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136th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Koehler

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SUMMARY

- Establishes informed consent requirements, except in the case of a medical emergency, for the provision of abortion-inducing drugs by a health care provider.
- Establishes civil penalties for a health care provider, provider's agent, or health care facility that violates the bill's requirements.
- Requires the Department of Health to create a form for health care providers to use to provide the information and the certification described in the bill.
- Names the bill the "Abortion Pill Provider Liability Education (APPLE) Act."

DETAILED ANALYSIS

Informed consent for abortion-inducing drugs

Background

Current law requires a physician who is to perform or induce an abortion, including by the provision of an abortion-inducing drug, to comply with various informed consent requirements, except in the case of a medical emergency or medical necessity.[1] The bill establishes additional informed consent requirements specific to the provision of abortion-inducing drugs that a health care provider must meet, except in the case of a medical emergency.

[1] R.C. 2317.56, not in the bill. Parts of that statute are subject to a preliminary injunction issued by the Franklin County Court of Common Pleas related to pending litigation involving Article I, Section 22 of the Ohio Constitution (*Preterm-Cleveland v. Yost*, Franklin C.P., No. 24 CV 2634 (August 23, 2024)).

Under the bill, an "abortion-inducing drug" is the drug RU-486 (mifepristone) when taken for the purpose of terminating a clinically diagnosable pregnancy.[2] Under existing federal law, the U.S. Food and Drug Administration (FDA) requires certified prescribers and dispensers to comply with its Risk Evaluation and Mitigation Strategies (REMS) program for mifepristone, which includes requirements that a Patient Agreement Form be reviewed with and signed by the patient and the health care provider and that the risks of the mifepristone treatment regimen be fully explained to the patient before mifepristone is prescribed.[3] Additionally, federal regulations require all authorized dispensers and pharmacies to provide a side effects statement to consumers for all prescriptions.[4]

Requirements

The bill, named the "Abortion Pill Provider Liability Education (APPLE) Act,"[5] requires a health care provider to ensure the following conditions are met before prescribing an abortion-inducing drug for the purpose of terminating a pregnancy, except in the case of a medical emergency (see below, "Medical emergency"):

- The health care provider or the provider's agent must provide the pregnant woman with written instructions and information on the abortion-inducing drug. The information must include all known complications associated with the use of the abortion-inducing drug and the following statement:

> "If you decide to take an abortion-inducing drug to end your pregnancy, the state of Ohio wants you to be aware that you and your family may hold the manufacturer, distributor, your health care provider, and the health care facility financially accountable if you die, suffer injury, complication, or any debilitating side effects, including infection, excessive bleeding, and the rupture of a previously undiscovered ectopic pregnancy, if the provider fails to address the side effects of the abortion-inducing drug, or if the medication fails to terminate the pregnancy which results in a failed abortion or requires surgical intervention. You and your family also may hold the health care provider, the health care provider's agent, and the health care facility accountable for failing to inform you of complications.
>
> If you experience complications from the abortion-inducing drug and are in need of medical attention, you have the right to tell the health care provider treating the complications that you have

[2] R.C. 2317.57(A)(1).

[3] See the FDA's Mifepristone REMS Program (PDF), Mifepristone Patient Agreement Form (PDF), and Mifepristone Medication Guide (PDF), which are available on the FDA's website: fda.gov.

[4] 21 Code of Federal Regulations 290.

[5] Section 2.

had a chemical abortion. Providing this information will not result in any criminal or civil penalty and may help save your life."

- The pregnant woman must certify in writing that she received the written instructions and information and that she has had the opportunity to review them.
- The health care provider or the provider's agent must receive a copy of the pregnant woman's certification.

Medical emergency

The bill's informed consent requirements do not apply when a pregnant woman is experiencing a medical emergency. A "medical emergency" is defined as a condition that in the physician's good faith medical judgment, based upon the facts known to the physician at that time, so complicates the woman's pregnancy as to necessitate the immediate performance or inducement of an abortion in order to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman that delay in the performance or inducement of the abortion would create.[6]

The definition of "medical emergency" refers only to a ***physician's*** medical judgment. However, the bill's requirements apply to ***health care providers***, which also includes advanced practice clinicians under the bill (see below, "Health care providers"). It is unclear how this provision may interact with the ability of a health care provider to determine a medical emergency.

Records retention

Under the bill, the health care provider or the provider's agent must retain a copy of the pregnant woman's written certification. The copy must be held in the woman's medical file for at least seven years or, in the case of a pregnant minor, for at least seven years or at least five years after the minor reaches age 18, whichever is longer.[7]

Civil penalties

Private action

Any health care provider, health care provider's agent, or health care facility that prescribes an abortion-inducing drug to a pregnant woman before meeting the bill's requirements is liable in a civil action. The civil action may be brought by any of the following:

- The woman who was prescribed the abortion-inducing drug;
- The father of the unborn child, if the father is married to the woman at the time the abortion-inducing drug was prescribed;

[6] R.C. 2317.57(B); R.C. 2919.16(F), not in the bill.

[7] R.C. 2317.57(C); R.C. 3901.01, not in the bill.

- The maternal grandparents of the unborn child, if the woman was a minor when the drug was prescribed or she has died due to the abortion or a complication related to the abortion; or
- The woman's next of kin, if she has died due to the abortion or a complication related to the abortion.

The court is prohibited from awarding damages to a plaintiff if the pregnancy was caused by the plaintiff's criminal conduct.

If the plaintiff prevails, the court must award both of the following:

- Damages for injuries and loss resulting to the plaintiff by reason of the prescription of the abortion-inducing drug; and
- Statutory damages equal to three times the cost of the abortion-inducing drug.[8]

State action

The bill allows the Attorney General or a prosecutor with appropriate jurisdiction to investigate an alleged violation of its informed consent requirements and to file an action for civil penalties against the health care provider, health care provider's agent, and health care facility. Prior to asserting a cause of action, the Attorney General or the prosecutor must give the health care provider, health care provider's agent, or health care facility at least 30 days to comply with the bill's requirements.

Any health care provider, health care provider's agent, or health care facility that violates the bill's requirements is liable for a civil penalty, to be assessed by the court, of not more than $5,000 for each day of violation. The court may impose an additional civil penalty, not to exceed $10,000 for each violation, against any health care provider or health care facility found by the court to have ***knowingly*** violated the bill's requirements. The Attorney General or prosecutor may choose to treat each violation as a separate violation or to combine them into one violation.

Civil penalties assessed under a state action must include statutory interest, in accordance with continuing law,[9] from the date the penalty is assessed by the court to the date that the penalty is paid in full. The statutory interest must be used to fund qualified entities under the Ohio Parenting and Pregnancy Program.[10]

Any commercial entity that violates the bill's requirements may be liable to the Attorney General or a prosecutor with appropriate jurisdiction for all costs, expenses, and fees related to investigations and proceedings associated with the violation, including attorney's fees.[11]

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[8] R.C. 2317.57(D).

[9] See R.C. 1343.03, not in the bill.

[10] The bill requires a technical amendment to correct a cross-reference error. R.C. 2317.57(E) contains a cross reference to R.C. 5101.804, which was recently renumbered to R.C. 5180.71 in H.B. 96 of the 136th General Assembly.

[11] R.C. 2317.57(E).

Immunity for pregnant woman

A woman who is prescribed an abortion-inducing drug is not liable under the bill.[12]

Department of Health (ODH) requirements

The Ohio Department of Health (ODH) must create a form for health care providers to use to provide the information and the certification described in the bill. ODH must make the form available to health care providers.[13]

Health care providers

Under the bill, a "health care provider" is any provider authorized to prescribe an abortion-inducing drug in accordance with state and federal law.[14] Existing Ohio statutory law allows only physicians to prescribe abortion-inducing drugs and prohibits advanced practice clinicians from doing so. However, a court has enjoined the law restricting the prescription of abortion-inducing drugs by advanced practice clinicians while litigation is pending. Under the injunction, physician assistants, nurse practitioners, and certified nurse-midwives are allowed to provide abortion-inducing drugs.[15]

HISTORY

Action	Date
Introduced	10-28-25

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[12] R.C. 2317.57(G).

[13] R.C. 2317.57(F)

[14] R.C. 2317.57(A)(2).

[15] R.C. 2919.123, 4723.50, and 4730.02, not in the bill; (*Planned Parenthood Southwest Ohio Region v. Ohio Dept. of Health*, Hamilton C.P. No. A2101148 (April 19, 2021)); see also Second Motion for Preliminary Injunction granted August 29, 2024, and Third Motion for Preliminary injunction granted July 8, 2025.