

MESSAGE FROM THE GOVERNOR

“Pursuant to Article 2, Section 14 of the Constitution of the State of Kansas, I veto HB 2503.

“As governor, nothing is more important to me than the safety and good health of our citizens. Kansans must be assured when they receive care in a hospital or clinic that their providers meet high standards of safety and responsibility. But these standards should be written and enforced by doctors, not politicians.

“I will continue to work closely with the Kansas Medical Society and the Board of Healing Arts in developing standards that will protect the well being of every Kansan who chooses the services of any surgical clinic, including those that would be covered in this bill. I am confident that strong standards, offering real protection across all procedures, will be adopted by the Board in the near future.

“Once again in 2005, the Legislature has chosen pure politics over good policy, has rejected uniform standards for all procedures, and has instead chosen to regulate only one procedure – abortion. As the number of outpatient surgeries grow rapidly in Kansas and throughout the country, it is wise to update our regulatory oversight to ensure the best possible treatment for all patients. Unfortunately, HB 2503 falls far short of meeting this basic standard of care. I have stated repeatedly that I will sign this law when it includes all surgical procedures and all surgical centers to ensure the safety of all Kansans.

“For these reasons, I veto HB 2503. I strongly urge the Legislature, upon its return, to endorse the appropriate clinic standards that the Board of Healing Arts is currently putting into place. We should encourage physicians and other health care professionals to work through the Board of Healing Arts for the speedy development of standards that apply to all surgical clinics and protect the health of every patient. There is no justifiable reason to do less.”

Signed Kathleen Sebelius

Date April 15, 2005

HOUSE BILL No. 2503

AN ACT concerning abortion clinics; providing for regulation, licensing and standards for the operation thereof; providing penalties for violations and authorizing injunctive actions.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) As used in this section:

- (1) "Secretary" means the secretary of health and environment.
- (2) "Abortion clinic" means a facility, other than an accredited hospital, in which five or more first trimester surgical abortions in any month or any second or third trimester abortions are performed.
- (3) "Department" means the department of health and environment.
- (4) "Physician" means a person licensed to practice medicine and surgery in this state.
- (5) "Gestational age" shall have the meaning ascribed to such term under K.S.A. 65-6701 and amendments thereto.
- (6) "Viable" shall have the meaning ascribed to such term under K.S.A. 65-6701 and amendments thereto.

(b) The secretary shall adopt rules and regulations for an abortion clinic's physical facilities. At a minimum these rules and regulations 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.

(c) The secretary shall adopt rules and regulations 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 and regulations 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 12 weeks gestational age of the fetus.
- (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.

(d) The secretary shall adopt rules and regulations relating to abortion clinic personnel. At a minimum these rules and regulations shall require that:

- (1) The abortion clinic designate a medical director of the abortion clinic who is licensed to practice medicine and surgery in Kansas.
- (2) Physicians performing surgery in an abortion clinic are licensed to practice medicine and surgery in Kansas, 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) Another individual is present in the room during a pelvic examination or during the abortion procedure and if the physician is male then the other individual shall be female.

(5) A registered nurse, nurse practitioner, licensed practical nurse or physician 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.

(6) Surgical assistants receive training in the specific responsibilities of the services the surgical assistants provide.

(7) Volunteers receive training in the specific responsibilities of the services the volunteers provide, including counseling and patient advocacy as provided in the rules and regulations adopted by the director for different types of volunteers based on their responsibilities.

(e) The secretary shall adopt rules and regulations relating to the medical screening and evaluation of each abortion clinic patient. At a minimum these rules and regulations 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 as indicated.

(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 12 weeks gestational age of the fetus. 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 rules and regulations. 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 rules and regulations and shall verify 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.

(f) The secretary shall adopt rules and regulations relating to the abortion procedure. At a minimum these rules and regulations 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 rules and regulations.

(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.

(g) The secretary shall adopt rules and regulations that prescribe min-

imum recovery room standards. At a minimum these rules and regulations 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 or a nurse who is advanced cardiovascular life support certified shall remain on the premises of the abortion clinic until all patients are discharged and to facilitate the transfer of emergency cases if hospitalization of the patient or viable fetus is necessary. A physician or nurse shall be readily accessible and available until the last patient is discharged.

(5) A physician or trained staff member 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 72 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 gestational age of the fetus.

(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 24 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.

(h) The secretary shall adopt rules and regulations that prescribe standards for follow-up visits. At a minimum these rules and regulations shall require that:

(1) A postabortion medical visit is offered and, if requested, scheduled within four 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.

(i) The secretary shall adopt rules and regulations to prescribe minimum abortion clinic incident reporting. At a minimum these rules and regulations 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 10 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 shall report such death to the department of health and environment not later than the next department business day.

(3) Incident reports are filed with the department of health and environment and appropriate professional regulatory boards.

(j) (1) The secretary shall adopt rules and regulations requiring each abortion clinic to establish and maintain an internal risk management program which, at a minimum, shall consist of: (A) A system for investigation and analysis of the frequency and causes of reportable incidents within the clinic; (B) measures to minimize the occurrence of reportable

incidents and the resulting injuries within the clinic; and (C) a reporting system based upon the duty of all health care providers staffing the clinic and all agents and employees of the clinic directly involved in the delivery of health care services to report reportable incidents to the chief of the medical staff, chief administrative officer or risk manager of the clinic.

(2) As used in this subsection (j), “reportable incident” means an act by a health care provider which: (A) Is or may be below the applicable standard of care and has a reasonable probability of causing injury to a patient; or (B) may be grounds for disciplinary action by the appropriate licensing agency.

(k) The secretary shall make or cause to be made such inspections and investigations of abortion clinics at such intervals as the secretary determines necessary to protect the public health and safety and to implement and enforce the provisions of this act and rules and regulations adopted hereunder. For that purpose, authorized agents of the secretary shall have access to an abortion clinic during reasonable business hours.

(l) Information received by the secretary through filed reports, inspections or as otherwise authorized under this act shall not be disclosed publicly in such manner as to identify individuals. Under no circumstances shall patient medical or other identifying information be made available to the public, and such information shall always be treated by the department as confidential.

(m) (1) No person shall operate an abortion clinic in this state unless such clinic holds a currently valid license as an abortion clinic under this act. Each such clinic shall be required annually to obtain a license from the department. The secretary shall adopt rules and regulations providing for the issuance of such licenses. At a minimum such rules and regulations shall require compliance with the standards adopted pursuant to this act. The secretary shall establish by rules and regulations the fee for such licenses in the amount required to cover costs of implementation and enforcement of this act.

(2) The department shall deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this act and rules and regulations adopted pursuant thereto, a failure to report any information required to be reported under subsections (i) and (j) or a failure to maintain a risk management program as required under subsection (j), after notice and an opportunity for hearing to the applicant or licensee in accordance with the provisions of the Kansas administrative procedure act.

(n) The rules and regulations adopted by the secretary pursuant to this section do not limit the ability of a physician or other health care professional to advise a patient on any health issue. The secretary periodically shall review and update current practice and technology standards under this act and based on current practice or technology adopt by rules and regulations alternative practice or technology standards found by the secretary to be as effective as those enumerated in this act.

(o) The provisions of this act and the rules and regulations adopted pursuant thereto shall be in addition to any other laws and rules and regulations which are applicable to facilities defined as abortion clinics under this section.

(p) In addition to any other penalty provided by law, whenever in the judgment of the secretary of health and environment any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of this section, or any rules and regulations adopted under the provisions of this section, the secretary shall make application to any court of competent jurisdiction for an order enjoining such acts or practices, and upon a showing by the secretary that such person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order or such other order as may be appropriate shall be granted by such court without bond.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.