

By Senator Rich

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1 A bill to be entitled
2 An act relating to reproductive health services and
3 family planning; creating the "Prevention First Act";
4 providing definitions; providing duties of licensed
5 health care practitioners and facilities relating to
6 the treatment of rape survivors; requiring the
7 Department of Health to provide certain information;
8 requiring the Agency for Health Care Administration to
9 provide for enforcement and impose penalties;
10 requiring the agency to adopt rules; amending s.
11 390.011, F.S.; defining the term "contraception";
12 creating s. 390.027, F.S.; specifying that the
13 provision of contraception is not subject to ch. 390,
14 F.S., relating to the termination of pregnancies;
15 creating s. 465.191, F.S.; providing definitions;
16 requiring licensed pharmacies to dispense certain
17 forms of contraception without delay; specifying
18 conditions under which a pharmacy may refuse to
19 provide a contraceptive; providing for a person to
20 file a complaint with the Department of Health if he
21 or she believes that a violation of such provisions
22 has occurred; providing for the Attorney General to
23 bring a civil action; amending ss. 465.016 and
24 465.023, F.S.; providing that a violation of
25 requirements for dispensing contraception constitutes
26 grounds for the Department of Health or the Board of
27 Pharmacy to impose disciplinary action or suspend or
28 revoke a pharmacist's license or permit; providing for
29 severability; providing an effective date.

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

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

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

45 WHEREAS, 98 percent of all women will use contraception at
46 some point in their lifetime according to the Guttmacher
47 Institute, and

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

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

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

58 WHEREAS, the Legislature further finds that providing

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

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

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

75
76 Be It Enacted by the Legislature of the State of Florida:

77
78 Section 1. This act may be cited as the "Prevention First
79 Act."

80 Section 2. Treatment for survivors of rape.-

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

82 (a) "Agency" means the Agency for Health Care
83 Administration.

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

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

87 (d) "Emergency contraception" means one or more

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88 prescription or over-the-counter drugs used separately or in
89 combination to be administered to or self-administered by a
90 patient to prevent pregnancy within a medically recommended
91 amount of time after sexual intercourse and dispensed for that
92 purpose, in accordance with professional standards of practice,
93 and determined to be safe by the United States Food and Drug
94 Administration.

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

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

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

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

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

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

112 (a) A health care practitioner licensed under chapter 458,
113 chapter 459, or chapter 464, Florida Statutes, or a health care
114 facility licensed under chapter 395, Florida Statutes, providing
115 care to a rape survivor shall:

116 1. Provide each female rape survivor with medically and

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117 factually accurate, clear, and concise information concerning
118 emergency contraception, including its indications and
119 contraindications and the risks associated with its use.

120 2. Inform each female rape survivor of her medical option
121 to receive emergency contraception.

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

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

132 (3) PATIENT INFORMATION.—

133 (a) The department shall:

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

140 2. Develop, prepare, and post information on the
141 department's Internet website relating to the duty of licensed
142 health care practitioners and health care facilities to provide
143 emergency contraception to female rape survivors.

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

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146 1. Be medically and factually accurate;

147 2. Be clearly written, readily comprehensible, and
148 culturally appropriate as determined by the department, in
149 collaboration with community sexual assault programs and other
150 relevant stakeholders; and

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

153 (4) ENFORCEMENT AND PENALTIES.—

154 (a) In addition to any other remedies provided by law, the
155 agency shall respond to complaints, using all available
156 investigative tools, and shall periodically review whether a
157 health care facility is in compliance with this section. If the
158 agency finds that a health care facility is not in compliance
159 with this section, the agency shall:

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

161 a. Denied medically and factually accurate and objective
162 information about emergency contraception;

163 b. Not informed of her medical option to receive emergency
164 contraception; or

165 c. Not provided the complete regimen of emergency
166 contraception, if emergency contraception is requested.

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

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

173 Section 3. Present subsections (4) through (8) of section
174 390.011, Florida Statutes, are redesignated as subsections (5)

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175 through (9), respectively, and a new subsection (4) is added to
176 that section, to read:

177 390.011 Definitions.—As used in this chapter, the term:

178 (4) "Contraception" means any drug or device approved by
179 the United States Food and Drug Administration to prevent
180 pregnancy.

181 Section 4. Section 390.027, Florida Statutes, is created to
182 read:

183 390.027 Access to contraception.—The provision of
184 contraception is not subject to or governed by this chapter.

185 Section 5. Section 465.191, Florida Statutes, is created to
186 read:

187 465.191 Patient contraceptive protection.—

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

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

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

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

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

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

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204 (2) DUTIES OF LICENSED PHARMACIES.—

205 (a) If a patient requests a contraceptive that is in stock,
206 the pharmacy shall ensure that the contraceptive is provided to
207 the patient or patient representative without delay.

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

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

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

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

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

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

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

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

225 2. The patient or patient representative is unable to pay
226 for the contraceptive; or

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

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

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233 and in compliance with this section.

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

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

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

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

247 465.016 Disciplinary actions.—

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

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

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

253 465.023 Pharmacy permittee; disciplinary action.—

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

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

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

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

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

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

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

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

286 (h) Dispensed any medicinal drug based upon a communication
287 that purports to be a prescription as defined by s. 465.003(14)
288 or s. 893.02 when the pharmacist knows or has reason to believe
289 that the purported prescription is not based upon a valid
290 practitioner-patient relationship that includes a documented

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291 patient evaluation, including history and a physical examination
292 adequate to establish the diagnosis for which any drug is
293 prescribed and any other requirement established by board rule
294 under chapter 458, chapter 459, chapter 461, chapter 463,
295 chapter 464, or chapter 466; ~~or-~~

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

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

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