LEGISLATURE OF THE STATE OF IDAHO
Sixty-fourth Legislature First Regular Session - 2017

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 250

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO ABORTION; PROVIDING LEGISLATIVE FINDINGS; AMENDING SECTION
18-617, IDAHO CODE, TO REMOVE LANGUAGE PROVIDING THAT A PHYSICIAN HAS
EXAMINED IN PERSON THE WOMAN TO WHOM THE ABORTIFACIENT IS ADMINISTERED
TO DETERMINE THE MEDICAL APPROPRIATENESS OF SUCH ADMINISTRATION AND
HAS DETERMINED THAT THE ABORTIFACIENT IS SUFFICIENTLY SAFE FOR USE IN
THE GESTATIONAL AGE AT WHICH IT WILL BE ADMINISTERED; AMENDING SECTION
54-5707, IDAHO CODE, TO REMOVE LANGUAGE PROVIDING THAT NO DRUG MAY BE
PRESCRIBED THROUGH TELEHEALTH SERVICES FOR THE PURPOSES OF CAUSING AN
ABORTION; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. LEGISLATIVE FINDINGS. (1) Exercising its proper legal au-
thority, as defended by the U.S. Supreme Court in Gonzales v. Carhart, 550
U.S. 124, 145 (2007), the Legislature previously found and further finds,
and reasserts, that women and girls are best served by an in-person examina-
tion and counseling by a qualified physician prior to undergoing a chemical
abortion;

(2) The Legislature previously found and further finds that the chem-
ical abortion procedure presents significant health risks to women and
girls undertaking the procedure; evidence presented to the Legislature in
2015 showed that the manufacturer of Mifeprex conceded before the U.S. Food
and Drug Administration that "nearly all of the women who receive Mifeprex
and misoprostol will report adverse reactions, and many can be expected to
report more than one such reaction." (See 2004 Mifeprex Final Printed Label-
ing);

(3) In 2015, the Legislature received evidence that the U.S. Food and
Drug Administration published a study in April of 2011 reporting that it had
knowledge of 2,207 adverse reactions in treatments using mifepristone to ac-
complish a chemical abortion. Those reactions included 14 deaths, 612 hos-
pitalizations (58 for ectopic pregnancies), 339 blood transfusions and 256
infections. (FDA, Mifepristone U.S. Postmarketing Adverse Events Summary
through April 30, 2011);

(4) The Legislature, during extensive hearings in the 2015 legisla-
tive session, received additional testimony and evidence of a peer-reviewed
study finding that the overall occurrence of health problems and comp-
lications was four times higher for women and girls undergoing chemical
abortions as compared to those choosing surgical abortions. (N. Niinimäki
et al., Immediate Complications After Medical Compared With Surgical Termi-
nation of Pregnancy, Obstetrics & Gynecology 114:795, October 2009);

(5) The Legislature received evidence that, by the terms of the U.S.
Food and Drug Administration's 2004 Final Printed Labeling for Mifeprex,
use of the drug to induce a chemical abortion is "contraindicated" if a pa-
tient does not have adequate access to medical facilities for the emergency
treatment of incomplete abortion, hemorrhaging and other life-threatening complications; further testimony before the Senate and House of Representative State Affairs Committees raised public health concerns about the large portion of Idaho's population residing more than one hour's drive away from medical facilities equipped to deal with such emergencies;

(6) During public hearings on HB154 (Chapter 270, 2015 Session Laws), legislators received testimony that Planned Parenthood did not offer chemical abortions using the telemedicine method in Idaho, nor did it have plans to do so; moreover, legislators received testimony that Planned Parenthood had not used the telemedicine procedure within the state in the prior 15 years during which the RU-486 regimen had been legalized by the U.S. Food and Drug Administration for use as an abortifacient. (House of Representatives State Affairs Committee Minutes, February 23, 2015; Senate State Affairs Committee Minutes, March 16, 2015);

(7) And, operating under its constitutional authority, as defended by the U.S. Supreme Court in Harris v. McRae, 448 U.S. 297, 325 (1980), the Legislature found and further finds that "abortion is inherently different from other medical procedures, because no other procedure involves the purposeful termination of a potential life";

(8) The Legislature found and further finds that chemical abortions performed via telemedicine methods undermine the creation of a healthy doctor-patient relationship;

(9) The Legislature therefore concludes, and hereby reasserts, that chemical abortions performed by remote teleconferencing methods represent substandard medical care and that women and girls undergoing abortion deserve and require a higher level of professional medical care;

(10) The Legislature has been provided a copy of the Stipulated Facts in Planned Parenthood of the Great Northwest and the Hawaiian Islands v. Lawrence G. Wasden, et al., Case No. 1:15-cv-00557-BLW. The Legislature asserts that many of the stipulated facts and characterizations of political purposes are contrary to the Legislature's actual prior findings and health-care concerns for women and girls. The Stipulated Facts does not reflect or accurately state the testimony before the Senate and House of Representatives State Affairs Committees and is not an accurate reflection of the Legislature's intent and purposes; and

(11) Notwithstanding the foregoing, and pursuant to the order continuing stay of enforcement entered by Judge B. Lynn Winmill, the Legislature enacts Sections 2 and 3 of this Act.

SECTION 2. That Section 18-617, Idaho Code, be, and the same is hereby amended to read as follows:

18-617. CHEMICAL ABORTIONS. (1) As used in this section:
(a) "Abortifacient" means mifepristone, misoprostol and/or other chemical or drug dispensed with the intent of causing an abortion as defined in section 18-604(1), Idaho Code. Nothing in the definition shall apply when used to treat ectopic pregnancy;
(b) "Chemical abortion" means the exclusive use of an abortifacient or combination of abortifacients to effect an abortion;
(c) "Physician" has the same meaning as provided in section 18-604(11), Idaho Code.
(2) No physician shall give, sell, dispense, administer, prescribe or otherwise provide an abortifacient for the purpose of effecting a chemical abortion unless the physician:
   (a) Has the ability to assess the duration of the pregnancy accurately in accordance with the applicable standard of care for medical practice in the state;
   (b) Has determined, if clinically feasible, that the unborn child to be aborted is within the uterus and not ectopic;
   (c) Has the ability to provide surgical intervention in cases of incomplete abortion or severe bleeding, or, if the physician does not have admitting privileges at a local hospital, has made and documented in the patient's medical record plans to provide such emergency care through other qualified physicians who have agreed in writing to provide such care;
   (d) Informs the patient that she may need access to medical facilities equipped to provide blood transfusions and resuscitation, if necessary, as a result of or in connection with the abortion procedure on a twenty-four (24) hour basis. If the appropriate medical facility is other than a local hospital emergency room, the physician shall provide the patient with the name, address and telephone number of such facility in writing; and
   (e) Has examined in person the woman to whom the abortifacient is administered to determine the medical appropriateness of such administration and has determined that the abortifacient is sufficiently safe for use in the gestational age at which it will be administered; and
   (f) Has complied with the informed consent provisions of section 18-609, Idaho Code.

(3) The physician inducing the abortion, or a person acting on behalf of the physician inducing the abortion, shall make reasonable efforts to ensure that the patient returns for a follow-up visit so that a physician can confirm that the pregnancy has been terminated and assess the patient's medical condition.

SECTION 3. That Section 54-5707, Idaho Code, be, and the same is hereby amended to read as follows:

54-5707. PRESCRIPTIONS. (1) A provider with an established provider-patient relationship, including a relationship established pursuant to section 54-5705, Idaho Code, may issue prescription drug orders using telehealth services within the scope of the provider's license and according to any applicable laws, rules and regulations, including the Idaho community standard of care; provided however, that the prescription drug shall not be a controlled substance unless prescribed in compliance with 21 U.S.C. section 802(54) (A).

(2) Nothing in this chapter shall be construed to expand the prescriptive authority of any provider beyond what is authorized by the provider's licensing board.

(3) No drug may be prescribed through telehealth services for the purpose of causing an abortion.
SECTION 4. An emergency existing therefore, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.