

By Senator Rich

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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 the treatment of
6 rape survivors; requiring the Department of Health to
7 provide certain information; requiring the Agency for
8 Health Care Administration to provide for enforcement and
9 impose penalties; defining the term "contraception";
10 specifying that the provision of contraception is not
11 subject to ch. 390, F.S., relating to the termination of
12 pregnancies; providing definitions; requiring licensed
13 pharmacies to dispense certain forms of contraception
14 without delay; specifying conditions under which a
15 pharmacy may refuse to provide a contraceptive; requiring
16 the Department of Health to investigate complaints
17 alleging a violation of certain provisions; providing for
18 an aggrieved person or the Attorney General to bring a
19 civil action; providing for penalties; providing for
20 severability; providing an effective date.

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

27 WHEREAS, the Legislature finds that family planning is basic
28 health care for women and that access to contraception helps
29 women prevent unintended pregnancy and control the timing and

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30 spacing of planned births, and

31 WHEREAS, 46.3 percent of pregnancies among women in this
32 state are unintended according to the Florida Pregnancy Risk
33 Assessment Monitoring System initiated by the United States
34 Centers for Disease Control and Prevention and the Florida
35 Department of Health, and

36 WHEREAS, currently more than 1.7 million women in Florida
37 are in need of contraceptive services and supplies, and

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

42 WHEREAS, women rely on prescription contraceptives for a
43 range of medical purposes in addition to birth control, such as
44 regulation of menstrual cycles and the treatment of
45 endometriosis, and

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

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

57 WHEREAS, according to the Department of Health's Family
58 Planning Program, for every dollar spent on family planning

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

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63 | Be It Enacted by the Legislature of the State of Florida:

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65 | Section 1. This act may be cited as the "Prevention First
66 | Act."

67 | Section 2. Treatment for survivors of rape.--

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

69 | (a) "Agency" means the Agency for Health Care
70 | Administration.

71 | (b) "Care to a rape survivor" means medical examinations,
72 | procedures, and services provided to a rape survivor.

73 | (c) "Department" means the Department of Health.

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

77 | (e) "Health care facility" means a facility licensed under
78 | chapter 395, Florida Statutes.

79 | (f) "Incest" means a sexual offense described in s. 826.04,
80 | Florida Statutes.

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

87 | (h) "Rape" means sexual battery as described in ss. 794.011

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88 and 827.071, Florida Statutes.

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

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

93 (a) A health care practitioner licensed under chapter 458,
94 chapter 459, or chapter 464, Florida Statutes, or a health care
95 facility licensed under chapter 395, Florida Statutes, providing
96 care to a rape survivor shall:

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

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

103 (b) If emergency birth control is requested, the health
104 care practitioner or health care facility shall immediately
105 provide the female rape survivor with the complete regimen of
106 emergency birth control.

107 (3) PATIENT INFORMATION.--

108 (a) The department shall:

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

115 2. Develop, prepare, and post information on the
116 department's Internet website relating to the duty of licensed

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117 health care practitioners and health care facilities to provide
118 emergency birth control to female rape survivors.

119 (b) Information provided to female rape survivors or female
120 victims of sexual assault must be:

121 1. Medically and factually accurate and objective.

122 2. Clearly written, readily comprehensible, and culturally
123 appropriate, as the department, in collaboration with community
124 sexual assault programs and other relevant stakeholders,
125 considers necessary to explain the nature of emergency birth
126 control, including its use, safety, efficacy, and availability.

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

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

138 (b) Impose a fine of \$5,000 for failure to comply with
139 subsection (2). For every 30 days that a health care facility is
140 not in compliance with subsection (2), an additional fine of
141 \$5,000 shall be imposed.

142 (c) After two violations, suspend or revoke the health care
143 facility's license or deny the health care facility's application
144 for a license.

145 Section 3. Access to contraception.--

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146 (1) The term "contraception" means any drug or device
147 approved by the United States Food and Drug Administration to
148 prevent pregnancy.

149 (2) The provision of contraception is not subject to or
150 governed by chapter 390, Florida Statutes.

151 Section 4. Patient protection.--

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

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

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

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

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

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

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

168 (g) "Without delay," with respect to a pharmacy providing,
169 providing a referral for, or ordering contraception, or
170 transferring a prescription for contraception, means within the
171 pharmacy's customary timeframe for providing, providing a
172 referral for, or ordering other products, or transferring the
173 prescription for other products.

174 (2) DUTIES OF LICENSED PHARMACIES.--

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175 (a) If a customer requests a contraceptive that is in
176 stock, the pharmacy shall ensure that the contraceptive is
177 provided to the customer without delay.

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

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

185 a. Locate a pharmacy of the customer's choice or the
186 closest pharmacy confirmed to have the contraceptive in stock;
187 and

188 b. Refer the customer or transfer the prescription to that
189 pharmacy.

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

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

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

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

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

202 4. Breach medical confidentiality with respect to a request
203 for contraception or threaten to breach such confidentiality; or

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204 5. Refuse to return a valid, lawful prescription for
205 contraception upon a customer's request.

206 (d) This section does not prohibit a pharmacy from refusing
207 to provide a contraceptive to a customer if:

208 1. It is unlawful to dispense the contraceptive to the
209 customer without a valid, lawful prescription and such
210 prescription is not presented;

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

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

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

219 (f) This section does not alter any standard established
220 under the Florida Civil Rights Act of 1992.

221 (g) Any person who believes that a violation of this
222 section has occurred may file a complaint with the Department of
223 Health. Within 30 days after receiving the complaint, the
224 department must investigate the complaint and determine whether a
225 violation occurred. If the department finds that a violation
226 occurred, the department shall impose a fine no greater than
227 \$10,000 or any other penalty in accordance with s. 456.072(2),
228 Florida Statutes. A pharmacy that violates this section is
229 subject to denial or revocation of a permit issued by the
230 department.

231 (h) Any person who has been injured by a violation of this
232 section may bring a civil action for compensatory and punitive

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233 damages as well as the costs of the suit and reasonable fees for
234 attorneys and expert witnesses. With respect to compensatory
235 damages, the plaintiff may elect, at any time prior to the
236 rendering of final judgment, to recover, in lieu of actual
237 damages, an award of statutory damages in the amount of \$5,000.

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

246 Section 5. If any provision of this act or the application
247 thereof to any person or circumstance is held invalid, the
248 invalidity does not affect other provisions or applications of
249 the act which can be given effect without the invalid provision
250 or application, and to this end the provisions of this act are
251 severable.

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