7a, Abortion Prohibition, if a physician responds positively to the question described in Subsection [~~(3)(a);~~] (3)(a)(i) the division shall, within 30 days after the day on which [~~it~~] the division renews the physician's license under this chapter, inform the Department of Health and Human Services in writing:

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

(b) that the physician responded positively to the question described in Subsection [~~(3)(a)~~] (3)(a)(i).

(5) The division shall accept and apply toward the hour requirement in Subsection (1)(a) any continuing education that a physician completes in accordance with Sections 26-61a-106 and 26-61a-403.

Section 9. Section **58-67-502** is amended to read:

58-67-502. Unprofessional conduct.

(1) "Unprofessional conduct" includes, in addition to the definition in Section 58-1-501:

(a) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule;

(b) making a material misrepresentation regarding the qualifications for licensure under Section 58-67-302.7 or Section 58-67-302.8;

(c) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable;

(d) violating the requirements of Title 26, Chapter 61a, Utah Medical Cannabis Act;

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[or]

(e) performing or inducing an abortion in violation of the requirements of Section 76-7-302 or Section 76-7a-201, regardless of whether the individual licensed under this chapter is found guilty of a crime in connection with the violation; or

~~(f)~~ (f) falsely making an entry in, or altering, a medical record with the intent to conceal:

(i) a wrongful or negligent act or omission of an individual licensed under this chapter or an individual under the direction or control of an individual licensed under this chapter; or

(ii) conduct described in Subsections (1)(a) through (d) or Subsection 58-1-501(1).

(2) "Unprofessional conduct" does not include:

(a) in compliance with Section 58-85-103:

(i) obtaining an investigational drug or investigational device;

(ii) administering the investigational drug to an eligible patient; or

(iii) treating an eligible patient with the investigational drug or investigational device;

or

(b) in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act:

(i) when registered as a qualified medical provider or acting as a limited medical provider, as those terms are defined in Section 26-61a-102, recommending the use of medical cannabis;

(ii) when registered as a pharmacy medical provider, as that term is defined in Section 26-61a-102, providing pharmacy medical provider services in a medical cannabis pharmacy; or

(iii) when registered as a state central patient portal medical provider, as that term is defined in Section 26-61a-102, providing state central patient portal medical provider services.

(3) Notwithstanding Subsection (2)(b), the division, in consultation with the board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define unprofessional conduct for a physician described in Subsection (2)(b).

Section 10. 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

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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)(i);

(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)(j); and

(d) if the licensee is an associate physician licensed under Section 58-68-302.5, successfully complete the educational methods and programs described in Subsection 58-68-807(4).

(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) (a) An application to renew a license under this chapter shall:

~~(a)~~ (i) require a physician to answer the following question: "Do you perform elective abortions in Utah in a location other than a hospital?"; and

~~(b)~~ (ii) immediately following the question, contain the following statement: "For purposes of the immediately preceding question, elective abortion means an abortion other than one of the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is necessary to avert the death of a woman, an abortion that is necessary to avert a serious physical risk of substantial [~~and irreversible~~] impairment of a major bodily function of a woman, an abortion of a fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where the woman is pregnant as a result of rape or incest."

(b) The statement in Subsection (3)(a)(ii) shall be modified, if necessary, to ensure compliance with the definitions and requirements of Title 76, Chapter 7, Part 3, Abortion, and Title 76, Chapter 7a, Abortion Prohibition.

(4) In order to assist the Department of Health and Human Services in fulfilling ~~its~~ the department's responsibilities relating to the licensing of ~~[an abortion clinic]~~ a health care facility and the enforcement of Title 76, Chapter 7, Part 3, Abortion, and Title 76, Chapter 7a, Abortion Prohibition, if a physician responds positively to the question described in Subsection

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~~[(3)(a)] (3)(a)(i)~~, 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 and Human Services in writing:

- (a) of the name and business address of the physician; and
- (b) that the physician responded positively to the question described in Subsection

~~[(3)(a)] (3)(a)(i)~~.

(5) The division shall accept and apply toward the hour requirement in Subsection (1)(a) any continuing education that a physician completes in accordance with Sections 26-61a-106 and 26-61a-403.

Section 11. Section **58-68-502** is amended to read:

58-68-502. Unprofessional conduct.

(1) "Unprofessional conduct" includes, in addition to the definition in Section 58-1-501:

(a) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule;

(b) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable;

(c) making a material misrepresentation regarding the qualifications for licensure under Section 58-68-302.5;

(d) violating the requirements of Title 26, Chapter 61a, Utah Medical Cannabis Act;

[~~or~~]

(e) performing or inducing an abortion in violation of the requirements of Section 76-7-302 or Section 76-7a-201, regardless of whether the individual licensed under this chapter is found guilty of a crime in connection with the violation; or

~~[(e)] (f)~~ falsely making an entry in, or altering, a medical record with the intent to conceal:

(i) a wrongful or negligent act or omission of an individual licensed under this chapter or an individual under the direction or control of an individual licensed under this chapter; or

(ii) conduct described in Subsections (1)(a) through (d) or Subsection 58-1-501(1).

(2) "Unprofessional conduct" does not include:

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(a) in compliance with Section 58-85-103:

- (i) obtaining an investigational drug or investigational device;
- (ii) administering the investigational drug to an eligible patient; or
- (iii) treating an eligible patient with the investigational drug or investigational device;

or

(b) in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act:

(i) when registered as a qualified medical provider or acting as a limited medical provider, as those terms are defined in Section 26-61a-102, recommending the use of medical cannabis;

(ii) when registered as a pharmacy medical provider, as that term is defined in Section 26-61a-102, providing pharmacy medical provider services in a medical cannabis pharmacy; or

(iii) when registered as a state central patient portal medical provider, as that term is defined in Section 26-61a-102, providing state central patient portal medical provider services.

(3) Notwithstanding Subsection (2)(b), the division, in consultation with the board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define unprofessional conduct for a physician described in Subsection (2)(b).

Section 12. Section **58-70a-501** is amended to read:

58-70a-501. Scope of practice.

(1) A physician assistant may provide any medical services that are not specifically prohibited under this chapter or rules adopted under this chapter, and that are within the physician assistant's skills and scope of competence.

(2) A physician assistant shall consult, collaborate with, and refer to appropriate members of the health care team:

- (a) as indicated by the patient's condition;
- (b) based on the physician assistant's education, experience, and competencies;
- (c) the applicable standard of care; and
- (d) if applicable, in accordance with the requirements described in Section 58-70a-307.

(3) Subject to Section 58-70a-307, the degree of collaboration under Subsection (2):

(a) shall be determined at the physician assistant's practice, including decisions made by the physician assistant's:

- (i) employer;

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(ii) group;

(iii) hospital service; or

(iv) health care facility credentialing and privileging system; and

(b) may also be determined by a managed care organization with whom the physician assistant is a network provider.

(4) A physician assistant may only provide healthcare services:

(a) for which the physician assistant has been trained and credentialed, privileged, or authorized to perform; and

(b) that are within the physician assistant's practice specialty.

(5) A physician assistant may authenticate through a signature, certification, stamp, verification, affidavit, or endorsement any document that may be authenticated by a physician and that is within the physician assistant's scope of practice.

(6) A physician assistant is responsible for the care that the physician assistant provides.

(7) (a) As used in this Subsection (7):

(i) "ALS/ACLS certification" means a certification:

(A) in advanced life support by the American Red Cross;

(B) in advanced cardiac life support by the American Heart Association; or

(C) that is equivalent to a certification described in Subsection (7)(a)(i)(A) or (B).

(ii) "Minimal sedation anxiolysis" means creating a drug induced state:

(A) during which a patient responds normally to verbal commands;

(B) which may impair cognitive function and physical coordination; and

(C) which does not affect airway, reflexes, or ventilatory and cardiovascular function.

(b) Except as provided in Subsections (c) through (e), a physician assistant may not administer general anesthetics.

(c) A physician assistant may perform minimal sedation anxiolysis if the procedure is within the physician assistant's scope of practice.

(d) A physician assistant may perform rapid sequence induction for intubation of a patient if:

(i) the procedure is within the physician assistant's scope of practice;

(ii) the physician assistant holds a valid ALS/ACLS certification and is credentialed

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and privileged at the hospital where the procedure is performed; and

- (iii) (A) a qualified physician is not available and able to perform the procedure; or
- (B) the procedure is performed by the physician assistant under supervision of or

delegation by a physician.

(e) Subsection (7)(b) does not apply to anesthetics administered by a physician assistant:

- (i) in an intensive care unit of a hospital;
- (ii) for the purpose of enabling a patient to tolerate ventilator support or intubation; and
- (iii) under supervision of or delegation by a physician whose usual scope of practice

includes the procedure.

(8) (a) A physician assistant may prescribe or administer an appropriate controlled substance that is within the physician assistant's scope of practice if the physician assistant holds a Utah controlled substance license and a DEA registration.

(b) A physician assistant may prescribe, order, administer, and procure a drug or medical device that is within the physician assistant's scope of practice.

(c) A physician assistant may dispense a drug if dispensing the drug:

- (i) is permitted under Title 58, Chapter 17b, Pharmacy Practice Act; and
- (ii) is within the physician assistant's scope of practice.

(9) A physician assistant may not perform or induce an abortion in violation of the requirements of Section 76-7-302 or Section 76-7a-201, regardless of whether the physician assistant is found guilty of a crime in connection with the violation.

~~[(9)]~~ (10) A physician assistant practicing independently may only perform or provide a health care service that:

- (a) is appropriate to perform or provide outside of a health care facility; and
- (b) the physician assistant has been trained and credentialed or authorized to provide or

perform independently without physician supervision.

~~[(10)]~~ (11) A physician assistant, while practicing as a physician assistant:

(a) shall wear an identification badge showing the physician assistant's license classification as a physician assistant;

(b) shall identify themselves to a patient as a physician assistant; and

(c) may not identify themselves to any person in connection with activities allowed

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under this chapter other than as a physician assistant or PA.

Section 13. Section **58-77-603** is amended to read:

58-77-603. Prohibited practices.

A direct-entry midwife may not:

- (1) administer a prescription drug to a client in a manner that violates this chapter;
- (2) effect any type of surgical delivery except for the cutting of an emergency

episiotomy;

(3) administer any type of epidural, spinal, or caudal anesthetic, or any type of narcotic analgesia;

- (4) use forceps or a vacuum extractor;

(5) manually remove the placenta, except in an emergency that presents an immediate threat to the life of the client; or

(6) ~~[induce abortion]~~ perform or induce an abortion in violation of the requirements of Section 76-7-302 or Section 76-7a-201, regardless of whether the direct-entry midwife is found guilty of a crime in connection with the violation.

Section 14. Section **63I-2-276** is amended to read:

63I-2-276. Repeal dates: Title 76.

(1) Subsection 76-5-102.7(2)(b), regarding assault or threat of violence against an owner, employee, or contractor of a health facility, is repealed January 1, 2027.

~~[(2) If Section 76-7-302.4 is not in effect before January 1, 2029, Section 76-7-302.4 is repealed January 1, 2029.]~~

~~[(3)]~~ (2) Section 76-7-305.7 is repealed January 1, 2023.

Section 15. Section **76-7-301** is amended to read:

76-7-301. Definitions.

As used in this part:

(1) (a) "Abortion" means~~[-]~~ the act, by a physician, of using an instrument, or prescribing a drug, with the intent to cause the death of an unborn child of a woman known to be pregnant, except as permitted under this part.

~~[(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;]~~

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~~[(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.

~~[(2) "Abortion clinic" means the same as that term is defined in Section 26-21-2.]~~

~~[(3)] (2) "Abuse" means the same as that term is defined in Section 80-1-102.~~

~~[(4)] (3) "Department" means the Department of Health and Human Services.~~

~~[(5)] (4) "Down syndrome" means a genetic condition associated with an extra chromosome 21, in whole or in part, or an effective trisomy for chromosome 21.~~

~~[(6)] (5) "Gestational age" means the age of an unborn child as calculated from the first day of the last menstrual period of the pregnant woman.~~

~~[(7)] (6) "Hospital" means:~~

(a) a general hospital licensed by the department 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 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.

~~[(8)] (7) "Information module" means the pregnancy termination information module prepared by the department.~~

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~~[(9)]~~ (8) "Medical emergency" means ~~[that condition which, on the basis of the physician's good faith clinical judgment, so threatens the life of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death, or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function]~~ a life threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the pregnant woman at risk of death, or poses a serious risk of substantial impairment of a major bodily function, unless the abortion is performed or induced.

~~[(10)]~~ (9) "Minor" means an individual who is:

- (a) under 18 years old;
- (b) unmarried; and
- (c) not emancipated.

~~[(11)]~~ (10) (a) "Partial birth abortion" means an abortion in which the person performing the abortion:

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

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

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

~~[(12)]~~ (11) "Perinatal hospice" means comprehensive support to the mother and her family from the time of the diagnosis of a lethal fetal anomaly, through the time of the child's birth, and through the postpartum period, that:

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

(b) may include counseling or medical care by:

(i) maternal-fetal medical specialists;

(ii) obstetricians;

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(iii) neonatologists;

(iv) anesthesia specialists;

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

(vi) clergy;

(vii) social workers; or

(viii) specialty nurses.

(12) "Physician" means:

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

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

(c) a physician employed by the federal government who has qualifications similar to [a person] an individual described in Subsection [~~(12)~~(a)] (11)(a) or (b).

~~ff~~(13)~~ff~~(12) (a) "Severe brain abnormality" means a malformation or defect that causes an individual to live in a mentally vegetative state.

(b) "Severe brain abnormality" does not include:

(i) Down syndrome;

(ii) spina bifida;

(iii) cerebral palsy; or

(iv) any other malformation, defect, or condition that does not cause an individual to live in a mentally vegetative state.

Section 16. Section **76-7-302** is amended to read:

76-7-302. Circumstances under which abortion authorized.

~~[(1) As used in this section, "viable" means that the unborn child has reached a stage of fetal development when the unborn child is potentially able to live outside the womb, as determined by the attending physician to a reasonable degree of medical certainty.]~~

~~[(2)]~~ (1) An abortion may be performed in this state only by a physician.

~~[(3)]~~ (2) An abortion may be performed in this state only under the following circumstances:

(a) the unborn child [~~is not viable; or~~] has not reached 18 weeks gestational age;

(b) the unborn child [~~is viable; if:~~] has reached 18 weeks gestational age, and:

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- (i) the abortion is necessary to avert:
 - (A) the death of the woman on whom the abortion is performed; or
 - (B) a serious physical risk of substantial [~~and irreversible~~] impairment of a major bodily function of the woman on whom the abortion is performed; or
- (ii) subject to Subsection (4), two physicians who practice maternal fetal medicine concur, in writing, in the patient's medical record that the fetus[:] has a fetal abnormality that in the physicians' reasonable medical judgment is incompatible with life; or
 - ~~[(A) has a defect that is uniformly diagnosable and uniformly lethal; or]~~
 - ~~[(B) has a severe brain abnormality that is uniformly diagnosable; or]~~
 - ~~[(iii)(A)]~~
- (c) the unborn child has not reached 18 weeks gestational age; and
 - (i) (A) the woman is pregnant as a result of:
 - (I) rape, as described in Section 76-5-402;
 - (II) rape of a child, as described in Section 76-5-402.1; or
 - (III) incest, as described in Subsection 76-5-406(2)(j) or Section 76-7-102; [~~and~~] or
 - (B) the pregnant woman is under the age of ~~12~~14; and
 - ~~[(B)]~~ (ii) before the abortion is performed, the physician who performs the abortion:
 - ~~[(A)]~~ (A) for an abortion authorized under Subsection (2)(c)(i)(A), ~~is~~ verifies that the incident described in Subsection [~~(3)(b)(iii)(A)]~~ (2)(c)(i)(A) has been reported to law enforcement; and
 - ~~[(B)]~~ (B) if applicable, complies with the requirements of Section 80-2-602.
- ~~[(4)]~~ (3) An abortion may be performed only in [~~an abortion clinic or~~] a hospital, unless it is necessary to perform the abortion in another location due to a medical emergency.
- (4) If ~~an~~ the unborn child has been diagnosed with a fetal abnormality that is incompatible with life, at the time of the diagnosis, the physician shall inform the woman, both verbally and in writing, that perinatal hospice and perinatal palliative care services are available and are an alternative to abortion ~~{ is performed under Subsection (2)(b)(ii), the abortion shall be performed by means of labor rather than in utero, unless the induction of labor poses an unacceptably higher risk to the mother than other methods }~~.

Section 17. Section ~~76-7-302.4~~ is amended to read:

76-7-302.4. Abortion restriction of an unborn child with Down syndrome.

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Notwithstanding any other provision of this part, an abortion may not be performed if the pregnant mother's sole reason for the abortion is that the unborn child has or may have Down syndrome, unless the abortion is permissible for a reason described in [~~Subsection 76-7-302(3)(b)~~] Section 76-7-302.

Section 18. Section ~~76-7-304~~ is amended to read:

76-7-304. Considerations by physician -- Notice to a parent or guardian -- Exceptions.

(1) To enable the physician to exercise the physician's best medical judgment, the physician shall consider all factors relevant to the well-being of a pregnant woman upon whom an abortion is to be performed, including:

- (a) her physical, emotional, and psychological health and safety;
- (b) her age; and
- (c) her familial situation.

(2) Subject to Subsection (3), at least 24 hours before a physician performs an abortion on a minor, the physician shall notify a parent or guardian of the minor that the minor intends to have an abortion.

(3) A physician is not required to comply with Subsection (2) if:

(a) subject to Subsection (4)(a):

(i) a medical condition exists that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant minor as to necessitate the abortion of her pregnancy to avert:

(A) the minor's death; or

(B) a serious physical risk of substantial [~~and irreversible~~] impairment of a major bodily function of the minor; and

(ii) there is not sufficient time to give the notice required under Subsection (2) before it is necessary to terminate the minor's pregnancy in order to avert the minor's death or impairment described in Subsection (3)(a)(i);

(b) subject to Subsection (4)(b):

(i) the physician complies with Subsection (5); and

(ii) (A) the minor is pregnant as a result of incest to which the parent or guardian was a party; or

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(B) the parent or guardian has abused the minor; or

(c) subject to Subsection (4)(b), the parent or guardian has not assumed responsibility for the minor's care and upbringing.

(4) (a) If, for the reason described in Subsection (3)(a), a physician does not give the 24-hour notice described in Subsection (2), the physician shall give the required notice as early as possible before the abortion, unless it is necessary to perform the abortion immediately in order to avert the minor's death or impairment described in Subsection (3)(a)(i).

(b) If, for a reason described in Subsection (3)(b) or (c), a parent or guardian of a minor is not notified that the minor intends to have an abortion, the physician shall notify another parent or guardian of the minor, if the minor has another parent or guardian that is not exempt from notification under Subsection (3)(b) or (c).

(5) If, for a reason described in Subsection (3)(b)(ii)(A) or (B), a physician does not notify a parent or guardian of a minor that the minor intends to have an abortion, the physician shall report the incest or abuse to the Division of Child and Family Services within the Department of Health and Human Services.

Section 19. Section **76-7-304.5** is amended to read:

76-7-304.5. Consent required for abortions performed on minors -- Division of Child and Family Services as guardian of a minor -- Hearing to allow a minor to self-consent -- Appeals.

(1) In addition to the other requirements of this part, a physician may not perform an abortion on a minor unless:

(a) the physician obtains the informed written consent of a parent or guardian of the minor, in accordance with Sections 76-7-305 and 76-7-305.5;

(b) the minor is granted the right, by court order under Subsection (4)(b), to consent to the abortion without obtaining consent from a parent or guardian; or

(c) (i) a medical condition exists that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant minor as to necessitate the abortion of her pregnancy to avert:

(A) the minor's death; or

(B) a serious physical risk of substantial [~~and irreversible~~] impairment of a major bodily function of the minor; and

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(ii) there is not sufficient time to obtain the consent in the manner chosen by the minor under Subsection (2) before it is necessary to terminate the minor's pregnancy in order to avert the minor's death or impairment described in Subsection (1)(c)(i).

(2) (a) A minor who wants to have an abortion may choose:

(i) to seek consent from the minor's parent or guardian as described in Subsection (1);

or

(ii) to seek a court order as described in Subsection (1).

(b) Neither Subsection (1) nor this Subsection (2) require the minor to seek or obtain consent from the minor's parent or guardian if the circumstances described in Subsection 76-7-304(3)(b)(ii) exist.

(3) If a minor does not obtain the consent of the minor's parent or guardian, the minor may file a petition with the juvenile court to obtain a court order as described in Subsection (1).

(4) (a) The juvenile court shall close the hearing on a petition described in Subsection (3) to the public.

(b) After considering the evidence presented at the hearing, the court shall order that the minor may obtain an abortion without the consent of a parent or guardian of the minor if the court finds by a preponderance of the evidence that:

(i) the minor:

(A) has given her informed consent to the abortion; and

(B) is mature and capable of giving informed consent to the abortion; or

(ii) an abortion would be in the minor's best interest.

(5) The Judicial Council shall make rules that:

(a) provide for the administration of the proceedings described in this section;

(b) provide for the appeal of a court's decision under this section;

(c) ensure the confidentiality of the proceedings described in this section and the records related to the proceedings; and

(d) establish procedures to expedite the hearing and appeal proceedings described in this section.

Section 20. Section **76-7-305** is amended to read:

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

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(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), consent to an abortion is voluntary and informed only if, at least 72 hours before the abortion:

(a) a staff member of [~~an abortion clinic or~~] a 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

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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;

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

(viii) 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]~~ department's website, which contains 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;

(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

(iii) a copy of the form described in Subsection 26-21-33(3)(a)(i) regarding the disposition of the aborted fetus.

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

(a) 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 a written certification 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);

(ii) obtain a copy of the statement described in Subsection (2)(c)(i); and

(iii) ensure that:

(A) the woman has received the information described in Subsections 26-21-33(3) and

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(4); and

(B) if the woman has a preference for the disposition of the aborted fetus, the woman has informed the health care facility of the woman's decision regarding the disposition of the aborted fetus.

(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 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 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 (5)(c), if the woman requests it.

(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 physical risk of substantial [~~and irreversible~~] impairment of a major

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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 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) 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 physical 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 described 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 old or younger.

(9) 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) (a) The department shall provide an ultrasound, in accordance with the provisions of Subsection (5)(b), at no expense to the pregnant woman.

(b) A local health department shall refer a pregnant woman who requests an ultrasound described in Subsection (10)(a) to the department.

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(11) 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 21. Section **76-7-314** is amended to read:

76-7-314. Violations of abortion laws -- Classifications.

(1) [~~A willful~~] An intentional violation of Section 76-7-307, 76-7-308, 76-7-310, 76-7-310.5, 76-7-311, or 76-7-312 is a felony of the third degree.

(2) A violation of Section 76-7-326 is a felony of the third degree.

(3) A violation of Section [~~76-7-302.5 or~~] 76-7-314.5 is a felony of the second degree.

(4) A violation of any other provision of this part, including Subsections 76-7-305(2)(a) through (c), and (e), is a class A misdemeanor.

(5) The [~~Department of Health~~] department shall report a physician's violation of any provision of this part to the Physicians Licensing Board, described in Section 58-67-201.

(6) Any person with knowledge of a physician's violation of any provision of this part may report the violation to the Physicians Licensing Board, described in Section 58-67-201.

(7) In addition to the penalties described in this section, the department may take any action described in Section 26-21-11 against [~~an abortion clinic~~] a health care facility if a violation of this chapter occurs at the [~~abortion clinic~~] health care facility.

Section 22. Section **76-7-314.5** is amended to read:

76-7-314.5. Killing an unborn child.

(1) A person is guilty of killing an unborn child if the person intentionally causes the death of an unborn child by performing an abortion of the unborn child in violation of the provisions of Subsection [~~76-7-302(3)~~] 76-7-302(2).

(2) A woman is not criminally liable for:

(a) seeking to obtain, or obtaining, an abortion that is permitted by this part; or

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(b) a physician's failure to comply with Subsection [76-7-302(3)(b)(ii)]
76-7-302(2)(b)(ii) or Section 76-7-305.

Section 23. Section **76-7-317** is amended to read:

76-7-317. Severability clause.

If any one or more provision, section, subsection, sentence, clause, phrase, or word of this part or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this part shall remain effective notwithstanding such unconstitutionality. The legislature hereby declares that it would have passed this part, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional. This section applies to any provision, section, subsection, sentence, clause, phrase, or word of this part, regardless of the time of enactment, amendment, or repeal.

Section 24. Section **76-7-332** is enacted to read:

76-7-332. Drugs known to be used for abortion -- Prescriber limitation --

Criminal penalties -- Pharmacy presumption for other use.

(1) As used in the section, "abortion-related drug" means a drug or medication that is known to be used for the purpose of performing an abortion, and includes:

- (a) methotrexate, or methotrexate with misoprostol;
- (b) mifepristone, also known as mifeprex;
- (c) misoprostol, also known as cytotec; and
- (d) RU-486.

(2) An individual may not prescribe an abortion-related drug for the purpose of causing an abortion, unless the individual is licensed as a physician in this state under:

- (a) Title 58, Chapter 67, Utah Medical Practice Act; or
- (b) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
- (3) A violation of Subsection (2) is a class B misdemeanor.

(4) (a) Any prescription or medical order for a drug that is known to possibly cause an abortion shall be presumed by a pharmacy to be for an indication other than for the termination of a pregnancy.

(b) A pharmacy dispensing a prescription or medical order for a drug that is known to

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possibly cause an abortion shall not be required to verify whether or not the prescription or medical order violates any provision of this chapter.

Section 25. Section ~~76-7a-101~~ is amended to read:

76-7a-101. Definitions.

As used in this chapter:

(1) (a) "Abortion" means~~[-]~~ the act, by a physician, of using an instrument, or prescribing a drug, with the intent to cause the death of an unborn child of a woman known to be pregnant, except as permitted under this chapter.

~~[(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.

~~[(2) "Abortion clinic" means a type I abortion clinic licensed by the state or a type II abortion clinic licensed by the state.]~~

~~[(3)]~~ (2) "Department" means the Department of Health and Human Services.

~~[(4)]~~ (3) "Down syndrome" means a genetic condition associated with an extra chromosome 21, in whole or in part, or an effective trisomy for chromosome 21.

~~[(5)]~~ (4) "Hospital" means:

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(a) a general hospital licensed by the department; or

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

~~[(6) "Incest" means the same as that term is defined in Section 80-1-102.]~~

~~[(7)] (5) "Medical emergency" means a [condition which, on the basis of the physician's good faith clinical judgment, so threatens the life of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death, or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function] life threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the pregnant woman at risk of death, or poses a serious risk of substantial impairment of a major bodily function, unless the abortion is performed or induced.~~

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

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

(b) may include counseling or medical care by:

(i) maternal-fetal medical specialists;

(ii) obstetricians;

(iii) neonatologists;

(iv) anesthesia specialists;

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

(vi) clergy;

(vii) social workers; or

(viii) specialty nurses

~~[(8)] ~~(6)~~ (7) "Physician" means:~~

~~(a) a medical doctor licensed to practice medicine and surgery in the state;~~

~~(b) an osteopathic physician licensed to practice osteopathic medicine in the state; or~~

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(c) a physician employed by the federal government who has qualifications similar to an individual described in Subsection ~~[(8)(a) or (b)]~~ (6)(a) or (b).

~~[(9) "Rape" means the same as that term is defined in Title 76, Utah Criminal Code.]~~

~~[(10)]~~ ~~(7)~~ (8) (a) "Severe brain abnormality" means a malformation or defect that causes an individual to live in a mentally vegetative state.

(b) "Severe brain abnormality" does not include:

(i) Down syndrome;

(ii) spina bifida;

(iii) cerebral palsy; or

(iv) any other malformation, defect, or condition that does not cause an individual to live in a mentally vegetative state.

Section 26. Section ~~76-7a-201~~ is amended to read:

76-7a-201. Abortion prohibition -- Exceptions -- Penalties.

(1) An abortion may be performed in this state only under the following circumstances:

(a) the abortion is necessary to avert:

(i) the death of the woman on whom the abortion is performed; or

(ii) a serious physical risk of substantial ~~[and irreversible]~~ impairment of a major bodily function of the woman on whom the abortion is performed;

(b) subject to Subsection (3), two physicians who practice maternal fetal medicine concur, in writing, in the patient's medical record that the fetus[:]
has a fetal abnormality that in the physicians' reasonable medical judgment is incompatible with life; or

~~[(i) has a defect that is uniformly diagnosable and uniformly lethal; or]~~

~~[(ii) has a severe brain abnormality that is uniformly diagnosable; or]~~

(c) ~~[(1)]~~ the unborn child has not reached 18 weeks gestational age; and

(i) (A) the woman is pregnant as a result of:

~~[(A)]~~ (I) rape, as described in Section 76-5-402;

~~[(B)]~~ (II) rape of a child, as described in Section 76-5-402.1; or

~~[(C)]~~ (III) incest[; and], as described in Subsection 76-5-406(2)(j) or Section 76-7-102;

or

(B) the pregnant woman is under the age of ~~12~~14; and

(ii) before the abortion is performed, the physician who performs the abortion:

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(A) for an abortion authorized under Subsection (1)(c)(i)(A), verifies that the incident described in Subsection ~~[(1)(c)(i)]~~ (1)(c)(i)(A) has been reported to law enforcement; and

(B) if applicable, complies with requirements related to reporting suspicions of or known child abuse.

(2) An abortion may be performed only:

(a) by a physician; and

(b) in ~~[an abortion clinic or]~~ a hospital, unless it is necessary to perform the abortion in another location due to a medical emergency.

(3) If ~~an~~ the unborn child has been diagnosed with a fetal abnormality that is incompatible with life, at the time of the diagnosis, the physician shall inform the woman, both verbally and in writing, that perinatal hospice services and perinatal palliative care are available and are an alternative to abortion ~~{ is performed under Subsection (1)(b), the abortion shall be performed by means of labor rather than in utero, unless the induction of labor poses an unacceptably higher risk to the mother than other methods}~~.

~~[(3)]~~ (4) A person who performs an abortion in violation of this section is guilty of a second degree felony.

~~[(4)]~~ (5) In addition to the penalty described in Subsection ~~[(3)]~~ (4), the department may take appropriate corrective action against ~~[an abortion clinic]~~ a health care facility, including revoking the ~~[abortion clinic's]~~ health care facility's license, if a violation of this chapter occurs at the ~~[abortion clinic]~~ health care facility.

~~[(5)]~~ (6) The department shall report a physician's violation of any provision of this section to the state entity that regulates the licensing of a physician.

Section 27. **Repealer.**

This bill repeals:

Section **76-7-302.5, Circumstances under which abortion prohibited.**