OHIO LEGISLATIVE SERVICE COMMISSION

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S.B. 260
133rd General Assembly

Final Analysis

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Version: As Passed by the General Assembly

Primary Sponsor: Sen. S. Huffman

Effective date: April 12, 2021

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SUMMARY

- Prohibits a physician from personally furnishing or providing an abortion-inducing drug to a pregnant woman unless the physician is physically present where and when the initial dose of the drug is consumed.
- Makes knowingly violating the prohibition a fourth degree felony for the first offense and a third degree felony for the second and subsequent offenses.

DETAILED ANALYSIS

Physical presence requirement for abortion-inducing drugs

The act prohibits a physician from personally furnishing or providing an abortion-inducing drug to a pregnant woman unless the physician is physically present at the location where and when the initial dose of the drug is consumed.[1] Under the act, "abortion-inducing drug" is defined as a drug or regimen of drugs that causes termination of a clinically diagnosable pregnancy. It includes RU-486 (mifepristone), which is regulated by federal and Ohio law for inducing abortions (see "**Background on mifepristone**," below).[2]

Penalties and other sanctions

Knowingly failing to comply with the prohibition is a fourth degree felony unless the offender has previously been convicted of violating the prohibition or other abortion laws. In

[1] R.C. 2919.124(B).

[2] R.C. 2919.124(A)(1) and 2919.123.

that case, it is a third degree felony.[3] Additionally, if the offender is a professionally licensed person, the offender is subject to sanction by the offender's regulatory or licensing board.[4]

If the offender is a physician, the following also apply:

- Disciplinary action taken for a second or subsequent violation of the act's prohibition or of the law (unchanged by the act) regarding the unlawful distribution of mifepristone must include a suspension of the physician's license for at least one year;[5]
- The physician's license is automatically suspended as of the date of the second or subsequent plea or conviction related to a violation of the act's prohibition or of the law regarding the unlawful distribution of mifepristone, and the suspension cannot be lifted through the issuance of a certificate of qualification for employment (a process for lifting collateral sanctions that bar convicted individuals from employment in certain fields);[6]
- A prosecutor must promptly notify the State Medical Board regarding a licensee's second or subsequent plea or conviction related to a violation of the act's prohibition or of the law regarding the unlawful distribution of mifepristone.[7]

Criminal records checks

Violation of the act's prohibition is added to the list of offenses investigated as part of a criminal records check for certain Medicaid and other providers, including direct care providers, independent providers, and waiver agencies.[8]

No right to abortion

The act states that its provisions must not be construed as creating or recognizing a right to abortion or affirming the lawfulness of an abortion that would otherwise be unlawful.[9]

Prescribing mifepristone

The act removes references to prescribing RU-486 (mifepristone).[10] Under Ohio law, prescribing and prescription generally refer to an order for drugs issued by a prescriber that is interpreted and dispensed by a pharmacist to an individual patient.[11] It appears that the

[3] R.C. 2919.124(C) and (E).

[4] R.C. 2919.124(E).

[5] R.C. 2919.123 and 4731.22(C).

[6] R.C. 4731.22(I) and 2953.25(C)(7)(d).

[7] R.C. 4731.223(B).

[8] R.C. 109.572(A)(3)(a).

[9] R.C. 2919.124(D).

[10] R.C. 2919.123(A) and 4729.291(B).

[11] R.C. 4729.01, not in the act.

U.S. Food and Drug Administration (FDA) requires mifepristone to be dispensed in clinics, medical offices, and hospitals by or under the supervision of a certified healthcare provider.[12] Accordingly, references to prescribing mifepristone are removed from Ohio law, but related references, including giving, selling, dispensing, administering, personally furnishing, and otherwise providing mifepristone, are maintained.

Background on mifepristone

Mifepristone is approved by the FDA, in a regimen with another medication called misoprostol, to end a pregnancy within 70 days of the first day of a woman's last menstrual period. The approved dosing regimen is as follows – on day one, 200 mg of mifepristone taken by mouth and, 24 to 48 hours after taking mifepristone, 800 mcg of misoprostol taken buccally (in the cheek pouch). About 7 to 14 days after taking mifepristone, a healthcare provider must conduct a follow-up evaluation of the patient.[13] The current FDA protocol for mifepristone was adopted in March, 2016. Before then, Ohio physicians had to follow an earlier protocol that was more restrictive.

HISTORY

Action	Date
Introduced	01-21-20
Reported, S. Health, Human Services & Medicaid	02-27-20
Passed Senate (20-9)	03-04-20
Reported, H. Health	12-16-20
Passed House (54-30)	12-17-20

20-SB260-133/ks

[12] U.S. Food & Drug Administration, *Mifeprex (mifepristone) Information*, https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/mifeprex-mifepristone-information.

[13] *Mifeprex (mifepristone) Information*.