

HB 517

2010

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.
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29 WHEREAS, although the Centers for Disease Control and
30 Prevention included family planning in its published list of Ten
31 Great Public Health Achievements in the 20th Century, the United
32 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, 98 percent of all women will use contraception at
44 some point in their lifetime according to the Guttmacher
45 Institute, and

46 WHEREAS, currently more than 1.9 million women in Florida
47 are in need of contraceptive services and supplies, and

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

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

56 WHEREAS, the Legislature further finds that providing

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57 | access to family planning information, family planning services,
 58 | and birth control will prevent abortions and unintended
 59 | pregnancies, thereby significantly reducing the number of women
 60 | and teens who need medical assistance, Medicaid, Kidcare, and
 61 | other social services, and

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

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

73 |

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

75 |

76 | Section 1. This act may be cited as the "Prevention First
 77 | Act."

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

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

80 | (a) "Agency" means the Agency for Health Care
 81 | Administration.

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

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

85 (d) "Emergency contraception" means one or more
 86 prescription or over-the-counter drugs used separately or in
 87 combination to be administered to or self-administered by a
 88 patient to prevent pregnancy within a medically recommended
 89 amount of time after sexual intercourse and dispensed for that
 90 purpose, in accordance with professional standards of practice,
 91 and determined to be safe by the United States Food and Drug
 92 Administration.

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

95 (f) "Incest" means a sexual offense described in s.
 96 826.04, Florida Statutes.

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

103 (h) "Rape" means sexual battery as described in ss.
 104 794.011 and 827.071, Florida Statutes.

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

109 (2) DUTIES OF LICENSED PRACTITIONERS AND FACILITIES.—

110 (a) A health care practitioner licensed under chapter 458,
 111 chapter 459, or chapter 464, Florida Statutes, or a health care
 112 facility licensed under chapter 395, Florida Statutes, providing

113 care to a rape survivor shall:

114 1. Provide each female rape survivor with medically and
 115 factually accurate, clear, and concise information concerning
 116 emergency contraception, including its indications and
 117 contraindications and the risks associated with its use.

118 2. Inform each female rape survivor of her medical option
 119 to receive emergency contraception.

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

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

130 (3) PATIENT INFORMATION.—

131 (a) The department shall:

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

138 2. Develop, prepare, and post information on the
 139 department's Internet website relating to the duty of licensed
 140 health care practitioners and health care facilities to provide

141 emergency contraception to female rape survivors.

142 (b) Information provided to female rape survivors or

143 female victims of sexual assault must:

144 1. Be medically and factually accurate;

145 2. Be clearly written, readily comprehensible, and

146 culturally appropriate as determined by the department, in

147 collaboration with community sexual assault programs and other

148 relevant stakeholders; and

149 3. Explain the nature of emergency contraception,

150 including its use, safety, efficacy, and availability.

151 (4) ENFORCEMENT AND PENALTIES.—

152 (a) In addition to any other remedies provided by law, the

153 agency shall respond to complaints using all available

154 investigative tools and shall, in the course of other compliance

155 reviews, determine whether a health care facility is in

156 compliance with this section. If the agency finds that a health

157 care facility is not in compliance with this section, the agency

158 shall:

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

160 a. Denied medically and factually accurate information

161 about emergency contraception and not informed of her medical

162 option to receive emergency contraception; or

163 b. Not provided the complete regimen of emergency

164 contraception, if emergency contraception is requested.

165 2. Impose a fine of \$5,000 for failure to comply with this

166 section and an additional fine of \$5,000 for every 30 days of

167 noncompliance.

168 (b) The agency shall adopt rules as necessary to

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169 administer the provisions of this section.

170 Section 3. Present subsections (4) through (8) of section
171 390.011, Florida Statutes, are redesignated as subsections (5)
172 through (9), respectively, and a new subsection (4) is added to
173 that section, to read:

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

178 Section 4. Section 390.027, Florida Statutes, is created
179 to read:

180 390.027 Access to contraception.—The provision of
181 contraception is not subject to or governed by this chapter.

182 Section 5. Section 465.191, Florida Statutes, is created
183 to read:

184 465.191 Patient contraceptive protection.—

185 (1) DEFINITIONS.—As used in this section, the term:

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

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

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

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

197 (e) "Without delay," with respect to a pharmacy dispensing
 198 a prescription for contraception, means within the pharmacy's
 199 customary timeframe for dispensing the prescription for other
 200 products.

201 (2) DUTIES OF LICENSED PHARMACIES.—

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

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

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

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

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

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

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

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

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

223 2. The patient or patient representative is unable to pay
 224 for the contraceptive; or

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

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

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

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

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

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

245 465.016 Disciplinary actions.—

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

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

249 Section 7. Subsection (1) of section 465.023, Florida
 250 Statutes, is amended to read:

251 465.023 Pharmacy permittee; disciplinary action.—

252 (1) The department or the board may revoke or suspend the

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253 permit of any pharmacy permittee, and may fine, place on
 254 probation, or otherwise discipline any pharmacy permittee if the
 255 permittee, or any affiliated person, partner, officer, director,
 256 or agent of the permittee, including a person fingerprinted
 257 under s. 465.022(3), has:

258 (a) Obtained a permit by misrepresentation or fraud or
 259 through an error of the department or the board;

260 (b) Attempted to procure, or has procured, a permit for
 261 any other person by making, or causing to be made, any false
 262 representation;

263 (c) Violated any of the requirements of this chapter or
 264 any of the rules of the Board of Pharmacy; of chapter 499, known
 265 as the "Florida Drug and Cosmetic Act"; of 21 U.S.C. ss. 301-
 266 392, known as the "Federal Food, Drug, and Cosmetic Act"; of 21
 267 U.S.C. ss. 821 et seq., known as the Comprehensive Drug Abuse
 268 Prevention and Control Act; or of chapter 893;

269 (d) Been convicted or found guilty, regardless of
 270 adjudication, of a felony or any other crime involving moral
 271 turpitude in any of the courts of this state, of any other
 272 state, or of the United States;

273 (e) Been convicted or disciplined by a regulatory agency
 274 of the Federal Government or a regulatory agency of another
 275 state for any offense that would constitute a violation of this
 276 chapter;

277 (f) Been convicted of, or entered a plea of guilty or nolo
 278 contendere to, regardless of adjudication, a crime in any
 279 jurisdiction which relates to the practice of, or the ability to
 280 practice, the profession of pharmacy;

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281 (g) Been convicted of, or entered a plea of guilty or nolo
 282 contendere to, regardless of adjudication, a crime in any
 283 jurisdiction which relates to health care fraud; ~~or~~

284 (h) Dispensed any medicinal drug based upon a
 285 communication that purports to be a prescription as defined by
 286 s. 465.003(14) or s. 893.02 when the pharmacist knows or has
 287 reason to believe that the purported prescription is not based
 288 upon a valid practitioner-patient relationship that includes a
 289 documented patient evaluation, including history and a physical
 290 examination adequate to establish the diagnosis for which any
 291 drug is prescribed and any other requirement established by
 292 board rule under chapter 458, chapter 459, chapter 461, chapter
 293 463, chapter 464, or chapter 466; or

294 (i) Violated the provisions of s. 465.191.

295 Section 8. If any provision of this act or the application
 296 thereof to any person or circumstance is held invalid, the
 297 invalidity does not affect other provisions or applications of
 298 the act which can be given effect without the invalid provision
 299 or application, and to this end the provisions of this act are
 300 severable.

301 Section 9. This act shall take effect July 1, 2010.