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CS/CS/HB 1411, Engrossed 2

2016 Legislature

1
2 An act relating to termination of pregnancies;
3 amending s. 390.011, F.S.; defining the term
4 "gestation" and revising the term "third trimester";
5 amending s. 390.0111, F.S.; revising the requirements
6 for disposal of fetal remains; revising the criminal
7 punishment for failure to properly dispose of fetal
8 remains; prohibiting state agencies, local
9 governmental entities, and Medicaid managed care plans
10 from expending or paying funds to or initiating or
11 renewing contracts under certain circumstances with
12 certain organizations that perform abortions;
13 providing exceptions; amending s. 390.0112, F.S.;
14 requiring directors of certain hospitals and
15 physicians' offices and licensed abortion clinics to
16 submit monthly reports to the Agency for Health Care
17 Administration on a specified form; prohibiting the
18 report from including personal identifying
19 information; requiring the agency to submit certain
20 data to the Centers for Disease Control and Prevention
21 on a quarterly basis; amending s. 390.012, F.S.;
22 requiring the agency to develop and enforce rules
23 relating to license inspections and investigations of
24 certain clinics; requiring the agency to adopt rules
25 to require all physicians performing abortions to have
26 admitting privileges at a hospital within a reasonable



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27 | proximity unless the clinic has a transfer agreement
28 | with the hospital; revising requirements for rules
29 | that prescribe minimum recovery room standards;
30 | revising requirements for the disposal of fetal
31 | remains; requiring the agency to submit an annual
32 | report to the Legislature; amending s. 390.014, F.S.;
33 | providing a different limitation on the amount of a
34 | fee; amending s. 390.025, F.S.; requiring certain
35 | organizations that provide abortion referral services
36 | or abortion counseling services to register with the
37 | agency, pay a specified fee, and include certain
38 | information in advertisements; requiring biennial
39 | renewal of a registration; providing exemptions from
40 | the registration requirement; requiring the agency to
41 | adopt rules; providing for the assessment of costs in
42 | certain circumstances; amending s. 873.05, F.S.;
43 | prohibiting an offer to purchase, sell, donate, or
44 | transfer fetal remains obtained from an abortion and
45 | the purchase, sale, donation, or transfer of such
46 | remains, excluding costs associated with certain
47 | transportation of remains; providing an appropriation;
48 | providing effective dates.

49 |
50 | Be It Enacted by the Legislature of the State of Florida:

51 |
52 | Section 1. Present subsections (6) through (12) of section



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53 390.011, Florida Statutes, are redesignated as subsections (7)
54 through (13), respectively, a new subsection (6) is added to
55 that section, and present subsection (11) of that section is
56 amended, to read:

57 390.011 Definitions.—As used in this chapter, the term:

58 (6) "Gestation" means the development of a human embryo or
59 fetus between fertilization and birth.

60 (12)-(11) "Third Trimester" means one of the following
61 three distinct periods of time in the duration of a pregnancy:

62 (a) "First trimester," which is the period of time from
63 fertilization through the end of the 11th week of gestation.

64 (b) "Second trimester," which is the period of time from
65 the beginning of the 12th week of gestation through the end of
66 the 23rd week of gestation.

67 (c) "Third trimester," which is the period of time from
68 the beginning of the 24th week of gestation through birth ~~the~~
69 ~~weeks of pregnancy after the 24th week of pregnancy.~~

70 Section 2. Subsection (7) of section 390.0111, Florida
71 Statutes, is amended, and subsection (15) is added to that
72 section, to read:

73 390.0111 Termination of pregnancies.—

74 (7) FETAL REMAINS.—Fetal remains shall be disposed of in a
75 sanitary ~~and appropriate~~ manner pursuant to s. 381.0098 and
76 rules adopted thereunder ~~and in accordance with standard health~~
77 ~~practices, as provided by rule of the Department of Health.~~
78 Failure to dispose of fetal remains in accordance with this



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79 subsection ~~department rules~~ is a misdemeanor of the first ~~second~~
80 degree, punishable as provided in s. 775.082 or s. 775.083.

81 (15) USE OF PUBLIC FUNDS RESTRICTED.—A state agency, a
82 local governmental entity, or a managed care plan providing
83 services under part IV of chapter 409 may not expend funds for
84 the benefit of, pay funds to, or initiate or renew a contract
85 with an organization that owns, operates, or is affiliated with
86 one or more clinics that are licensed under this chapter and
87 perform abortions unless one or more of the following applies:

88 (a) All abortions performed by such clinics are:

89 1. On fetuses that are conceived through rape or incest;

90 or

91 2. Are medically necessary to preserve the life of the
92 pregnant woman or to avert a serious risk of substantial and
93 irreversible physical impairment of a major bodily function of
94 the pregnant woman, other than a psychological condition.

95 (b) The funds must be expended to fulfill the terms of a
96 contract entered into before July 1, 2016.

97 (c) The funds must be expended as reimbursement for
98 Medicaid services provided on a fee-for-service basis.

99 Section 3. Subsection (1) of section 390.0112, Florida
100 Statutes, is amended, present subsections (2), (3), and (4) of
101 that section are redesignated as subsections (3), (4), and (5),
102 respectively, and a new subsection (2) is added to that section,
103 to read:

104 390.0112 Termination of pregnancies; reporting.—



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105 (1) The director of any medical facility in which
106 abortions are performed, including a physician's office, any
107 ~~pregnancy is terminated~~ shall submit a monthly report each month
108 to the agency. The report may be submitted electronically, may
109 not include personal identifying information, and must include:

110 (a) Until the agency begins collecting data under
111 paragraph (e), the number of abortions performed.

112 (b) The reasons such abortions were performed.

113 (c) For each abortion, the period of gestation at the time
114 the abortion was performed.

115 (d) which contains the number of procedures performed, the
116 reason for same, the period of gestation at the time such
117 procedures were performed, and The number of infants born alive
118 or alive during or immediately after an attempted abortion.

119 (e) Beginning no later than January 1, 2017, information
120 consistent with the United States Standard Report of Induced
121 Termination of Pregnancy adopted by the Centers for Disease
122 Control and Prevention.

123 (2) The agency shall keep be responsible for keeping such
124 reports in a central location for the purpose of compiling and
125 analyzing place from which statistical data and shall submit
126 data reported pursuant to paragraph (1)(e) to the Division of
127 Reproductive Health within the Centers for Disease Control and
128 Prevention, as requested by the Centers for Disease Control and
129 Prevention analysis can be made.

130 Section 4. Paragraph (c) of subsection (1), subsection



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131 (2), paragraphs (c) and (f) of subsection (3), and subsection
132 (7) of section 390.012, Florida Statutes, are amended, and
133 subsection (8) is added to that section, to read:

134 390.012 Powers of agency; rules; disposal of fetal
135 remains.—

136 (1) The agency may develop and enforce rules pursuant to
137 ss. 390.011–390.018 and part II of chapter 408 for the health,
138 care, and treatment of persons in abortion clinics and for the
139 safe operation of such clinics.

140 (c) The rules shall provide for:

141 1. The performance of pregnancy termination procedures
142 only by a licensed physician.

143 2. The making, protection, and preservation of patient
144 records, which shall be treated as medical records under chapter
145 458. When performing a license inspection of a clinic, the
146 agency shall inspect at least 50 percent of patient records
147 generated since the clinic's last license inspection.

148 3. Annual inspections by the agency of all clinics
149 licensed under this chapter to ensure that such clinics are in
150 compliance with this chapter and agency rules.

151 4. The prompt investigation of credible allegations of
152 abortions being performed at a clinic that is not licensed to
153 perform such procedures.

154 (2) For clinics that perform abortions in the first
155 trimester of pregnancy only, these rules must ~~shall~~ be
156 comparable to rules that apply to all surgical procedures



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157 requiring approximately the same degree of skill and care as the
 158 performance of first trimester abortions and must require:

159 (a) Clinics to have a written patient transfer agreement
 160 with a hospital within reasonable proximity to the clinic which
 161 includes the transfer of the patient's medical records held by
 162 the clinic and the treating physician to the licensed hospital;
 163 or

164 (b) Physicians who perform abortions at the clinic to have
 165 admitting privileges at a hospital within reasonable proximity
 166 to the clinic.

167 (3) For clinics that perform or claim to perform abortions
 168 after the first trimester of pregnancy, the agency shall adopt
 169 rules pursuant to ss. 120.536(1) and 120.54 to implement the
 170 provisions of this chapter, including the following:

171 (c) Rules relating to abortion clinic personnel. At a
 172 minimum, these rules shall require that:

173 1. The abortion clinic designate a medical director who is
 174 licensed to practice medicine in this state, and all physicians
 175 who perform abortions in the clinic have ~~who has~~ admitting
 176 privileges at a ~~licensed~~ hospital within reasonable proximity to
 177 the clinic, unless the clinic ~~in this state or~~ has a written
 178 patient transfer agreement with a ~~licensed~~ hospital within
 179 reasonable proximity to ~~of~~ the clinic which includes the
 180 transfer of the patient's medical records held by both the
 181 clinic and the treating physician.

182 2. If a physician is not present after an abortion is



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183 performed, a registered nurse, licensed practical nurse,
184 advanced registered nurse practitioner, or physician assistant
185 ~~shall~~ be present and remain at the clinic to provide
186 postoperative monitoring and care until the patient is
187 discharged.

188 3. Surgical assistants receive training in counseling,
189 patient advocacy, and the specific responsibilities associated
190 with the services the surgical assistants provide.

191 4. Volunteers receive training in the specific
192 responsibilities associated with the services the volunteers
193 provide, including counseling and patient advocacy as provided
194 in the rules adopted by the director for different types of
195 volunteers based on their responsibilities.

196 (f) Rules that prescribe minimum recovery room standards.
197 At a minimum, these rules must ~~shall~~ require that:

198 1. Postprocedure recovery rooms be ~~are~~ supervised and
199 staffed to meet the patients' needs.

200 2. Immediate postprocedure care consist ~~consists~~ of
201 observation in a supervised recovery room for as long as the
202 patient's condition warrants.

203 ~~3. The clinic arranges hospitalization if any complication~~
204 ~~beyond the medical capability of the staff occurs or is~~
205 ~~suspected.~~

206 3.4. A registered nurse, licensed practical nurse,
207 advanced registered nurse practitioner, or physician assistant
208 who is trained in the management of the recovery area and is



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209 | capable of providing basic cardiopulmonary resuscitation and
210 | related emergency procedures remain ~~remains~~ on the premises of
211 | the abortion clinic until all patients are discharged.

212 | ~~4.5.~~ A physician ~~shall~~ sign the discharge order and be
213 | readily accessible and available until the last patient is
214 | discharged to facilitate the transfer of emergency cases if
215 | hospitalization of the patient or viable fetus is necessary.

216 | ~~5.6.~~ A physician discuss ~~discusses~~ Rho(D) immune globulin
217 | with each patient for whom it is indicated and ensure ~~ensures~~
218 | that it is offered to the patient in the immediate postoperative
219 | period or ~~that it~~ will be available to her within 72 hours after
220 | completion of the abortion procedure. If the patient refuses the
221 | Rho(D) immune globulin, she and a witness must sign a refusal
222 | form approved by the agency which must be ~~shall be signed by the~~
223 | ~~patient and a witness and~~ included in the medical record.

224 | ~~6.7.~~ Written instructions with regard to postabortion
225 | coitus, signs of possible problems, and general aftercare which
226 | are specific to the patient be ~~are~~ given to each patient. The
227 | instructions must include information ~~Each patient shall have~~
228 | ~~specific written instructions~~ regarding access to medical care
229 | for complications, including a telephone number for use in the
230 | event of a ~~to call for~~ medical emergency ~~emergencies~~.

231 | ~~7.8.~~ ~~There is~~ A ~~specified~~ minimum length of time be
232 | specified, by type of abortion procedure and duration of
233 | gestation, during which ~~that~~ a patient must remain ~~remains~~ in
234 | the recovery room ~~by type of abortion procedure and duration of~~



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235 gestation.

236 8.9. The physician ensure ~~ensures~~ that, with the patient's
237 consent, a registered nurse, licensed practical nurse, advanced
238 registered nurse practitioner, or physician assistant from the
239 abortion clinic makes a good faith effort to contact the patient
240 by telephone, ~~with the patient's consent~~, within 24 hours after
241 surgery to assess the patient's recovery.

242 9.10. Equipment and services be ~~are~~ readily accessible to
243 provide appropriate emergency resuscitative and life support
244 procedures pending the transfer of the patient or viable fetus
245 to the hospital.

246 (7) If an ~~any~~ owner, operator, or employee of an abortion
247 clinic fails to dispose of fetal remains and tissue in a
248 sanitary manner pursuant to s. 381.0098, rules adopted
249 thereunder, and rules adopted by the agency pursuant to this
250 section consistent with the disposal of other human tissue in a
251 competent professional manner, the license of such clinic may be
252 suspended or revoked, and such person commits ~~is guilty of~~ a
253 misdemeanor of the first degree, punishable as provided in s.
254 775.082 or s. 775.083.

255 (8) Beginning February 1, 2017, and annually thereafter,
256 the agency shall submit a report to the President of the Senate
257 and the Speaker of the House of Representatives which summarizes
258 all regulatory actions taken during the prior year by the agency
259 under this chapter.

260 Section 5. Subsection (3) of section 390.014, Florida



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261 Statutes, is amended to read:

262 390.014 Licenses; fees.—

263 (3) In accordance with s. 408.805, an applicant or
264 licensee shall pay a fee for each license application submitted
265 under this chapter and part II of chapter 408. The amount of the
266 fee shall be established by rule and may not be more than
267 required to pay for the costs incurred by the agency in
268 administering this chapter ~~less than \$70 or more than \$500.~~

269 Section 6. Effective January 1, 2017, present subsection
270 (3) of section 390.025, Florida Statutes, is amended, and new
271 subsections (3), (4), and (5) are added to that section, to
272 read:

273 390.025 Abortion referral or counseling agencies;
274 penalties.—

275 (3) An abortion referral or counseling agency, as defined
276 in subsection (1), shall register with the Agency for Health
277 Care Administration. To register or renew a registration an
278 applicant must pay an initial or renewal registration fee
279 established by rule, which must not exceed the costs incurred by
280 the agency in administering this section. Registrants must
281 include in any advertising materials the registration number
282 issued by the agency and must renew their registration
283 biennially.

284 (4) The following are exempt from the requirement to
285 register pursuant to subsection (3):

286 (a) Facilities licensed pursuant to this chapter, chapter



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287 395, chapter 400, or chapter 408;

288 (b) Facilities that are exempt from licensure as a clinic
289 under s. 400.9905(4) and that refer five or fewer patients for
290 abortions per month; and

291 (c) Health care practitioners, as defined in s. 456.001,
292 who, in the course of their practice outside of a facility
293 licensed pursuant to this chapter, chapter 395, chapter 400, or
294 chapter 408, refer five or fewer patients for abortions each
295 month.

296 (5) The agency shall adopt rules to administer this
297 section and part II of chapter 408.

298 (6)(3) Any person who violates the provisions of
299 subsection (2) commits this section is guilty of a misdemeanor
300 of the first degree, punishable as provided in s. 775.082 or s.
301 775.083. In addition to any other penalties imposed pursuant to
302 this chapter, the Agency for Health Care Administration may
303 assess costs related to an investigation of violations of this
304 section which results in a successful prosecution. Such costs
305 may not include attorney fees.

306 Section 7. Section 873.05, Florida Statutes, is amended to
307 read:

308 873.05 Advertising, purchase, or sale, or transfer of
309 human embryos or fetal remains prohibited.-

310 (1) A ~~No~~ person may not shall knowingly advertise or offer
311 to purchase or sell, or purchase, sell, or otherwise transfer, a
312 any human embryo for valuable consideration.



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313 ~~(2)~~ As used in this subsection ~~section~~, the term "valuable
314 consideration" does not include the reasonable costs associated
315 with the removal, storage, and transportation of a human embryo.

316 (2) A person may not advertise or offer to purchase, sell,
317 donate, or transfer, or purchase, sell, donate, or transfer,
318 fetal remains obtained from an abortion, as defined in s.
319 390.011. This subsection does not prohibit the transportation or
320 transfer of fetal remains for disposal pursuant to s. 381.0098
321 or rules adopted thereunder.

322 (3) A person who violates ~~the provisions of~~ this section
323 commits is guilty of a felony of the second degree, punishable
324 as provided in s. 775.082, s. 775.083, or s. 775.084.

325 Section 8. For the 2016-2017 fiscal year, 0.5 full-time
326 equivalent positions, with associated salary rate of 39,230, are
327 authorized and the sums of \$59,951 in recurring funds and
328 \$185,213 in nonrecurring funds from the Health Care Trust Fund
329 are appropriated to the Agency for Health Care Administration
330 for the purpose of implementing this act.

331 Section 9. Except as otherwise expressly provided in this
332 act, this act shall take effect July 1, 2016.