

TITLE 39
HEALTH AND SAFETY

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."

[39-9501, added 2018, ch. 225, sec. 1, p. 509.]

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 emotional 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

(1) 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 medical complications and maternal deaths resulting from these abortions.

[39-9502, added 2018, ch. 225, sec. 1, p. 509.]

39-9503. DEFINITIONS. As used in this chapter:

(1) "Abortion" shall have the same meaning as provided in section 18-502, Idaho Code.

(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 facility;
- (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.

[39-9503, added 2018, ch. 225, sec. 1, p. 510.]

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 required under this chapter and submit the data to the federal centers for disease control and prevention for the purpose of inclusion in the annual vital 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 contractor thereof shall not compare data concerning abortions or abortion complications 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 obtaining or seeking to obtain an abortion shall not be maintained by the department, 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 official 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.

[39-9504, added 2018, ch. 225, sec. 1, p. 511.]

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.

[39-9505, added 2018, ch. 225, sec. 1, p. 513.]

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.

[39-9506, added 2018, ch. 225, sec. 1, p. 513.]

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.

[39-9507, added 2018, ch. 225, sec. 1, p. 513.]

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.

[39-9508, added 2018, ch. 225, sec. 1, p. 513.]

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.

[39-9509, added 2018, ch. 225, sec. 1, p. 514.]