

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. 465.191, 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.
28

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 pregnancies and control the
37 timing 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

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
 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.
 93 826.04, 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.
 101 794.011 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
 104 incest and because of the alleged offense seeks treatment as a
 105 patient.

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

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

111 1. Provide each female rape survivor with medically and
 112 factually accurate, clear, and concise information concerning

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113 emergency contraception, including its indications and
114 contraindications and the risks associated with its use.

115 2. Inform each female rape survivor of her medical option
116 to receive emergency contraception.

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

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

127 (3) PATIENT INFORMATION.--

128 (a) The department shall:

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

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

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

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- 141 1. Be medically and factually accurate;
142 2. Be clearly written, readily comprehensible, and
143 culturally appropriate as determined by the department, in
144 collaboration with community sexual assault programs and other
145 relevant stakeholders; and
146 3. Explain the nature of emergency contraception,
147 including its use, safety, efficacy, and availability.
148 (4) ENFORCEMENT AND PENALTIES.--
149 (a) In addition to any other remedies provided by law, the
150 agency shall respond to complaints, using all available
151 investigative tools, and shall periodically review whether a
152 health care facility is in compliance with this section. If the
153 agency finds that a health care facility is not in compliance
154 with this section, the agency shall:
155 1. Impose a fine of \$5,000 per woman who is:
156 a. Denied medically and factually accurate and objective
157 information about emergency contraception;
158 b. Not informed of her medical option to receive emergency
159 contraception; or
160 c. Not provided the complete regimen of emergency
161 contraception, if emergency contraception is requested.
162 2. Impose a fine of \$5,000 for failure to comply with this
163 section. For every 30 days that a health care facility is not in
164 compliance with this section, an additional fine of \$5,000 shall
165 be imposed.
166 (b) The agency shall adopt rules as necessary to
167 administer the provisions of this section.
168 Section 3. Subsections (4) through (8) of section 390.011,

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169 Florida Statutes, are renumbered as subsections (5) through (9),
170 respectively, and a new subsection (4) is added to that section
171 to read:

172 390.011 Definitions.--As used in this chapter, the term:
173 (4) "Contraception" means any drug or device approved by
174 the United States Food and Drug Administration to prevent
175 pregnancy.

176 Section 4. Section 390.027, Florida Statutes, is created
177 to read:

178 390.027 Access to contraception.--The provision of
179 contraception is not subject to or governed by this chapter.

180 Section 5. Section 465.191, Florida Statutes, is created
181 to read:

182 465.191 Patient contraceptive protection.--

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

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

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

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

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

195 (e) "Without delay," with respect to a pharmacy dispensing
196 a prescription for contraception, means within the pharmacy's

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197 customary timeframe for dispensing a prescription for other
198 products.

199 (2) DUTIES OF LICENSED PHARMACIES.--

200 (a) If a patient requests a contraceptive that is in
201 stock, the pharmacy shall ensure that the contraceptive is
202 provided to the patient or patient representative without delay.

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

204 1. Intimidate, threaten, or harass a patient in the
205 delivery of services relating to a request for contraception;

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

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

210 4. Breach medical confidentiality with respect to a
211 request for contraception or threaten to breach such
212 confidentiality; or

213 5. Refuse to return a valid, lawful prescription for
214 contraception upon a patient's or patient representative's
215 request.

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

218 1. It is unlawful to dispense the contraceptive to the
219 patient without a valid, lawful prescription and such
220 prescription is not presented;

221 2. The patient or patient representative is unable to pay
222 for the contraceptive; or

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

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

230 (e) This section does not alter any standard established
 231 under the Florida Civil Rights Act of 1992.

232 (f) Any person who believes that a violation of this
 233 section has occurred may file a complaint with the Department of
 234 Health.

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

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

243 465.016 Disciplinary actions.--

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

246 (t) Violating the provisions of s. 465.191.

247 Section 7. Paragraphs (d) and (e) of subsection (1) of
 248 section 465.023, Florida Statutes, are amended, and paragraph
 249 (f) is added to that subsection, to read:

250 465.023 Pharmacy permittee; disciplinary action.--

251 (1) The department or the board may revoke or suspend the
 252 permit of any pharmacy permittee, and may fine, place on

253 | probation, or otherwise discipline any pharmacy permittee who
 254 | has:

255 | (d) Been convicted or found guilty, regardless of
 256 | adjudication, of a felony or any other crime involving moral
 257 | turpitude in any of the courts of this state, of any other
 258 | state, or of the United States; ~~or~~

259 | (e) Dispensed any medicinal drug based upon a
 260 | communication that purports to be a prescription as defined by
 261 | s. 465.003(14) or s. 893.02 when the pharmacist knows or has
 262 | reason to believe that the purported prescription is not based
 263 | upon a valid practitioner-patient relationship that includes a
 264 | documented patient evaluation, including history and a physical
 265 | examination adequate to establish the diagnosis for which any
 266 | drug is prescribed and any other requirement established by
 267 | board rule under chapter 458, chapter 459, chapter 461, chapter
 268 | 463, chapter 464, or chapter 466; or.

269 | (f) Violated the provisions of s. 465.191.

270 | Section 8. If any provision of this act or the application
 271 | thereof to any person or circumstance is held invalid, the
 272 | invalidity does not affect other provisions or applications of
 273 | the act which can be given effect without the invalid provision
 274 | or application, and to this end the provisions of this act are
 275 | severable.

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