

1 A bill to be entitled

2 An act relating to reproductive health services and family
3 planning; creating the "Prevention First Act"; providing
4 definitions; providing duties of licensed health care
5 practitioners and facilities relating to treatment of rape
6 survivors; requiring the Department of Health to provide
7 certain information; authorizing the Agency for Health
8 Care Administration to provide for enforcement and
9 penalties; prohibiting interference with the right to
10 obtain and use certain methods of contraception; requiring
11 licensed pharmacies to dispense certain forms of
12 contraception without discrimination or delay; specifying
13 conditions for refusal to provide contraception; providing
14 for civil action by aggrieved persons; authorizing the
15 Attorney General to bring a civil action; providing for
16 penalties; providing severability; providing an effective
17 date.

18
19 WHEREAS, although the Centers for Disease Control and
20 Prevention included family planning in its published list of the
21 Ten Great Public Health Achievements in the 20th Century, the
22 United States still has one of the highest rates of unintended
23 pregnancies among industrialized nations, and

24 WHEREAS, the Legislature finds that family planning is
25 basic health care for women and that access to contraception
26 helps women prevent unintended pregnancy and control the timing
27 and spacing of planned births, and

28 WHEREAS, 46.3 percent of pregnancies among women in the

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29 | state are unintended, according to the Florida Pregnancy Risk
30 | Assessment Monitoring System initiated by the United States
31 | Centers for Disease Control and Prevention and the Florida
32 | Department of Health, and

33 | WHEREAS, according to a 2005 study by the Guttmacher
34 | Institute, more than 1,726,160 women in Florida are in need of
35 | contraceptive services and supplies, and

36 | WHEREAS, the Legislature finds that the victimization of
37 | women through rape is compounded by the possibility that rape
38 | survivors may suffer unintended pregnancies, and half of such
39 | pregnancies end in abortion, and

40 | WHEREAS, women rely on prescription contraceptives for a
41 | range of medical purposes in addition to birth control, such as
42 | regulation of cycles and endometriosis, and

43 | WHEREAS, the Legislature further finds that providing
44 | access to family planning information, services, and birth
45 | control will prevent abortions and unintended pregnancies,
46 | thereby significantly reducing the number of women and teens who
47 | need medical assistance, Medicaid, KidCare, and other social
48 | services, and

49 | WHEREAS, the Legislature recognizes that the most recent
50 | study of women in need of family planning services by the
51 | Florida State University Center for Prevention and Early
52 | Intervention Policy found that only 26 percent of women in this
53 | state who are in need of such services are currently receiving
54 | them, and

55 | WHEREAS, according to the Department of Health's Family
56 | Planning Program, for every dollar spent in family planning

57 services, up to \$24 is saved as a result of averting
 58 expenditures for public programs that support women who have
 59 unintended pregnancies and their infants, NOW, THEREFORE,

60

61 Be It Enacted by the Legislature of the State of Florida:

62

63 Section 1. This act may be cited as the "Prevention First
 64 Act."

65 Section 2. Treatment for survivors of rape.--

66 (1) DEFINITIONS.--As used in this section, the term:

67 (a) "Agency" means the Agency for Health Care
 68 Administration.

69 (b) "Care to a rape survivor" means medical examinations,
 70 procedures, and services provided to a rape survivor.

71 (c) "Department" means the Department of Health.

72 (d) "Emergency birth control" means any drug or device
 73 approved by the United States Food and Drug Administration that
 74 prevents pregnancy after sexual intercourse.

75 (e) "Health care facility" means a facility licensed under
 76 chapter 395, Florida Statutes.

77 (f) "Incest" means a sexual offense described in s.
 78 826.04, Florida Statutes.

79 (g) "Medically and factually accurate" means information
 80 supported by the weight of research conducted in compliance with
 81 accepted scientific methods and recognized as accurate and
 82 objective by leading professional organizations and agencies
 83 with relevant expertise in the field.

84 (h) "Rape" means sexual battery as described in ss.

85 794.011 and 827.071, Florida Statutes.

86 (i) "Rape survivor" means a person who alleges or is
87 alleged to have been raped or is the victim of alleged incest
88 and because of the alleged offense seeks treatment as a patient.

89 (2) DUTIES OF LICENSED PRACTITIONERS AND FACILITIES.--

90 (a) A health care practitioner licensed under chapter 458,
91 chapter 459, or chapter 464, Florida Statutes, or a health care
92 facility licensed under chapter 395, Florida Statutes, that
93 provides care to a rape survivor shall:

94 1. Provide each female rape survivor with medically and
95 factually accurate, clear, and concise information concerning
96 emergency birth control, including its indications and
97 contraindications and the risks associated with its use.

98 2. Inform each female rape survivor of her medical option
99 to receive emergency birth control.

100 (b) If emergency birth control is requested, the health
101 care practitioner shall immediately provide the female rape
102 survivor with the complete regimen of emergency birth control.

103 (3) PATIENT INFORMATION.--

104 (a) The department shall:

105 1. Develop, prepare, and produce informational materials
106 relating to emergency birth control for the prevention of
107 pregnancy for distribution to and use in all emergency
108 departments in the state, in quantities sufficient to comply
109 with the requirements of this section, to the extent that funds
110 are available.

111 2. Develop, prepare, and post information relating to the
112 duty of licensed health care practitioners and health care

113 facilities to provide emergency birth control to female rape
 114 survivors on the department's Internet website.

115 (b) Information provided to female victims of sexual
 116 assault must:

117 1. Be medically and factually accurate and objective.

118 2. Be clearly written, readily comprehensible, and
 119 culturally appropriate, as the department, in collaboration with
 120 community sexual assault programs and other relevant
 121 stakeholders, deems necessary to explain the nature of emergency
 122 birth control, including its use, safety, efficacy, and
 123 availability.

124 (4) ENFORCEMENT AND PENALTIES.--In addition to any other
 125 remedies provided by law, the agency shall respond to complaints
 126 and shall periodically determine, using all available
 127 investigative tools, whether a health care facility is in
 128 compliance with this section. If the agency determines that a
 129 health care facility is not in compliance with this section, the
 130 agency shall:

131 (a) Impose a fine of \$5,000 per woman who is denied
 132 medically and factually accurate and objective information about
 133 emergency birth control or who is not offered or provided with
 134 emergency birth control.

135 (b) Impose a fine of \$5,000 for failure to comply with
 136 subsection (2). For every 30 days that a health care facility is
 137 not in compliance with subsection (2), an additional fine of
 138 \$5,000 shall be imposed.

139 (c) After two violations, suspend or revoke the health
 140 care facility's license or deny the health care facility's

141 application for a license.

142 Section 3. Access to contraception.--

143 (1) For all purposes, "contraception" means any drug or
 144 device approved by the United States Food and Drug
 145 Administration to prevent pregnancy.

146 (2) The provision of contraception shall not be subject to
 147 or governed by chapter 390, Florida Statutes.

148 Section 4. Patient protection.--

149 (1) DEFINITIONS.--As used in this section, the term:

150 (a) "Contraception" or "contraceptive" means any drug or
 151 device approved by the United States Food and Drug
 152 Administration to prevent pregnancy.

153 (b) "Employee" means a person hired, by contract or any
 154 other form of agreement, by a pharmacy.

155 (c) "Pharmacist" means a person licensed under chapter
 156 465, Florida Statutes.

157 (d) "Pharmacy" means an entity that is authorized by the
 158 state to engage in the business of selling prescription drugs at
 159 retail and that employs one or more employees.

160 (e) "Product" means a drug or device approved by the
 161 United States Food and Drug Administration.

162 (f) "Professional clinical judgment" means the use of
 163 professional knowledge and skills to form a clinical judgment in
 164 accordance with prevailing medical standards.

165 (g) "Without delay," with respect to a pharmacy providing,
 166 providing a referral for, or ordering contraception, or
 167 transferring the prescription for contraception, means within
 168 the pharmacy's customary timeframe for providing, providing a

169 referral for, or ordering other products, or transferring the
 170 prescription for other products.

171 (2) DUTIES OF LICENSED PHARMACIES.--

172 (a) If a customer requests a contraceptive that is in
 173 stock, the pharmacy shall ensure that the contraceptive is
 174 provided to the customer without delay.

175 (b) If a customer requests a contraceptive that is not in
 176 stock and the pharmacy, in the normal course of business, stocks
 177 contraception, the pharmacy shall immediately inform the
 178 customer that the contraceptive is not in stock and without
 179 delay offer the customer the following options:

180 1. If the customer prefers to obtain the contraceptive
 181 through a referral or transfer, the pharmacy shall:

182 a. Locate a pharmacy of the customer's choice or the
 183 closest pharmacy confirmed to have the contraceptive in stock;
 184 and

185 b. Refer the customer or transfer the prescription to that
 186 pharmacy.

187 2. If the customer prefers that the pharmacy order the
 188 contraceptive, the pharmacy shall obtain the contraceptive under
 189 the pharmacy's standard procedure for expedited ordering of
 190 medication and notify the customer when the contraceptive
 191 arrives.

192 (c) A pharmacy shall ensure that its employees do not:

193 1. Intimidate, threaten, or harass a customer in the
 194 delivery of services relating to a request for contraception;

195 2. Interfere with or obstruct the delivery of services
 196 relating to a request for contraception;

197 3. Intentionally misrepresent or deceive a customer about
 198 the availability of contraception or its mechanism of action;

199 4. Breach medical confidentiality with respect to a
 200 request for contraception or threaten to breach such
 201 confidentiality; or

202 5. Refuse to return a valid, lawful prescription for
 203 contraception upon customer request.

204 (d) This section does not prohibit a pharmacy from
 205 refusing to provide a contraceptive to a customer in accordance
 206 with any of the following:

207 1. If it is unlawful to dispense the contraceptive to the
 208 customer without a valid, lawful prescription and no such
 209 prescription is presented;

210 2. If the customer is unable to pay for the contraceptive;
 211 or

212 3. If the employee of the pharmacy refuses to provide the
 213 contraceptive on the basis of a professional clinical judgment.

214 (e) The provisions of this section shall not be
 215 interpreted so as to prevent a pharmacist or other person from
 216 refusing to furnish any contraceptive or family planning
 217 service, supplies, or information for religious reasons so long
 218 as the pharmacy ensures the customer receives the contraceptive
 219 without delay and in compliance with this section.

220 (f) Nothing in this section shall be construed to alter
 221 any standard established under the Florida Civil Rights Act of
 222 1992.

223 (g) Any person who believes that a violation of this act
 224 has occurred may file a complaint with the department. Within 30

225 days after receiving a complaint, the department must
 226 investigate the complaint and determine whether a violation
 227 occurred. If the department determines that a violation has
 228 occurred, the department shall impose a fine no greater than
 229 \$10,000 or any other penalty in accordance with s. 456.072(2),
 230 Florida Statutes. A pharmacy that violates this act is subject
 231 to denial or revocation of a permit issued by the department.

232 (h) Any person who has been injured by a violation of this
 233 act may bring a civil action for compensatory and punitive
 234 damages as well as the costs of suit and reasonable fees for
 235 attorneys and expert witnesses. With respect to compensatory
 236 damages, the plaintiff may elect, at any time prior to the
 237 rendering of final judgment, to recover, in lieu of actual
 238 damages, an award of statutory damages in the amount of \$5,000.

239 (i) If the Attorney General has reasonable cause to
 240 believe that any person or group of persons is being, has been,
 241 or may be injured by conduct constituting a violation of this
 242 act, the Attorney General may bring a civil action in the name
 243 of the state, as parens patriae on behalf of natural persons
 244 residing in the state. In such an action by the Attorney
 245 General, the court may award appropriate relief, including
 246 compensatory damages and civil penalties of not more than
 247 \$10,000 for each violation.

248 Section 5. If any provision, word, phrase, or clause of
 249 this act or the application thereof to any person, entity, or
 250 circumstance should be held invalid, such invalidity shall not
 251 affect the remaining provisions, words, phrases, or clauses of
 252 this act which can be given effect without the invalid

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253 provision, word, phrase, clause, or application, and to this end
254 the provisions, words, phrases, or clauses of this act are
255 declared severable.

256 Section 6. This act shall take effect upon becoming a law.