

## RÉSUMÉ DIGEST

ACT 435 (HB 484)

2019 Regular Session

Crews

New law provides the following legislative findings:

- (1) Existing law enacted prior to the effective date of new 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 record retention requirements provided in existing law. 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.

New 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 existing law, R.S. 40:1061.19(A).

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

Prior law required physicians to retain the abortion-related records enumerated in existing law, R.S. 40:1061.19(A), for not less than seven years. New law revises prior 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; provides, however, that when the patient has reported facts that would require reporting of child abuse under existing law, the retention period shall be 30 years.

New law provides all of the following with respect to penalties:

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

New law provides that in addition to the remedies established therein and any others available under existing law, a person required by new law to retain the abortion-related

documents enumerated in existing law who, either intentionally or with negligence, fails to obtain, make part of a medical record, or retain any document in compliance with new 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.

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

New law provides that a person may comply with new 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.

New law provides that whoever violates existing law and new 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. Provides that in addition to any other authority granted by existing constitution and existing law, the attorney general shall have the authority to pursue the civil fines provided for in existing law and new law.

New law stipulates that in addition to whatever remedies are otherwise available under existing law, failure to comply with existing law and new 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.

Effective upon signature of governor (June 22, 2019).

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