

By the Committee on Health Regulation; and Senators Rich, Bennett, Aronberg, Deutch, Ring, Margolis, Joyner, Wilson and Jones

588-07631-08

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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; requiring the agency to adopt rules;
10 amending s. 390.011, F.S.; defining the term
11 "contraception"; creating s. 390.027, F.S.; specifying
12 that the provision of contraception is not subject to ch.
13 390, F.S., relating to the termination of pregnancies;
14 creating s. 465.190, F.S.; providing definitions;
15 requiring licensed pharmacies to dispense certain forms of
16 contraception without delay; specifying conditions under
17 which a pharmacy may refuse to provide a contraceptive;
18 providing for a person to file a complaint with the
19 Department of Health if he or she believes that a
20 violation of such provisions has occurred; providing for
21 the Attorney General to bring a civil action; amending ss.
22 465.016 and 465.023, F.S.; providing that a violation of
23 requirements for dispensing contraception constitutes
24 grounds for the Department of Health or the Board of
25 Pharmacy to impose disciplinary action or suspend or
26 revoke a pharmacist's license or permit; providing for
27 severability; providing an effective date.

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588-07631-08

2008780c1

29 WHEREAS, although the Centers for Disease Control and
30 Prevention included family planning in its published list of
31 Ten Great Public Health Achievements in the 20th Century, the
32 United States still has one of the highest rates of unintended
33 pregnancies among industrialized nations, and

34 WHEREAS, the Legislature finds that family planning is
35 basic health care for women and that access to contraception
36 helps women prevent unintended pregnancy and control the timing
37 and spacing of planned births, and

38 WHEREAS, 46.3 percent of pregnancies among women in this
39 state are unintended according to the Florida Pregnancy Risk
40 Assessment Monitoring System initiated by the United States
41 Centers for Disease Control and Prevention and the Florida
42 Department of Health, and

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

45 WHEREAS, the Legislature finds that the victimization of
46 women through rape is compounded by the possibility that the
47 rape survivors may suffer unintended pregnancies, and half of
48 such pregnancies end in abortion, and

49 WHEREAS, women rely on prescription contraceptives for a
50 range of medical purposes in addition to birth control, such as
51 regulation of menstrual cycles and the treatment of
52 endometriosis, and

53 WHEREAS, the Legislature further finds that providing
54 access to family planning information, services, and birth
55 control will prevent abortions and unintended pregnancies,
56 thereby significantly reducing the number of women and teens

588-07631-08

2008780c1

57 | who need medical assistance, Medicaid, Kidcare, and other
58 | social services, and

59 | WHEREAS, the Legislature recognizes that the most recent
60 | study of women in need of family planning services by the
61 | Florida State University Center for Prevention and Early
62 | Intervention Policy found that only 26 percent of women in this
63 | state who are in need of such services are currently receiving
64 | them, and

65 | WHEREAS, according to the Department of Health's Family
66 | Planning Program, for every dollar spent on family planning
67 | services, up to \$24 is saved as a result of averting
68 | expenditures for public programs that support women who have
69 | unintended pregnancies and their infants, NOW, THEREFORE,

70 |

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

72 |

73 | Section 1. This act may be cited as the "Prevention First
74 | Act."

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

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

77 | (a) "Agency" means the Agency for Health Care
78 | Administration.

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

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

82 | (d) "Emergency contraception" means one or more
83 | prescription or over-the-counter drugs used separately or in
84 | combination to be administered to or self-administered by a
85 | patient to prevent pregnancy within a medically recommended

588-07631-08

2008780c1

86 amount of time after sexual intercourse and dispensed for that
87 purpose, in accordance with professional standards of practice,
88 and determined to be safe by the United States Food and Drug
89 Administration.

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

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

94 (g) "Medically and factually accurate" means information
95 that is supported by the weight of research conducted in
96 compliance with accepted scientific methods and that is
97 recognized as accurate and objective by leading professional
98 organizations and agencies having relevant expertise in the
99 field.

100 (h) "Rape" means sexual battery as described in ss. 794.011
101 and 827.071, Florida Statutes.

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

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

106 (a) A health care practitioner licensed under chapter 458,
107 chapter 459, or chapter 464, Florida Statutes, or a health care
108 facility licensed under chapter 395, Florida Statutes, providing
109 care to a rape survivor shall:

110 1. Provide each female rape survivor with medically and
111 factually accurate, clear, and concise information concerning
112 emergency contraception, including its indications and
113 contraindications and the risks associated with its use.

114 2. Inform each female rape survivor of her medical option

588-07631-08

2008780c1

115 to receive emergency contraception.

116 (b) If emergency contraception is requested, the health
117 care practitioner or health care facility shall immediately
118 provide the female rape survivor with the complete regimen of
119 emergency contraception, unless contraindicated as determined by
120 a pregnancy test approved by the United States Food and Drug
121 Administration.

122 (c) The Agency for Health Care Administration, with input
123 from the Florida Hospital Association and the Florida Council
124 Against Sexual Violence, shall adopt a protocol to implement the
125 requirements of this subsection.

126 (3) PATIENT INFORMATION.--

127 (a) The department shall:

128 1. Develop, prepare, and produce informational materials
129 relating to emergency contraception for the prevention of
130 pregnancy for distribution to and use in all health care
131 facilities in the state that provide care to rape survivors, in
132 quantities sufficient to comply with the requirements of this
133 section, to the extent that funds are available.

134 2. Develop, prepare, and post information on the
135 department's Internet website relating to the duty of licensed
136 health care practitioners and health care facilities to provide
137 emergency contraception to female rape survivors.

138 (b) Information provided to female rape survivors or female
139 victims of sexual assault must:

140 1. Be medically and factually accurate;

141 2. Be clearly written, readily comprehensible, and
142 culturally appropriate as determined by the department, in
143 collaboration with community sexual assault programs and other

588-07631-08

2008780c1

144 relevant stakeholders; and

145 3. Explain the nature of emergency contraception, including
146 its use, safety, efficacy, and availability.

147 (4) ENFORCEMENT AND PENALTIES.--

148 (a) In addition to any other remedies provided by law, the
149 agency shall respond to complaints, using all available
150 investigative tools, and shall periodically review whether a
151 health care facility is in compliance with this section. If the
152 agency finds that a health care facility is not in compliance
153 with this section, the agency shall:

154 1. Impose a fine of \$5,000 per woman who is:

155 a. Denied medically and factually accurate and objective
156 information about emergency contraception;

157 b. Not informed of her medical option to receive emergency
158 contraception; or

159 c. Not provided the complete regimen of emergency
160 contraception, if emergency contraception is requested.

161 2. Impose a fine of \$5,000 for failure to comply with this
162 section. For every 30 days that a health care facility is not in
163 compliance with this section, an additional fine of \$5,000 shall
164 be imposed.

165 (b) The agency shall adopt rules as necessary to administer
166 the provisions of this section.

167 Section 3. Subsection (9) is added to section 390.011,
168 Florida Statutes, to read:

169 390.011 Definitions.--As used in this chapter, the term:

170 (9) "Contraception" means any drug or device approved by
171 the United States Food and Drug Administration to prevent
172 pregnancy.

588-07631-08

2008780c1

173 Section 4. Section 390.027, Florida Statutes, is created to
174 read:

175 390.027 Access to contraception.--The provision of
176 contraception is not subject to or governed by this chapter.

177 Section 5. Section 465.190, Florida Statutes, is created to
178 read:

179 465.190 Patient contraceptive protection.--

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

181 (a) "Contraception" or "contraceptive" means any
182 prescription drug or over-the-counter oral contraceptive approved
183 by the United States Food and Drug Administration to prevent
184 pregnancy.

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

187 (c) "Product" means a drug or device approved by the United
188 States Food and Drug Administration.

189 (d) "Professional clinical judgment" means the use of
190 professional knowledge and skills to form a clinical judgment in
191 accordance with prevailing medical standards.

192 (e) "Without delay," with respect to a pharmacy dispensing
193 a prescription for contraception, means within the pharmacy's
194 customary timeframe for dispensing the prescription for other
195 products.

196 (2) DUTIES OF LICENSED PHARMACIES.--

197 (a) If a patient requests a contraceptive that is in stock,
198 the pharmacy shall ensure that the contraceptive is provided to
199 the patient or patient representative without delay.

200 (b) A pharmacy shall ensure that its employees do not:

201 1. Intimidate, threaten, or harass a patient in the

588-07631-08

2008780c1

202 delivery of services relating to a request for contraception;

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

205 3. Intentionally misrepresent or deceive a patient about
206 the availability of contraception or its mechanism of action;

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

209 5. Refuse to return a valid, lawful prescription for
210 contraception upon a patient's or patient representative's
211 request.

212 (c) This section does not prohibit a pharmacy from refusing
213 to provide a contraceptive to a patient if:

214 1. It is unlawful to dispense the contraceptive to the
215 patient without a valid, lawful prescription and such
216 prescription is not presented;

217 2. The patient or patient representative is unable to pay
218 for the contraceptive; or

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

221 (e) This section does not prevent a pharmacist or other
222 person from refusing to furnish any in-stock contraceptive for
223 religious reasons so long as the pharmacy reasonably accommodates
224 the patient or patient representative without delay and in
225 compliance with this section.

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

228 (g) Any person who believes that a violation of this
229 section has occurred may file a complaint with the Department of
230 Health.

588-07631-08

2008780c1

231 (h) If the Attorney General has reasonable cause to believe
232 that any person or group of persons is being, has been, or may be
233 injured by conduct constituting a violation of this section, the
234 Attorney General may bring a civil action in the name of the
235 state, as parens patriae on behalf of natural persons residing in
236 the state.

237 Section 6. Paragraph (t) is added to subsection (1) of
238 section 465.016, Florida Statutes, to read:

239 465.016 Disciplinary actions.--

240 (1) The following acts constitute grounds for denial of a
241 license or disciplinary action, as specified in s. 456.072(2):

242 (t) Violating the provisions of s. 465.190.

243 Section 7. Paragraph (f) is added to subsection (1) of
244 section 465.023, Florida Statutes, to read:

245 465.023 Pharmacy permittee; disciplinary action.--

246 (1) The department or the board may revoke or suspend the
247 permit of any pharmacy permittee, and may fine, place on
248 probation, or otherwise discipline any pharmacy permittee who
249 has:

250 (f) Violated the provisions of s. 465.190.

251 Section 8. If any provision of this act or the application
252 thereof to any person or circumstance is held invalid, the
253 invalidity does not affect other provisions or applications of
254 the act which can be given effect without the invalid provision
255 or application, and to this end the provisions of this act are
256 severable.

257 Section 9. This act shall take effect upon becoming a law.