

HOUSE BILL No. 4760

June 14, 2017, Introduced by Reps. Faris, Cochran, Dianda, Sneller, Chang, Sabo, Jones, Sowerby, Wittenberg, Geiss, Pagan, Hoadley, Brinks, Hertel, Greig, Moss, Hammoud, Durhal and Greimel and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 17015 and 17015a (MCL 333.17015 and
333.17015a), section 17015 as amended and section 17015a as added
by 2012 PA 499; and to repeal acts and parts of acts.

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 to abort.

5 (2) For purposes of this section and section 17015a:

6 (a) "Abortion" means the intentional use of an instrument,
7 drug, or other substance or device to terminate a woman's pregnancy
8 for a purpose other than to increase the probability of a live

1 birth, to preserve the life or health of the child after live
2 birth, or to remove a fetus that has died as a result of natural
3 causes, accidental trauma, or a criminal assault on the pregnant
4 woman. Abortion does not include the use or prescription of a drug
5 or device intended as a contraceptive.

6 (b) "Coercion to abort" means an act committed with the intent
7 to coerce an individual to have an abortion, which act is
8 prohibited by section 213a of the Michigan penal code, 1931 PA 328,
9 MCL 750.213a.

10 (c) "Domestic violence" means that term as defined in section
11 1 of 1978 PA 389, MCL 400.1501.

12 (d) "Fetus" means an individual organism of the species ~~homo~~
13 **HOMO** sapiens in utero.

14 (e) "Local health department representative" means a person
15 who meets 1 or more of the licensing requirements listed in
16 subdivision (h) and who is employed by, or under contract to
17 provide services on behalf of, a local health department.

18 (f) "Medical emergency" means ~~that~~ **A** condition ~~which,~~ **THAT**, on
19 the basis of the physician's good faith clinical judgment, so
20 complicates the medical condition of a pregnant woman as to
21 necessitate the immediate abortion of her pregnancy to avert her
22 death or for which a delay will create serious risk of substantial
23 and irreversible impairment of a major bodily function.

24 (g) "Medical service" means the provision of a treatment,
25 procedure, medication, examination, diagnostic test, assessment, or
26 counseling, including, but not limited to, a pregnancy test,
27 ultrasound, pelvic examination, or an abortion.

1 (h) "Qualified person assisting the physician" means another
2 physician or a physician's assistant licensed under this part or
3 part 175, a fully licensed or limited licensed psychologist
4 licensed under part 182, a professional counselor licensed under
5 part 181, a registered professional nurse or a licensed practical
6 nurse licensed under part 172, or a social worker licensed under
7 part 185.

8 (i) "Probable gestational age of the fetus" means the
9 gestational age of the fetus at the time an abortion is planned to
10 be performed.

11 (j) "Provide the patient with a physical copy" means
12 confirming that the patient accessed the internet website described
13 in subsection (5) and received a printed valid confirmation form
14 from the website and including that form in the patient's medical
15 record or giving a patient a copy of a required document by 1 or
16 more of the following means:

17 (i) In person.

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

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

21 (iv) By facsimile transmission.

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

26 (a) Confirm that, according to the best medical judgment of a
27 physician, the patient is pregnant, and determine the probable

1 gestational age of the fetus.

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 probable gestational age of the fetus she is carrying.

6 (ii) Information about what to do and whom to contact should
7 medical complications arise from the abortion.

8 (iii) Information about how to obtain pregnancy prevention
9 information through the department of ~~community-health~~ **AND HUMAN**
10 **SERVICES**.

11 (c) Provide the patient with a physical copy of the written
12 standardized summary described in subsection (11)(b) that
13 corresponds to the procedure the patient will undergo and is
14 provided by the department of ~~community-health~~ **AND HUMAN SERVICES**.
15 If the procedure has not been recognized by the department **OF**
16 **HEALTH AND HUMAN SERVICES**, but is otherwise allowed under Michigan
17 law, and the department **OF HEALTH AND HUMAN SERVICES** has not
18 provided a written standardized summary for that procedure, the
19 physician shall develop and provide a written summary that
20 describes the procedure, any known risks or complications of the
21 procedure, and risks associated with live birth and meets the
22 requirements of subsection (11)(b) (iii) ~~through~~ **TO** (vii).

23 (d) Provide the patient with a physical copy of a medically
24 accurate depiction, illustration, or photograph and description of
25 a fetus supplied by the department of ~~community-health~~ **AND HUMAN**
26 **SERVICES** pursuant to subsection (11)(a) at the gestational age
27 nearest the probable gestational age of the patient's fetus.

1 (e) Provide the patient with a physical copy of the prenatal
2 care and parenting information pamphlet distributed by the
3 department of ~~community health~~ **AND HUMAN SERVICES** under section
4 9161.

5 (f) Provide the patient with a physical copy of the
6 prescreening summary on prevention of coercion to abort described
7 in subsection (11) (i).

8 (4) The requirements of subsection (3) may be fulfilled by the
9 physician or a qualified person assisting the physician at a
10 location other than the health facility where the abortion is to be
11 performed. The requirement of subsection (3) (a) that a patient's
12 pregnancy be confirmed may be fulfilled by a local health
13 department under subsection (18). The requirements of subsection
14 (3) cannot be fulfilled by the patient accessing an internet
15 website other than the internet website that is maintained and
16 operated by the department **OF HEALTH AND HUMAN SERVICES** under
17 subsection (11) (g).

18 (5) The requirements of subsection (3) (c) ~~through~~ **TO** (f) may
19 be fulfilled by a patient accessing the internet website that is
20 maintained and operated by the department **OF HEALTH AND HUMAN**
21 **SERVICES** under subsection (11) (g) and receiving a printed, valid
22 confirmation form from the website that the patient has reviewed
23 the information required in subsection (3) (c) ~~through~~ **TO** (f). ~~at~~
24 ~~least 24 hours before an abortion being performed on the patient.~~
25 The website shall not require any information be supplied by the
26 patient. The department **OF HEALTH AND HUMAN SERVICES** shall not
27 track, compile, or otherwise keep a record of information that

1 would identify a patient who accesses this website. The patient
2 shall supply the valid confirmation form to the physician or
3 qualified person assisting the physician to be included in the
4 patient's medical record to comply with this subsection.

5 (6) Subject to subsection (10), before obtaining the patient's
6 signature on the acknowledgment and consent form **DESCRIBED IN**
7 **SUBSECTION (11) (C)**, a physician personally and in the presence of
8 the patient shall do all of the following:

9 (a) Provide the patient with the physician's name, confirm
10 with the patient that the coercion to abort screening required
11 under section 17015a was performed, and inform the patient of her
12 right to withhold or withdraw her consent to the abortion at any
13 time before performance of the abortion.

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

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

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

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

(8) If at any time before the performance of an abortion, a patient undergoes an ultrasound examination, or a physician determines that ultrasound imaging will be used during the course of a patient's abortion, the physician or qualified person assisting the physician shall provide the patient with the opportunity to view or decline to view an active ultrasound image of the fetus, and offer to provide the patient with a physical picture of the ultrasound image of the fetus before the performance of the abortion. ~~After the expiration of the 24-hour period prescribed under subsection (3) but before~~ **BEFORE** performing an abortion on a patient who is a pregnant woman, a physician or a qualified person assisting the physician shall do all of the following:

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

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

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

(9) This subsection does not prohibit notifying the patient that payment for medical services will be required or that collection of payment in full for all medical services provided or planned may be demanded. ~~after the 24-hour period described in this subsection has expired.~~ A physician or an agent of the physician

1 shall not collect payment, in whole or in part, for a medical
2 service provided to or planned for a patient before ~~the expiration~~
3 ~~of 24 hours from the time~~ the patient has done either or both of
4 the following, except in the case of a physician or an agent of a
5 physician receiving capitated payments or under a salary
6 arrangement for providing those medical services:

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

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

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

21 (11) The department of ~~community health~~ **AND HUMAN SERVICES**
22 shall do each of the following:

23 (a) Produce medically accurate depictions, illustrations, or
24 photographs of the development of a human fetus that indicate by
25 scale the actual size of the fetus at 2-week intervals from the
26 fourth week through the twenty-eighth week of gestation. Each
27 depiction, illustration, or photograph ~~shall~~ **MUST** be accompanied by

1 a printed description, in nontechnical English, Arabic, and
2 Spanish, of the probable anatomical and physiological
3 characteristics of the fetus at that particular state of
4 gestational development.

5 (b) Subject to subdivision (e), develop, draft, and print, in
6 nontechnical English, Arabic, and Spanish, written standardized
7 summaries, based upon the various medical procedures used to abort
8 pregnancies, that do each of the following:

9 (i) Describe, individually and on separate documents, those
10 medical procedures used to perform abortions in this state that are
11 recognized by the department **OF HEALTH AND HUMAN SERVICES**.

12 (ii) Identify the physical complications that have been
13 associated with each procedure described in subparagraph (i) and
14 with live birth, as determined by the department **OF HEALTH AND**
15 **HUMAN SERVICES**. In identifying these complications, the department
16 **OF HEALTH AND HUMAN SERVICES** shall consider the annual statistical
17 report required under section 2835, and shall consider studies
18 concerning complications that have been published in a peer review
19 medical journal, with particular attention paid to the design of
20 the study, and shall consult with the federal ~~centers~~ **CENTERS** for
21 ~~disease control~~ **DISEASE CONTROL** and ~~prevention~~, **PREVENTION**, the
22 American ~~congress~~ **CONGRESS** of ~~obstetricians~~ **OBSTETRICIANS** and
23 ~~gynecologists~~, **GYNECOLOGISTS**, the Michigan ~~state medical society~~,
24 **STATE MEDICAL SOCIETY**, or any other source that the department **OF**
25 **HEALTH AND HUMAN SERVICES** determines appropriate for the purpose.
26 (iii) State that as the result of an abortion, some women may
27 experience depression, feelings of guilt, sleep disturbance, loss

1 of interest in work or sex, or anger, and that if these symptoms
2 occur and are intense or persistent, professional help is
3 recommended.

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

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

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

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

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

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

26 _____
27 (Name of operation(s) or procedure(s))

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

A. 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 before performance of that procedure.

B. I understand that it is illegal for anyone to coerce me into seeking an abortion.

C. I acknowledge that ~~at least 24 hours before the scheduled abortion~~ I have received a physical copy of each of the following:

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

2. A written description of the medical procedure that will be used to perform the abortion.

3. A prenatal care and parenting information pamphlet.

D. If any of the documents listed in paragraph C were transmitted by facsimile, I certify that the documents were clear and legible.

E. I acknowledge that the physician who will perform the abortion has orally described all of the following to me:

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

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

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

1 1. Information about what to do and whom to contact in the
2 event that complications arise from the abortion.

3 2. Information pertaining to available pregnancy related
4 services.

5 G. I have been given an opportunity to ask questions about the
6 operation(s) or procedure(s).

7 H. I certify that I have not been required to make any
8 payments for an abortion or any medical service before ~~the~~
9 ~~expiration of 24 hours after~~ I received the written materials
10 listed in paragraph C, or ~~24 hours~~ after the time and date listed
11 on the confirmation form if the information described in paragraph
12 C was viewed from the state of Michigan internet website.".

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

23 (e) ~~The department shall not develop~~ **IN DEVELOPING THE** written
24 standardized summaries for abortion procedures under subdivision
25 (b), ~~that utilize~~ **INCLUDE IN THE SUMMARIES ONLY** medication that has
26 ~~not been approved by the United States food~~ **FOOD** and ~~drug~~
27 ~~administration~~ **DRUG ADMINISTRATION** for use in performing an

1 abortion.

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

6 (g) Develop, operate, and maintain an internet website that
7 allows a patient considering an abortion to review the information
8 required in subsection (3)(c) ~~through~~**TO** (f). After the patient
9 reviews the required information, the department shall ~~assure~~
10 **ENSURE** that a confirmation form can be printed by the patient from
11 the internet website that will verify the time and date the
12 information was reviewed. A confirmation form printed under this
13 subdivision becomes invalid 14 days after the date and time printed
14 on the confirmation form.

15 (h) Include on the informed consent internet website operated
16 under subdivision (g) a list of health care providers, facilities,
17 and clinics that offer to perform ultrasounds free of charge. The
18 list ~~shall~~**MUST** be organized geographically and ~~shall~~**MUST** include
19 the name, address, and telephone number of each health care
20 provider, facility, and clinic.

21 (i) After considering the standards and recommendations of the
22 ~~joint commission~~**JOINT COMMISSION** on accreditation ~~ACCREDITATION~~ of
23 ~~healthcare organizations~~**HEALTHCARE ORGANIZATIONS**, the Michigan
24 domestic and sexual violence prevention and treatment board, the
25 Michigan ~~coalition~~**COALITION** to end domestic ~~END DOMESTIC~~ and
26 ~~sexual violence~~**SEXUAL VIOLENCE** or successor organization, and the
27 American ~~medical association~~**MEDICAL ASSOCIATION**, do all of the

1 following:

2 (i) Develop, draft, and print or make available in printable
3 format, in nontechnical English, Arabic, and Spanish, a notice that
4 is required to be posted in facilities and clinics under section
5 17015a. The notice ~~shall~~**MUST** be at least 8-1/2 inches by 14
6 inches, ~~shall~~**MUST** be printed in at least 44-point type, and shall
7 contain at a minimum all of the following:

8 (A) A statement that it is illegal under Michigan law to
9 coerce a woman to have an abortion.

10 (B) A statement that help is available if a woman is being
11 threatened or intimidated; is being physically, emotionally, or
12 sexually harmed; or feels afraid for any reason.

13 (C) The telephone number of at least 1 domestic violence
14 hotline and 1 sexual assault hotline.

15 (ii) Develop, draft, and print or make available in printable
16 format, in nontechnical English, Arabic, and Spanish, a
17 prescreening summary on prevention of coercion to abort that, at a
18 minimum, contains the information required under subparagraph (i)
19 and notifies the patient that an oral screening for coercion to
20 abort will be conducted before her giving written consent to obtain
21 an abortion.

22 (iii) Develop, draft, and print screening and training tools
23 and accompanying training materials to be utilized by a physician
24 or qualified person assisting the physician while performing the
25 coercion to abort screening required under section 17015a. The
26 screening tools ~~shall~~**MUST** instruct the physician or qualified
27 person assisting the physician to orally communicate information to

1 the patient regarding coercion to abort and to document the
2 findings from the coercion to abort screening in the patient's
3 medical record.

4 (iv) Develop, draft, and print protocols and accompanying
5 training materials to be utilized by a physician or a qualified
6 person assisting the physician if a patient discloses coercion to
7 abort or that domestic violence is occurring, or both, during the
8 coercion to abort screening. The protocols ~~shall~~**MUST** instruct the
9 physician or qualified person assisting the physician to do, at a
10 minimum, all of the following:

11 (A) Follow the requirements of section 17015a as applicable.

12 (B) Assess the patient's current level of danger.

13 (C) Explore safety options with the patient.

14 (D) Provide referral information to the patient regarding law
15 enforcement and domestic violence and sexual assault support
16 organizations.

17 (E) Document any referrals in the patient's medical record.

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

22 (13) A written consent form meeting the requirements set forth
23 in this section and signed by the patient is presumed valid. The
24 presumption created by this subsection may be rebutted by evidence
25 that establishes, by a preponderance of the evidence, that consent
26 was obtained through fraud, negligence, deception,
27 misrepresentation, coercion, or duress.

1 (14) A completed certification form described in subsection
2 (11)(f) that is signed by a local health department representative
3 is presumed valid. The presumption created by this subsection may
4 be rebutted by evidence that establishes, by a preponderance of the
5 evidence, that the physician who relied upon the certification had
6 actual knowledge that the certificate contained a false or
7 misleading statement or signature.

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

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

11 (17) If any portion of this act or the application of this act
12 to any person or circumstances is found invalid by a court, that
13 invalidity does not affect the remaining portions or applications
14 of the act that can be given effect without the invalid portion or
15 application, if those remaining portions are not determined by the
16 court to be inoperable.

17 (18) Upon a patient's request, ~~each~~**A** local health department
18 shall **COMPLY WITH THE FOLLOWING:**

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

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

27 (19) The identity and address of a patient who is provided

1 information or who consents to an abortion pursuant to this section
2 is confidential and is subject to disclosure only with the consent
3 of the patient or by judicial process.

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

8 (a) Only release the identity and address of the patient to a
9 physician or qualified person assisting the physician in order to
10 verify the receipt of the information required under this section.

11 (b) Destroy the information containing the identity and
12 address of the patient within 30 days after assisting the patient
13 under this section.

14 Sec. 17015a. (1) At the time a patient first presents at a
15 private office, freestanding surgical outpatient facility, or other
16 facility or clinic in which abortions are performed for the purpose
17 of obtaining an abortion, ~~whether before or after the expiration of~~
18 ~~the 24-hour period described in section 17015(3),~~ the physician or
19 qualified person assisting the physician shall orally screen the
20 patient for coercion to abort using the screening tools developed
21 by the department under section 17015(11). The oral screening
22 required under this subsection may occur before the requirements of
23 section 17015(3) have been met with regard to that patient.

24 (2) If a patient discloses that she is the victim of domestic
25 violence that does not include coercion to abort, the physician or
26 qualified person assisting the physician shall follow the protocols
27 developed by the department under section 17015(11).

1 (3) If a patient discloses coercion to abort, the physician or
2 qualified person assisting the physician shall follow the protocols
3 developed by the department under section 17015(11).

4 (4) If a patient who is under the age of 18 discloses domestic
5 violence or coercion to abort by an individual responsible for the
6 health or welfare of the minor patient, the physician or qualified
7 person assisting the physician shall report that fact to a local
8 child protective services office.

9 (5) A private office, freestanding surgical outpatient
10 facility, or other facility or clinic in which abortions are
11 performed shall post in a conspicuous place in an area of its
12 facility that is accessible to patients, employees, and visitors
13 the notice described in section 17015(11)(i). A private office,
14 freestanding surgical outpatient facility, or other facility or
15 clinic in which abortions are performed shall make available in an
16 area of its facility that is accessible to patients, employees, and
17 visitors publications that contain information about violence
18 against women.

19 (6) This section does not create a right to abortion.
20 Notwithstanding any other provision of this section, a person shall
21 not perform an abortion that is prohibited by law.

22 Enacting section 1. Section 17014 of the public health code,
23 1978 PA 368, MCL 333.17014, is repealed.

24 Enacting section 2. This amendatory act takes effect 90 days
25 after the date it is enacted into law.