

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MAGISTRATE JUDGE SCHEER

NORTHLAND FAMILY PLANNING CLINIC, INC.; )  
NORTHLAND FAMILY PLANNING CLINIC, INC. – )  
WEST; NORTHLAND FAMILY PLANNING CLINIC, )  
INC – EAST; WOMANCARE OF SOUTHFIELD, P.C.; )  
WOMANCARE OF MACOMB, P.C.; WOMANCARE OF )  
FLINT, P.C.; WOMANCARE OF LANSING, P.C.; )  
WOMANCARE OF LIVONIA, P.C.; WOMANCARE OF )  
DOWNRIVER, P.C.; SUMMIT MEDICAL CENTER, )  
INC.; SCOTTSDALE WOMEN’S CENTER; and )  
MARSHALL D. LEVINE, M.D., on behalf of )  
themselves and the patients they serve, )

Plaintiffs,

v.

JANET OLSZEWSKI, Director of the Michigan )  
Department of Community Health, in her official )  
capacity; and LINDA HOTCHKISS, M.D., )  
Chairperson of the Michigan Board of Medicine, )  
in her official capacity; and their employees, )  
agents, and successors in office, )

Defendants.

Civil Action

No.:

ROBERT H. OUELLETTE

03CV71054DT

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FILED

COMPLAINT

1. Plaintiffs, by and through their undersigned attorneys, bring this complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof allege the following:

**I. Preliminary Statement**

2. This civil rights action challenges the constitutionality of Michigan Public Act No. 685 of the Michigan Public Acts of 2002, amending Mich. Comp. Laws §§ 333.16299, 333.17014, and 333.17015 (hereinafter “Act No. 685”), signed into law by Governor Engler on

December 29, 2002. Act No. 685 is scheduled to take effect March 31, 2003. A copy of Act No. 685 is attached as Exhibit A.

3. Specifically, Plaintiffs challenge the constitutionality of Subsections (9) and portions of Subsection (11)(c) of Section 17015 of Act No. 685 (hereinafter “the delay in payment provisions”). Those provisions replace statutory provisions that this Court found unconstitutionally vague in a decision it issued on February 26, 2002.

4. Plaintiffs seek declaratory and injunctive relief against the challenged provisions, which prohibit physicians and their agents from collecting payment for medical services already rendered to patients if or until certain events have occurred. The challenged provisions even prevent abortion providers from obtaining payment for medical services rendered to patients and from performing abortions when they have seemingly complied with the delay in payment requirement. The delay in payment provisions of Act No. 685 impose vague and contradictory requirements upon abortion providers, making them subject to licensure penalties without adequately describing the conduct proscribed by the delay in payment provision. Moreover, the delay in payment provisions differentially treat abortion providers, as compared to other providers of medical services, subjecting the former to unique burdens, including loss of revenue. They also impose burdens on women’s exercise of their right to reproductive choice and impose burdens on women seeking medical services that are not imposed on men.

5. Thus, the delay in payment provisions of Act No. 685 violate the rights of Plaintiffs and their patients to due process and equal protection guaranteed under the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983.

## **II. Jurisdiction and Venue**

6. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

7. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202 and by Rules 57 and 65 of the Federal Rules of Civil Procedure.

8. Venue is appropriate under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to this action occurred in this district.

## **III. Parties**

### **A. Plaintiffs**

9. Plaintiffs Northland Family Planning Clinic, Inc., Northland Family Planning Clinic, Inc. - West, and Northland Family Planning Clinic, Inc. - East (together, "Northland") are women's reproductive health care facilities in Southfield, Westland, and Sterling Heights, Michigan, respectively. The Northland facilities provide a full range of gynecological services, including: annual examinations and pap smears; pregnancy testing; non-directive options counseling; contraceptive counseling and services; detection and treatment of sexually transmitted diseases; and community outreach education programs. In addition, Northland provides abortion services up to twenty-four weeks, as measured from the first day of the woman's last menstrual period ("lmp"). Northland sues on behalf of itself, its staff, and its patients.

10. Plaintiffs Womancare of Southfield, P.C., Womancare of Macomb, P.C., Womancare of Flint, P.C., Womancare of Lansing, P.C., Womancare of Livonia, P.C., and Womancare of Downriver, P.C., are women's reproductive health care facilities located in Lathrup Village, Sterling Heights, Flint, Lansing, Livonia, and Southgate, Michigan, respectively. These facilities provide a full range of gynecological services including: pregnancy testing; non-directive options

counseling; abortion up to twenty-four weeks lmp; contraceptive counseling; contraceptives; cancer screening; and detection and treatment of sexually transmitted diseases. Womancare sues on behalf of itself, its staff, and its patients.

11. Plaintiff Summit Medical Center Inc. ("Summit"), a women's reproductive health center facility in Detroit, Michigan, provides the following services: a full range of obstetrical and gynecological services; teen programs for birth control and abortion; community outreach education programs; prenatal care and obstetrical services; pregnancy testing; detection and treatment of sexually transmitted diseases; non-directive options counseling; abortion up to 24 weeks lmp; contraceptives counseling; and contraceptives. Summit provides prenatal care and obstetrical services in cooperation with the Hutzel Hospital. Summit sues on behalf of itself, its staff, and its patients.

12. Plaintiff Scottsdale Women's Center ("Scottsdale") is a women's reproductive health care facility in Detroit, Michigan, that provides a full range of obstetrical and gynecological services including: pregnancy testing; non-directive options counseling; contraceptive counseling; contraceptives; detection and treatment of sexually transmitted diseases; abortion up to twenty-four weeks lmp; complete obstetrical services; and prenatal care. Scottsdale sues on behalf of itself, its staff and its patients.

13. Plaintiff Marshall D. Levine, M.D., is a physician licensed to practice medicine in the State of Michigan. He is board-certified in obstetrics and gynecology, as well as in medical genetics. He currently specializes in gynecology and provides surgical abortions up to twenty weeks lmp at the Michiana Clinic in Niles, Michigan. Dr. Levine sues on his own behalf and on behalf of his patients.

14. After the effective date of Act No. 685, the Plaintiffs intend to continue to provide abortion services and other medical services to their patients. The Plaintiffs reasonably fear that they may violate the delay in payment provisions, such that they will risk civil liability, loss of revenue, and/or an inability to perform lawfully scheduled abortions.

**B. Defendants**

15. Defendant Janet Olszewski is the director of the Michigan Department of Community Health ("the Department"). Under Act No. 685, the Department is responsible for creating the state materials that must be provided to each woman at least 24 hours prior to the procedure. Act No. 685 also charges the Department with creating the acknowledgement and consent form that must be signed by each patient prior to an abortion procedure. Defendant Olszewski is sued in her official capacity, as are her employees, agents, and successors.

16. Defendant Linda Hotchkiss, M.D., is the Chairperson of the Michigan Board of Medicine, which can impose licensure penalties and fines on health professionals who are found to have violated Act No. 685's terms. Defendant Hotchkiss is sued in her official capacity, as are her employees, agents, and successors.

**IV. The Statutory Framework**

17. Act No. 685 amends a pre-existing mandatory delay statute -- Mich. Comp. Laws § 333.17015 -- that has been in force in Michigan subject to settlement agreements approved by this Court in 1999 and in 2001, and a 2002 decision of this Court finding a portion of the pre-existing statute unconstitutional. The mandatory delay statute prohibits a physician from providing an abortion unless, inter alia, the patient receives certain state-mandated materials at least 24 hours before the abortion is to be performed. See Act No. 685, § 17015.

18. Act No. 685 amended § 333.17015 by, inter alia, replacing in its entirety the prior Subsection (9), which this Court had found unconstitutionally vague. Prior to enactment of Act No. 685, Subsection (9) read:

A physician shall not require or obtain payment for an abortion related medical service provided to a patient who has inquired about an abortion or scheduled an abortion until the expiration of the 24-hour period required in subsection (3).

Mich. Comp. Laws § 333.17015(9). The term “abortion related medical service” was not defined. See Mich. Comp. Laws § 333.17015.

19. Act No. 685 amended Subsection (9) to read:

This subsection does not prohibit notifying the patient that payment for medical services will be required or that collection of payment in full for all medical services provided or planned may be demanded after the 24-hour period described in this subsection has expired. A physician or an agent of the physician shall not collect payment, in whole or in part, for a medical service provided to or planned for a patient before the expiration of 24 hours from the time the patient has done either or both of the following, except in the case of a physician or an agent of a physician receiving capitated payments or under a salary arrangement for providing those medical services:

(a) Inquired about obtaining an abortion after her pregnancy is confirmed and she has received from that physician or a qualified person assisting the physician the information required under subsection (3)(c) and (d).

(b) Scheduled an abortion to be performed by that physician.

Act No. 685, § 17015(9).

20. Act No. 685 defined the term “medical service” as meaning “the provision of a treatment, procedure, medication, examination, diagnostic test, assessment, or counseling, including, but not limited to, a pregnancy test, ultrasound, pelvic examination, or an abortion.”

Act. No. 685, § 17015(2)(e).

21. Subsection (11)(c) of Act No. 685 requires the Department to “develop, draft, and print . . . an acknowledgment and consent form” that contains only the language specified in the statute. Before performing an abortion, a physician or qualified person assisting the physician

must obtain that patient's signature of that form. The prior version of Subsection (11)(c) required that the patient certify that she had not been required to make certain payments before the expiration of 24 hours after receiving or viewing the state-mandated materials; that portion of the certification form was stricken pursuant to this Court's prior vagueness ruling.

22. Act No. 685 made only minor changes in the wording of the portion of Subsection (11)(c) that related to the delay in payment issue. It amended Subsection (11)(c) so that it now requires that the patient certify, in relevant part, that she had:

not been required to make any payments for an abortion or any medical service before the expiration of 24 hours after [she had] received the written materials listed in paragraphs (a), (b), and (c) above, or 24 hours after the time and date listed on the confirmation form if paragraphs (a), (b), and (c) were viewed from the state of Michigan internet website.

Act No. 685, § 17015(11)(c). This amendment reflects the change from "abortion related medical service" to "medical service" in the Subsection (9), but does not reflect the other new wording in that Subsection.

23. Act No. 685 imposes civil penalties on persons who violate its terms, including the delay in payment provisions. If a disciplinary committee finds that a health professional has violated Act No. 685, it may impose one or more of the following licensure penalties: denial, revocation, restitution, probation, suspension, limitation, reprimand, or fine. See Mich. Comp. Laws §§ 333.16221(m), 333.16266. There is no limitation on the amount of the fine that may be imposed. See Mich. Comp. Laws § 333.16266.

#### **V. Prior Proceedings**

24. In 1994, several Michigan abortion providers, including some of these Plaintiffs, filed suit in this Court to challenge, inter alia, Mich. Comp. Laws Ann. § 333.17015. Northland Family Planning Clinic v. Engler, No. 94-75351 (Compl. filed Mar. 10, 1994). At that time, Section 333.17015 did not contain any provision delaying payment for medical services. See

Mich. Comp. Laws § 333.17015 (as in effect in 1994). That lawsuit was concluded by stipulated settlement. See Northland Family Planning Clinic v. Engler, No. 94-75351, Final Order (June 17, 1999). That settlement provided, inter alia, that a physician other than the physician who performs an abortion may provide the state-mandated materials to a woman. Id., ¶ 9.

25. In 2000, the Legislature amended Section 333.17015, inter alia, to add a delay in payment provision, as set forth in Section IV, supra. In 2001, several of these Plaintiffs filed suit in this Court to challenge, facially, various provisions in the new law, including the delay in payment provision. Northland Family Planning Clinic v. Granholm, Civ. Action No. 01-CV-70549 (Compl. filed Feb. 12, 2001). The parties settled Plaintiffs' claims, except for the challenge to the delay in payment provision: Subsection (9) of § 333.17015 and the related language in Subsection 11(c). Id., Order Adopting Partial Settlement (April 11, 2001); id., Partial Settlement Stipulation (executed April 9, 2001).

26. In 2001, Plaintiffs moved for summary judgment and Defendants moved for judgment on the pleadings on the delay in payment provision. This Court granted Plaintiffs' motion and denied Defendants' motion. Northland Family Planning Clinic v. Granholm, Civ. Action No. 01-CV-70549, Mem. Op. and Order (Feb. 26, 2002). The Court found that prior provision to be unconstitutionally vague. Id. Because this Court found the delay in payment provision to be unconstitutionally vague, the Court did not reach Plaintiffs' equal protection and other due process claims. Id. at 6.

## **VI. Statement of Facts**

27. Currently, Michigan providers of reproductive health services -- including providers of abortions -- are allowed by law to obtain prompt payment for medical services rendered to patients, as are the providers of other medical services.



28. The Plaintiffs all provide abortions, but in addition provide a variety of other reproductive health care services. Those other services include some -- such as pregnancy tests and ultrasounds -- that provide their patients with information they need in order to decide whether they are pregnant and, if so, whether they will carry their pregnancy to term or seek an abortion. Some of the patients who receive such services decide to carry their pregnancies to term, and others decide to terminate their pregnancies

29. Although the Plaintiffs provide some free services -- in particular, urine pregnancy tests -- they charge a fee for most of the medical services that they provide, including ultrasounds, physical examinations, early pregnancy tests, and blood pregnancy tests. Most of their patients do not have insurance coverage for those services and are required to pay for the medical service at the time they receive the service; for patients with insurance coverage, their insurance plan is billed at the time they receive the service.

30. Women come to the Plaintiffs seeking medical services for a variety of reasons. Some of the patients who receive such services decide to carry their pregnancies to term, and others decide to terminate their pregnancies. Some of them change their mind -- in either direction -- after receiving medical services.

31. In many cases, Plaintiffs provide medical services to patients before the day the patient receives an abortion. In some of those cases, the patients do not return to Plaintiffs for further services. If a patient chooses not to return to the clinic, for whatever reason, after she has received medical services, the Plaintiff may never be able to recoup its costs for such services. Therefore, if Plaintiffs are not able to collect payment at the time services are rendered, they will lose money.

32. Given the lack of clarity in the delay in payment provisions, Plaintiffs may inadvertently fail to comply with them, with the resultant risk of civil penalties. Moreover, even

where they have complied with Subsection (9), women may be unable to certify that they have paid for any service within 24 hours of receiving or viewing the state-mandated materials, as required under Subsection (11)(c). As a result, women may be unable to receive scheduled abortions.

33. Also, prohibiting Plaintiffs from obtaining prompt payment for services rendered will leave them vulnerable to abusive conduct by anti-choice activists.

34. The meaning of the delay in payment provisions is unclear to abortion providers. As a result, abortion providers cannot be sure that they are in compliance with those provisions when they seek payment for medical services that they provide to their patients, putting them at risk of civil penalties. Moreover, abortion providers and patients will be unsure whether a patient may truthfully sign the certification required before an abortion is performed, as the required wording of the certificate does not match the language of the provision detailing the delay in payment requirements. As a result, some women will be unable to receive a lawfully scheduled abortion, thus experiencing potentially harmful delay in obtaining an abortion.

35. To the extent that the delay in payment provisions prohibit abortion providers from obtaining payment for a medical service at the time it is rendered to the patient, those provisions will cause Plaintiffs to provide services without any guarantee of payment. Obtaining prompt payment for medical services is crucial to Plaintiffs' business. If a patient chooses not to return to the clinic, for whatever reason, after Plaintiffs have provided medical services, Plaintiffs may never be able to recoup their costs for such services. Therefore, Plaintiffs either will: discontinue the provision of services prior to the day the abortion is performed -- which will impair women's access to information they need to exercise their right of reproductive choice; raise their prices, which will mean some women will be unable to access their services; or suffer financial losses

which may cause them to go out of business, thus impairing women's ability to exercise their right of reproductive choice.

36. If Plaintiffs' patients are unable to obtain appropriate care in Michigan because of the constraints imposed by the delay in payment provisions, some of them will be forced to carry their pregnancies to term, often with tragic results for them and their families. Other patients will be delayed in obtaining care while arranging to travel out of Michigan for services. Obtaining later abortion procedures would force women to place their health at greater risk because the complications associated with abortion increase as the pregnancy progresses.

37. The meaning of the delay in payment provisions is unclear in several ways, including, but not limited to, the following.

38. First, the payment prohibition imposed by Act. No. 685 is unclear because the wording of the required certification form that a patient must sign before obtaining an abortion is inconsistent with the wording of Subsection (9). As a result, it is unclear whether an abortion may be performed if, for example, the patient paid for a medical service 24 hours after she received the service but before she received the state-mandated materials; or if the patient paid for an ultrasound when she received it, at which time she intended to continue her pregnancy, but later sought to terminate that pregnancy. In such cases, among others, the patient could not truthfully certify that she had not been required to pay for a medical service before the expiration of 24 hours after she received or viewed the state-mandated materials.

39. Second, it is unclear from the wording of Subsection (9) itself when payment may be collected for medical services that have already been provided. For example, it is unclear whether payment may be collected promptly for a gynecological service not connected to the patient's pregnancy; or if a woman who plans to obtain an abortion changes her mind after

receiving an ultrasound and cancels her scheduled abortion; or if a woman has viewed the state-mandated materials on the state website the same day she receives a pregnancy test.

40. Third, it is unclear whether the collection of payment for rendered medical services is prohibited for 24 hours *only if* one of two events has occurred: the patient has either scheduled an abortion or received the state-mandated information from that physician.

41. The delay in payment provisions do not bear even a rational relationship to a legitimate state interest.

## VII. Causes of Action

### FIRST CLAIM FOR RELIEF

(Vagueness)

42. Plaintiffs hereby incorporate by reference Paragraphs 1 through 41 above.

43. By failing to give adequate notice of the conduct it proscribes, and thereby encouraging arbitrary enforcement of its terms, the delay in payment provisions is void for vagueness in violation of the Due Process Clause of the Fourteenth Amendment and 42 U.S.C. § 1983.

### SECOND CLAIM FOR RELIEF

(Equal Protection)

44. Plaintiffs hereby incorporate by reference Paragraphs 1 through 41 above.

45. The delay in payment provisions create three impermissible classifications: (1) between patients who seek abortions and those who seek other medical services; (2) between men and women seeking health care; and (3) between physicians who provide abortions and those who provide other types of medical care. The delay in payment provisions thus infringe on

physicians' and patients' rights to equal protection, in violation of the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1983.

### **THIRD CLAIM FOR RELIEF**

(Deprivation of Property Without Due Process)

78. Plaintiffs hereby incorporate by reference Paragraphs 1 through 41 above.

79. By prohibiting abortion providers from obtaining prompt payment for services rendered, Act No. 685 has the effect of depriving providers of their property without due process of law, in violation of the Due Process Clause of the Fourteenth Amendment and 42 U.S.C. § 1983.

### **INJUNCTIVE RELIEF**

80. Plaintiffs' claims meet the standard for injunctive relief because: (1) they have no adequate remedy at law; (2) they and their patients will suffer immediate and irreparable harm for continued violations of their constitutional rights should Act No. 685 be permitted to go into effect and applied to them; (3) they are likely to succeed on the merits of their claims; and (4) Defendants will suffer no harm in being denied the opportunity to enforce an invalid and unconstitutional statute pending resolution of the merits of this claim. Issuance of the injunction will maintain the status quo.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs ask this Court:

A. To issue a temporary restraining order and/or preliminary injunction restraining Defendants, their employees, agents, and successors from enforcing Subsection (9) and the related language in Subsection (11)(c), of § 17015 of Act No. 685 of Michigan Public Acts of 2002;

B. To enter judgment declaring Subsection (9) and the related language in Subsection (11)(c), of § 17015 of Act No. 685 of Michigan Public Acts of 2002, to be in violation of the United States Constitution and 42 U.S.C. § 1983;

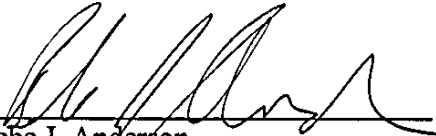
C. To issue an order permanently enjoining Subsection (9) and the related language in Subsection (11)(c), of § 17015 of Act No. 685 of Michigan Public Acts of 2002; and

D. To grant such other and further relief as this Court should find just and proper, including attorneys' fees and costs.

Dated: March 14, 2003

Respectfully Submitted,

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Act No. 685  
Public Acts of 2002  
Approved by the Governor  
December 29, 2002  
Filed with the Secretary of State  
December 30, 2002  
EFFECTIVE DATE: March 31, 2003

**STATE OF MICHIGAN  
91ST LEGISLATURE  
REGULAR SESSION OF 2002**

Introduced by Reps. Vander Roest, Palmer, Julian, Meyer, Hummel, Gilbert, Pappageorge, Mead, Cassis, Drolet, Kuipers, Ehardt, Vear, Pumford, Van Woerkom, Kowall, Spade, Sheltrown, Callahan, Gosselin, Cameron Brown, Rocca, Bovin, Voorhees, Pestka, Kooiman, Jansen, Shulman and Jelinek

**ENROLLED HOUSE BILL No. 5971**

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," by amending sections 16299, 17014, and 17015 (MCL 333.16299, 333.17014, and 333.17015), section 17014 as added by 1993 PA 133 and section 17015 as amended by 2000 PA 345.

*The People of the State of Michigan enact:*

Sec. 16299. (1) Except as otherwise provided in subsection (2), a person who violates or aids or abets another in a violation of this article, other than those matters described in sections 16294 and 16296, is guilty of a misdemeanor punishable as follows:

- (a) For the first offense, by imprisonment for not more than 90 days, or a fine of not more than \$100.00, or both.
  - (b) For the second or subsequent offense, by imprisonment for not less than 90 days nor more than 6 months, or a fine of not less than \$200.00 nor more than \$500.00, or both.
- (2) Subsection (1) does not apply to a violation of section 17015 or 17515.

Sec. 17014. The legislature recognizes that under federal constitutional law, a state is permitted to enact persuasive measures that favor childbirth over abortion, even if those measures do not further a health interest. Sections 17015 and 17515 are nevertheless designed to provide objective, truthful information, and are not intended to be persuasive. The legislature finds that the enactment of sections 17015 and 17515 is essential for all of the following reasons:

(316)

EXHIBIT A



(a) The knowledgeable exercise of a woman's decision to have an abortion depends on the extent to which the woman receives sufficient information to make an informed choice regarding abortion.

(b) The decision to obtain an abortion is an important and often stressful one, and it is in the state's interest that the decision be made with full knowledge of its nature and consequences.

(c) Enactment of sections 17015 and 17515 is necessary to ensure that, before an abortion, a woman is provided information regarding her available alternatives, and to ensure that a woman gives her voluntary and informed consent to an abortion.

(d) The receipt of accurate information about abortion and its alternatives is essential to the physical and psychological well-being of a woman considering an abortion.

(e) Because many abortions in this state are performed in clinics devoted solely to providing abortions, women who seek abortions at these clinics normally do not have a prior patient-physician relationship with the physician performing the abortion nor do these women continue a patient-physician relationship with the physician after the abortion. In many instances, the woman's only actual contact with the physician performing the abortion occurs simultaneously with the abortion procedure, with little opportunity to receive counsel concerning her decision. Consequently, certain safeguards are necessary to protect a woman's opportunity to select the option best suited to her particular situation.

(f) This state has an interest in protecting women and, subject to United States constitutional limitations and supreme court decisions, this state has an interest in protecting the fetus.

(g) Providing a woman with factual, medical, and biological information about the fetus she is carrying is essential to safeguard the state's interests described in subdivision (f). The dissemination of the information set forth in sections 17015 and 17515 is necessary due to the irreversible nature of the act of abortion and the often stressful circumstances under which the abortion decision is made.

(h) Because abortion services are marketed like many other commercial enterprises, and nearly all abortion providers advertise some free services, including pregnancy tests and counseling, the legislature finds that consumer protection should be extended to women contemplating an abortion decision by delaying any financial transactions until after a 24-hour waiting period. Furthermore, since the legislature and abortion providers have determined that a woman's right to give informed consent to an abortion can be protected by means other than the patient having to travel to the abortion facility during the 24-hour waiting period, the legislature finds that abortion providers do not have a legitimate claim of necessity in obtaining payments during the 24-hour waiting period.

(i) The safeguards that will best protect a woman seeking advice concerning abortion include the following:

(i) Private, individual counseling, including dissemination of certain information, as the woman's individual circumstances dictate, that affect her decision of whether to choose an abortion.

(ii) A 24-hour waiting period between a woman's receipt of that information provided to assist her in making an informed decision, and the actual performance of an abortion, if she elects to undergo an abortion. A 24-hour waiting period affords a woman, in light of the information provided by the physician or a qualified person assisting the physician, an opportunity to reflect on her decision and to seek counsel of family and friends in making her decision.

(j) The safeguards identified in subdivision (i) advance a woman's interests in the exercise of her discretion to choose or not to choose an abortion, and are justified by the objectives and interests of this state to protect the health of a pregnant woman and, subject to United States constitutional limitations and supreme court decisions, to protect the fetus.

Sec. 17015. (1) Subject to subsection (10), a physician shall not perform an abortion otherwise permitted by law without the patient's informed written consent, given freely and without coercion.

(2) For purposes of this section:

(a) "Abortion" means the intentional use of an instrument, drug, or other substance or device to terminate a woman's pregnancy for a purpose other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus. Abortion does not include the use or prescription of a drug or device intended as a contraceptive.

(b) "Fetus" means an individual organism of the species homo sapiens in utero.

(c) "Local health department representative" means a person employed by, or under contract to provide services on behalf of, a local health department who meets 1 or more of the licensing requirements listed in subdivision (f).

(d) "Medical emergency" means that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(e) "Medical service" means the provision of a treatment, procedure, medication, examination, diagnostic test, assessment, or counseling, including, but not limited to, a pregnancy test, ultrasound, pelvic examination, or an abortion.



(f) "Qualified person assisting the physician" means another physician or a physician's assistant licensed under this part or part 175, a fully licensed or limited licensed psychologist licensed under part 182, a professional counselor licensed under part 181, a registered professional nurse or a licensed practical nurse licensed under part 172, or a social worker registered under part 185.

(g) "Probable gestational age of the fetus" means the gestational age of the fetus at the time an abortion is planned to be performed.

(h) "Provide the patient with a physical copy" means confirming that the patient accessed the internet website described in subsection (5) and received a printed valid confirmation form from the website and including that form in the patient's medical record or giving a patient a copy of a required document by 1 or more of the following means:

(i) In person.

(ii) By registered mail, return receipt requested.

(iii) By parcel delivery service that requires the recipient to provide a signature in order to receive delivery of a parcel.

(iv) By facsimile transmission.

(3) Subject to subsection (10), a physician or a qualified person assisting the physician shall do all of the following not less than 24 hours before that physician performs an abortion upon a patient who is a pregnant woman:

(a) Confirm that, according to the best medical judgment of a physician, the patient is pregnant, and determine the probable gestational age of the fetus.

(b) Orally describe, in language designed to be understood by the patient, taking into account her age, level of maturity, and intellectual capability, each of the following:

(i) The probable gestational age of the fetus she is carrying.

(ii) Information about what to do and whom to contact should medical complications arise from the abortion.

(iii) Information about how to obtain pregnancy prevention information through the department of community health.

(c) Provide the patient with a physical copy of the written summary described in subsection (11)(b) that corresponds to the procedure the patient will undergo and is provided by the department of community health. If the procedure has not been recognized by the department, but is otherwise allowed under Michigan law, and the department has not provided a written summary for that procedure, the physician shall develop and provide a written summary that describes the procedure, any known risks or complications of the procedure, and risks associated with live birth and meets the requirements of subsection (11)(b)(iii) through (vi).

(d) Provide the patient with a physical copy of a medically accurate depiction, illustration, or photograph and description of a fetus supplied by the department of community health pursuant to subsection (11)(a) at the gestational age nearest the probable gestational age of the patient's fetus.

(e) Provide the patient with a physical copy of the prenatal care and parenting information pamphlet distributed by the department of community health under section 9161.

(4) The requirements of subsection (3) may be fulfilled by the physician or a qualified person assisting the physician at a location other than the health facility where the abortion is to be performed. The requirement of subsection (3)(a) that a patient's pregnancy be confirmed may be fulfilled by a local health department under subsection (18). The requirements of subsection (3) cannot be fulfilled by the patient accessing an internet website other than the internet website described in subsection (5) that is maintained through the department.

(5) The requirements of subsection (3)(c) through (e) may be fulfilled by a patient accessing the internet website maintained and operated through the department and receiving a printed, valid confirmation form from the website that the patient has reviewed the information required in subsection (3)(c) through (e) at least 24 hours before an abortion being performed on the patient. The website shall not require any information be supplied by the patient. The department shall not track, compile, or otherwise keep a record of information that would identify a patient who accesses this website. The patient shall supply the valid confirmation form to the physician or qualified person assisting the physician to be included in the patient's medical record to comply with this subsection.

(6) Subject to subsection (10), before obtaining the patient's signature on the acknowledgment and consent form, a physician personally and in the presence of the patient shall do all of the following:

(a) Provide the patient with the physician's name and inform the patient of her right to withhold or withdraw her consent to the abortion at any time before performance of the abortion.

(b) Orally describe, in language designed to be understood by the patient, taking into account her age, level of maturity, and intellectual capability, each of the following:

(i) The specific risk, if any, to the patient of the complications that have been associated with the procedure the patient will undergo, based on the patient's particular medical condition and history as determined by the physician.

(ii) The specific risk of complications, if any, to the patient if she chooses to continue the pregnancy based on the patient's particular medical condition and history as determined by a physician.

(7) To protect a patient's privacy, the information set forth in subsection (3) and subsection (6) shall not be disclosed to the patient in the presence of another patient.

(8) Before performing an abortion on a patient who is a pregnant woman, a physician or a qualified person assisting the physician shall do all of the following:

(a) Obtain the patient's signature on the acknowledgment and consent form described in subsection (11)(c) confirming that she has received the information required under subsection (3).

(b) Provide the patient with a physical copy of the signed acknowledgment and consent form described in subsection (11)(c).

(c) Retain a copy of the signed acknowledgment and consent form described in subsection (11)(c) and, if applicable, a copy of the pregnancy certification form completed under subsection (18)(b), in the patient's medical record.

(9) This subsection does not prohibit notifying the patient that payment for medical services will be required or that collection of payment in full for all medical services provided or planned may be demanded after the 24-hour period described in this subsection has expired. A physician or an agent of the physician shall not collect payment, in whole or in part, for a medical service provided to or planned for a patient before the expiration of 24 hours from the time the patient has done either or both of the following, except in the case of a physician or an agent of a physician receiving capitated payments or under a salary arrangement for providing those medical services:

(a) Inquired about obtaining an abortion after her pregnancy is confirmed and she has received from that physician or a qualified person assisting the physician the information required under subsection (3)(c) and (d).

(b) Scheduled an abortion to be performed by that physician.

(10) If the attending physician, utilizing his or her experience, judgment, and professional competence, determines that a medical emergency exists and necessitates performance of an abortion before the requirements of subsections (1), (3), and (6) can be met, the physician is exempt from the requirements of subsections (1), (3), and (6), may perform the abortion, and shall maintain a written record identifying with specificity the medical factors upon which the determination of the medical emergency is based.

(11) The department of community health shall do each of the following:

(a) Produce medically accurate depictions, illustrations, or photographs of the development of a human fetus that indicate by scale the actual size of the fetus at 2-week intervals from the fourth week through the twenty-eighth week of gestation. Each depiction, illustration, or photograph shall be accompanied by a printed description, in nontechnical English, Arabic, and Spanish, of the probable anatomical and physiological characteristics of the fetus at that particular state of gestational development.

(b) Subject to subdivision (g), develop, draft, and print, in nontechnical English, Arabic, and Spanish, written standardized summaries, based upon the various medical procedures used to abort pregnancies, that do each of the following:

(i) Describe, individually and on separate documents, those medical procedures used to perform abortions in this state that are recognized by the department.

(ii) Identify the physical complications that have been associated with each procedure described in subparagraph (i) and with live birth, as determined by the department. In identifying these complications, the department shall consider the annual statistical report required under section 2835(6), and shall consider studies concerning complications that have been published in a peer review medical journal, with particular attention paid to the design of the study, and shall consult with the federal centers for disease control, the American college of obstetricians and gynecologists, the Michigan state medical society, or any other source that the department determines appropriate for the purpose.

(iii) State that as the result of an abortion, some women may experience depression; feelings of guilt, sleep disturbance, loss of interest in work or sex, or anger, and that if these symptoms occur and are intense or persistent, professional help is recommended.

(iv) State that not all of the complications listed in subparagraph (ii) may pertain to that particular patient and refer the patient to her physician for more personalized information.

(v) Identify services available through public agencies to assist the patient during her pregnancy and after the birth of her child, should she choose to give birth and maintain custody of her child.

(vi) Identify services available through public agencies to assist the patient in placing her child in an adoptive or foster home, should she choose to give birth but not maintain custody of her child.

(vii) Identify services available through public agencies to assist the patient and provide counseling should she experience subsequent adverse psychological effects from the abortion.

(c) Develop, draft, and print, in nontechnical English, Arabic, and Spanish, an acknowledgment and consent form that includes only the following language above a signature line for the patient:

"I, \_\_\_\_\_, hereby authorize Dr. \_\_\_\_\_ ("the physician") and any assistant designated by the physician to perform upon me the following operation(s) or procedure(s):

\_\_\_\_\_  
(Name of operation(s) or procedure(s))

I understand that I am approximately \_\_\_\_\_ weeks pregnant. I consent to an abortion procedure to terminate my pregnancy. I understand that I have the right to withdraw my consent to the abortion procedure at any time prior to performance of that procedure. I acknowledge that at least 24 hours before the scheduled abortion I have received a physical copy of each of the following:

(a) A medically accurate depiction, illustration, or photograph of a fetus at the probable gestational age of the fetus I am carrying.

(b) A written description of the medical procedure that will be used to perform the abortion.

(c) A prenatal care and parenting information pamphlet. If any of the above listed documents were transmitted by facsimile, I certify that the documents were clear and legible. I acknowledge that the physician who will perform the abortion has orally described all of the following to me:

(i) The specific risk to me, if any, of the complications that have been associated with the procedure I am scheduled to undergo.

(ii) The specific risk to me, if any, of the complications if I choose to continue the pregnancy.

I acknowledge that I have received all of the following information:

(d) Information about what to do and whom to contact in the event that complications arise from the abortion.

(e) Information pertaining to available pregnancy related services.

I have been given an opportunity to ask questions about the operation(s) or procedure(s). I certify that I have not been required to make any payments for an abortion or any medical service before the expiration of 24 hours after I received the written materials listed in paragraphs (a), (b), and (c) above, or 24 hours after the time and date listed on the confirmation form if paragraphs (a), (b), and (c) were viewed from the state of Michigan internet website."

(d) Make available to physicians through the Michigan board of medicine and the Michigan board of osteopathic medicine and surgery, and any person upon request the copies of medically accurate depictions, illustrations, or photographs described in subdivision (a), the standardized written summaries described in subdivision (b), the acknowledgment and consent form described in subdivision (c), the prenatal care and parenting information pamphlet described in section 9161, and the pregnancy certification form described in subdivision (f).

(e) The department shall not develop written summaries for abortion procedures under subdivision (b) that utilize medication that has not been approved by the United States food and drug administration for use in performing an abortion.

(f) Develop, draft, and print a certification form to be signed by a local health department representative at the time and place a patient has a pregnancy confirmed, as requested by the patient, verifying the date and time the pregnancy is confirmed.

(g) Develop and maintain an internet website that allows a patient considering an abortion to review the information required in subsection (3)(c) through (e). After the patient reviews the required information, the department shall assure that a confirmation form can be printed by the patient from the internet website that will verify the time and date the information was reviewed. A confirmation form printed under this subdivision becomes invalid 14 days after the date and time printed on the confirmation form.

(12) A physician's duty to inform the patient under this section does not require disclosure of information beyond what a reasonably well-qualified physician licensed under this article would possess.

(13) A written consent form meeting the requirements set forth in this section and signed by the patient is presumed valid. The presumption created by this subsection may be rebutted by evidence that establishes, by a preponderance of the evidence, that consent was obtained through fraud, negligence, deception, misrepresentation, coercion, or duress.

(14) A completed certification form described in subsection (11)(f) that is signed by a local health department representative is presumed valid. The presumption created by this subsection may be rebutted by evidence that establishes, by a preponderance of the evidence, that the physician who relied upon the certification had actual knowledge that the certificate contained a false or misleading statement or signature.

(15) This section does not create a right to abortion.

(16) Notwithstanding any other provision of this section, a person shall not perform an abortion that is prohibited by law.

(17) If any portion of this act or the application of this act to any person or circumstances is found invalid by a court, that invalidity does not affect the remaining portions or applications of the act that can be given effect without the invalid portion or application, if those remaining portions are not determined by the court to be inoperable.

(18) Upon a patient's request, each local health department shall:

(a) Provide a pregnancy test for that patient to confirm the pregnancy as required under subsection (3)(a) and determine the probable gestational stage of the fetus. The local health department need not comply with this subdivision if the requirements of subsection (3)(a) have already been met.

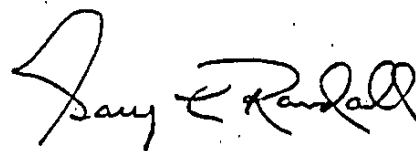
(b) If a pregnancy is confirmed, ensure that the patient is provided with a completed pregnancy certification form described in subsection (11)(f) at the time the information is provided.

(19) The identity and address of a patient who is provided information or who consents to an abortion pursuant to this section is confidential and is subject to disclosure only with the consent of the patient or by judicial process.

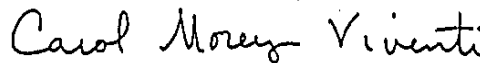
(20) A local health department with a file containing the identity and address of a patient described in subsection (19) who has been assisted by the local health department under this section shall do both of the following:

(a) Only release the identity and address of the patient to a physician or qualified person assisting the physician in order to verify the receipt of the information required under this section.

(b) Destroy the information containing the identity and address of the patient within 30 days after assisting the patient under this section.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved \_\_\_\_\_

\_\_\_\_\_  
Governor.