

SUBSTITUTE FOR
HOUSE BILL NO. 4446

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 17015 (MCL 333.17015), as amended by 2002 PA
685.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 17015. (1) Subject to subsection (10), a physician shall
2 not perform an abortion otherwise permitted by law without the
3 patient's informed written consent, given freely and without
4 coercion.

5 (2) For purposes of this section:

6 (a) "Abortion" means the intentional use of an instrument,
7 drug, or other substance or device to terminate a woman's pregnancy

1 for a purpose other than to increase the probability of a live
2 birth, to preserve the life or health of the child after live
3 birth, or to remove a dead fetus. Abortion does not include the use
4 or prescription of a drug or device intended as a contraceptive.

5 (b) "Fetus" means an individual organism of the species homo
6 sapiens in utero.

7 (c) "Local health department representative" means a person,
8 **WHO MEETS 1 OR MORE OF THE LICENSING REQUIREMENTS LISTED IN**
9 **SUBDIVISION (F) AND WHO IS** employed by, or under contract to
10 provide services on behalf of, a local health department. ~~who meets~~
11 ~~1 or more of the licensing requirements listed in subdivision (f).~~

12 (d) "Medical emergency" means that condition which, on the
13 basis of the physician's good faith clinical judgment, so
14 complicates the medical condition of a pregnant woman as to
15 necessitate the immediate abortion of her pregnancy to avert her
16 death or for which a delay will create serious risk of substantial
17 and irreversible impairment of a major bodily function.

18 (e) "Medical service" means the provision of a treatment,
19 procedure, medication, examination, diagnostic test, assessment, or
20 counseling, including, but not limited to, a pregnancy test,
21 ultrasound, pelvic examination, or an abortion.

22 (f) "Qualified person assisting the physician" means another
23 physician or a physician's assistant licensed under this part or
24 part 175, a fully licensed or limited licensed psychologist
25 licensed under part 182, a professional counselor licensed under
26 part 181, a registered professional nurse or a licensed practical
27 nurse licensed under part 172, or a social worker ~~registered~~

1 **LICENSED** under part 185.

2 (g) "Probable gestational age of the fetus" means the
3 gestational age of the fetus at the time an abortion is planned to
4 be performed.

5 (h) "Provide the patient with a physical copy" means
6 confirming that the patient accessed the internet website described
7 in subsection (5) and received a printed valid confirmation form
8 from the website and including that form in the patient's medical
9 record or giving a patient a copy of a required document by 1 or
10 more of the following means:

11 (i) In person.

12 (ii) By registered mail, return receipt requested.

13 (iii) By parcel delivery service that requires the recipient to
14 provide a signature in order to receive delivery of a parcel.

15 (iv) By facsimile transmission.

16 (3) Subject to subsection (10), a physician or a qualified
17 person assisting the physician shall do all of the following not
18 less than 24 hours before that physician performs an abortion upon
19 a patient who is a pregnant woman:

20 (a) Confirm that, according to the best medical judgment of a
21 physician, the patient is pregnant, and determine the probable
22 gestational age of the fetus.

23 (b) Orally describe, in language designed to be understood by
24 the patient, taking into account her age, level of maturity, and
25 intellectual capability, each of the following:

26 (i) The probable gestational age of the fetus she is carrying.

27 (ii) Information about what to do and whom to contact should

House Bill No. 4446 (H-1) as amended May 11, 2005

medical complications arise from the abortion.

(iii) Information about how to obtain pregnancy prevention information through the department of community health.

(c) Provide the patient with a physical copy of the written summary described in subsection (11)(b) that corresponds to the procedure the patient will undergo and is provided by the department of community health. If the procedure has not been recognized by the department, but is otherwise allowed under Michigan law, and the department has not provided a written summary for that procedure, the physician shall develop and provide a written summary that describes the procedure, any known risks or complications of the procedure, and risks associated with live birth and meets the requirements of subsection (11)(b)(iii) through (vii).

(d) Provide the patient with a physical copy of a medically accurate depiction, illustration, or photograph and description of a fetus supplied by the department of community health pursuant to subsection (11)(a) at the gestational age nearest the probable gestational age of the patient's fetus.

(e) Provide the patient with a physical copy of the prenatal care and parenting information pamphlet distributed by the department of community health under section 9161.

[

]

(4) The requirements of subsection (3) may be fulfilled by the

1 physician or a qualified person assisting the physician at a
2 location other than the health facility where the abortion is to be
3 performed. The requirement of subsection (3)(a) that a patient's
4 pregnancy be confirmed may be fulfilled by a local health
5 department under subsection (18). The requirements of subsection
6 (3) cannot be fulfilled by the patient accessing an internet
7 website other than the internet website described in subsection (5)
8 that is maintained through the department.

9 (5) The requirements of subsection (3)(c) through (e) may be
10 fulfilled by a patient accessing the internet website maintained
11 and operated through the department and receiving a printed, valid
12 confirmation form from the website that the patient has reviewed
13 the information required in subsection (3)(c) through (e) at least
14 24 hours before an abortion being performed on the patient. The
15 website shall not require any information be supplied by the
16 patient. The department shall not track, compile, or otherwise keep
17 a record of information that would identify a patient who accesses
18 this website. The patient shall supply the valid confirmation form
19 to the physician or qualified person assisting the physician to be
20 included in the patient's medical record to comply with this
21 subsection.

22 (6) Subject to subsection (10), before obtaining the patient's
23 signature on the acknowledgment and consent form, a physician
24 personally and in the presence of the patient shall do all of the
25 following:

26 (a) Provide the patient with the physician's name and inform
27 the patient of her right to withhold or withdraw her consent to the

House Bill No. 4446 (H-1) as amended May 11, 2005

1 abortion at any time before performance of the abortion.

2 (b) Orally describe, in language designed to be understood by
3 the patient, taking into account her age, level of maturity, and
4 intellectual capability, each of the following:

5 (i) The specific risk, if any, to the patient of the
6 complications that have been associated with the procedure the
7 patient will undergo, based on the patient's particular medical
8 condition and history as determined by the physician.

9 (ii) The specific risk of complications, if any, to the patient
10 if she chooses to continue the pregnancy based on the patient's
11 particular medical condition and history as determined by a
12 physician.

13 (7) To protect a patient's privacy, the information set forth
14 in subsection (3) and subsection (6) shall not be disclosed to the
15 patient in the presence of another patient.

16 (8) **[BEFORE OBTAINING THE PATIENT'S SIGNATURE ON THE
ACKNOWLEDGMENT AND CONSENT FORM AS REQUIRED UNDER THIS SUBSECTION, A
PHYSICIAN OR A QUALIFIED PERSON ASSISTING THE PHYSICIAN SHALL PERFORM AN
ULTRASOUND ON THE PATIENT, PROVIDE THE PATIENT WITH AN OPPORTUNITY TO
VIEW THE ACTIVE ULTRASOUND IMAGE OF THE FETUS, AND OFFER TO PROVIDE THE
PATIENT WITH A PHYSICAL PICTURE OF THE ULTRASOUND IMAGE OF THE FETUS.]**
Before performing an abortion on a patient who is a

17 pregnant woman, a physician or a qualified person assisting the
18 physician shall do all of the following:

19 (a) Obtain the patient's signature on the acknowledgment and
20 consent form described in subsection (11)(c) confirming that she
21 has received the information required under subsection (3).

22 (b) Provide the patient with a physical copy of the signed
23 acknowledgment and consent form described in subsection (11)(c).

24 (c) Retain a copy of the signed acknowledgment and consent
25 form described in subsection (11)(c) and, if applicable, a copy of
26 the pregnancy certification form completed under subsection
27 (18)(b), in the patient's medical record.

1 (9) This subsection does not prohibit notifying the patient
2 that payment for medical services will be required or that
3 collection of payment in full for all medical services provided or
4 planned may be demanded after the 24-hour period described in this
5 subsection has expired. A physician or an agent of the physician
6 shall not collect payment, in whole or in part, for a medical
7 service provided to or planned for a patient before the expiration
8 of 24 hours from the time the patient has done either or both of
9 the following, except in the case of a physician or an agent of a
10 physician receiving capitated payments or under a salary
11 arrangement for providing those medical services:

12 (a) Inquired about obtaining an abortion after her pregnancy
13 is confirmed and she has received from that physician or a
14 qualified person assisting the physician the information required
15 under subsection (3)(c) and (d).

16 (b) Scheduled an abortion to be performed by that physician.

17 (10) If the attending physician, utilizing his or her
18 experience, judgment, and professional competence, determines that
19 a medical emergency exists and necessitates performance of an
20 abortion before the requirements of subsections (1), (3), and (6)
21 can be met, the physician is exempt from the requirements of
22 subsections (1), (3), and (6), may perform the abortion, and shall
23 maintain a written record identifying with specificity the medical
24 factors upon which the determination of the medical emergency is
25 based.

26 (11) The department of community health shall do each of the
27 following:

1 (a) Produce medically accurate depictions, illustrations, or
2 photographs of the development of a human fetus that indicate by
3 scale the actual size of the fetus at 2-week intervals from the
4 fourth week through the twenty-eighth week of gestation. Each
5 depiction, illustration, or photograph shall be accompanied by a
6 printed description, in nontechnical English, Arabic, and Spanish,
7 of the probable anatomical and physiological characteristics of the
8 fetus at that particular state of gestational development.

9 (b) Subject to subdivision (g), develop, draft, and print, in
10 nontechnical English, Arabic, and Spanish, written standardized
11 summaries, based upon the various medical procedures used to abort
12 pregnancies, that do each of the following:

13 (i) Describe, individually and on separate documents, those
14 medical procedures used to perform abortions in this state that are
15 recognized by the department.

16 (ii) Identify the physical complications that have been
17 associated with each procedure described in subparagraph (i) and
18 with live birth, as determined by the department. In identifying
19 these complications, the department shall consider the annual
20 statistical report required under section 2835(6), and shall
21 consider studies concerning complications that have been published
22 in a peer review medical journal, with particular attention paid to
23 the design of the study, and shall consult with the federal centers
24 for disease control, the American college of obstetricians and
25 gynecologists, the Michigan state medical society, or any other
26 source that the department determines appropriate for the purpose.

27 (iii) State that as the result of an abortion, some women may

1 experience depression, feelings of guilt, sleep disturbance, loss
2 of interest in work or sex, or anger, and that if these symptoms
3 occur and are intense or persistent, professional help is
4 recommended.

5 (iv) State that not all of the complications listed in
6 subparagraph (ii) may pertain to that particular patient and refer
7 the patient to her physician for more personalized information.

8 (v) Identify services available through public agencies to
9 assist the patient during her pregnancy and after the birth of her
10 child, should she choose to give birth and maintain custody of her
11 child.

12 (vi) Identify services available through public agencies to
13 assist the patient in placing her child in an adoptive or foster
14 home, should she choose to give birth but not maintain custody of
15 her child.

16 (vii) Identify services available through public agencies to
17 assist the patient and provide counseling should she experience
18 subsequent adverse psychological effects from the abortion.

19 (c) Develop, draft, and print, in nontechnical English,
20 Arabic, and Spanish, an acknowledgment and consent form that
21 includes only the following language above a signature line for the
22 patient:

23 "I, _____, hereby authorize Dr.
24 _____ ("the physician") and any assistant designated
25 by the physician to perform upon me the following operation(s) or
26 procedure(s):

27 _____

(Name of operation(s) or procedure(s))

I understand that I am approximately _____ weeks pregnant. I consent to an abortion procedure to terminate my pregnancy. I understand that I have the right to withdraw my consent to the abortion procedure at any time prior to performance of that procedure. I acknowledge that at least 24 hours before the scheduled abortion I have received a physical copy of each of the following:

(a) A medically accurate depiction, illustration, or photograph of a fetus at the probable gestational age of the fetus I am carrying.

(b) A written description of the medical procedure that will be used to perform the abortion.

(c) A prenatal care and parenting information pamphlet. If any of the above listed documents were transmitted by facsimile, I certify that the documents were clear and legible. I acknowledge that the physician who will perform the abortion has orally described all of the following to me:

(i) The specific risk to me, if any, of the complications that have been associated with the procedure I am scheduled to undergo.

(ii) The specific risk to me, if any, of the complications if I choose to continue the pregnancy.

I acknowledge that I have received all of the following information:

(d) Information about what to do and whom to contact in the event that complications arise from the abortion.

1 (e) Information pertaining to available pregnancy related
2 services.

3 I have been given an opportunity to ask questions about the
4 operation(s) or procedure(s). I certify that I have not been
5 required to make any payments for an abortion or any medical
6 service before the expiration of 24 hours after I received the
7 written materials listed in paragraphs (a), (b), and (c) above, or
8 24 hours after the time and date listed on the confirmation form if
9 paragraphs (a), (b), and (c) were viewed from the state of Michigan
10 internet website.".

11 (d) Make available to physicians through the Michigan board of
12 medicine and the Michigan board of osteopathic medicine and
13 surgery, and any person upon request the copies of medically
14 accurate depictions, illustrations, or photographs described in
15 subdivision (a), the standardized written summaries described in
16 subdivision (b), the acknowledgment and consent form described in
17 subdivision (c), the prenatal care and parenting information
18 pamphlet described in section 9161, and the pregnancy certification
19 form described in subdivision (f).

20 (e) The department shall not develop written summaries for
21 abortion procedures under subdivision (b) that utilize medication
22 that has not been approved by the United States food and drug
23 administration for use in performing an abortion.

24 (f) Develop, draft, and print a certification form to be
25 signed by a local health department representative at the time and
26 place a patient has a pregnancy confirmed, as requested by the
27 patient, verifying the date and time the pregnancy is confirmed.

House Bill No. 4446 (H-1) as amended May 11, 2005

1 (g) Develop and maintain an internet website that allows a
2 patient considering an abortion to review the information required
3 in subsection (3)(c) through (e). After the patient reviews the
4 required information, the department shall assure that a
5 confirmation form can be printed by the patient from the internet
6 website that will verify the time and date the information was
7 reviewed. A confirmation form printed under this subdivision
8 becomes invalid 14 days after the date and time printed on the
9 confirmation form.

[(H) INCLUDE ON THE INFORMED CONSENT WEBSITE DEVELOPED UNDER
SUBDIVISION (G) A LIST OF HEALTH CARE PROVIDERS, FACILITIES, AND CLINICS
THAT OFFER TO PERFORM ULTRASOUNDS FREE OF CHARGE. THE LIST SHALL BE
ORGANIZED GEOGRAPHICALLY AND SHALL INCLUDE THE NAME, ADDRESS, AND
TELEPHONE NUMBER OF EACH HEALTH CARE PROVIDER, FACILITY, AND CLINIC.]

10 (12) A physician's duty to inform the patient under this
11 section does not require disclosure of information beyond what a
12 reasonably well-qualified physician licensed under this article
13 would possess.

14 (13) A written consent form meeting the requirements set forth
15 in this section and signed by the patient is presumed valid. The
16 presumption created by this subsection may be rebutted by evidence
17 that establishes, by a preponderance of the evidence, that consent
18 was obtained through fraud, negligence, deception,
19 misrepresentation, coercion, or duress.

20 (14) A completed certification form described in subsection
21 (11)(f) that is signed by a local health department representative
22 is presumed valid. The presumption created by this subsection may
23 be rebutted by evidence that establishes, by a preponderance of the
24 evidence, that the physician who relied upon the certification had
25 actual knowledge that the certificate contained a false or
26 misleading statement or signature.

27 (15) This section does not create a right to abortion.

1 (16) Notwithstanding any other provision of this section, a
2 person shall not perform an abortion that is prohibited by law.

3 (17) If any portion of this act or the application of this act
4 to any person or circumstances is found invalid by a court, that
5 invalidity does not affect the remaining portions or applications
6 of the act that can be given effect without the invalid portion or
7 application, if those remaining portions are not determined by the
8 court to be inoperable.

9 (18) Upon a patient's request, each local health department
10 shall:

11 (a) Provide a pregnancy test for that patient to confirm the
12 pregnancy as required under subsection (3)(a) and determine the
13 probable gestational stage of the fetus. The local health
14 department need not comply with this subdivision if the
15 requirements of subsection (3)(a) have already been met.

16 (b) If a pregnancy is confirmed, ensure that the patient is
17 provided with a completed pregnancy certification form described in
18 subsection (11)(f) at the time the information is provided.

19 (19) The identity and address of a patient who is provided
20 information or who consents to an abortion pursuant to this section
21 is confidential and is subject to disclosure only with the consent
22 of the patient or by judicial process.

23 (20) A local health department with a file containing the
24 identity and address of a patient described in subsection (19) who
25 has been assisted by the local health department under this section
26 shall do both of the following:

27 (a) Only release the identity and address of the patient to a

1 physician or qualified person assisting the physician in order to
2 verify the receipt of the information required under this section.

3 (b) Destroy the information containing the identity and
4 address of the patient within 30 days after assisting the patient
5 under this section.