

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND NINETEEN

H.P. 922 - L.D. 1261

An Act To Authorize Certain Health Care Professionals To Perform Abortions**Be it enacted by the People of the State of Maine as follows:**

Sec. 1. 22 MRSA §1596, as repealed and replaced by PL 1989, c. 274, §1 and amended by PL 2003, c. 689, Pt. B, §6, is further amended to read:

§1596. Abortion and miscarriage data

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Abortion" means the intentional interruption of a pregnancy by the application of external agents, whether chemical or physical, or the ingestion of chemical agents with an intention other than to produce a live birth or to remove a dead fetus, regardless of the length of gestation.

B. "Miscarriage" means an interruption of a pregnancy other than as provided in paragraph A of a fetus of less than 20 weeks gestation.

C. "Health care professional" means a physician or physician assistant licensed under Title 32, chapter 36 or 48 or a person licensed under Title 32, chapter 31 to practice as an advanced practice registered nurse.

2. Abortion reports. A report of each abortion performed ~~shall~~ must be made to the Department of Health and Human Services on forms prescribed by the department. These report forms ~~shall~~ may not identify the patient by name or otherwise and ~~shall~~ must contain only the information requested on the United States Standard Report of Induced Termination of Pregnancy, published by the National Center for Health Statistics, dated January 1978, or any more recent revision of a standard report form.

The form containing that information and data ~~shall~~ must be prepared and signed by the ~~attending physician~~ health care professional who performed the abortion and transmitted to the department not later than 10 days following the end of the month in which the abortion is performed.

A ~~physician health care professional~~ who reports data on an abortion pursuant to this section ~~shall be~~ is immune from any criminal liability for that abortion under section 1598.

3. Miscarriage reports. A report of each miscarriage ~~shall~~ must be made by the ~~physician health care professional~~ in attendance at or after the occurrence of the miscarriage to the Department of Health and Human Services on forms prescribed by the department. These report forms ~~shall~~ must contain all of the applicable information required on the certificate of fetal death in current use.

The report form ~~shall~~ must be prepared and signed by the ~~attending physician health care professional in attendance at or after the occurrence of the miscarriage~~ and transmitted to the department not later than 10 days following the end of the month in which the miscarriage occurs.

The identity of any patient or ~~physician health care professional~~ reporting pursuant to this section is confidential and the department shall take the steps ~~which are~~ necessary to ~~insure~~ ensure the confidentiality of the identity of patients or ~~physicians health care professionals~~ reporting pursuant to this section.

Sec. 2. 22 MRSA §1597-A, sub-§§2 to 4, as enacted by PL 1989, c. 573, §2, are amended to read:

2. Prohibitions; exceptions. Except as otherwise provided by law, ~~no person a health care professional, as defined in section 1596, subsection 1, paragraph C,~~ may not knowingly perform an abortion upon a pregnant minor unless:

A. The ~~attending physician health care professional~~ has received and will make part of the medical record the informed written consent of the minor and one parent, guardian or adult family member;

B. The ~~attending physician health care professional~~ has secured the informed written consent of the minor as prescribed in subsection 3 and the minor, under all the surrounding circumstances, is mentally and physically competent to give consent;

C. The minor has received the information and counseling required under subsection 4, the minor has secured written verification of receiving the information and counseling and the ~~attending physician health care professional~~ has received and will make part of the medical record the informed written consent of the minor and the written verification of receiving information and counseling required under subsection 4; or

D. The Probate Court or District Court issues an order under subsection 6 on petition of the minor or the next friend of the minor for purposes of filing a petition for the minor, granting:

(1) To the minor majority rights for the sole purpose of consenting to the abortion and the ~~attending physician health care professional~~ has received the informed written consent of the minor; or

(2) To the minor consent to the abortion, when the court has given its informed written consent and the minor is having the abortion willingly, in compliance with subsection 7.

3. Informed consent; disallowance of recovery. ~~No physician~~ A health care professional, as defined in section 1596, subsection 1, paragraph C, may not perform an abortion upon a minor unless, prior to performing the abortion, ~~the attending physician~~ that health care professional has received the informed written consent of the minor.

A. To ensure that the consent for an abortion is informed consent, the ~~attending physician~~ health care professional who will perform the abortion shall:

(1) Inform the minor in a manner ~~which~~ that, in the ~~physician's~~ health care professional's professional judgment, is not misleading and ~~which~~ that will be understood by the patient, of at least the following:

(a) According to the ~~physician's~~ health care professional's best judgment the minor is pregnant;

(b) The number of weeks of duration of the pregnancy; and

(c) The particular risks associated with the minor's pregnancy, the abortion technique that may be performed and the risks involved for both;

(2) Provide the information and counseling described in subsection 4 or refer the minor to a counselor who will provide the information and counseling described in subsection 4; and

(3) Determines whether the minor is, under all the surrounding circumstances, mentally and physically competent to give consent.

B. ~~No recovery may be~~ Recovery is not allowed against any ~~physician~~ health care professional upon the grounds that the abortion was rendered without the informed consent of the minor when:

(1) The ~~physician~~ health care professional, in obtaining the minor's consent, acted in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities; or

(2) The ~~physician~~ health care professional has received and acted in good faith on the informed written consent to the abortion given by the minor to a counselor.

4. Information and counseling for minors. The provision of information and counseling by any ~~physician~~ health care professional, as defined in section 1596, subsection 1, paragraph C, or counselor for any pregnant minor for decision making regarding pregnancy ~~shall~~ must be in accordance with this subsection.

A. Any ~~physician~~ health care professional or counselor providing pregnancy information and counseling under this subsection shall, in a manner that will be understood by the minor:

- (1) Explain that the information being given to the minor is being given objectively and is not intended to coerce, persuade or induce the minor to choose either to have an abortion or to carry the pregnancy to term;
- (2) Explain that the minor may withdraw a decision to have an abortion at any time before the abortion is performed or may reconsider a decision not to have an abortion at any time within the time period during which an abortion may legally be performed;
- (3) Clearly and fully explore with the minor the alternative choices available for managing the pregnancy, including:
 - (a) Carrying the pregnancy to term and keeping the child;
 - (b) Carrying the pregnancy to term and placing the child with a relative or with another family through foster care or adoption;
 - (c) The elements of prenatal and postnatal care; and
 - (d) Having an abortion;
- (4) Explain that public and private agencies are available to provide birth control information and that a list of these agencies and the services available from each will be provided if the minor requests;
- (5) Discuss the possibility of involving the minor's parents, guardian or other adult family members in the minor's decision making concerning the pregnancy and explore whether the minor believes that involvement would be in the minor's best interests; and
- (6) Provide adequate opportunity for the minor to ask any questions concerning the pregnancy, abortion, child care and adoption, and provide the information the minor seeks or, if the person cannot provide the information, indicate where the minor can receive the information.

B. After the person provides the information and counseling to a minor as required by this subsection, that person shall have the minor sign and date a form stating that:

- (1) The minor has received information on prenatal care and alternatives to abortion and that there are agencies that will provide assistance;
- (2) The minor has received an explanation that the minor may withdraw an abortion decision or reconsider a decision to carry a pregnancy to term;
- (3) The alternatives available for managing the pregnancy have been clearly and fully explored with the minor;
- (4) The minor has received an explanation about agencies available to provide birth control information;
- (5) The minor has discussed with the person providing the information and counseling the possibility of involving the minor's parents, guardian or other adult family members in the minor's decision making about the pregnancy;

(6) The reasons for not involving the minor's parents, guardian or other adult family members are put in writing on the form by the minor or the person providing the information and counseling; and

(7) The minor has been given an adequate opportunity to ask questions.

The person providing the information and counseling shall also sign and date the form, and include that person's address and telephone number. The person shall keep a copy for that person's files and shall give the form to the minor or, if the minor requests and if the person providing the information is not the ~~attending physician~~ health care professional performing the abortion, transmit the form to the ~~minor's attending physician~~ health care professional performing the abortion.

Sec. 3. 22 MRSA §1597-A, sub-§8, ¶B, as enacted by PL 2003, c. 452, Pt. K, §11 and affected by Pt. X, §2, is amended to read:

B. ~~An attending physician~~ A health care professional, as defined in section 1596, subsection 1, paragraph C, or counselor may not knowingly fail to perform any action required by this section. A person who violates this paragraph commits a civil violation for which a fine of not more than \$1,000 may be adjudged for each violation.

Sec. 4. 22 MRSA §1598, sub-§1, as amended by PL 1993, c. 61, §2, is further amended to read:

1. Policy. It is the public policy of the State that the State not restrict a woman's exercise of her private decision to terminate a pregnancy before viability except as provided in section 1597-A. After viability an abortion may be performed only when it is necessary to preserve the life or health of the mother. It is also the public policy of the State that all abortions may be performed only by a ~~physician~~ health care professional, as defined in section 1596, subsection 1, paragraph C.

Sec. 5. 22 MRSA §1598, sub-§3, ¶A, as enacted by PL 1979, c. 405, §2, is amended to read:

A. Only a person licensed under Title 32, chapter 36 or ~~chapter 48~~, to practice ~~medicine in Maine the State as a medical or an osteopathic or medical physician; or physician assistant or a person licensed under Title 32, chapter 31 to practice in the State as an advanced practice registered nurse~~ may perform an abortion on another person.

Sec. 6. 22 MRSA §1599-A, as enacted by PL 1993, c. 61, §4, is amended to read:

§1599-A. Informed consent to abortion

1. Consent by the woman. A ~~physician~~ health care professional, as defined in section 1596, subsection 1, paragraph C, may not perform an abortion unless, prior to the performance, the ~~attending physician~~ health care professional certifies in writing that the woman gave her informed written consent, freely and without coercion.

2. Informed consent. To ensure that the consent for an abortion is truly informed consent, the ~~attending physician~~ health care professional, as defined in section 1596, subsection 1, paragraph C, shall inform the woman, in a manner that in the ~~physician's~~ health care professional's professional judgment is not misleading and that will be understood by the patient, of at least the following:

- A. According to the ~~physician's~~ health care professional's best judgment she is pregnant;
- B. The number of weeks elapsed from the probable time of the conception;
- C. The particular risks associated with her own pregnancy and the abortion technique to be performed; and
- D. At the woman's request, alternatives to abortion such as childbirth and adoption and information concerning public and private agencies that will provide the woman with economic and other assistance to carry the fetus to term, including, if the woman so requests, a list of these agencies and the services available from each.