

Chapter 44. Abortion Facilities

Subchapter A. General Provisions

§4401. Definitions

Abortion—any surgical procedure performed, after pregnancy has been medically verified, with the intent to cause the termination of the pregnancy, other than for the purpose of:

1. producing a live birth;
2. removing an ectopic pregnancy; or
3. removing a dead fetus caused by a spontaneous abortion.

Active Admitting Privileges—the physician is a member in good standing of the medical staff of a hospital that is currently licensed by the department, with the ability to admit a patient and to provide diagnostic and surgical services to such patient.

1. The hospital shall be located not further than 30 miles from the location at which the abortion is performed or induced, and shall provide obstetrical or gynecological health care services.

2. Violations of active admitting privileges provisions shall be fined not more than \$4,000 per violation.

Administrator—the person responsible for the day-to-day management, supervision, and operation of the outpatient abortion facility.

Change of Ownership (CHOW)—transfer of ownership to someone other than the owner listed on the initial licensing application or license renewal application.

Coerced Abortion—the use of force, intimidation, threat of force, threat of deprivation of food and shelter, or the deprivation of food and shelter by a parent or any other person in order to compel a female child to undergo an abortion against her will, whether or not the abortion procedure has been attempted or completed.

CRNA—a certified registered nurse anesthetist licensed by the Louisiana State Board of Nursing who is under the supervision of the physician performing the abortion or an anesthesiologist who is immediately available if needed as defined in the medical staff bylaws and in accordance with applicable licensing boards. A CRNA is an advanced practice registered nurse educated in the field of nurse anesthesia and certified according to the requirements of a nationally recognized certifying body such as the Council on Certification of Nurse Anesthetists or the Council on Recertification of Nurse Anesthetists, as approved by the board and who is authorized to select and administer anesthetics or ancillary services to patients under their care.

Department—the Department of Health and Hospitals (DHH).

Facility Need Review (FNR)—pursuant to R.S. 40:2116, a process that requires licensure applicants to prove the need for the services prior to applying for licensure.

First Trimester—the time period up to 14 weeks after the first day of the last menstrual period.

General Anesthesia—any drug, element, or other material which, when administered, results in a controlled state of unconsciousness accompanied by a partial or complete loss of protective reflexes, including a loss of ability to independently maintain an airway and respond purposefully to physical stimuli or verbal command.

Gestational Age—the age of the unborn child as measured by the time elapsed since the first day of the last menstrual period as determined by a physician and confirmed through the use of an ultrasound.

Health Standards Section (HSS)—the Department of Health and Hospitals, Health Standards Section.

Medical Director—a physician who is responsible for all of the medical care provided to patients in the outpatient abortion facility, and for the ethical and professional practices of the medical staff.

OPH—the Department of Health and Hospitals, Office of Public Health.

OSFM—the Department of Public Safety and Corrections, Office of State Fire Marshal, Public Safety Services.

Outpatient Abortion Facility—any outpatient facility or clinic, other than a hospital or an ambulatory surgical center as defined by applicable state law, in which any second trimester or five or more first trimester abortions per calendar year are performed.

Patient—the woman receiving services from an outpatient abortion facility.

Peer Review—the evaluation of work by one or more persons of similar competence to the producers of the work.

Physician—a doctor who possesses a current license to practice medicine in Louisiana, is in good standing with the Louisiana State Board of Medical Examiners, and whose

license does not restrict the doctor from performing the services at the outpatient abortion facility.

Physician Assistant (PA)—an individual who is currently approved by, licensed by, and in good standing with the Louisiana State Board of Medical Examiners to perform medical services under the supervision of a physician or group of physicians who are licensed by and registered with the Louisiana State Board of Medical Examiners to supervise a physician assistant and who is acting within the scope of all applicable state laws and the individual's professional license.

Products of Conception—placenta, amniotic sac or membrane, embryo, or fetal elements that result from a human pregnancy.

Second Trimester—the time period from 14 to 23 weeks after the first day of the last menstrual period.

Secretary—the secretary of the Louisiana Department of Health and Hospitals.

Telecommunications—any means of transmitting messages at a distance, including but not limited to:

1. telephones;
2. cell phones;
3. pagers; or
4. other similar devices which foster communication.

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2. either a detection of fetal heart tones or ultrasonography.

B. Gestational age shall be estimated by the following methods pre-operatively:

1. first date of last menstrual period, if known;
2. pelvic examination; and
3. ultrasonography.

C. Laboratory Tests

1. The laboratory tests listed below shall be performed within 30 days prior to the abortion procedure:

- a. hematocrit or hemoglobin determination; and
- b. Rh Factor status.

2. The results of the laboratory tests as required in §4331.C.1.a-b shall be documented in the patient's medical record.

3. The physician performing the abortion shall document acknowledgement of the results of the laboratory tests in the patient's medical record prior to the abortion procedure.

D. Minors

1. No physician shall perform or induce an abortion upon any pregnant woman who is under the age of 18 years and who is not emancipated judicially or by marriage unless the physician has received the following:

a. one of the following documents:

i. a notarized statement, pursuant to applicable state laws, rules, and regulations, signed by either the mother, father, legal guardian, or tutor of the minor declaring that the affiant has been informed that the minor intends to seek an abortion and that the affiant consents to the abortion; or

ii. a court order pursuant to applicable state laws, rules, and regulations; and

b. a signed, dated, and timed document obtained by the attending physician and/or licensed nurse, before the administration of any type of anesthesia which indicates if any person has or has not compelled the female child to undergo an abortion against her will.

2. All documentation related to consent and coercion shall be maintained in the medical record.

E. Ultrasound Requirements. Except in the case of a medical emergency, consent to an abortion of an unborn child at any stage of gestational development is voluntary and informed only if an obstetric ultrasound is performed in accordance with the provisions of this Section and applicable state laws, rules, and regulations.

1. Qualifications to Perform Ultrasound. The ultrasound shall be performed by the physician who is to perform the abortion or a qualified person who is the physician's agent. For purposes of this Section, "qualified

Subchapter C. Pre-Operative, Intra-Operative, and Post-Operative Procedures

§4431. Screening and Pre-Operative Services

A. Verification of Pregnancy. The presence of an intrauterine pregnancy shall be verified by the following:

1. urine or serum pregnancy test performed on-site; and

person" means a person having documented evidence that he or she has completed a course in the operation of ultrasound equipment and is in compliance with any other requirements of law regarding the operation of ultrasound equipment.

2. Requirements. At least 24 hours prior to the pregnant woman having any part of an abortion performed or induced, and prior to the administration of any anesthesia or medication in preparation for the abortion on the pregnant woman, the physician who is to perform the abortion or a qualified person who is the physician's agent shall comply with all of the following requirements:

a. perform an obstetric ultrasound on the pregnant woman, offer to simultaneously display the screen which depicts the active ultrasound images so that the pregnant woman may view them and make audible the fetal heartbeat, if present, in a quality consistent with current medical practice. Nothing in this Section shall be construed to prevent the pregnant woman from not listening to the sounds detected by the fetal heart monitor, or from not viewing the images displayed on the ultrasound screen;

b. provide a simultaneous and objectively accurate oral explanation of what the ultrasound is depicting, in a manner understandable to a layperson, which shall include the presence and location of the unborn child within the uterus and the number of unborn children depicted, the dimensions of the unborn child, and the presence of cardiac activity if present and viewable, along with the opportunity for the pregnant woman to ask questions;

c. offer the pregnant woman the option of requesting an ultrasound photograph or print of her unborn child of a quality consistent with current standard medical practice that accurately portrays, to the extent feasible, the body of the unborn child including limbs, if present and viewable;

d. from a form that shall be produced and made available by the department, staff will orally read the statement on the form to the pregnant woman in the ultrasound examination room prior to beginning the ultrasound examination, and obtain from the pregnant woman a copy of a completed, signed, and dated form;

e. retain copies of the election form and certification prescribed above. The certification shall be placed in the medical file of the woman and shall be kept by the outpatient abortion facility for a period of not less than seven years. If the woman is a minor, the certification shall be placed in the medical file of the minor and kept for at least ten years from the time the minor reaches the age of majority. The woman's medical files shall be kept confidential as provided by law.

3. Options to view or listen to required medical information shall be in accordance with applicable state laws, rules, and regulations.

a. A pregnant woman may choose not to exercise her option to request an ultrasound photograph print.

b. A pregnant woman may choose not to view the ultrasound images required to be provided to and reviewed with the pregnant woman.

c. A pregnant woman may choose not to listen to the sounds detected by the fetal heart monitor required to be provided to the pregnant woman.

F. Medical Emergencies. Upon a determination by a physician that a medical emergency, as defined pursuant to applicable state law, exists with respect to a pregnant woman, the outpatient abortion facility shall certify in writing the specific medical conditions that constitute the emergency. The certification shall be placed in the medical file of the woman.

G. Information and Informed Consent

1. Oral and Written Information Provided by Physician or Referring Physician

a. At least 24 hours before the abortion the physician who is to perform the abortion or the referring physician shall provide informed consent to the pregnant woman seeking an abortion. The informed consent shall be communicated both orally and in-person, and in writing, and shall be provided in a private room.

b. Documentation. The documentation of all such informed consent provided shall be maintained in the patient's medical record.

c. The informed consent shall also contain language explaining the following information to the pregnant woman seeking an abortion:

i. the option of reviewing and receiving an oral explanation of an obstetric ultrasound image of the unborn child;

ii. that the pregnant woman shall not be required to view or receive an explanation of the obstetric ultrasound images;

iii. that the pregnant woman shall not be penalized if she chooses not to view or receive an explanation of the obstetric ultrasound images;

iv. that the physician shall not be penalized if the pregnant woman chooses not to view or receive an explanation of the obstetric ultrasound images; and

v. inclusion in the patient's printed materials of a comprehensive list, compiled by the department, of facilities that offer obstetric ultrasounds free of charge.

2. Oral Information from a Physician or Qualified Person

a. When an initial contact is made by a person seeking to schedule an abortion for herself, a minor, or other adult woman, regardless of the means of contact, the physician who is to perform the abortion or any qualified person acting on behalf of the physician shall inform the person of the internet address of the department's abortion alternatives and informed consent website which includes links to mental health counseling.

3. Oral Information Provided by Physician, Referring Physician, or Qualified Person

a. At least 24 hours before a scheduled abortion the physician who is to perform the abortion, the referring physician, or a qualified person shall inform the pregnant woman seeking an abortion, orally and in-person that:

i. medical assistance may be available for prenatal care, childbirth, and neonatal care and that more detailed information on the availability of such assistance is contained on the department's website and printed materials;

ii. a pamphlet is available that describes the unborn child and contains a directory of agencies that offer an abortion alternative;

iii. the father of the unborn child is liable to assist in the support of the child, even if he has offered to pay for the abortion. In the case of rape this information may be omitted;

iv. the pregnant woman seeking an abortion is free to withhold or withdraw consent to the abortion at any time before or during the abortion without affecting her right to future care or treatment and without loss of any state or federally funded benefits to which she might otherwise be entitled.

4. Provision of Printed Materials

a. At least 24 hours before the abortion, the pregnant woman seeking an abortion shall be given a copy of the printed materials, pursuant to any applicable state laws, rules, and regulations, by the physician who is to perform the abortion, the referring physician, or a qualified person, including but not limited to the following:

i. as a condition for consent to undergoing an elective abortion and, as such to be deemed voluntary and informed, the woman or minor female considering abortion shall be given a copy of the DHH *Point of Rescue* pamphlet by the physician who is to perform the abortion or a qualified person, except in the case of medical emergency as defined by applicable state laws.

NOTE: The provisions of this Section requiring a physician or qualified person to provide required printed materials to a woman considering an abortion shall become effective 30 days after the department publishes a notice of the availability of such materials.

b. If the pregnant woman seeking an abortion is unable to read the materials, the material shall be read to her.

c. If the pregnant woman seeking an abortion asks questions concerning any of the information or materials, answers shall be provided to her in her own language.

5. Certification and Reporting

a. Prior to the abortion, the outpatient abortion facility shall ensure the pregnant woman seeking an abortion has certified, in writing on a form provided by the department that the information and materials required were provided at least 24 hours prior to the abortion. This form shall be maintained in the woman's medical record.

b. Prior to performing the abortion, the physician who is to perform the abortion or his agent receives a copy of the written certification.

c. The pregnant woman seeking an abortion is not required to pay any amount for the abortion procedures until the 24-hour period has expired.

6. Reporting Requirements. Any physician who has provided the information and materials to any woman in accordance with the requirements of this Section shall provide to the department:

a. with respect to a woman upon whom an abortion is performed, all information as required by applicable state laws, rules, and regulations as well as the date upon which the information and materials required to be provided under this Section were provided, as well as an executed copy of the certification form. This form shall be maintained in the woman's medical record;

b. with respect to any woman to whom the printed and oral information and materials have been provided pursuant to applicable state laws, rules, and regulations, but upon whom the physician has not performed an abortion, the name and address of the facility where the required information was provided and if executed by the woman, a copy of the certification form required. This form shall be maintained in the woman's medical record.

7. Information Provided by the Physician Performing or Inducing an Abortion. On the date the abortion is performed or induced, a physician performing or inducing the abortion shall provide the pregnant woman with all of the following before the abortion is performed or induced:

a. a telephone number by which the pregnant woman may reach the physician, or other health care personnel employed by the physician or facility at which the abortion was performed or induced, who has 24 hours per day access to the woman's relevant medical records so that the woman may request assistance related to any complication that arises from the performance or induction of the abortion, or to ask health-related questions regarding the abortion; and

b. the name and telephone number of the hospital nearest to the home of the pregnant woman at which an emergency arising from the abortion would be treated.

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