

Definition of Abortion; Medication Abortion Reversal Notification; HB 2264

HB 2264 amends the definition of abortion and clarifies certain medical procedures and methods of contraception are not considered an abortion. The bill adopts the amended definition of abortion uniformly for multiple statutes. The bill also amends the Woman's-Right-to-Know Act to add a notification requirement about reversal of abortion options with certain medications.

Definitions

The bill amends the definition of abortion and adopts the definition of abortion uniformly for statutes pertaining to insurance coverage for elective abortions, abortion facility licensure, abortion of a pain-capable unborn child, the Kansas Unborn Child Protection from Dismemberment Abortion Act, and general abortion statutes addressing viability, restrictions and prohibitions, and information to be provided.

The bill defines "abortion" in multiple statutes to be the same as in KSA 65-6701, a public health statute, which the bill amends to "the use or prescription of any instrument, medicine, drug, or any other means to terminate the pregnancy of a woman knowing that such termination will, with reasonable likelihood, result in the death of an unborn child."

The bill adds to the definition of abortion that the use or prescription of any instrument, medicine, drug, or any other means to terminate the pregnancy of a woman does not mean an "abortion" when done with the intent to:

- Preserve the life or health of the unborn child;
- Increase the probability of a live birth;
- Remove a dead unborn child who died as a result of natural causes in utero, accidental trauma, or a criminal assault on the pregnant woman or the unborn child; or
- Remove an ectopic pregnancy.

The bill affirmatively states that "abortion" does not include the prescription, dispensing, administration, sale, or use of any method of contraception.

The bill also defines the following terms:

- "Medication abortion" means the use or prescription of any drug for the purpose of inducing an abortion; and
- "Medical emergency" means the same as defined in KSA 65-6701: "A condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert the death of the woman for which a delay necessary to comply with the

applicable statutory requirements will create serious risk of substantial or irreversible physical impairment of a major bodily function. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or substantial and irreversible physical impairment of a major bodily function.”

The bill also replaces the definition of “medical emergency” in several statutes with a reference to the definition in KSA 65-6701.

Notification Requirements Regarding Medication Abortion

The bill requires any private office, freestanding surgical outpatient clinic, hospital, or other facility or clinic where medication abortions that use mifepristone are provided to post a conspicuous sign that is clearly visible to patients, printed with lettering that is legible and at least 3/4 of an inch boldfaced type, and contains the following text:

NOTICE TO PATIENTS HAVING MEDICATION ABORTIONS THAT USE MIFEPRISTONE: Mifepristone, also known as RU-486 or Mifeprex, alone is not always effective in ending a pregnancy. It may be possible to reverse its intended effect if the second pill or tablet has not been taken or administered. If you change your mind and wish to try to continue the pregnancy, you can get immediate help by accessing available resources.

The bill requires the notice to include information about the Kansas Department of Health and Environment (KDHE) website required by continuing law and other relevant telephone and internet resources containing information on where the patient can obtain timely assistance to attempt to reverse the medication abortion.

Facilities

The bill requires private offices or freestanding surgical outpatient clinics where medication abortions that use mifepristone are provided to post the sign in each patient waiting room and patient consultation room used by patients for whom medication abortions are provided.

Hospitals or other facilities where medication abortions that use mifepristone are provided that are not private offices or freestanding surgical outpatient clinics are required to post the sign in each patient admission area used by patients for whom medication abortions that use mifepristone are provided.

Pharmacies where mifepristone is prescribed, dispensed, or administered for the purpose of inducing a medication abortion are required to post the sign in each area inside the premises where customers are provided prescription medications and on the exterior of the premises in the area where customers are provided prescription medications via a drive-through window.

Physician

Except in the case of a medical emergency, the bill prohibits a physician from providing, inducing, or attempting to provide or induce a medication abortion that uses mifepristone without informing the woman, in writing as prescribed in the Woman's-Right-to-Know Act and by telephone or in person, at least 24 hours prior to the medication abortion, of the following:

- It may be possible to reverse the intended effects of a medication abortion that uses mifepristone, if the woman changes her mind, but that time is of the essence; and
- Information on reversing the effects of a medication abortion that uses mifepristone is available on the KDHE website, as required by law, and other relevant telephone and internet resources containing information on where the patient can obtain timely assistance to attempt to reverse the medication abortion.

After a physician dispenses or provides an initial administration of mifepristone to a patient for the purposes of performing a medication abortion, the physician or an agent of the physician must provide a legible, written notice to the patient that includes the same information stated above.

When a medical emergency compels the performance of a medication abortion that uses mifepristone, the physician must inform the woman, prior to the medication abortion, if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert the woman's death or a 24-hour delay would create serious risk of substantial and irreversible impairment of a major bodily function, excluding psychological or emotional conditions.

KDHE Website

The bill requires, within 90 days after the effective date of the bill, KDHE to publish comprehensible materials designed to inform women of the possibility of reversing the effects of a medication abortion that uses mifepristone and information on resources available to reverse the effects of a medication abortion that uses mifepristone. The bill requires publication in English and in each language that is the primary language of 2.0 percent or more of the state's population, in print and on the website required by law. The bill also requires the website to include other relevant telephone and internet resources containing information on where the patient can obtain timely assistance to attempt to reverse the medication abortion.

Criminal Penalties

The bill provides that upon a first conviction of a violation of failing to provide notification as outlined in the bill, a person is guilty of a class A person misdemeanor and, upon second or subsequent conviction of such violation, a person is guilty of a severity level 10 person felony.

Civil Penalties

The bill requires KDHE to assess a fine of \$10,000 to any private office, freestanding surgical outpatient clinic, hospital, or other clinic or facility that fails to post the sign. Each day the required sign is not posted is a separate violation. KDHE must remit all moneys received from fines to the State Treasurer for deposit to the credit of the State General Fund.

Civil Actions

The bill allows the following individuals to bring a civil action against a physician who provided a medication abortion using mifepristone in violation of the provisions in the bill for actual damages, exemplary and punitive damages, and any other appropriate relief:

- A woman to whom such medication abortion has been provided;
- The father of the unborn child who was subject to such medication abortion; or
- Any grandparent of the unborn child who was subject to such medication abortion, if the woman was not 18 years of age or older at the time the medication abortion was performed or if the woman died as a result of the medication abortion.

The bill requires such civil action be commenced within two years after the later of:

- The date of the discovery of the violation; or
- The conclusion of a related criminal case.

A court is required to award reasonable attorney fees and costs to a prevailing plaintiff or a prevailing defendant upon a finding that the action was frivolous and brought in bad faith.

Anonymity

In any civil or criminal proceeding or action brought under the provisions of bill, the bill requires the court to rule whether the anonymity of any woman to whom a medication abortion has been provided, induced, or attempted to be provided or induced is preserved from public disclosure, if she does not give her consent to such disclosure.

The bill requires the court, upon motion of a party or on its own accord, to make such a ruling and, upon determining the woman's anonymity should be preserved, to issue orders to the parties, witnesses, and counsel and to direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. The bill requires each such order to be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman to whom a medication abortion has been provided, induced, or attempted

to be provided or induced, any person, other than a public official, who brings an action under this section is required to do so under a pseudonym. The bill states these provisions are not to be construed to conceal the identity of the plaintiff or witnesses from the defendant.

Severability Clause

The bill declares its provisions to be severable, to provide that if any provision of the bill, or any application of it to any person or circumstance, is held to be invalid by court order, the invalidity does not affect the remainder of the provisions and any application thereof.

Woman's-Right-to-Know Act

The bill's provisions are included in the Woman's-Right-to-Know Act.