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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla Roberts.

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DIGEST

SB 221 Original

2019 Regular Session

Mizell

Present law provides for the Woman's Right to Know law which requires that providers of abortions in Louisiana ensure that their patients have the necessary information, including specific legal rights and options, to make an informed decision before they undergo an abortion procedure.

Present law also provides that no abortion shall be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Present law provides that, except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if, the physician who is to perform the abortion or the referring physician has informed the woman, orally and in person, the name of the physician who meets is licensed to practice medicine in the state of La. and who will perform the abortion.

Proposed law changes present law from oral to written, as it relates to the requirement that the woman must be informed of the name of the physician who is to perform the abortion.

Proposed law provides that, in addition to the name of the physician who is to perform the abortion, the physician shall inform the woman, in writing, all of the following:

- (1) The name of the physician who will perform the abortion shall be listed in the written document in the same manner as the name appears on the membership roll of the Louisiana State Board of Medical Examiners.
- (2) The location and specialty of the physician's residency and whether the residency has been completed.
- (3) Whether the physician is currently board certified and, if so, the name of the certifying organization.
- (4) Whether the physician has active admitting privileges at any hospital that provides obstetrical or gynecological healthcare services, and if so, the name of the hospital or hospitals. "Active admitting privileges" means that the physician is a member in good standing of the medical staff of a hospital that is currently licensed by the Department of Health, with the ability to admit a patient, and to provide diagnostic and surgical services to such patient.
- (5) Whether the physician has malpractice insurance that would cover the abortion procedure.
- (6) Whether in the last 10 years the physician has ever been placed on probation, reprimanded, or had his license suspended or revoked by any professional licensing organization, and if so, the jurisdiction in which the professional discipline was ordered. For purposes of this

subsection, the disciplinary action must be disclosed even if it was stayed or suspended. Disclosure of disciplinary action shall include but not be limited to action taken by the Louisiana State Board of Medical Examiners and the Louisiana Board of Pharmacy.

- (7) The internet address for disciplinary records of the Louisiana Board of Medical Examiners.

Proposed law provides that the physician shall document compliance with proposed law in the patient's medical records.

Proposed law provides that, in the event that a physician who has provided the written information, pursuant to proposed law, is not the physician who performs or completes the abortion procedure, the woman shall be provided this same information from the physician who is substituted before the procedure begins.

Proposed law provides the following legislative intent:

- (1) Louisiana patients considering a medical procedure customarily do research and rely upon the qualifications and background information of the physician who would potentially perform the patient's procedure. Such information is relevant and necessary to determine if the patient should undergo the procedure, the risk of complications, and to the patient's choice of physician.
- (2) Louisiana physicians commonly make information about their background and qualifications available to current and potential patients and by posting such information on the physicians' websites. More information about physicians improves the market for medical services in La. by enabling informed decisions by patients and by encouraging physicians and medical facilities to maintain high professional standards.
- (3) Abortion carries the known risk of serious complications for the mother including infection, injury, hemorrhaging, sepsis, permanent loss of childbearing capacity, and death. Such risks are documented as occurring in Louisiana as a result of procedures at Louisiana abortion clinics.
- (4) La. outpatient abortion facilities do not publicly disclose the identities and professional qualifications of physicians who perform abortions there. Unlike other La. medical practices, outpatient abortion facilities do not customarily post the identities or qualifications of their physicians on their websites; therefore, the women considering an abortion may have difficulty obtaining information about an abortion facility's doctors.
- (5) Louisiana has a long history of outpatient abortion facilities operated by out-of-state businessmen, and those clinics appear to perform little or no review of the credentials or disciplinary history of the physicians who perform abortions at the facility. *See, e.g., June Medical Servs., LLC v. Gee*, 905 F.3d 787, 799 (5th Cir. 2018).
- (6) Louisiana outpatient abortion facilities actively work to conceal the identities and misconduct

of abortion providers. For example, in a pending litigation, plaintiff abortion providers repeatedly insisted that publicly available information regarding misconduct by abortion doctors be filed under seal. *Compare* Emergency Motion to Strike (ECF 202), *June Medical Servs. LLC v. Gee*, No. 3:16-cv-444 (M.D. La.) with Mem. (ECF 207-1) at 4, 7-8, *June Medical Servs. LLC v. Gee*, No. 3:16-cv-444 (M.D. La.) (noting that the documents sealed at plaintiffs' request include a grand jury report that is for sale as a book and publicly available Louisiana State Board of Medical Examiners disciplinary records); *see also, e.g.*, Reply (ECF 135-2) at 5, *June Medical Servs. LLC v. Gee*, No. 3:16-cv-444 (M.D. La.) (noting that plaintiffs had redacted the name of a deceased Louisiana abortion provider from a public record). In another case, a state court was induced to seal the *existence* of a malpractice case against two abortion providers, although the providers repeatedly used the patient's name in federal litigation.

- (7) Current law requires that a woman, in order to give informed consent to an abortion, must receive the name of the physician who will perform the abortion. La. abortion facilities are not currently required to provide information about the physician's background and qualifications or to direct the woman to a website where she may find information relevant to her decision about her physician.
- (8) The lack of transparency surrounding the medical operations of outpatient abortion facilities makes it difficult for women to fully evaluate whether to obtain an abortion or whether to obtain it from a particular physician at a given abortion facility. Such lack of transparency makes it difficult for women to make important decisions about their health and safety and creates obstacles to women exercising their informed consent and; therefore, such lack of transparency is contrary to the public interest.
- (9) A significant number of physicians who have performed abortions at La. outpatient abortion facilities in recent years have been subject to professional discipline and malpractice claims. The abortion facilities at which these physicians perform abortions have received a significant number of noncompliance actions related to violations of health and safety regulations which have been documented by deficiency reports filed with the La. Dept. of Health.
- (10) If a woman who is considering an abortion is to be treated by a physician who has been subject to professional discipline, it is in the best interest of that woman that she be afforded the opportunity to consider that professional discipline, in advance of undergoing the abortion procedure.
- (11) There is empirical evidence correlating nonboard certified physicians with an increased likelihood of professional discipline. Susan H. Allen, et al, *Training Matters: A Retrospective Study of Physician Disciplinary Matters by the Louisiana State Board of Medical Examiners, 1990-2010*, 102(4) J. MED. REG. 7 (2016).
- (12) The information to be disclosed under the requirements under proposed law is truthful information that is nonmisleading and relevant to the decision to obtain an abortion. It is

therefore within the scope of information that Louisiana may require to be disclosed as part of a woman's informed consent before an abortion.

Proposed law provides the legislature finds and declares that the purpose of proposed law is to require the written disclosure of information regarding the physician performing the abortion and the facility where the abortion will be performed will improve the ability of La. women to determine whether to obtain an abortion, to choose the appropriate facility and physician and; thereby, make an informed consent for such an abortion if the woman chooses to have the procedure. Such informed consent is needed so that the state of La. may adequately provide reasonable protections for public health.

Proposed law clarifies that, even though amendments are being added to the section of present law which contains the number of hours for the waiting period required between the time of the pre-abortion counseling and the actual abortion, proposed law is not intended to be construed to affect the outcome of the court case which was filed in response to a change in the waiting period in 2016 from 24 hours (prior law) to 72 hours (present law).

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 40:1061.17(B)(3))