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H.P. 1217

House of Representatives, January 3, 2018

An Act To Authorize Certain Health Care Professionals Who Are Not Physicians To Perform Abortions

Submitted by the Department of the Attorney General pursuant to Joint Rule 203.
Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative McCREIGHT of Harpswell.
Cosponsored by Senator KATZ of Kennebec and
Representatives: HYMANSON of York, LONGSTAFF of Waterville, MOONEN of Portland,
PERRY of Calais, Senators: BREEN of Cumberland, CARSON of Cumberland, GRATWICK
of Penobscot, MIRAMANT of Knox.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 22 MRSA §1596**, as repealed and replaced by PL 1989, c. 274, §1 and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

4 **§1596. Abortion and miscarriage data**

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

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

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

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

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

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

26 A ~~physician~~ health care professional who reports data on an abortion pursuant to this
27 section ~~shall be~~ is immune from any criminal liability for that abortion under section
28 1598.

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

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

38 The identity of any patient or ~~physician~~ health care professional reporting pursuant to
39 this section is confidential and the department shall take the steps ~~which are~~ necessary to

1 ~~insure~~ ensure the confidentiality of the identity of patients or ~~physicians~~ health care
2 professionals reporting pursuant to this section.

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

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

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

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

14 C. The minor has received the information and counseling required under subsection
15 4, the minor has secured written verification of receiving the information and
16 counseling and the ~~attending physician~~ health care professional has received and will
17 make part of the medical record the informed written consent of the minor and the
18 written verification of receiving information and counseling required under
19 subsection 4; or

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

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

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

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

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

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

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

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

- 1 (c) The particular risks associated with the minor's pregnancy, the abortion
2 technique that may be performed and the risks involved for both;
- 3 (2) Provide the information and counseling described in subsection 4 or refer the
4 minor to a counselor who will provide the information and counseling described
5 in subsection 4; and
- 6 (3) Determines whether the minor is, under all the surrounding circumstances,
7 mentally and physically competent to give consent.
- 8 B. ~~No recovery may be~~ Recovery is not allowed against any ~~physician health care~~
9 professional upon the grounds that the abortion was rendered without the informed
10 consent of the minor when:
- 11 (1) The ~~physician health care professional~~, in obtaining the minor's consent, acted
12 in accordance with the standards of practice among members of the same health
13 care profession with similar training and experience situated in the same or
14 similar communities; or
- 15 (2) The ~~physician health care professional~~ has received and acted in good faith
16 on the informed written consent to the abortion given by the minor to a
17 counselor.
- 18 **4. Information and counseling for minors.** The provision of information and
19 counseling by any ~~physician health care professional~~, as defined in section 1596,
20 subsection 1, paragraph C, or counselor for any pregnant minor for decision making
21 regarding pregnancy ~~shall~~ must be in accordance with this subsection.
- 22 A. Any ~~physician health care professional~~ or counselor providing pregnancy
23 information and counseling under this subsection shall, in a manner that will be
24 understood by the minor:
- 25 (1) Explain that the information being given to the minor is being given
26 objectively and is not intended to coerce, persuade or induce the minor to choose
27 either to have an abortion or to carry the pregnancy to term;
- 28 (2) Explain that the minor may withdraw a decision to have an abortion at any
29 time before the abortion is performed or may reconsider a decision not to have an
30 abortion at any time within the time period during which an abortion may legally
31 be performed;
- 32 (3) Clearly and fully explore with the minor the alternative choices available for
33 managing the pregnancy, including:
- 34 (a) Carrying the pregnancy to term and keeping the child;
- 35 (b) Carrying the pregnancy to term and placing the child with a relative or
36 with another family through foster care or adoption;
- 37 (c) The elements of prenatal and postnatal care; and
- 38 (d) Having an abortion;

1 (4) Explain that public and private agencies are available to provide birth control
2 information and that a list of these agencies and the services available from each
3 will be provided if the minor requests;

4 (5) Discuss the possibility of involving the minor's parents, guardian or other
5 adult family members in the minor's decision making concerning the pregnancy
6 and explore whether the minor believes that involvement would be in the minor's
7 best interests; and

8 (6) Provide adequate opportunity for the minor to ask any questions concerning
9 the pregnancy, abortion, child care and adoption, and provide the information the
10 minor seeks or, if the person cannot provide the information, indicate where the
11 minor can receive the information.

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

14 (1) The minor has received information on prenatal care and alternatives to
15 abortion and that there are agencies that will provide assistance;

16 (2) The minor has received an explanation that the minor may withdraw an
17 abortion decision or reconsider a decision to carry a pregnancy to term;

18 (3) The alternatives available for managing the pregnancy have been clearly and
19 fully explored with the minor;

20 (4) The minor has received an explanation about agencies available to provide
21 birth control information;

22 (5) The minor has discussed with the person providing the information and
23 counseling the possibility of involving the minor's parents, guardian or other
24 adult family members in the minor's decision making about the pregnancy;

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

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

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

35 **Sec. 3. 22 MRSA §1597-A, sub-§8, ¶B**, as enacted by PL 2003, c. 452, Pt. K,
36 §11 and affected by Pt. X, §2, is amended to read:

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

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

3 **1. Policy.** It is the public policy of the State that the State not restrict a woman's
4 exercise of her private decision to terminate a pregnancy before viability except as
5 provided in section 1597-A. After viability an abortion may be performed only when it is
6 necessary to preserve the life or health of the mother. It is also the public policy of the
7 State that all abortions may be performed only by a physician, a physician assistant or an
8 advanced practice registered nurse.

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

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

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

17 **§1599-A. Informed consent to abortion**

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

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

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

SUMMARY

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This bill allows a physician assistant or an advanced practice registered nurse licensed as such in this State to perform abortions, in addition to a licensed allopathic or osteopathic physician.