LEGISLATURE OF THE STATE OF IDAHO

Sixty-fourth Legislature Second Regular Session - 2018

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 638

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO THE ABORTION COMPLICATIONS REPORTING ACT; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 95, TITLE 39, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE FINDINGS AND PURPOSE, TO DEFINE TERMS, TO ESTABLISH PROVISIONS REGARDING REPORTING OF ABORTION COMPLICATIONS, TO PROVIDE FOR REPORTING FORMS, TO ESTABLISH PROVISIONS REGARDING PENALTIES AND PROFESSIONAL SANCTIONS, TO PROVIDE CLARIFICATION FOR CONSTRUCTION OF THIS CHAPTER, TO PROVIDE A RIGHT OF INTERVENTION AND TO PROVIDE SEVERABILITY; AMENDING SECTION 54-1413, IDAHO CODE, TO PROVIDE GROUNDS FOR PROFESSIONAL DISCIPLINE FOR NURSES AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 54-1814, IDAHO CODE, TO PROVIDE GROUNDS FOR PROFESSIONAL DISCIPLINE FOR PHYSICIANS, PHYSICIAN ASSISTANTS AND CERTAIN OTHER INDIVIDUALS.

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

SECTION 1. That Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 95, Title 39, Idaho Code, and to read as follows:

CHAPTER 95

ABORTION COMPLICATIONS REPORTING ACT

39-9501. SHORT TITLE. This act shall be known and may be cited as the "Abortion Complications Reporting Act."

39-9502. LEGISLATIVE FINDINGS AND PURPOSE. (1) The legislature of the state of Idaho asserts and finds that:

(a) The state "has legitimate interests from the outset of pregnancy in protecting the health of women," as found by the United States Supreme Court in Planned Parenthood of Southeastern Pennsylvania v. Casey;

(b) Specifically, the state "has a legitimate concern with the health of women who undergo abortions," as found by the United States Supreme Court in Akron v. Akron Ctr. for Reproductive Health, Inc.;

(c) Surgical abortion is an invasive procedure that can cause severe physical and psychological complications for women, both short-term and long-term, including, but not limited to, uterine perforation, cervical perforation, infection, bleeding, hemorrhage, blood clots, failure to actually terminate the pregnancy, incomplete abortion, retained tissue, pelvic inflammatory disease, endometritis, missed ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure, metabolic disorder, shock, embolism, coma, placenta previa in subsequent pregnancies, preterm delivery in subsequent pregnancies, free fluid in the abdomen, adverse reactions to anesthesia and other drugs, an increased risk for developing breast cancer, psychological or emo-
tional complications such as depression, suicidal ideation, anxiety and sleeping disorders, and death;
(d) To facilitate reliable scientific studies and research on the safety and efficacy of abortion, it is essential that the medical and public health communities have access to accurate information both on the abortion procedure and on complications resulting from abortion;
(e) Abortion "record keeping and reporting provisions that are reasonably directed to the preservation of maternal health and that properly respect a patient's confidentiality and privacy are permissible," according to the United States Supreme Court in Planned Parenthood v. Danforth;
(f) Abortion and complication reporting provisions do not impose an undue burden on a woman's right to choose whether or not to terminate a pregnancy. Specifically, the "collection of information with respect to actual patients is a vital element of medical research, and so it cannot be said that the requirements serve no purpose other than to make abortions more difficult," as found by the United States Supreme Court in Planned Parenthood v. Casey;
(g) The use of RU-486 as part of a chemical abortion can cause significant medical risks including, but not limited to, abdominal pain, cramping, vomiting, headache, fatigue, uterine hemorrhage, infections and pelvic inflammatory disease;
(h) The risk of abortion complications increases with advancing gestational age;
(i) Studies document that increased rates of complications, including incomplete abortion, occur even within the gestational limit approved by the federal food and drug administration (FDA);
(j) In July 2011, the FDA reported two thousand two hundred seven (2,207) adverse events after women used RU-486 for abortions. Among these events were fourteen (14) deaths, six hundred twelve (612) hospitalizations, three hundred thirty-nine (339) blood transfusions, and two hundred fifty-six (256) infections, including forty-eight (48) severe infections;
(k) The adverse event reports systems relied upon by the FDA have limitations and typically detect only a small proportion of events that actually occur. Furthermore, the FDA has failed to publicly release data since 2011, and it is necessary to develop a state-based information system in the wake of court rulings legalizing telemedicine abortions; and
(l) To promote its interest in maternal health and life, the state of Idaho maintains an interest in:
   (i) Collecting information on all complications from all abortions performed in the state; and
   (ii) Compiling statistical reports based on abortion complication information collected pursuant to this chapter for future scientific studies and public health research.
(2) Based on the findings in subsection (1) of this section, it is the purpose of this chapter to promote the health and safety of women by adding to the sum of medical and public health knowledge through the compilation of
relevant data on all abortions performed in the state, as well as on all medi-
cal complications and maternal deaths resulting from these abortions.

39-9503. DEFINITIONS. As used in this chapter:
(1) "Abortion" shall have the same meaning as provided in section
(2) "Complication" means an abnormal or a deviant process or event
arising from the performance or completion of an abortion, as follows:
(a) Uterine perforation or injury to the uterus;
(b) Injury or damage to any organ inside the body;
(c) Cervical perforation or injury to the cervix;
(d) Infection;
(e) Heavy or excessive bleeding;
(f) Hemorrhage;
(g) Blood clots;
(h) Blood transfusion;
(i) Failure to actually terminate the pregnancy;
(j) Incomplete abortion or retained tissue;
(k) The need for follow-up care, surgery or an aspiration procedure for
incomplete abortion or retained tissue;
(l) Weakness, nausea, vomiting or diarrhea that lasts more than twenty-
four (24) hours;
(m) Pain or cramps that do not improve with medication;
(n) A fever of one hundred and four-tenths (100.4) degrees or higher for
more than twenty-four (24) hours;
(o) Hemolytic reaction due to the administration of ABO-incompatible
blood or blood products;
(p) Hypoglycemia where onset occurs while the patient is being cared
for in the abortion facility;
(q) Physical injury associated with care received in the abortion fa-
cility;
(r) Pelvic inflammatory disease;
(s) Endometritis;
(t) Missed ectopic pregnancy;
(u) Cardiac arrest;
(v) Respiratory arrest;
(w) Renal failure;
(x) Metabolic disorder;
(y) Shock;
(z) Embolism;
(aa) Coma;
(bb) Placenta previa or preterm delivery in subsequent pregnancies;
(cc) Free fluid in the abdomen;
(dd) Adverse or allergic reaction to anesthesia or other drugs;
(ee) Subsequent development of breast cancer;
(ff) Inability, refusal or unwillingness to have follow-up care,
surgery or an aspiration procedure following an incomplete abortion or
retained tissue;
(gg) Inability, refusal or unwillingness to have a follow-up visit;
(hh) Referral to or care provided by a hospital, emergency department or urgent care clinic or department;
(ii) Death;
(jj) Any psychological or emotional condition reported by the patient, such as depression, suicidal ideation, anxiety or a sleeping disorder;
or
(kk) Any other adverse event as defined by the federal food and drug administration criteria provided in the medwatch reporting system.
(3) "Department" means the state department of health and welfare.
(4) "Facility" means any public or private hospital, clinic, center, medical school, medical training institution, health care facility, physician's office, infirmary, dispensary, ambulatory surgical center or other institution or location where medical care is provided to any person.
(5) "Hospital" means any institution licensed as a hospital pursuant to chapter 13, title 39, Idaho Code.
(6) "Medical practitioner" means a licensed medical care provider capable of making a diagnosis within the scope of such provider's license.
(7) "Pregnant" or "pregnancy" means the reproductive condition of having an unborn child in the uterus.

39-9504. ABORTION COMPLICATION REPORTING. (1) Every hospital, licensed health care facility or individual medical practitioner shall file a written report with the department regarding each woman who comes under the hospital's, health care facility's or medical practitioner's care and reports any complication, requires medical treatment or suffers death that the attending medical practitioner has reason to believe, in the practitioner's reasonable medical judgment, is a direct or an indirect result of an abortion. Such reports shall be completed by the hospital, health care facility or attending medical practitioner who treated the woman, signed by the attending medical practitioner and transmitted to the department within ninety (90) days from the last date of treatment or other care or consultation for the complication.
(2) Every hospital, licensed health care facility or individual medical practitioner required to submit a complication report shall attempt to ascertain and shall report on the following:
(a) The age and race of the woman;
(b) The woman's state and county of residence;
(c) The number of previous pregnancies, number of live births and number of previous abortions of the woman;
(d) The date the abortion was performed and the date that the abortion was completed, as well as the gestational age of the fetus, as defined in section 18-604, Idaho Code, and the methods used;
(e) Identification of the physician who performed the abortion, the facility where the abortion was performed and the referring medical practitioner, agency or service, if any; and
(f) The specific complication, as that term is defined in section 39-9503(2), Idaho Code, including, where applicable, the location of the complication in the woman's body, the date on which the complication occurred and whether there were any preexisting medical conditions that would potentially complicate pregnancy or the abortion.
(3) Reports required under this section shall not contain:
(a) The name of the woman;
(b) Common identifiers such as the woman's social security number or
    motor vehicle operator's license number; or
(c) Other information or identifiers that would make it possible to
    identify, in any manner or under any circumstances, a woman who has
    obtained an abortion and subsequently suffered an abortion-related
    complication.
(4) The department shall prepare a comprehensive annual statistical
    report for the legislature based on the data gathered from reports under
    this section. The statistical report shall not lead to the disclosure of the
    identity of any medical practitioner or person filing a report under this
    section nor of a woman about whom a report is filed. The aggregate data shall
    also be made independently available to the public by the department in a
    downloadable format.
(5) The department shall summarize aggregate data from the reports re-
    quired under this chapter and submit the data to the federal centers for dis-
    ease control and prevention for the purpose of inclusion in the annual vi-
    tal statistics report. The aggregate data shall also be made independently
    available to the public by the department in a downloadable format.
(6) Reports filed pursuant to this section shall not be deemed public
    records and shall remain confidential, except that disclosure may be made to
    law enforcement officials upon an order of a court after application showing
    good cause. The court may condition disclosure of the information upon any
    appropriate safeguards it may impose.
(7) Absent a valid court order or judicial subpoena, the department,
    any other state department, agency or office, or any employees or contrac-
    tor thereof shall not compare data concerning abortions or abortion compli-
    cations maintained in an electronic or other information system file with
    data in any other electronic or other information system, a comparison of
    which could result in identifying, in any manner or under any circumstances,
    a woman obtaining or seeking to obtain an abortion.
(8) Statistical information that may reveal the identity of a woman ob-
    taining or seeking to obtain an abortion shall not be maintained by the de-
    partment, any other state department, agency or office, or any employee or
    contractor thereof.
(9) The department or an employee or contractor of the department shall
    not disclose to a person or entity outside the department the reports or the
    contents of the reports required under this section in a manner or fashion
    that would permit the person or entity to whom the report is disclosed to
    identify, in any way or under any circumstances, the woman who is the subject
    of the report.
(10) Original copies of all reports filed under this section shall be
    available to the state board of medicine for use in the performance of its of-
    ficial duties.
(11) The department shall communicate this reporting requirement to
    all medical professional organizations, medical practitioners, hospitals,
    emergency departments, abortion facilities, clinics, ambulatory surgical
    facilities, and other health care facilities operating in the state.
39-9505. REPORTING FORMS. The department shall create the forms required by this chapter within sixty (60) days after the effective date of this chapter. Such forms shall provide for the reporting of information required by section 39-9504(2), Idaho Code. No provision of this chapter requiring the reporting of information on forms published by the department shall be applicable until ten (10) days after the requisite forms are first created or until the effective date of this chapter, whichever is later.

39-9506. PENALTIES AND PROFESSIONAL SANCTIONS. (1) Any person who willfully delivers or discloses to the department any report, record or information required pursuant to this chapter and known by him or her to be false is guilty of a misdemeanor.

(2) Any person who willfully discloses any information obtained from reports filed pursuant to this chapter, other than the disclosure authorized by this chapter or otherwise authorized by law, is guilty of a misdemeanor.

(3) Any person required under this chapter to file a report, keep any records or supply any information, who willfully fails to file such report, keep such records or supply such information at the time or times required by law or rule, is:

(a) Guilty of unprofessional conduct, and his or her professional license is subject to discipline in accordance with procedures governing his or her license; and

(b) Subject to a civil fine of five hundred dollars ($500) for each instance of failure to report, if such person is a medical practitioner responsible for filing an adverse reaction report with the department.

(4) In addition to the above penalties, any facility that willfully violates any of the requirements of this chapter shall:

(a) In the case of a first violation, be subject to a civil fine of one thousand dollars ($1,000) for each instance of failure to report;

(b) Have its license suspended for a period of six (6) months for the second violation; and

(c) Have its license suspended for a period of one (1) year upon a third or subsequent violation.

39-9507. CONSTRUCTION. (1) Nothing in this chapter shall be construed as creating or recognizing a right to abortion.

(2) It is not the intention of this chapter to make lawful an abortion that is currently unlawful.

39-9508. RIGHT OF INTERVENTION. The legislature, by concurrent resolution, may appoint one (1) or more of its members who sponsored or co-sponsored this chapter in his or her official capacity, or other member or members if the original sponsors and co-sponsors are no longer serving, to intervene as a matter of right in any case in which the constitutionality of this law is challenged.

39-9509. SEVERABILITY. The provisions of this chapter are hereby declared to be severable, and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for
any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

SECTION 2. That Section 54-1413, Idaho Code, be, and the same is hereby amended to read as follows:

54-1413. DISCIPLINARY ACTION. (1) Grounds for discipline. The board shall have the power to refuse to issue, renew or reinstate a license issued pursuant to this chapter and may revoke, suspend, place on probation, reprimand, limit, restrict, condition or take other disciplinary action against the licensee as it deems proper, including assessment of the costs of investigation and discipline against the licensee, upon a determination by the board that the licensee engaged in conduct constituting any one (1) of the following grounds:

(a) Made, or caused to be made, a false, fraudulent or forged statement or representation in procuring or attempting to procure a license to practice nursing;
(b) Practiced nursing under a false or assumed name;
(c) Is convicted of a felony or of any offense involving moral turpitude;
(d) Is or has been grossly negligent or reckless in performing nursing functions;
(e) Habitually uses alcoholic beverages or drugs as defined by rule;
(f) Is physically or mentally unfit to practice nursing;
(g) Violates the provisions of this chapter or rules and standards of conduct and practice as may be adopted by the board;
(h) Otherwise engages in conduct of a character likely to deceive, defraud or endanger patients or the public, which includes, but is not limited to, failing or refusing to report criminal conduct or other conduct by a licensee that endangers patients;
(i) Has been disciplined by a nursing regulatory authority in any jurisdiction. A certified copy of the order entered by the jurisdiction shall be prima facie evidence of such discipline;
(j) Failure to comply with the terms of any board order, negotiated settlement or probationary agreement of the board, or to pay fines or costs assessed in a prior disciplinary proceeding;
(k) Engaging in conduct with a patient that is sexual, sexually exploitative, sexually demeaning or may reasonably be interpreted as sexual, sexually exploitative or sexually demeaning; or engaging in conduct with a former patient that is sexually exploitative or may reasonably be interpreted as sexually exploitative. It would not be a violation under this subsection for a nurse to continue a sexual relationship with a spouse or individual of majority if a consensual sexual relationship existed prior to the establishment of the nurse-patient relationship; or
(l) Failure to comply with the requirements of the abortion complications reporting act, chapter 95, title 39, Idaho Code.
(2) Separate offense. Each day an individual violates any of the provisions of this chapter or rules and standards of conduct and practice as may be adopted by the board shall constitute a separate offense.
(3) Proceedings.
(a) The executive director shall conduct such investigations and initiate such proceedings as necessary to ensure compliance with this section. The board may accept the voluntary surrender of a license from any nurse under investigation and accordingly enter an order revoking or suspending such license and/or imposing such conditions, limitations, or restrictions on the practice of any such nurse as may be appropriate in the discretion of the board. Otherwise, every person subject to disciplinary proceedings shall be afforded an opportunity for hearing after reasonable notice. All proceedings hereunder shall be in accordance with chapter 52, title 67, Idaho Code.

(b) Hearings shall be conducted by the board or by persons appointed by the board to conduct hearings and receive evidence. The board and any person duly appointed by the board to conduct hearings shall have all powers as are necessary and incident to orderly and effective receipt of evidence including, but not limited to, the power to administer oaths and to compel by subpoena attendance of witnesses and production of books, records and things at the hearing or at a deposition taken by a party in accordance with the Idaho rules of civil procedure. Any party shall be entitled to the use of subpoena upon application therefor.

(c) In the event any person fails to comply with a subpoena personally served upon him or refuses to testify to any matter regarding which he may be lawfully interrogated, the board shall petition the district court in the county where such failure or refusal occurred or where such person resides, to enforce such subpoena or compel such testimony. Proceedings before the district court shall be for contempt in the same nature as contempt of court for failure or refusal to comply with an order of the court, and the court shall have the same powers to secure compliance with subpoena and testimony or to impose penalties as in contempt of court proceedings.

(4) Probation/ Subsequent review. Any order of the board entered under this section may be withheld or suspended for a probationary period to be fixed by the board upon such terms and conditions as may be appropriate in order to regulate, monitor and/or supervise the practice of nursing by the licensee subject to such order for the prescribed probationary period. Any order of the board entered under this section may be withdrawn, reversed, modified or amended upon a showing by the person subject to the order that the grounds for discipline no longer exist or that he is rehabilitated, qualified and competent to practice nursing and that he is not likely to violate this chapter or rules adopted hereunder in the future. The board may, as a condition to withdrawal, reversal, modification or amendment of the order, require the person to pay all or part of the costs incurred by the board in proceedings upon which the order was entered.

(5) Reporting investigative information.

(a) Nothing in section 74-106(8) and (9), Idaho Code, shall be construed as limiting the authority of the board to report current significant investigative information to the coordinated licensure information system for transmission to states that are parties to any multistate agreements or compacts regarding nurse licensure.
(b) The executive director of the board may, in the administration of
this chapter, share information and otherwise cooperate with govern-
ment regulatory and law enforcement agencies.

SECTION 3. That Section 54-1814, Idaho Code, be, and the same is hereby
amended to read as follows:

54-1814. GROUNDS FOR MEDICAL DISCIPLINE. Every person licensed to
practice medicine, licensed to practice as a physician assistant or regis-
tered as an extern, intern or resident in this state is subject to discipline
by the board pursuant to the procedures set forth in this chapter and rules
promulgated pursuant thereto upon any of the following grounds:

1. Conviction of a felony, or a crime involving moral turpitude, or the
entering of a plea of guilty or the finding of guilt by a jury or court of com-
misson of a felony or a crime involving moral turpitude.

2. Use of false, fraudulent or forged statements or documents, diplo-
mas or credentials in connection with any licensing or other requirements of
this act.

3. Practicing medicine under a false or assumed name in this or any
other state.

4. Advertising the practice of medicine in any unethical or unprofes-
sonal manner.

5. Knowingly aiding or abetting any person to practice medicine who is
not authorized to practice medicine as provided in this chapter.

6. Performing or procuring an unlawful abortion or aiding or abetting
the performing or procuring of an unlawful abortion.

7. The provision of health care which fails to meet the standard of
health care provided by other qualified physicians in the same community or
similar communities, taking into account his training, experience and the
degree of expertise to which he holds himself out to the public.

8. Division of fees or gifts or agreement to split or divide fees or
gifts received for professional services with any person, institution or
corporation in exchange for referral.

9. Giving or receiving or aiding or abetting the giving or receiving of
rebates, either directly or indirectly.

10. Inability to obtain or renew a license to practice medicine, or re-
vocation of, or suspension of a license to practice medicine by any other
state, territory, district of the United States or Canada, unless it can be
shown that such action was not related to the competence of the person to
practice medicine or to any conduct designated herein.

11. Prescribing or furnishing narcotic or hallucinogenic drugs to ad-
dicted persons to maintain their addictions and level of usage without at-
ttempting to treat the primary condition requiring the use of narcotics.

12. Prescribing or furnishing narcotic, hypnotic, hallucinogenic,
stimulating or dangerous drugs for other than treatment of any disease, in-
jury or medical condition.

13. Failure to safeguard the confidentiality of medical records or
other medical information pertaining to identifiable patients, except as
required or authorized by law.
(14) The direct promotion by a physician of the sale of drugs, devices, appliances or goods to a patient that are unnecessary and not medically indicated.

(15) Abandonment of a patient.

(16) Willfully and intentionally representing that a manifestly incurable disease or injury or other manifestly incurable condition can be permanently cured.

(17) Failure to supervise the activities of externs, interns, residents, nurse practitioners, certified nurse-midwives, clinical nurse specialists, or physician assistants.

(18) Practicing medicine when a license pursuant to this chapter is suspended, revoked or inactive.

(19) Practicing medicine in violation of a voluntary restriction or terms of probation pursuant to this chapter.

(20) Refusing to divulge to the board upon demand the means, method, device or instrumentality used in the treatment of a disease, injury, ailment, or infirmity.

(21) Commission of any act constituting a felony or commission of any act constituting a crime involving moral turpitude.

(22) Engaging in any conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the physician by the patient.

(23) Being convicted of or pleading guilty to driving under the influence of alcohol, drugs or other intoxicating substances or being convicted of or pleading guilty to other drug or alcohol related criminal charges.

(24) Failure to comply with a board order entered by the board.

(25) Failure to comply with the requirements of the abortion complications reporting act, chapter 95, title 39, Idaho Code.