State of Arizona
House of Representatives
Forty-fourth Legislature
Second Regular Session
2000

CHAPTER 365

HOUSE BILL 2647

AN ACT

AMENDING SECTIONS 36-449.03, 36-2301.01 AND 36-2301.02, ARIZONA REVISED STATUTES; AMENDING LAWS 1999, CHAPTER 311, SECTIONS 5, 6, 7, 9 AND 10; RELATING TO ABORTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 36-449.03, Arizona Revised Statutes, is amended to read:

36-449.03. Abortion clinics; rules

A. The director shall adopt rules for an abortion clinic’s physical facilities. At a minimum these rules shall prescribe standards for:

1. Adequate private space that is specifically designated for interviewing, counseling and medical evaluations.
2. Dressing rooms for staff and patients.
3. Appropriate lavatory areas.
4. Areas for preprocedure hand washing.
5. Private procedure rooms.
6. Adequate lighting and ventilation for abortion procedures.
7. Surgical or gynecologic examination tables and other fixed equipment.
8. Postprocedure recovery rooms that are supervised, staffed and equipped to meet the patients’ needs.
9. Emergency exits to accommodate a stretcher or gurney.
10. Areas for cleaning and sterilizing instruments.
11. Adequate areas for the secure storage of medical records and necessary equipment and supplies.
12. The display in the abortion clinic, in a place that is conspicuous to all patients, of the clinic’s current license issued by the department.

B. The director shall adopt rules to prescribe abortion clinic supplies and equipment standards, including supplies and equipment that are required to be immediately available for use or in an emergency. At a minimum these rules shall:

1. Prescribe required equipment and supplies, including medications, required for the conduct, in an appropriate fashion, of any abortion procedure that the medical staff of the clinic anticipates performing and for monitoring the progress of each patient throughout the procedure and recovery period.
2. Require that the number or amount of equipment and supplies at the clinic is adequate at all times to assure sufficient quantities of clean and sterilized durable equipment and supplies to meet the needs of each patient.
3. Prescribe required equipment, supplies and medications that shall be available and ready for immediate use in an emergency and requirements for written protocols and procedures to be followed by staff in an emergency, such as the loss of electrical power.
4. Prescribe required equipment and supplies for required laboratory tests and requirements for protocols to calibrate and maintain laboratory equipment at the abortion clinic or operated by clinic staff.
5. Require ultrasound equipment in those facilities that provide abortions after twelve weeks’ gestation.
6. Require that all equipment is safe for the patient and the staff, meets applicable federal standards and is checked annually to ensure safety and appropriate calibration.

C. The director shall adopt rules relating to abortion clinic personnel. At a minimum these rules shall require that:
   1. The abortion clinic designate a medical director of the abortion clinic who is licensed pursuant to title 32, chapter 13, 17 or 29.
   2. Physicians performing surgery are licensed pursuant to title 32, chapter 13 or 17, demonstrate competence in the procedure involved and are acceptable to the medical director of the abortion clinic.
   3. A physician with admitting privileges at an accredited hospital in this state is available.
   4. IF A PHYSICIAN IS NOT PRESENT, a registered nurse, nurse practitioner, licensed practical nurse or physician's assistant is present and remains at the clinic when abortions are performed to provide postoperative monitoring and care until each patient who had an abortion that day is discharged.
   5. Surgical assistants receive training in counseling, patient advocacy and the specific responsibilities of the services the surgical assistants provide.
   6. Volunteers receive training in the specific responsibilities of the services the volunteers provide, including counseling and patient advocacy as provided in the rules adopted by the director for different types of volunteers based on their responsibilities.

D. The director shall adopt rules relating to the medical screening and evaluation of each abortion clinic patient. At a minimum these rules shall require:
   1. A medical history including the following:
      (a) Reported allergies to medications, antiseptic solutions or latex.
      (b) Obstetric and gynecologic history.
      (c) Past surgeries.
   2. A physical examination including a bimanual examination estimating uterine size and palpation of the adnexa.
   3. The appropriate laboratory tests including:
      (a) For an abortion in which an ultrasound EXAMINATION is not performed before the abortion procedure, urine or blood tests for pregnancy performed before the abortion procedure.
      (b) A test for anemia.
      (c) Rh typing, unless reliable written documentation of blood type is available.
      (d) Other tests as indicated from the physical examination.
   4. An ultrasound evaluation for all patients who elect to have an abortion after twelve weeks' gestation. The rules shall require that IF a person who IS NOT A PHYSICIAN performs an ultrasound examination, THAT PERSON shall have documented evidence that the person completed a course in the
operation of ultrasound equipment as prescribed in rule. The physician or
other health care professional shall review, at the request of the patient,
the ultrasound EVALUATION results with the patient before the abortion
procedure is performed, including the probable gestational age of the fetus.

5. That the physician is responsible for estimating the gestational
age of the fetus based on the ultrasound examination and obstetric standards
in keeping with established standards of care regarding the estimation of
fetal age as defined in rule and shall write the estimate in the patient's
medical history. The physician shall keep original prints of each ultrasound
examination of a patient in the patient's medical history file.

E. The director shall adopt rules relating to the abortion procedure.
At a minimum these rules shall require:

1. That medical personnel is available to all patients throughout the
abortion procedure.
2. Standards for the safe conduct of abortion procedures that conform
to obstetric standards in keeping with established standards of care
regarding the estimation of fetal age as defined in rule.
3. Appropriate use of local anesthesia, analgesia and sedation if
ordered by the physician.
4. The use of appropriate precautions, such as the establishment of
intravenous access at least for patients undergoing second or third trimester
abortions.

5. The use of appropriate monitoring of the vital signs and other
defined signs and markers of the patient's status throughout the abortion
procedure and during the recovery period until the patient's condition is
deemed to be stable in the recovery room.

F. The director shall adopt rules that prescribe minimum recovery room
standards. At a minimum these rules shall require that:

1. Immediate postprocedure care consists of observation in a
supervised recovery room for as long as the patient's condition warrants.
2. The clinic arrange hospitalization if any complication beyond the
management capability of the staff occurs or is suspected.
3. A licensed health professional who is trained in the management of
the recovery area and is capable of providing basic cardiopulmonary
resuscitation and related emergency procedures remains on the premises of the
abortion clinic until all patients are discharged.
4. A physician with admitting privileges at an accredited hospital in
this state remains on the premises of the abortion clinic until all patients
are stable and are ready to leave the recovery room and to facilitate the
transfer of emergency cases if hospitalization of the patient or viable fetus
is necessary. A physician shall sign the discharge order and be readily
accessible and available until the last patient is discharged.

5. A physician discusses RhO(d) immune globulin with each patient for
whom it is indicated and assures it is offered to the patient in the
immediate postoperative period or that it will be available to her within
seventy-two hours after completion of the abortion procedure. If the patient
refuses, a refusal form approved by the department shall be signed by the
patient and a witness and included in the medical record.

6. Written instructions with regard to postabortion coitus, signs of
possible problems and general aftercare are given to each patient. Each
patient shall have specific instructions regarding access to medical care for
complications, including a telephone number to call for medical emergencies.

7. There is a specified minimum length of time that a patient remains
in the recovery room by type of abortion procedure and duration of gestation.

8. The physician assures that a licensed health professional from the
abortion clinic makes a good faith effort to contact the patient
by telephone, with the patient’s consent, within twenty-four hours after
surgery to assess the patient’s recovery.

9. Equipment and services are located in the recovery room to provide
appropriate emergency resuscitative and life support procedures pending the
transfer of the patient or viable fetus to the hospital.

G. The director shall adopt rules that prescribe standards for follow-
up visits. At a minimum these rules shall require that:

1. A postabortion medical visit is offered and, if requested,
scheduled for three weeks after the abortion, including a medical examination
and a review of the results of all laboratory tests.

2. A urine pregnancy test is obtained at the time of the follow-up
visit to rule out continuing pregnancy. If a continuing pregnancy is
suspected, the patient shall be evaluated and a physician who performs
abortions shall be consulted.

H. The director shall adopt rules to prescribe minimum abortion clinic
incident reporting. At a minimum these rules shall require that:

1. The abortion clinic records each incident resulting in a patient’s
or viable fetus’ serious injury occurring at an abortion clinic and shall
report them in writing to the department within ten days after the incident.
For the purposes of this paragraph, “serious injury” means an injury that
occurs at an abortion clinic and that creates a serious risk of substantial
impairment of a major body organ.

2. If a patient’s death occurs, other than a fetal death properly
reported pursuant to law, the abortion clinic reports it to the department
not later than the next department work day.

3. Incident reports are filed with the department and appropriate
professional regulatory boards.

I. No THE DEPARTMENT SHALL NOT RELEASE personally identifiable patient
or physician information shall be released by the department.

J. The rules adopted by the director pursuant to this section do not
limit the ability of a physician or other health professional to advise a
patient on any health issue.

Sec. 2. Section 36-2301.01, Arizona Revised Statutes, is amended to
read:
36-2301.01. Abortion of viable fetus; requirements; definitions

A. A PHYSICIAN SHALL NOT KNOWINGLY PERFORM AN ABORTION OF A VIABLE FETUS UNLESS:

1. Before a physician performs an abortion of a viable fetus, the physician shall state in writing BEFORE THE ABORTION IS PERFORMED that the abortion is necessary to preserve the life or health of the woman, specifying the medical indications for and the probable health consequences of the abortion. The physician shall attach a copy of this statement to any fetal death report filed pursuant to section 11-593 or fetal death registration filed pursuant to section 36-329, subsection C.

B. 2. A physician performing an abortion of a viable fetus shall use THE PHYSICIAN USES the available method or technique of abortion most likely to preserve the life and health of the fetus, unless the use of such method or technique would present a greater risk to the life or health of the woman than the use of another available method or technique.

3. When a physician performs an abortion of a viable fetus, the physician shall state in writing the available methods or techniques considered, the method or technique used and the reasons for choosing that method or technique. The physician shall attach a copy of this statement to any fetal death report filed pursuant to section 11-593 or fetal death registration filed pursuant to section 36-329, subsection C.

C. 4. A physician shall not perform an abortion of a viable fetus unless, In addition to the physician performing the abortion, there is another physician in attendance who shall take control of and provide immediate medical care for a living child born as a result of the abortion.

5. During the performance of the abortion the physician performing the abortion THE PHYSICIAN shall take all reasonable steps DURING THE PERFORMANCE OF THE ABORTION, consistent with the procedure used and in keeping with good medical practice, to preserve the life and health of the fetus, if these steps do not pose an increased risk to the life or health of the woman on whom the abortion is performed.

B. B. This section does not apply if there is a medical emergency.

C. C. As used in this section AND SECTION 36-2301.02:

1. "Abortion" means the use of an instrument, medicine or drug or other substance or device with the intent to terminate a pregnancy for reasons other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to terminate an ectopic pregnancy or to remove a dead fetus. Abortion does not include birth control devices or oral contraceptives.

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

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3. "Viable fetus" means the unborn offspring of human beings that has reached a stage of fetal development so that, in the judgment of the attending physician on the particular facts of the case, there is a reasonable probability of the fetus' sustained survival outside the uterus, with or without artificial support.

4. "PHYSICIAN" MEANS ANY PERSON LICENSED UNDER TITLE 32, CHAPTER 13 OR 17.

Sec. 3. Section 36-2301.02, Arizona Revised Statutes, is amended to read:

36-2301.02. Review of ultrasound results

A. BEGINNING ON JANUARY 1, 2001, a person who performs SHALL NOT KNOWINGLY PERFORM an abortion AFTER TWELVE WEEKS' GESTATION UNLESS THE PERSON shall estimate the gestational age of the fetus using obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rule BASED ON BIPARIETAL DIAMETER AND FEMUR LENGTH ACCORDING TO THE HADLOK MEASUREMENT SYSTEM OR OTHER EQUIVALENT MEASUREMENT SYSTEMS USING ULTRASOUND EXAMINATION AS PROVIDED IN RULE.

B. BEGINNING ON JANUARY 1, 2001, a person who performs SHALL NOT KNOWINGLY PERFORM an abortion AFTER TWELVE WEEKS' GESTATION UNLESS THE PERSON shall ensure that each set of fetal remains IS sent to persons or corporations contracted pursuant to this section. The person performing the abortion shall ensure that the fetal and embryonic tissues removed from a woman as a result of a second or third trimester abortion are IS sent to persons or corporations contracted pursuant to this section. The person performing the abortion shall ensure that each set of fetal remains ULTRASOUND RESULT OR RESULTS FROM THE WOMAN is sent in a manner that it is distinguishable from, and not mixed with, any other set of remains ULTRASOUND RESULTS and is accompanied with a copy of any report that notes the estimate of the fetus' gestational age that was made before the abortion.

C. The department of health services shall contract with qualified public or private persons or corporations for the delivery of pathology services REVIEW OF ULTRASOUND RESULTS TO DETERMINE COMPLIANCE WITH THIS SECTION. The department shall issue requests for proposals for the purpose of establishing contracts pursuant to this section. At a minimum, the contracts shall require the contractor to:

1. Perform a pathological examination of fetal and embryonic tissues REVIEW ULTRASOUND RESULTS to verify the accuracy of the estimate of the fetus' ESTIMATED gestational age made before the abortion AND TO VERIFY THAT THE ESTIMATE WAS MADE IN REASONABLE COMPLIANCE WITH THE HADLOK MEASUREMENT SYSTEM OR ANOTHER EQUIVALENT MEASUREMENT SYSTEM AS PROVIDED IN RULE.

2. Perform a pathological examination of fetal and embryonic tissues to verify that the estimate of the fetus' gestational age made before the abortion was made in reasonable compliance with obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rule.
3. Make available additional evaluation of the fetal and embryonic tissues at the direction and cost of either the person who performed the abortion or the abortion clinic.

D. The contractor shall use a statistically valid method of sampling to conduct the pathological examination of fetal and embryonic tissues resulting from implantation in the uterus REVIEW OF ULTRASOUND RESULTS from a woman as a result of a second trimester abortion of a fetus of up to eighteen weeks' gestation. The contractor shall conduct a pathological examination of all fetal and embryonic tissues resulting from implantation in the uterus REVIEW OF ALL ULTRASOUND RESULTS from a woman as a result of an abortion of a fetus of eighteen or more weeks' gestation.

E. BEGINNING ON JANUARY 1, 2001, on a monthly basis, persons or corporations providing pathology services ULTRASOUND REVIEW SERVICES to the department pursuant to this section shall file a report with the director regarding test ULTRASOUND results, noting:

1. Any instances in which the contractor believes there was a significant inaccuracy in the age-estimate ESTIMATED GESTATIONAL AGE OF THE FETUS made before the abortion.

2. Any circumstances that, based on the contractor's professional judgment, might explain a significant inaccuracy reported pursuant to paragraph 1 of this subsection.

3. Whether there was reasonable compliance pursuant to subsection C, paragraph 2 of this section.

4. Whether, based on the results of the pathologist's examination REVIEW OF EACH ULTRASOUND, the doctor PHYSICIAN should have filed a fetal death certificate with the department of health services as required by section 36-329, subsection C.

F. The department of health services shall forward the report or portions of the report within thirty working days to the appropriate professional regulatory boards for their review and appropriate action.

G. Except as provided by subsection F of this section, the reports required by this section are confidential and disclosable by the department or its contractor only in aggregate form for statistical or research purposes. Except as provided by subsection F of this section, information relating to any physician, hospital, clinic or other institution shall not be released. Personally identifiable patient information shall not be released by the department or its contractor.
Sec. 4.  Laws 1999, chapter 311, section 5 is amended to read:

Sec. 5.  Abortion clinics, rules; exemption for rule making; effective date of rules

A. On or before December 31, 1999, the department of health services shall adopt rules, in addition to any other applicable rules for health care institutions, that at a minimum meet the requirements of title 36, chapter 4, article 10, Arizona Revised Statutes, as added by this act, LAWS 1999, CHAPTER 311, relating to abortion clinics' physical facilities, supplies and equipment, personnel, medical screening and evaluation, the abortion procedure, the recovery room and the follow-up visit.

B. On or before March OCTOBER 31, 2000, the department of health services shall adopt rules regarding the REVIEW OF ULTRASOUND RESULTS pathological examination of fetal and embryonic tissues pursuant to section 36-2301.02, Arizona Revised Statutes, as added by this act LAWS 1999, CHAPTER 311.

C. The department of health services is exempt from the provisions of title 41, chapter 6, Arizona Revised Statutes, until March OCTOBER 31, 2000 with respect to the adoption of rules required pursuant to title 36, chapter 4, article 10, Arizona Revised Statutes, as added by this act and section 36-2301.02, Arizona Revised Statutes, as added by this act LAWS 1999, CHAPTER 311.

D. The department shall provide the public with an opportunity to comment on the proposed rules and shall hold at least one public hearing on the proposed rules.

E. Rules adopted pursuant to title 36, chapter 4, article 10, Arizona Revised Statutes, as added by this act LAWS 1999, CHAPTER 311, are effective from and after March 31, 2000.

F. Rules adopted pursuant to section 36-2301.02, Arizona Revised Statutes, as added by this act LAWS 1999, CHAPTER 311, are effective from and after June 30 DECEMBER 31, 2000.

Sec. 6.  Laws 1999, chapter 311, section 6 is amended to read:

Sec. 6.  Exemption from procurement code

The department of health services is exempt from the procurement code requirements of title 41, chapter 23, Arizona Revised Statutes, until April 1 DECEMBER 31, 2000 to contract with qualified public or private persons or corporations for the delivery of pathology services for fetal and embryonic tissues ULTRASOUND REVIEW SERVICES.  THE DEPARTMENT SHALL REPORT TO THE GOVERNOR, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE BY JANUARY 31, 2001 ON ANY DEPARTURES FROM THE PROCUREMENT CODE AND THE REASON FOR THE DEPARTURE.

Sec. 7.  Laws 1999, chapter 311, section 7 is amended to read:

Sec. 7.  Review of ultrasound results; auditor general report

By December 31, 2002 2003, the auditor general shall evaluate the first two years' operation of the effectiveness of the pathological examination of fetal and embryonic tissues REVIEW OF ULTRASOUNDS required by section
36-2301.02, Arizona Revised Statutes, in ensuring compliance with the provisions of section 36-2301.01, Arizona Revised Statutes. The auditor general's report shall be delivered to the governor, the president of the senate and the speaker of the house of representatives and a copy of this report shall be provided to the secretary of state and the director of the department of library, archives and public records.

Sec. 7. Laws 1999, chapter 311, section 9 is amended to read:

Sec. 9. Joint health committee of reference; offices and clinics of health care providers; review of exemption

The joint health committee of reference shall review the types of facilities that remain exempt from regulation by the department of health services pursuant to section 36-402, paragraph 3, Arizona Revised Statutes, after the legislature eliminated the exemptions for urgent care centers and abortion clinics during the first regular session of the forty-fourth legislature. The committee shall make recommendations by no later than December 31, 1999 2001 to the governor, the speaker of the house of representatives and the president of the senate as to which classes of exempt facilities should be regulated by the department of health services to ensure the public health. The board of medical examiners and the department of health services shall provide assistance to the committee as requested by the committee chairmen.

Sec. 8. Laws 1999, chapter 311, section 10 is amended to read:

Sec. 10. Severability

If a provision of this act OR A RULE ADOPTED PURSUANT TO THIS ACT is held invalid, the invalidity of that specific provision does not affect the validity of any other section of this act OR ANY OTHER RULE ADOPTED PURSUANT TO THIS ACT that is not specifically held to be invalid, and to this end the provisions of this act AND RULES ADOPTED PURSUANT TO THIS ACT are severable.

Sec. 9. Exemption from rule making

The department of health services is exempt from title 41, chapter 6, Arizona Revised Statutes, until March 31, 2001 with respect to the adoption or amendment of rules as required pursuant to this act.

Sec. 10. Retroactivity

Section 36-2301.02, Arizona Revised Statutes, as amended by this act, is effective retroactively to from and after June 30, 2000.

APPROVED BY THE GOVERNOR APRIL 24, 2000.