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Bill Analysis

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Amy L. Archer, Research Analyst

SUMMARY

“Abortion” definition change

- Amends the definition of “abortion” for purposes of the Revised Code to include the purposeful termination of a pregnancy by use of an abortion-inducing drug, unless the context clearly requires otherwise.

Requirements prior to performing or inducing an abortion

- Adds the following to the conditions that must be satisfied prior to performing or inducing an abortion:
 - Provision of ultrasound images and fetal heartbeat sounds.
 - Requirements to the informed consent meeting with the physician held at least 24 hours prior to the performance or inducement of the abortion.
- Requires the physician who is to perform or induce the abortion or a qualified technician to whom the responsibility has been delegated by the physician to meet several requirements for the provision of ultrasound images and fetal heartbeats, including, for example, the following:
 - Set up ultrasound equipment so that ultrasound images are within reasonable viewing distance and heartbeat sounds are within reasonable hearing range from the pregnant woman;
 - Ascultate the fetal heartbeat of the embryo or fetus so that the pregnant woman may hear the heartbeat, if it is audible;
 - Provide a medical description of ultrasound images.
- Requires the State Medical Board to take disciplinary action against a physician for failure to (1) provide the pregnant woman the opportunity to view ultrasound images,

at no cost to the woman, or (2) offer to provide the pregnant woman with a physical picture of the ultrasound image.

- Requires, at the informed consent meeting, the physician to inform the pregnant woman of the following:
 - The possible increased risk of breast cancer that is associated with women who have undergone an abortion;
 - The short-term and long-term risk of psychological or emotional harm, including depression, suicidal ideation, post-traumatic stress disorder, and guilt, that the woman may endure from undergoing an abortion.
- Requires the physician who provides the new informed consent information required under the bill to possess adequate training and education in the categories of risk described in the new information, as well as any other risks associated with abortion.

Informed consent materials

- Adds the following to the informed consent materials the Department of Health (ODH) is required to publish on its website relating to pregnancy and family planning:
 - The possible increased risk of breast cancer that is associated with women who have undergone an abortion;
 - The short-term and long-term risk of psychological or emotional harm, including depression, suicidal ideation, post-traumatic stress disorder, and guilt, that the woman may endure from undergoing an abortion.
- Requires the informed consent materials to either be prominently featured on the main page of ODH's website or directly accessible through easily identified hyperlinks on the main page of ODH's website.

Statute of limitations on abortion civil actions

- Permits a person to commence a civil action for (1) unlawful abortion or (2) performing or inducing an abortion without satisfying certain pre-abortion conditions no later than one year after the person reasonably *should* have discovered the injury, death, or loss to person or property.
- Permits the person against whom the civil action is commenced to use any affirmative defense available under the Revised Code or Common Law and specifies that that person has the burden of proving any defense by a preponderance of evidence.
- Specifies that when a person is imprisoned for the commission of any offense, the time of the person's imprisonment cannot be computed as any part of any period of limitation within which a person must bring the abortion civil action against the imprisoned person.

ODH requirements

- Requires ODH to annually audit all provider records to determine compliance with all the informed consent and education and training requirements regarding abortion.
- Requires ODH to prescribe a certification form for the pregnant woman to sign in order to certify that she has (1) viewed the ultrasound images and listened to the heartbeat, if the heartbeat is audible, or declined to do so, and (2) been presented with the following information:
 - A simultaneous explanation of what the ultrasound is depicting;
 - A display of the ultrasound images;
 - An ascultation of the fetal heartbeat of the embryo or fetus so that the pregnant woman may hear the heartbeat, if it is audible;
 - A medical description of the ultrasound.

Auditor of State rules

- Requires the Auditor of State, no later than 180 days after the bill's effective date, to adopt rules to establish the following:
 - Procedures for auditing ODH's records of ODH audits of provider records;
 - Penalties to be assessed against entities or providers for noncompliance with all informed consent and education and training requirements;
 - Procedures for enforcing the penalties for noncompliance.

DETAILED ANALYSIS

“Abortion” definition change

The bill amends the definition of “abortion,” as used in the Revised Code, to include the purposeful termination of a pregnancy by use of an abortion-inducing drug, unless the context clearly requires otherwise. An “abortion-inducing drug,” under continuing law, is a drug or regimen of drugs that causes the termination of a clinically diagnosable pregnancy, including RU-486 (mifepristone). Under continuing law, “abortion” is still defined as the purposeful termination of a human pregnancy by any person, including the pregnant woman, with an intention other than to produce a live birth or to remove a dead fetus or embryo.¹

Requirements prior to performing or inducing an abortion

Under continuing law, an abortion can only be performed or induced if several conditions are first satisfied, unless there is a medical emergency or medical necessity.² The bill

¹ R.C. 2919.11; R.C. 2919.124, not in the bill.

² R.C. 2317.56(B).

amends those conditions by (1) adding requirements on the provision of ultrasound images and fetal heartbeat sounds, as described below under “**Provision of ultrasound images and fetal heartbeat sounds**,” and (2) amending requirements on the informed consent meeting with a physician in continuing law, described below under “**Informed consent meeting with physician**,”

Provision of ultrasound images and fetal heartbeat sounds

Under the bill, prior to a pregnant woman giving informed consent for an abortion, the physician who is to perform or induce the abortion or a qualified technician to whom the responsibility has been delegated by the physician must do all of the following:

- Set up ultrasound equipment in a manner so that ultrasound images are within reasonable viewing distance and heartbeat sounds are within reasonable hearing range from the woman;
- Explain to the pregnant woman that the ultrasound images and fetal heartbeat sounds, if the heartbeat is audible, will be provided to the pregnant woman during the examination, and that the pregnant woman has the option to avert her eyes from ultrasound images or request the volume of the heartbeat to be reduced or turned off, if the heartbeat is audible;
- Provide a simultaneous explanation of what the ultrasound is depicting, which must include the presence and location of the embryo or fetus within the uterus, the number of embryos or fetuses depicted, and, if the ultrasound image indicates that fetal death has occurred, inform the woman of that fact;
- Display the ultrasound images so that the pregnant woman may view the images;
- Ascultate the fetal heartbeat of the embryo or fetus so that the pregnant woman may hear the heartbeat, if it is audible;
- Provide a medical description of ultrasound images, which must include the dimensions of the embryo or fetus and the presence of external members and internal organs, if present and viewable;
- Offer to provide the pregnant woman a physical picture of the ultrasound image of the embryo or fetus;
- Obtain the woman’s signature on the ODH-prescribed certification form (see below, “**Prescription of certification form**”), and retain the signed certification in the woman’s medical record, that she:
 - Has been provided an explanation of what the ultrasound is depicting, the number of embryos or fetuses depicted, and, if applicable, if the ultrasound image indicates a fetal death has occurred;
 - Had the ultrasound image displayed so that the pregnant woman may view the images;

- Had the fetal heartbeat auscultated for her so that she can hear the heartbeat, if audible;
- Has been provided a medical description of the ultrasound images; and
- Has viewed the ultrasound images and listened to the heartbeat, if the heartbeat is audible, or declined to do so.

The bill specifies that the requirement to provide an ultrasound so that the pregnant woman may view the active ultrasound images of the embryo or fetus must be performed at no additional charge to her.³

The bill defines the following terms:⁴

- “Auscultate”⁵ is to examine by listening for sounds made by internal organs of the fetus, specifically for a fetal heartbeat, utilizing an ultrasound transducer or a fetal heart rate monitor.
- “Qualified technician” is a medical imaging technologist who is certified in obstetrics and gynecology by the American Registry for Diagnostic Medical Sonography or a certified nurse-midwife or certified nurse practitioner in obstetrics with certification in obstetrical ultrasonography.
- “Ultrasound” is the use of ultrasonic waves for diagnostic or therapeutic purposes, specifically to monitor a developing fetus.

Disciplinary action for failure to comply with ultrasound requirement

Under the bill, the State Medical Board may take disciplinary action against a physician who fails to do either of the following:

- Provide the pregnant woman the opportunity to view ultrasound images, at no cost to the woman;
- Offer to provide the pregnant woman with a physical picture of the ultrasound image.

The disciplinary action described above replaces the current law requirement, that, if an obstetric ultrasound examination is performed at any time prior to the performance or inducement of an abortion or the physician performing or inducing the abortion determines that an ultrasound examination will be performed as part of the abortion procedure, the physician must do both of the following:

³ R.C. 2317.56(B)(1).

⁴ R.C. 2317.56(A)(1), (5), and (6).

⁵ An LSC technical amendment is required to correct the misspelling of “auscultate” in the bill. The correct spelling is “auscultate.” R.C. 2317.56(A)(1) and (B)(1)(e).

- Provide the pregnant woman receiving the abortion the opportunity to view the active ultrasound image of the embryo or fetus, performed at no additional charge to the pregnant woman;
- Offer to provide the pregnant woman with a physical picture of the ultrasound image of the embryo or fetus.⁶

Under continuing law, disciplinary action requires an affirmative vote of no fewer than six members of the Board. Those actions may include, for example, revocation, suspension, or refusal to renew a license or certificate to practice.⁷

Informed consent meeting with physician

Continuing law requires, at least 24 hours prior to the performance or inducement of an abortion, a physician to meet with the pregnant woman in person in an individual, private setting and give her adequate opportunity to ask questions about the abortion that will be performed or induced. At the meeting, the physician must inform the pregnant woman, verbally or, if she is hearing impaired, by other means of communication, of statutorily required information. Under the bill, the physician must also inform the pregnant woman of the following:

- The possible increased risk of breast cancer that is associated with women who have undergone an abortion;
- The short-term and long-term risk of psychological or emotional harm, including depression, suicidal ideation, post-traumatic stress disorder, and guilt, that the woman may endure from undergoing an abortion.

The bill requires that any physician who provides the new informed consent information required under the bill must possess adequate training and education in the categories of risk described in the new information, as well as any other risks associated with abortion. Evidence of adequate training includes successful completion of continuing education and professional development courses or programs in the relevant subject areas.⁸

Informed consent materials

Continuing law requires the Department of Health (ODH) to publish on its website materials that inform pregnant women of information related to pregnancy and family planning. The bill requires the materials to also inform the pregnant woman of the following:

- The possible increased risk of breast cancer that is associated with woman who have undergone an abortion;

⁶ R.C. 2317.561, repealed by the bill and 4731.22(B)(38).

⁷ R.C. 4731.22(A) and (B).

⁸ R.C. 2317.56(B)(2), with conforming changes in R.C. 2317.56(B)(3) to (6) and 3726.14.

- The short-term and long-term risk of psychological or emotional harm, including depression, suicidal ideation, post-traumatic stress disorder, and guilt, that the woman may endure from undergoing an abortion.

Under the bill, the materials must either be prominently featured on the main page of ODH's website or directly accessible through easily identified hyperlinks on the main page of ODH's website. Additionally, continuing law requires the materials to be published (1) in English and in Spanish, (2) in a typeface large enough to be clearly legible, and (3) in an easily comprehensible format.⁹

Statute of limitations on abortion civil actions

The bill provides that if a person who commences a civil action under continuing law (described below) regarding an abortion, in the exercise of reasonable care and diligence, could not have discovered that the person bringing the action has suffered injury, death, or loss to person or property resulting from the violation constituting the alleged basis of the action within the one-year period required under continuing law, that person is permitted to commence the action no later than one year after the person, with reasonable care and diligence, should have discovered the injury, death, or loss to person or property.

Further, under the bill, the person against whom the civil action is commenced is permitted to use any affirmative defense available under the Revised Code or Common Law, including the affirmative defense of the action being brought past the statute of limitations. The person has the burden of proving any defense that the person invokes by a preponderance of evidence.¹⁰

The bill specifies that when a person is imprisoned for the commission of any offense, the time of the person's imprisonment cannot be computed as any part of any period of limitation that a person must bring an action against the imprisoned person.¹¹

Under continuing law, any physician who performs or induces an abortion with actual knowledge that the pre-conditions for performing an abortion (see above, "**Requirements prior to performing or inducing an abortion**"), have not been satisfied or with heedless indifference as to whether those conditions have been satisfied is liable for compensatory and exemplary damages to any person, or the representative of any person's estate, who sustains injury, death, or loss to person or property as a result of the failure to satisfy those conditions. Additionally, a person who performs or induces an abortion without the informed consent of the pregnant woman or who knowingly performs or induces an abortion on a woman who is pregnant, unmarried, under 18 years of age, and unemancipated,

⁹ R.C. 2317.56(C).

¹⁰ R.C. 2305.118.

¹¹ R.C. 2305.15.

unless certain conditions, are met is liable to the pregnant woman and her parents, guardian, or custodian for civil and exemplary damages.¹²

ODH requirements

Audit of provider records

The bill requires ODH to annually audit all provider records to determine compliance with all the informed consent and education and training requirements in accordance with the bill, as described above under “**Requirements prior to performing or inducing an abortion,**” and continuing law.¹³

Prescription of certification form

ODH must prescribe a certification form to be used for the pregnant woman to sign in order to certify that she has (1) viewed the ultrasound images and listened to the heartbeat, if the heartbeat is audible, or declined to do so, and (2) been presented with the following information:¹⁴

- The provision of a simultaneous explanation of what the ultrasound is depicting, which must include the presence and location of the embryo or fetus within the uterus, the number of embryos or fetuses depicted, and, if the ultrasound image indicates that fetal death has occurred, inform the woman of that fact;
- A display of the ultrasound images so that the pregnant woman may view the images;
- An auscultation of the fetal heartbeat of the embryo or fetus so that the pregnant woman may hear the heartbeat, if it is audible;
- The provision of a medical description of ultrasound images, which must include the dimensions of the embryo or fetus and the presence of external members and internal organs, if present and viewable.

Auditor of State rules

The bill requires the Auditor of State, no later than 180 days after the bill’s effective date, to adopt rules under the Administrative Procedure Act (R.C. Chapter 119.) to establish all of the following:¹⁵

- Procedures for auditing ODH’s audit records described above under “**Audit of provider records**”;

¹² R.C. 2317.56(H); R.C. 2919.12(E), not in the bill.

¹³ R.C. 3701.792.

¹⁴ R.C. 2317.56(B)(1)(c) to (f) and (h) and 3701.793.

¹⁵ R.C. 117.55.

- Penalties to be assessed against entities or providers for noncompliance with all informed consent and education and training requirements, as determined by the audits performed in accordance with the procedures established under the adopted rules;
- Procedures for enforcing the penalties for noncompliance.

HISTORY

Action	Date
Introduced	09-16-21