

2019 Regular Session

HOUSE BILL NO. 484

BY REPRESENTATIVE CREWS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

ABORTION: Establishes requirements for physicians and abortion facilities relative to medical records of women upon whom abortions are performed

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AN ACT

To amend and reenact R.S. 40:1061.19, relative to regulation of abortion; to provide requirements relative to medical records of women upon whom abortions are performed; to establish duties of physicians and medical directors, administrators, and owners of abortion facilities relative to such medical records; to establish retention periods for such records; to institute penalties for violations of record retention requirements; to provide for enforcement of such requirements by the attorney general and the Louisiana Department of Health; to provide for causes for disciplinary actions against licensed healthcare providers relative to abortions and records thereof; to provide conditions and requirements for obtaining and maintaining an abortion facility license; to provide legislative findings; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:1061.19 is hereby amended and reenacted to read as follows:

§1061.19. Records

A. ~~Each physician shall retain and make part of the medical record of each pregnant woman upon whom an abortion is performed or induced, copies of the following:~~ In addition to any other duty that may be imposed by state law or regulations, each physician who performs or induces an abortion, the medical director of the facility where an abortion is performed or induced, the administrator

1 of an abortion facility, and each owner of an abortion facility shall have an
2 independent duty to ensure that a designated custodian of records for the facility
3 obtains, retains, and makes part of the medical record of each pregnant woman upon
4 whom an abortion is performed or induced at least one copy of each of the following
5 documents:

6 (1) The certificate required by R.S. 40:1061.13.

7 (2) If the pregnant woman is an unemancipated minor, one of the following:

8 (a) A notarized consent form and copies of identification as provided for in
9 R.S. 40:1061.14(A)(1).

10 (b) A court order required by R.S. 40:1061.14(B), if applicable.

11 (3) The consent form required by R.S. 40:1061.17.

12 (4) The reports required by R.S. 40:1061.21.

13 (5) The certificate required by R.S. 40:1061.23, if applicable.

14 (6) The signed certification form provided for in R.S. 40:1061.16(C)
15 indicating that the woman or minor female acknowledged receipt of informational
16 materials concerning psychological impacts, illegal coercion, abuse, and human
17 trafficking.

18 ~~B. The physician shall retain the documents required in Subsection A of this~~
19 ~~Section for not less than seven years. The individuals listed in Subsection A of this~~
20 ~~Section and the abortion facility shall each have an independent duty to ensure that~~
21 ~~the custodian of records for the abortion facility where the abortion was performed~~
22 ~~or induced retains the documents required in Subsection A of this Section for not less~~
23 ~~than seven years and ten years from the age of majority for minors. The ten-year~~
24 ~~period for minors shall begin to run when the patient attains the age of eighteen;~~
25 ~~provided, however, that in any case where the patient has reported facts that would~~
26 ~~require reporting under Title VI of the Children's Code, the retention period shall be~~
27 ~~thirty years.~~

28 C. For purposes of this Section, "owner" shall include each person with an
29 ownership interest totaling five percent or more in an abortion facility.

1 D.(1) Any person identified in Subsection A of this Section who, either
2 intentionally or with criminal negligence, fails to obtain any document listed in
3 Subsection A of this Section, fails to retain any document listed in Subsection A of
4 this Section for the period required in Subsection B of this Section, or fails to make
5 the documents listed in Subsection A of this Section part of the medical record of
6 each pregnant woman upon whom an abortion is performed or induced, may be fined
7 not more than one thousand dollars per document listed in Subsection A of this
8 Section, imprisoned for not more than two years with or without hard labor, or both.

9 (2) The abortion facility shall also be responsible independently for
10 obtaining and retaining the documents listed in Subsection A of this Section for the
11 time period listed in Subsection B of this Section. The abortion facility shall be
12 subject to a civil penalty of not more than one thousand dollars for each record listed
13 in Subsection A of this Section that was not obtained or retained in compliance with
14 this Section. Either the department or the attorney general may institute any
15 necessary civil action in order to enforce and collect this civil penalty.

16 E.(1) In addition to the remedies provided in this Section and any other
17 remedies available under the laws of this state, a person listed in Subsection A of this
18 Section who, either intentionally or with negligence, fails to obtain or retain any
19 document in compliance with this Section may be temporarily or permanently
20 disqualified from performing or inducing an abortion, applying for a medical facility
21 license, or otherwise operating or managing a medical facility in this state.

22 (2) For purposes of this Subsection, "operating" or "managing" shall include
23 acting as an owner, governing board member, physician, medical director,
24 administrator, or in any comparable role or title in which the individual has executive
25 responsibility for the abortion facility or has professional medical responsibility for
26 patient care.

27 F. In addition to the remedies provided in this Section and any other
28 remedies available under the laws of this state, failing to obtain or retain any
29 document in compliance with this Section, either intentionally or with negligence,

1 shall provide a basis for professional disciplinary action against any licensed
2 healthcare provider.

3 G. Each abortion facility, as a condition of obtaining and maintaining a
4 license under R.S. 40:2175.1, et.seq., shall establish a written record retention and
5 archiving policy, which shall be submitted within thirty days of the effective date of
6 this Act to the department. The department shall review and approve the policy
7 within ninety days of its receipt. During the pendency of the ninety days, the facility
8 shall be deemed in compliance with this Section and if the department fails to act
9 within ninety days of receipt of the proposed policy, the policy shall be deemed
10 approved. The policy shall be signed by the individuals identified in Subsection A,
11 of this Section who shall acknowledge their legal obligations and acknowledge
12 receiving a copy of the policy.

13 H. The obligation of the individuals listed in Subsection A of this Section to
14 retain records shall survive the voluntary or involuntary termination of an abortion
15 facility's license for the period listed in Subsection B of this Section.

16 I. In addition to the district attorney, the attorney general shall have the
17 authority to investigate and prosecute criminal violations of this Section.

18 Section 2. The Legislature of Louisiana hereby finds and declares the following:

19 (A) Current law is inadequate to deter and punish the illegal destruction of patient
20 medical records by abortion clinics.

21 (B) Abortion facilities have among their clients women who have been victims of
22 sexual assault, domestic violence, and human trafficking.

23 (C) Like other medical professionals, abortion providers are required by law to
24 report child abuse and neglect.

25 (D) Medical records of Louisiana abortion facility patients have been destroyed in
26 violation of current record retention requirements. These acts of destruction have obstructed
27 investigation of sexual assaults involving minors and allegations of illegally performed
28 abortions, and have permanently hindered the rights of victims to pursue or obtain justice.

1 Section 3. If any provision or item of this Act or the application thereof is held
2 invalid, such invalidity shall not affect other provisions, items, or applications of this Act
3 which can be given effect without the invalid provisions, items or applications, and to this
4 end the provisions of this Act are hereby declared severable in accordance with R.S. 24:175.

5 Section 4. This Act shall become effective upon signature by the governor or, if not
6 signed by the governor, upon expiration of the time for bills to become law without signature
7 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
8 vetoed by the governor and subsequently approved by the legislature, this Act shall become
9 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 484 Original

2019 Regular Session

Crews

Abstract: Establishes requirements for physicians and medical directors, administrators, and owners of abortion facilities relative to medical records of women upon whom abortions are performed.

Proposed law provides the following legislative findings:

- (1) Current law is inadequate to deter and punish the illegal destruction of patient medical records by abortion clinics.
- (2) Abortion facilities have among their clients women who have been victims of sexual assault, domestic violence, and human trafficking.
- (3) Like other medical professionals, abortion providers are required by law to report child abuse and neglect.
- (4) Medical records of La. abortion facility patients have been destroyed in violation of current record retention requirements. These acts of destruction have obstructed investigation of sexual assaults involving minors and allegations of illegally performed abortions, and have permanently hindered the rights of victims to pursue or obtain justice.

Proposed law provides that in addition to any other duty that may be imposed by state law or regulations, each physician who performs or induces an abortion, the medical director of the facility where an abortion is performed or induced, the administrator of an abortion facility, and each owner of an abortion facility shall have an independent duty to ensure that a designated custodian of records for the facility obtains, retains, and makes part of the medical record of each pregnant woman upon whom an abortion is performed or induced at least one copy of the abortion-related records enumerated in present law, R.S. 40:1061.19(A).

Present law requires physicians to retain the abortion-related records enumerated in present law, R.S. 40:1061.19(A), for not less than seven years. Proposed law revises present law to provide that physicians and abortion facilities shall each have an independent duty to ensure that the custodian of records for the abortion facility where the abortion was performed or induced retains those records for not less than seven years and ten years from the age of majority for minors. Stipulates that the ten-year period for minors shall begin to run when the patient attains the age of 18; provided, however, that when the patient has reported facts that would require reporting of child abuse under present law, the retention period shall be 30 years.

Proposed law provides that any person required by proposed law to retain the abortion-related documents enumerated in present law who, either intentionally or with criminal negligence, fails to obtain any such document, fails to retain any such document for the period required in proposed law, or fails to make such documents part of the medical record of each pregnant woman upon whom an abortion is performed or induced, may be fined not more than \$1,000 per document, imprisoned for not more than two years with or without hard labor, or both.

Proposed law provides that the abortion facility shall also be responsible independently for obtaining and retaining the abortion-related documents enumerated in present law for the time period provided in proposed law. Provides that the abortion facility shall be subject to a civil penalty of not more than \$1,000 for each record that was not obtained or retained in compliance with proposed law.

Proposed law provides that in addition to the remedies provided therein and any others available under present law, a person required by proposed law to retain the abortion-related documents enumerated in present law who, either intentionally or with negligence, fails to obtain or retain any document in compliance with proposed law may be temporarily or permanently disqualified from performing or inducing an abortion, applying for a medical facility license, or otherwise operating or managing a medical facility in La.

Proposed law provides that in addition to the remedies provided therein and any others available under present law, failing to obtain or retain any document in compliance with proposed law, either intentionally or with negligence, shall provide a basis for professional disciplinary action against any licensed healthcare provider.

Proposed law requires each abortion facility, as a condition of obtaining and maintaining a state license, to establish a written record retention and archiving policy.

Proposed law stipulates that the obligation of the person required by proposed law to retain the abortion-related documents enumerated in present law shall survive the voluntary or involuntary termination of an abortion facility's license for the period provided in proposed law.

Proposed law provides that in addition to the district attorney, the attorney general shall have the authority to investigate and prosecute criminal violations of proposed law.

(Amends R.S. 40:1061.19)