
DIGEST

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HB 484 Engrossed

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, each 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).

Proposed law adds the following to the list of the abortion-related records enumerated in present law, R.S. 40:1061.19(A), which abortion facilities and providers are required to retain: Any report of child abuse required by present law, Ch.C. Art. 601 et seq., and any other report made to law enforcement in relation the patient.

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 for adult patients and not less than ten years from the age of majority for minor patients. 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 all of the following with respect to penalties:

- (1) Any person who intentionally or negligently fails to comply with the requirements of present law or proposed law relative to records retention shall be subject to the penalties provided for in present law and proposed law, R.S. 40:1061.29.
- (2) Any abortion facility that fails to comply with the requirements of present law or proposed law relative to records retention shall be subject to the penalties provided for in present law and proposed law, R.S. 40:1061.29.
- (3) Each medical record that does not include the documents identified in present law and proposed law, R.S. 40:1061.19(A), or which is not retained for the time specified in proposed law, shall constitute a separate incidence or occurrence for purposes of present law and proposed law providing penalties, R.S. 40:1061.29, and shall constitute a continuing violation until the relevant retention period specified in proposed law has expired.

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, make part of a medical record, 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 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 provides that a person may comply with proposed law by depositing copies of required documents with the La. Department of Health in an organized and readily accessible format, and that the department shall have a cause of action against a depositor for the reasonably anticipated cost of storing the documents for the required period of time.

Proposed law provides that whoever violates present law and proposed law relative to regulation of abortion (R.S. 40:1061 et seq.) shall be subject to a civil fine of \$1,000 per incidence or occurrence, and that the attorney general shall have jurisdiction to pursue this civil fine in any competent court.

Proposed law stipulates that in addition to whatever remedies are otherwise available under present law, failure to comply with present law and proposed law shall provide a basis for the attorney general, the district attorney in whose jurisdiction the violation occurred, or the secretary of the La. Department of Health to obtain a writ of injunction, which shall not be subject to being released

upon bond. Provides that the trial of the proceeding shall be summary and by the judge without a jury.

(Amends R.S. 40:1061.19 and 1061.29)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the original bill:

1. Provide that each 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 each of the abortion-related records enumerated in present law and proposed law, R.S. 40:1061.19(A).
2. Add the following to the list of the abortion-related records enumerated in present law, R.S. 40:1061.19(A), which abortion facilities and providers are required to retain: Any report of child abuse required by present law, Ch.C. Art. 601 et seq., and any other report made to law enforcement in relation the patient.
3. Revise proposed law to provide that abortion facilities and providers shall retain certain records for not less than seven years for adult patients and not less than ten years from the age of majority for minor patients.
4. Revise proposed law to provide all of the following:
 - a. Any person who intentionally or negligently fails to comply with the requirements of present law or proposed law shall be subject to the penalties provided for in present law and proposed law, R.S. 40:1061.29.
 - b. Any abortion facility that fails to comply with the requirements of present law or proposed law shall be subject to the penalties provided for in present law and proposed law, R.S. 40:1061.29.
 - c. Each medical record that does not include the documents identified in present law and proposed law, R.S. 40:1061.19(A), or which is not retained for the time specified in proposed law, shall constitute a separate incidence or occurrence for purposes of present law and proposed law providing penalties, R.S. 40:1061.29, and shall constitute a continuing violation until the relevant retention period specified in proposed law has expired.
5. Provide that any person subject to proposed law who fails to make part of the medical record of a woman upon whom an abortion is performed any document required by proposed law may be temporarily or permanently disqualified from all of the following:

- a. Performing or inducing an abortion.
 - b. Applying for a medical facility license.
 - c. Otherwise operating or managing a medical facility.
6. Delete proposed law providing all of the following:
- a. That failure to obtain or retain any document in compliance with proposed law shall provide a basis for professional disciplinary action against any licensed healthcare provider.
 - b. The obligation to retain records shall survive the voluntary or involuntary termination of an abortion facility's license for a period provided in proposed law.
 - c. In addition to the district attorney, the attorney general shall have authority to investigate and prosecute criminal violations of proposed law.
7. Provide that a person may comply with proposed law by depositing copies of required documents with the La. Department of Health in an organized and readily accessible format, and that the department shall have a cause of action against a depositor for the reasonably anticipated cost of storing the documents for the required period of time.
8. Provide that whoever violates present law and proposed law relative to regulation of abortion (R.S. 40:1061 et seq.) shall be subject to a civil fine of \$1,000 per incidence or occurrence, and that the attorney general shall have jurisdiction to pursue this civil fine in any competent court.
9. Stipulate that in addition to whatever remedies are otherwise available under present law, failure to comply with present law and proposed law shall provide a basis for the attorney general, the district attorney in whose jurisdiction the violation occurred, or the secretary of the La. Department of Health to obtain a writ of injunction, which shall not be subject to being released upon bond; and that the trial of the proceeding shall be summary and by the judge without a jury.
10. Make technical changes.