

Oklahoma  
Abortion Statutes  
Effective November 1, 2021

Oklahoma State Department of Health  
Health Care Information  
123 Robert S. Kerr Avenue  
Oklahoma City, OK, 73102

## Introduction / Background

This information has been put together as a convenient reference to Oklahoma Abortion laws and regulations. It has been taken directly from Oklahoma Statutes Title 63, which can be found on the Oklahoma State Courts Network website <http://www.oscn.net/applications/oscn/index.asp?ftdb=STOKST&level=1>.

For your information, a few definitions:

- **Laws/Statutes:** These are the laws which are passed by the legislature and often provide broad overarching guidance to implement programs and address specific items of interest. Often you will find this assigning responsibility for the implementation of a program to a particular group, a mission statement, implementation timelines, and possibly funding sources. Most of OSDH related legislation is found under Title 63, which covers Public Health and Safety.
- **Administrative Code:** These have the same effect as law and are passed by the Board of Health and then in turn are reviewed by the legislature. Here you will find the detail on how a program should be implemented, interpreted, enforced or administered. OSDH related regulation can be found under Title 310. Administrative Code can be found on the Oklahoma Secretary of State website: <http://www.oar.state.ok.us/oar/codedoc02.nsf/frmMain?OpenFrameSet&Frame=Main&Src=75tnm2shfcdnm8pb4dthj0chedppmcbq8dtmmak31ctijujrgcln50ob7ckj42tbkdt374obdcli00>

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**A. LICENSING AND REGULATIONS**  
**Title 63, Article 7 – Hospitals and Related Institutions**

**§63-1-701. Definitions**

For the purposes of Section 1-701 et seq. of this title:

1. "Hospital" means any institution, place, building or agency, public or private, whether organized for profit or not, primarily engaged in the maintenance and operation of facilities for the diagnosis, treatment or care of patients admitted for overnight stay or longer in order to obtain medical care, surgical care, obstetrical care, or nursing care for illness, disease, injury, infirmity, or deformity. Except as otherwise provided by paragraph 5 of this subsection, places where pregnant females are admitted and receive care incident to pregnancy, abortion or delivery shall be considered to be a "hospital" within the meaning of this article, regardless of the number of patients received or the duration of their stay. The term "hospital" includes general medical surgical hospitals, specialized hospitals, critical access and emergency hospitals, and birthing centers;
2. "General medical surgical hospital" means a hospital maintained for the purpose of providing hospital care in a broad category of illness and injury;
3. "Specialized hospital" means a hospital maintained for the purpose of providing hospital care in a certain category, or categories, of illness and injury;
4. "Critical access hospital" means a hospital determined by the State Department of Health to be a necessary provider of health care services to residents of a rural community;
5. "Emergency hospital" means a hospital that provides emergency treatment and stabilization services on a twenty-four-hour basis that has the ability to admit and treat patients for short periods of time;
6. "Birthing center" means any facility, place or institution, which is maintained or established primarily for the purpose of providing services of a certified midwife or licensed medical doctor to assist or attend a woman in delivery and birth, and where a woman is scheduled in advance to give birth following a normal, uncomplicated, low-risk pregnancy. Provided, however, licensure for a birthing center shall not be compulsory;
7. "Day treatment program" means nonresidential, partial hospitalization programs, day treatment programs, and day hospital programs as defined by subsection A of Section 175.20 of Title 10 of the Oklahoma Statutes; and
8. a. "Primarily engaged" means a hospital shall be primarily engaged, defined by this section and as determined by the State Department of Health, in providing to inpatients the following care by or under the supervision of physicians:

- (1) diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons, or

- (2) rehabilitation services for the rehabilitation of injured, disabled or sick persons.

- b. In reaching a determination as to whether an entity is primarily engaged in providing inpatient hospital services to inpatients of a hospital, the Department shall evaluate the total facility operations and consider multiple factors as provided in subparagraphs c and d of this subsection.
- c. In evaluating the total facility operations, the Department shall review the actual provision of care and services to two or more inpatients, and the effects of that care, to assess whether the care provided meets the needs of individual patients by way of patient outcomes.
- d. The factors that the Department shall consider for determination of whether an entity meets the definition of primarily engaged include, but are not limited to:
  - (1) a minimum of four inpatient beds,
  - (2) the entity's average daily census (ADC),
  - (3) the average length of stay (ALOS),
  - (4) the number of off-site campus outpatient locations,
  - (5) the number of provider-based emergency departments for the entity,
  - (6) the number of inpatient beds related to the size of the entity and the scope of the services offered,
  - (7) the volume of outpatient surgical procedures compared to the inpatient surgical procedures, if surgical services are provided,
  - (8) staffing patterns, and
  - (9) patterns of ADC by day of the week.
- e. Notwithstanding any other provision of this section, an entity shall be considered primarily engaged in providing inpatient hospital services to inpatients if the hospital has had an ADC of at least two (2) and an ALOS of at least two (2) midnights over the past twelve (12) months. A critical access hospital shall be exempt from the ADC and ALOS determination. ADC shall be calculated by adding the midnight daily census for each day of the twelve-month period and then dividing the total number by days in the year. A facility that has been operating for less than (12) months at the time of the survey shall calculate its ADC based on the number of months the facility has been operational, but not less than three (3) months. If a first survey finds noncompliance with the ADC and ALOS, a second survey may be required by the Department to demonstrate compliance with state licensure.

Added by Laws 1963, SB 26, c. 325, § 701;  
Amended by Laws 1978, HB 1813, c. 207, § 1, eff. October 1, 1978;  
Laws 1991, HB 1113, c. 306, § 7, emerg. eff. June 4, 1991;  
Laws 1995, HB 1602, c. 231, § 5, eff. November 1, 1995;

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Laws 1999, HB 1184, c. 93, § 1, eff. November 1, 1999;  
Laws 2020, SB 1748, c. 150, § 1, eff. November 1, 2020.

### §63-1-702. Licenses Required – Practice of Healing Arts or Medicine

A. It shall be unlawful for any person to establish, operate or maintain in the State of Oklahoma a hospital without first obtaining a license therefor in the manner hereinafter provided. Hospitals operated by the federal government, the Department of Corrections, state mental hospitals, and community-based structured crisis centers as defined in Section 3-317 of Title 43A of the Oklahoma Statutes, shall be exempt from the provisions of this article.

B. A hospital may be licensed as a general medical surgical hospital with one or more specialty services or combination of specialty services in a single license.

C. Nothing in this article shall authorize any person to engage, in any manner, in the practice of the healing arts.

Added by Laws 1963, SB 26, c. 325, art. 7, § 702, emerg. eff. July 1, 1963;  
Amended by Laws 1996, HB 2964, c. 354, § 49, eff. November 1, 1996;  
Laws 1999, HB 1184, c. 93, § 2, eff. November 1, 1999;  
Laws 2016, SB 884, c. 95, § 1, eff. November 1, 2016.

### §63-1-707. Rules and Standards

A. The State Commissioner of Health, with the advice of the Oklahoma Hospital Advisory Council, shall promulgate rules and standards as the Commissioner deems to be in the public interest for hospitals, on the following:

1. Construction plans and location, including fees not to exceed Two Thousand Dollars (\$2,000.00) for submission or resubmission of architectural and building plans, and procedures to ensure the timely review of such plans by the State Department of Health. The assessed fee shall be used solely for the purposes of processing approval of construction plans and location by the State Department of Health;
2. Physical plant and facilities;
3. Fire protection and safety;
4. Food service;
5. Reports and records;
6. Staffing and personal service;
7. Surgical facilities and equipment;
8. Maternity facilities and equipment;
9. Control of communicable disease;
10. Sanitation;
11. Laboratory services;
12. Nursing facilities and equipment; and
13. Other items as may be deemed necessary to carry out the purposes of this article.

B. 1. The State Commissioner of Health, with the advice of the Oklahoma Hospital Advisory Council and the State Board of Pharmacy, shall promulgate rules and standards as the Commissioner deems to be in the public interest with respect to the storage and dispensing of drugs and medications for hospital patients.

2. The State Board of Pharmacy shall be empowered to inspect drug facilities in licensed hospitals and shall report violations of applicable statutes and rules to the State Department of Health for action and reply.

C. 1. The Commissioner shall appoint an Oklahoma Hospital Advisory Council to advise the Department regarding hospital operations and to recommend actions to improve patient care.

2. The Advisory Council shall have the duty and authority to:

a. review and approve in its advisory capacity rules and standards for hospital licensure,

b. evaluate, review and make recommendations regarding Department licensure activities; provided however, the Advisory Council shall not make recommendations regarding scope of practice for any health care providers or practitioners regulated pursuant to Title 59 of the Oklahoma Statutes, and

c. recommend and approve:

(1) quality indicators and data submission requirements for hospitals, and

(2) the indicators and data to be used by the Department to monitor compliance with licensure requirements

D. 1. The Advisory Council shall be composed of nine (9) members appointed by the Commissioner. The membership of the Advisory Council shall be as follows:

a. two members shall be hospital administrators of licensed hospitals,

b. two members shall be licensed physicians or practitioners who have current privileges to provide services in hospitals,

c. two members shall be hospital employees, and

d. three members shall be citizens representing the public who:

(1) are not hospital employees,

(2) do not hold hospital staff appointments, and

(3) are not members of hospital governing boards.

2. a. Advisory Council members shall be appointed for three-year terms except the initial terms after November 1, 1999, of one hospital administrator, one licensed physician or practitioner, one hospital employee, and one public member shall be one (1) year. The initial terms after the effective date of this act of one hospital administrator, one licensed physician or practitioner, one hospital employee, and one public member shall be two (2) years. The initial terms of all other members shall be three (3) years. After initial appointments to the Council, members shall be appointed to three-year terms.

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b. Members of the Advisory Council may be removed by the Commissioner for cause.

E. The Advisory Council shall meet on a quarterly basis and shall annually elect from among its members a chairperson. Members of the Council shall serve without compensation but shall be reimbursed by the Department for travel expenses related to their service as authorized by the State Travel Reimbursement Act.

Added by Laws 1963, SB 26, c. 325, art. 7, § 707, emerg. eff. July 1, 1963;  
Amended by Laws 1968, SB 346, c. 86, § 1, emerg. eff. April 1, 1968;  
Laws 1999, HB 1184, c. 93, § 6, eff. November 1, 1999;  
Laws 1999, HB 1188, c. 213, § 2, emerg. eff. July 1, 1999;  
Laws 2006, HB 2842, c. 315, § 16, emerg. eff. June 9, 2006;  
Laws 2019, HB 2285, c. 153, § 1, eff. November 1, 2019.

## B-2 FREEDOM OF CONSCIENCE ACT

### §63-1-729.1. RU-486 (mifepristone) – Other Drug for Purpose of Performing or Inducing Abortion – Physician Present When First Given to Patient

When RU-486 (mifepristone) or any other drug or chemical is used for the purpose of performing or inducing an abortion, the physician who is prescribing, dispensing, or otherwise providing the drug or chemical shall be physically present, in person, in the same room as the patient when the drug or chemical is first provided to the patient.

Added by Laws 2012, c. 170, § 1, eff. Nov. 1, 2012.

### §63-1-729.2. Violation - Felony

Any person who knowingly or recklessly violates this act shall be guilty of a felony. No penalty may be assessed against the female upon whom the abortion is performed or induced or attempted to be performed or induced.

Added by Laws 2012, c. 170, § 2, eff. Nov. 1, 2012.

### §63-1-729.3. Civil Liability for Knowing or Reckless Violations – Remedies and Relief

A. Any person who knowingly or recklessly violates a provision of this act shall be liable for damages as provided in this section and may be enjoined from such acts in accordance with this section in an appropriate court.

B. Any female upon whom an abortion has been performed or induced, the father of the unborn child who was the subject of the abortion if the father was married to the woman who received the abortion at the time the abortion was performed or induced, or a maternal grandparent of the unborn child may maintain an action against the person who performed or induced the abortion in knowing or reckless violation of this act for actual and punitive damages. Any female upon whom an abortion has been attempted to be performed or induced in knowing or reckless violation of this act may maintain an action against the person who attempted to perform or induce the abortion for actual and punitive damages.

C. If a judgment is rendered in favor of the plaintiff in any action described in this section, the court shall also render judgment for a reasonable attorney fee in favor of the plaintiff against the defendant. If a judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney fee in favor of the defendant against the plaintiff.

D. A cause of action for injunctive relief against any person who has knowingly or recklessly violated this act may be maintained by:

1. The female upon whom an abortion was performed or induced or attempted to be performed or induced in violation of this act;
2. Any person who is the spouse, parent, sibling or guardian of, or a current or former licensed health care provider of, the female upon whom an abortion has been performed or induced or attempted to be performed or induced in violation of this act;
3. A district attorney with appropriate jurisdiction; or
4. The Attorney General.

The injunction shall prevent the abortion provider from performing or inducing further abortions in violation of this act in the State of Oklahoma.

E. Any person who knowingly or recklessly violates the terms of an injunction issued in accordance with this act shall be subject to civil contempt, and shall be fined Ten Thousand Dollars (\$10,000.00) for the first violation, Fifty Thousand Dollars (\$50,000.00) for the second violation, One Hundred Thousand Dollars (\$100,000.00) for the third violation and for each succeeding violation an amount in excess of One Hundred Thousand Dollars (\$100,000.00) sufficient to deter future violations. The fines shall be the exclusive penalties for such contempt. Each performance or induction or attempted performance or induction of an abortion in violation of the terms of an injunction is a separate violation. These fines shall be cumulative. However, no fine may be assessed against the woman on whom an abortion was performed or induced or was attempted to be performed or induced.

F. A physician who performed or induced an abortion or attempted to perform or induce an abortion in violation of this act shall be considered to have engaged in unprofessional conduct for which his or her license to practice medicine in the State of Oklahoma may be suspended or revoked by the State Medical Board of Licensure and Supervision or the State Board of Osteopathic Examiners.

Added by Laws 2012, c. 170, § 3, eff. Nov. 1, 2012.

### §63-1-729.4. Anonymity in the Absence of Written Consent

In every proceeding or action brought under this act, the anonymity of any woman upon whom an abortion is performed or induced or attempted to be performed or induced shall be preserved from public disclosure unless she gives her consent to such disclosure. The court, upon motion or sua sponte, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the

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extent necessary to safeguard her identity from public disclosure. In the absence of written consent of the woman upon whom an abortion has been performed or induced or has been attempted to be performed or induced, anyone who brings an action under Section 3 of this act shall do so under a pseudonym.

Added by Laws 2012, c. 170, § 4, eff. Nov. 1, 2012.

### §63-1-729.5. Persons Not Subject to Civil Actions

No pregnant female who obtains or possesses RU-486 (mifepristone) or any other drug or chemical for the purpose of performing or inducing an abortion to terminate her own pregnancy shall be subject to any action brought under Section 3 of this act.

Added by Laws 2012, c. 170, § 5, eff. Nov. 1, 2012.

### §63-1-729.6. Act Does Not Create or Recognize Right to Abortion

Nothing in this act shall be construed as creating or recognizing a right to abortion.

Added by Laws 2012, c. 170, § 6, eff. Nov. 1, 2012.

### §63-1-729.7. Severability of Act

If any one or more provision, section, subsection, sentence, clause, phrase or word of this act or the application hereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed this act, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.

Added by Laws 2012, c. 170, § 7, eff. Nov. 1, 2012.

### §63-1-729a. Legislative Findings – Regulation of Mifepristone RU-486 and Abortion-Inducing Drugs

A. The Legislature finds that:

1. The U.S. Food and Drug Administration (FDA) approved the drug mifepristone (brand name "Mifeprex"), a first-generation [selective] progesterone receptor modulator ([S]PRM), as an abortion-inducing drug with a specific gestation, dosage, and administration protocol;
2. The FDA approved mifepristone (brand name Mifeprex) under the rubric of 21 C.F.R., Section 314.520, also referred to as "Subpart H", which is the only FDA approval process that allows for postmarketing restrictions. Specifically, the Code of Federal Regulations (CFR) provides for accelerated approval of certain drugs that are shown to be effective but "can be safely used only if distribution or use is restricted";

3. The FDA does not treat Subpart H drugs in the same manner as drugs which undergo the typical approval process;

4. As approved by the FDA, and as outlined in the Mifeprex final printed labeling (FPL), an abortion by mifepristone consists of three two-hundred-milligram tablets of mifepristone taken orally, followed by two two-hundred-microgram tablets of misoprostol taken orally, through forty-nine (49) days LMP (a gestational measurement using the first day of the woman's "last menstrual period" as a marker). The patient is to return for a follow-up visit in order to confirm that the abortion has been completed. This FDA-approved protocol is referred to as the "Mifeprex regimen" or the "RU-486 regimen";

5. The aforementioned procedure requires three office visits by the patient, and the dosages may only be administered in a clinic, medical office, or hospital and under supervision of a physician;

6. The Mifeprex final printed labeling (FPL) outlines the FDA-approved dosage and administration of both drugs in the Mifeprex regimen, namely mifepristone and misoprostol;

7. When the FDA approved the Mifeprex regimen under Subpart H, it did so with certain restrictions. For example, the distribution and use of the Mifeprex regimen must be under the supervision of a physician who has the ability to assess the duration of pregnancy, diagnose ectopic pregnancies, and provide surgical intervention (or has made plans to provide surgical intervention through other qualified physicians);

8. One of the restrictions imposed by the FDA as part of its Subpart H approval is a written agreement that must be signed by both the physician and patient. In that agreement, the woman attests to the following, among other statements:

- a. "I believe I am no more than 49 days (7 weeks) pregnant",
- b. "I understand that I will take misoprostol in my provider's office two days after I take Mifeprex (Day 3)", and
- c. "I will do the following: return to my provider's office in two days (Day 3) to check if my pregnancy has ended. My provider will give me misoprostol if I am still pregnant";

9. The FDA concluded that available medical data did not support the safety of home use of misoprostol, and it specifically rejected information in the Mifeprex final printed labeling (FPL) on self-administering misoprostol at home;

10. The use of abortion-inducing drugs presents significant medical risks to women, including but not limited to abdominal pain, cramping, vomiting, headache, fatigue, uterine hemorrhage, viral infections, and pelvic inflammatory disease;

11. Abortion-inducing drugs are associated with an increased risk of complications relative to surgical abortion. The risk of complications increases with advancing gestational age, and, in the instance of the Mifeprex regimen, with failure to complete the two-step dosage process;

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12. In July 2011, the FDA reported 2,207 adverse events in the United States after women used abortion-inducing drugs. Among those were 14 deaths, 612 hospitalizations, 339 blood transfusions, and 256 infections (including 48 "severe infections");

13. "Off-label" or so-called "evidence-based" use of abortion-inducing drugs may be deadly. To date, fourteen women have reportedly died after administering abortion-inducing drugs, with eight deaths attributed to severe bacterial infection. All eight of those women administered the drugs in an "off-label" or "evidence-based" manner advocated by many abortion providers. The FDA has received no reports of women dying from bacterial infection following administration according to the FDA-approved protocol for the Mifeprex regimen. The FDA has not been able to conclude one way or another whether off-label use led to the eight deaths;

14. Medical evidence demonstrates that women who utilize abortion-inducing drugs incur more complications than those who have surgical abortions;

15. Based on the foregoing findings, it is the purpose of this act to:

a. protect women from the dangerous and potentially deadly off-label use of abortion-inducing drugs, and

b. ensure that physicians abide by the protocol approved by the FDA for the administration of abortion-inducing drugs, as outlined in the drugs' final printed labeling (FPL); and

16. In response to the Oklahoma Supreme Court's decision in *Cline v. Oklahoma Coalition for Reproductive Justice* (No. 111,939), in which the Oklahoma Supreme Court determined, in contravention of this Legislature's intent, that this act prohibits all uses of misoprostol for chemical abortion and prohibits the use of methotrexate in treating ectopic pregnancies, it is also the purpose of this act to legislatively overrule the decision of the Oklahoma Supreme Court and ensure that should such questions be presented before that Court in the future it will reach the proper result that this act does not ban use of misoprostol in chemical abortion (and allows it as part of the FDA-approved Mifeprex regimen) nor prevent the off-label use of drugs for the treatment of ectopic pregnancy.

B. As used in this section:

1. "Abortion-inducing drug" means a medicine, drug, or any other substance prescribed or dispensed with the intent of inducing an abortion. This includes off-label use of drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion, such as misoprostol (Cytotec), and methotrexate. This definition does not apply to drugs that may be known to cause an abortion, but which are prescribed for other medical indications, such as chemotherapeutic agents or diagnostic drugs, or for treatment of an ectopic pregnancy;

2. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to remove an

ectopic pregnancy, or to remove a dead unborn child who died as the result of a spontaneous miscarriage, accidental trauma, or a criminal assault on the pregnant female or her unborn child;

3. "Drug label" or "drug's label" means the pamphlet accompanying an abortion-inducing drug which outlines the protocol authorized by the U.S. Food and Drug Administration (FDA) and agreed upon by the drug company applying for FDA authorization of that drug. Also known as "final printed labeling (FPL)" or referred to as the "FDA-approved label", it is the FDA-approved document which delineates how a drug is to be used according to the FDA approval;

4. "Mifeprex regimen" means the abortion-inducing drug regimen that is described in the FDA-approved Mifeprex final printed labeling, and which involves administration of mifepristone (brand name "Mifeprex") and misoprostol. It is the only abortion-inducing drug regimen approved by the FDA, and it does not include any dosage or administration not explicitly approved in Mifeprex final printed labeling. It is also commonly referred to as the "RU-486 regimen" or simply "RU-486";

5. "Mifepristone" means the first drug used in the Mifeprex regimen;

6. "Misoprostol" means the second drug used in the Mifeprex regimen;

7. "Personal identifying information" means any information designed to identify a person and any information commonly used or capable of being used alone or in conjunction with any other information to identify a person; and

8. "Physician" means a doctor of medicine or osteopathy legally authorized to practice medicine in the state.

C. No person shall knowingly or recklessly give, sell, dispense, administer, prescribe, or otherwise provide an abortion-inducing drug, including the Mifeprex regimen, unless the person who gives, sells, dispenses, administers, prescribes, or otherwise provides the abortion-inducing drug is a physician who:

1. Has the ability to assess the duration of the pregnancy accurately;

2. Has the ability to diagnose ectopic pregnancies;

3. Has the ability to provide surgical intervention in cases of incomplete abortion or severe bleeding, or has made and documented in the patient's medical record plans to provide such care through other qualified physicians; and

4. Is able to assure patient access to medical facilities equipped to provide blood transfusions and resuscitation, if necessary.

D. No physician who provides an abortion-inducing drug, including the Mifeprex regimen, shall knowingly or recklessly fail to provide or prescribe the drug according to the protocol authorized by the U.S. Food and Drug Administration and as outlined in the FDA-approved label. In the specific case of the Mifeprex regimen, the Mifeprex label

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includes the FDA-approved dosage and administration instructions for both mifepristone (brand name Mifeprex) and misoprostol, and any provision accomplished according to that labeling is not prohibited.

E. No physician who provides an abortion-inducing drug, including the Mifeprex regimen, shall knowingly or recklessly fail to:

1. Provide each patient with a copy of the drug manufacturer's medication guide and drug label for the drug(s) being used; when the Mifeprex regimen is being utilized, this requirement is satisfied so long as the patient is provided the FDA-approved Mifeprex medication guide and final printed labeling;
2. Fully explain the procedure to the patient, including, but not limited to, explaining that the drug is being used in accordance with the protocol authorized by the U.S. Food and Drug Administration and as outlined in the drug label for the abortion-inducing drug;
3. Provide the female with a copy of the drug manufacturer's patient agreement and obtain the patient's signature on the patient agreement;
4. Sign the patient agreement; and
5. Record the drug manufacturer's package serial number in the patient's medical record.

F. Because the failure and complications rates from abortion-inducing drugs increase with increasing gestational age, and because the physical symptoms of an abortion induced by drugs can be identical to the symptoms of ectopic pregnancy, thereby increasing the risk of ruptured ectopic pregnancy, the physician giving, selling, dispensing, administering, or otherwise providing or prescribing the abortion-inducing drug shall first examine the woman and document, in the woman's medical chart, gestational age and intrauterine location of the pregnancy prior to giving, selling, dispensing, administering, or otherwise providing or prescribing the abortion-inducing drug.

G. An abortion-inducing drug must be administered in the same room and in the physical presence of the physician who prescribed, dispensed, or otherwise provided the drug to the patient. The physician inducing the abortion, or a person acting on behalf of the physician inducing the abortion, shall schedule the patient for a follow-up appointment and make all reasonable efforts to ensure that the patient returns twelve (12) to eighteen (18) days after the administration or use of the abortion-inducing drug for a follow-up visit so that the physician can confirm that the pregnancy has been terminated and assess the patient's medical condition. A brief description of the efforts made to comply with this subsection, including the date, time, and identification by name of the person making such efforts, shall be included in the patient's medical record.

H. 1. If a physician provides an abortion-inducing drug and knows that the female who uses the abortion-inducing drug experiences within one (1) year after the use of the abortion-inducing drug an incomplete abortion, severe bleeding, or an adverse reaction to the abortion-inducing drug or is hospitalized, receives a transfusion, or

experiences any other serious event, the physician shall, as soon as is practicable, but in no case more than sixty (60) days after the physician learns of the adverse reaction or serious event, provide a written report of the incomplete abortion, severe bleeding, adverse reaction, hospitalization, transfusion, or serious event to the drug manufacturer. If the physician is a doctor of medicine, the physician shall simultaneously provide a copy of the report to the State Board of Medical Licensure and Supervision. If the physician is a doctor of osteopathy, the physician shall simultaneously provide a copy of the report to the State Board of Osteopathic Examiners. The relevant Board shall compile and retain all reports it receives pursuant to this subsection. All reports the relevant Board receives under this subsection are public records open to inspection pursuant to the Oklahoma Open Records Act; however, absent an order by a court of competent jurisdiction, neither the drug manufacturer nor the relevant Board shall release the name or any other personal identifying information regarding a person who uses or provides the abortion-inducing drug for the purpose of inducing an abortion and who is the subject of a report the drug manufacturer or the relevant Board receives under this subsection.

2. No physician who provides an abortion-inducing drug to a pregnant female shall knowingly or recklessly fail to file a report required under paragraph 1 of this subsection. Knowing or reckless failure to comply with this subsection shall subject the physician to sanctioning by the licensing board having administrative authority over such physician.

I. Any female upon whom an abortion has been performed, the father of the unborn child who was the subject of the abortion if the father was married to the woman who received the abortion at the time the abortion was performed, or a maternal grandparent of the unborn child may maintain an action against the person who performed the abortion in knowing or reckless violation of this section for actual and punitive damages. Any female upon whom an abortion has been attempted in knowing or reckless violation of this section may maintain an action against the person who attempted to perform the abortion for actual and punitive damages.

J. If a judgment is rendered in favor of the plaintiff in any action described in this section, the court shall also render judgment for a reasonable attorney fee in favor of the plaintiff against the defendant. If a judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney fee in favor of the defendant against the plaintiff.

K. No pregnant female who obtains or possesses an abortion-inducing drug to terminate her own pregnancy shall be subject to any action brought under subsection I of this section.

L. If some or all of the language in this section is ever temporarily or permanently restrained or enjoined by judicial order, then this section shall be enforced as though such restrained or enjoined provisions had not been adopted; provided, however, that whenever such temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

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Added by Laws 2010, c. 48, § 1, emerg. eff. April 2, 2010;

Amended by Laws 2011, c. 216, § 1, eff. Nov. 1, 2011;

Laws 2014, c. 121, § 1, eff. Nov. 1, 2014.

### C. ABORTIONS

#### §63-1-730. Definitions

A. As used in this article:

1. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to remove an ectopic pregnancy, or to remove a dead unborn child who died as the result of a spontaneous miscarriage, accidental trauma, or a criminal assault on the pregnant female or her unborn child;

2. "Attempt to perform an abortion" means an act, or an omission of a statutorily required act, that under the circumstances as the actor believes them to be constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion;

3. "Certified technician" means a Registered Diagnostic Medical Sonographer who is certified in obstetrics and gynecology by the American Registry for Diagnostic Medical Sonography (ARDMS) or a Nurse Midwife or Advance Practice Nurse Practitioner in Obstetrics with certification in obstetrical ultrasonography;

4. "Unborn child" or "unborn person" means the unborn offspring of human beings from the moment of conception, through pregnancy, and until live birth including the human conceptus, zygote, morula, blastocyst, embryo and fetus;

5. "Unemancipated minor" means any person less than eighteen (18) years of age who is not or has not been married or who is under the care, custody, and control of the person's parent or parents, guardian, or juvenile court of competent jurisdiction;

6. "Viable" means potentially able to live outside of the womb of the mother upon premature birth, whether resulting from natural causes or an abortion;

7. "Conception" means the fertilization of the ovum of a female individual by the sperm of a male individual;

8. "Health" means physical or mental health;

9. "Department" means the State Department of Health; and

10. "Inducing an abortion" means the administration by any person, including the pregnant woman, of any substance designed or intended to cause an expulsion of the unborn child, effecting an abortion as defined above.

B. Nothing contained herein shall be construed in any manner to include any contraceptive device or medication or sterilization procedure.

Added by Laws 1978, c. 207, § 2, eff. Oct. 1, 1978;

Amended by Laws 2007, c. 161, § 1, eff. Nov. 1, 2007;

Laws 2009, c. 227, § 1, eff. Nov. 1, 2009;

Laws 2020, c. 149, § 3, eff. Nov. 1, 2020.

#### §63-1-731. Persons Who May Perform Abortions – Violations - Penalties

A. No person shall perform or induce an abortion upon a pregnant woman unless that person is a physician licensed to practice medicine in the State of Oklahoma who is board-certified in obstetrics and gynecology. Any person violating this section shall be guilty of a felony punishable by imprisonment for not less than one (1) year nor more than three (3) years in the custody of the Department of Corrections.

B. No person shall perform or induce an abortion upon a pregnant woman subsequent to the end of the first trimester of her pregnancy, unless such abortion is performed or induced in a general hospital.

Added by Laws 1978, c. 207, § 3, eff. Oct. 1, 1978;  
Amended by Laws 1997, c. 133, § 523, eff. July 1, 1999;  
Laws 1999, 1st Ex.Sess., c. 5, § 379, eff. July 1, 1999;  
Laws 2021, HB 1904 c.211, § 1, eff. Nov. 1, 2021.

#### §63-1-731.2. Abortion Solely on Account of Sex of Unborn Child – Penalties – Civil Action – Anonymity of the Female

A. As used in this section:

1. "Attempt to perform an abortion" means an act, or an omission of a statutorily required act, that under the circumstances as the actor believes them to be constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion; and

2. "Unemancipated minor" means any person less than eighteen (18) years of age who is not or has not been married or who is under the care, custody, and control of the person's parent or parents, guardian, or juvenile court of competent jurisdiction.

B. No person shall knowingly or recklessly perform or attempt to perform an abortion with knowledge that the pregnant female is seeking the abortion solely on account of the sex of the unborn child. Nothing in this section shall be construed to proscribe the performance of an abortion because the unborn child has a genetic disorder that is sex-linked.

C. Any person who knowingly or recklessly violates a provision of this section shall be liable for damages as provided in this subsection and may be enjoined from such acts in accordance with this section in an appropriate court.

1. A cause of action for injunctive relief against any person who has knowingly or recklessly violated a provision of this section may be maintained by:

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- a. the female upon whom an abortion was performed or attempted to be performed in violation of this section,
- b. any person who is the spouse, parent, sibling, or guardian of, or current or former licensed health care provider of, the female upon whom an abortion has been performed in violation of this section,
- c. a district attorney with appropriate jurisdiction, or
- d. the Attorney General.

2. The injunction shall prevent the abortion provider from performing further abortions in violation of this section in this state.

3. Any person who knowingly violates the terms of an injunction issued in accordance with this section shall be subject to civil contempt and shall be fined Ten Thousand Dollars (\$10,000.00) for the first violation, Fifty Thousand Dollars (\$50,000.00) for the second violation, and One Hundred Thousand Dollars (\$100,000.00) for the third violation and for each succeeding violation. The fines shall be the exclusive penalties for civil contempt pursuant to this paragraph. Each performance or attempted performance of an abortion in violation of the terms of an injunction is a separate violation. These fines shall be cumulative. No fine shall be assessed against the female upon whom an abortion is performed or attempted.

4. A pregnant female upon whom an abortion has been performed in violation of this section, or the parent or legal guardian of the female if she is an unemancipated minor, may commence a civil action against the abortion provider for any knowing or reckless violation of this section for actual and punitive damages.

D. An abortion provider who knowingly or recklessly performed an abortion in violation of this section shall be considered to have engaged in unprofessional conduct for which the certificate or license of the provider to provide health care services in this state shall be suspended or revoked by the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners.

E. In every proceeding or action brought under this section, the anonymity of any female upon whom an abortion is performed or attempted shall be preserved unless she gives her consent to such disclosure. The court, upon motion or sua sponte, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the female's identity from public disclosure. In the absence of written consent of the female upon whom an abortion has been performed or attempted, anyone who brings an action under subsection B of this section shall do so under a pseudonym.

Added by Laws 2010, c. 46, § 1, emerg. eff. April 2, 2010.

### §63-1-731.3. Detectable Heartbeat – Grounds to Abort

A. No person shall perform or induce an abortion upon a pregnant woman without first detecting whether or not her unborn child has a

heartbeat. No person shall perform or induce an abortion upon a pregnant woman after such time as her unborn child has been determined to have a detectable heartbeat except if, in reasonable medical judgment, she has a condition that so complicates her medical condition that it necessitates the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No such condition may be determined to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

B. A "detectable heartbeat" shall mean embryonic or fetal cardiac activity or the steady or repetitive rhythmic contract of the heart within the gestational sac.

C. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

D. Any person violating subsection A of this section shall be guilty of homicide.

Laws 2021, HB 2441, c. 219, § 1, eff. November 1, 2021.

### §63-1-732. Viable fetus - Grounds to Abort - Procedure

A. No person shall perform or induce an abortion upon a pregnant woman after such time as her unborn child has become viable unless such abortion is necessary to prevent the death of the pregnant woman or to prevent impairment to her health.

B. An unborn child shall be presumed to be viable if more than twenty-four (24) weeks have elapsed since the probable beginning of the last menstrual period of the pregnant woman, based upon either information provided by her or by an examination by her attending physician. If it is the judgment of the attending physician that a particular unborn child is not viable where the presumption of viability exists as to that particular unborn child, then he shall certify in writing the precise medical criteria upon which he has determined that the particular unborn child is not viable before an abortion may be performed or induced.

C. No abortion of a viable unborn child shall be performed or induced except after written certification by the attending physician that in his best medical judgment the abortion is necessary to prevent the death of the pregnant woman or to prevent an impairment to her health. The physician shall further certify in writing the medical indications for such abortion and the probable health consequences if the abortion is not performed or induced.

D. The physician who shall perform or induce an abortion upon a pregnant woman after such time as her unborn child has become viable shall utilize the available method or technique of abortion most likely to preserve the life and health of the unborn child, unless he shall first certify in writing that in his best medical judgment such method or technique shall present a significantly greater danger to

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the life or health of the pregnant woman than another available method or technique.

Added by Laws 1978, c. 207, § 6, eff. Oct. 1, 1978;  
Amended by Laws 1997, c. 133, § 526, eff. July 1, 1999.

E. An abortion of a viable unborn child shall be performed or induced only when there is in attendance a physician other than the physician performing or inducing the abortion who shall take control of and provide immediate medical care for the child. During the performance or inducing of the abortion, the physician performing it, and subsequent to it, the physician required by this section to be in attendance, shall take all reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life and health of the child, in the same manner as if the child had been born naturally or spontaneously. The requirement of the attendance of a second physician may be waived when in the best judgment of the attending physician a medical emergency exists and further delay would result in a serious threat to the life or physical health of the pregnant woman. Provided that, under such emergency circumstances and waiver, the attending physician shall have the duty to take all reasonable steps to preserve the life and health of the child before, during and after the abortion procedure, unless such steps shall, in the best medical judgment of the physician, present a significantly greater danger to the life or health of the pregnant woman.

F. Any person violating subsection A of this section shall be guilty of homicide.

Added by Laws 1978, c. 207, § 4, eff. Oct. 1, 1978;  
Amended by Laws 1997, c. 133, § 524, eff. July 1, 1999.

### §63-1-733. Self-Induced Abortions

No woman shall perform or induce an abortion upon herself, except under the supervision of a duly licensed physician. Any physician who supervises a woman in performing or inducing an abortion upon herself shall fulfill all the requirements of this article which apply to a physician performing or inducing an abortion.

Added by Laws 1978, c. 207, § 5, eff. Oct. 1, 1978;  
Amended by Laws 1997, c. 133, § 525, eff. July 1, 1999.

### §63-1-734. Live-born fetus - Care and treatment

A. No person shall purposely take the life of a child born as a result of an abortion or attempted abortion which is alive when partially or totally removed from the uterus of the pregnant woman.

B. No person shall purposely take the life of a viable child who is alive while inside the uterus of the pregnant woman and may be removed alive therefrom without creating any significant danger to her life or health.

C. Any person who performs, induces, or participates in the performance or inducing of an abortion shall take all reasonable measures to preserve the life of a child who is alive when partially or totally removed from the uterus of the pregnant woman, so long as the measures do not create any significant danger to her life or health.

D. Any person violating this section shall be guilty of homicide.

### §63-1-735. Sale of Child, Unborn Child or Remains of Child - Experiments

A. No person shall sell a child, an unborn child or the remains of a child or an unborn child resulting from an abortion. No person shall experiment upon a child or an unborn child resulting from an abortion or which is intended to be aborted unless the experimentation is therapeutic to the child or unborn child.

B. No person shall experiment upon the remains of a child or an unborn child resulting from an abortion. The term "experiment" does not include autopsies performed according to law.

Added by Laws 1978, c. 207, § 7, eff. Oct. 1, 1978.

### §63-1-736. Hospitals - Advertising of Counseling to Pregnant Women

No hospital in which abortions are performed or induced shall advertise or hold itself out as also providing counseling to pregnant women, unless:

1. The counseling is done by a licensed physician, a licensed registered nurse or by a person holding at least a bachelor's degree from an accredited college or university in psychology or some similarly appropriate field;
2. The counseling includes factual information, including explicit discussion of the development of the unborn child; and
3. The counseling includes a thorough discussion of the alternatives to abortion and the availability of agencies and services to assist her if she chooses not to have an abortion.

Added by Laws 1978, c. 207, § 8, eff. Oct. 1, 1978.

### §63-1-737. Hospitals Which May Perform Abortions

An abortion otherwise permitted by law shall be performed only in a hospital, as defined in this article, which meets standards set by the Department. The Department shall develop and promulgate reasonable standards relating to abortions.

Added by Laws 1978, c. 207, § 9, eff. Oct. 1, 1978.

#### §63-1-737.4. Requiring Signing in Abortion Facilities

A. Any private office, freestanding outpatient clinic, or other facility or clinic in which abortions, other than abortions necessary to prevent the death of the pregnant female, are performed, induced, prescribed for, or where the means for an abortion are provided shall conspicuously post a sign in a location defined in subsection C of this section so as to be clearly visible to patients, which reads:

Notice: It is against the law for anyone, regardless of his or her relationship to you, to force you to have an abortion. By law, we

## Oklahoma Abortion Statutes

cannot perform, induce, prescribe for, or provide you with the means for an abortion unless we have your freely given and voluntary consent. It is against the law to perform, induce, prescribe for, or provide you with the means for an abortion against your will. You have the right to contact any local or state law enforcement agency to receive protection from any actual or threatened physical abuse or violence.

There are public and private agencies willing and able to help you carry your child to term, have a healthy pregnancy and a healthy baby and assist you and your child after your child is born, whether you choose to keep your child or place him or her for adoption. The State of Oklahoma strongly encourages you to contact them if you are pregnant.

B. The sign required pursuant to subsection A of this section shall be printed with lettering that is legible and shall be at least three-quarters-of-an-inch boldfaced type.

C. A facility in which abortions are performed, induced, prescribed for, or where the means for an abortion are provided that is a private office or a freestanding outpatient clinic shall post the required sign in each patient waiting room and patient consultation room used by patients on whom abortions are performed, induced, prescribed for, or who are provided with the means for an abortion. A hospital or any other facility in which abortions are performed, induced, prescribed for, or where the means for an abortion are provided that is not a private office or freestanding outpatient clinic shall post the required sign in each patient admission area used by patients on whom abortions are performed, induced, prescribed for, or by patients who are provided with the means for an abortion.

Added by Laws 2010, c. 163, § 1, emerg. eff. April 22, 2010;  
Amended by Laws 2017, c. 123, § 1, eff. July 1, 2017.

### §63-1-737.5. Failure to Post – Civil Penalty – Emotional Damages for Injuries Caused

A. Any private office, freestanding outpatient clinic or other facility or clinic that fails to post a required sign in knowing, reckless, or

negligent violation of this act shall be assessed an administrative fine of Ten Thousand Dollars (\$10,000.00). Each day on which an abortion, other than an abortion necessary to prevent the death of the pregnant female, is performed, induced, prescribed for, or where the means for an abortion are provided in a private office, freestanding outpatient clinic or other facility or clinic in which the required sign is not posted during any portion of business hours when patients or prospective patients are present is a separate violation.

B. An action may be brought by or on behalf of an individual injured by the failure to post the required sign. A plaintiff in an action under this subsection may recover damages for emotional distress and any other damages allowed by law.

C. The sanctions and actions provided in this section shall not displace any sanction applicable under other law.

Added by Laws 2010, c. 163, § 2, emerg. eff. April 22, 2010.

### §63-1-737.6. Minors Informed Orally - Records

A. If the pregnant female is a minor, the attending physician shall orally inform the female that no one can force her to have an abortion and that an abortion cannot be performed, induced, prescribed for, or that the means for an abortion cannot be provided unless she provides her freely given, voluntary, and informed consent.

B. The minor female shall certify in writing, prior to the performance of, induction of, receiving the prescription for, or provision of the means for the abortion, that she was informed by the attending physician of the required information in subsection A of this section. A copy of the written certification shall be placed in the minor's file and kept for at least seven (7) years or for five (5) years after the minor reaches the age of majority, whichever is greater.

Added by Laws 2010, c. 163, § 3, emerg. eff. April 22, 2010.

## OKLAHOMA UNBORN CHILD PROTECTION FROM DISMEMBERMENT ABORTION ACT

### §63-1-737.7. Short Title

This act shall be known and may be cited as the "Oklahoma Unborn Child Protection from Dismemberment Abortion Act".

Added by Laws 2015, c. 59, § 1, eff. Nov. 1, 2015.

### §63-1-737.8. Definitions

For the purposes of the Oklahoma Unborn Child Protection from Dismemberment Abortion Act:

1. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device:

a. to purposely kill the unborn child of a woman known to be pregnant, or

b. to purposely terminate the pregnancy of a woman known to be pregnant, with a purpose other than:

(1) after viability to produce a live birth and preserve the life and health of the child born alive, or

(2) to remove a dead unborn child;

2. "Attempt to perform an abortion" means to do or omit to do anything that, under the circumstances as the actor believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in the actor performing an abortion. Such substantial steps include, but are not limited to:

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- a. agreeing with an individual to perform an abortion on that individual or on some other person, whether or not the term "abortion" is used in the agreement, and whether or not the agreement is contingent on another factor such as receipt of payment or a determination of pregnancy, or
- b. scheduling or planning a time to perform an abortion on an individual, whether or not the term "abortion" is used, and whether or not the performance is contingent on another factor such as receipt of payment or a determination of pregnancy.

This definition shall not be construed to require that an abortion procedure actually must be initiated for an attempt to occur;

3. "Dismemberment abortion" means, with the purpose of causing the death of an unborn child, purposely to dismember a living unborn child and extract him or her one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors or similar instruments that, through the convergence of two rigid levers, slice, crush, and/or grasp a portion of the unborn child's body to cut or rip it off. This definition does not include an abortion which uses suction to dismember the body of the developing unborn child by sucking fetal parts into a collection container;

4. "Physician" means a person licensed to practice medicine and surgery or osteopathic medicine and surgery, or otherwise legally authorized to perform an abortion;

5. "Purposely" means the following: A person acts purposely with respect to a material element of an offense when:

- a. if the element involves the nature of his or her conduct or a result thereof, it is his or her conscious objective to engage in conduct of that nature or to cause such a result, and
- b. if the element involves the attendant circumstances, he or she is aware of the existence of such circumstances or he or she believes or hopes that they exist;

6. "Serious health risk to the unborn child's mother" means that in reasonable medical judgment she has a condition that so complicates her medical condition that it necessitates the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No such condition may be determined to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function; and

7. "Woman" means a female human being whether or not she has reached the age of majority.

Added by Laws 2015, c. 59, § 2, eff. Nov. 1, 2015.

### §63-1-737.9. Dismemberment Abortion Prohibited – Hearing - Liability

A. Notwithstanding any other provision of law, it shall be unlawful for any person to purposely perform or attempt to perform a

dismemberment abortion and thereby kill an unborn child unless necessary to prevent serious health risk to the unborn child's mother.

B. A person accused in any proceeding of unlawful conduct under subsection A of this section may seek a hearing before the State Board of Medical Licensure and Supervision on whether the dismemberment abortion was necessary to prevent serious health risk to the unborn child's mother. The Board's findings are admissible on that issue at any trial in which such unlawful conduct is alleged. Upon a motion of the person accused, the court shall delay the beginning of the trial for not more than thirty (30) days to permit such a hearing to take place.

C. No woman upon whom an abortion is performed or attempted to be performed shall be thereby liable for performing or attempting to perform a dismemberment abortion. No nurse, technician, secretary, receptionist or other employee or agent who is not a physician but who acts at the direction of a physician and no pharmacist or other individual who is not a physician but who fills a prescription or provides instruments or materials used in an abortion at the direction of or to a physician shall be thereby liable for performing or attempting to perform a dismemberment abortion.

Added by Laws 2015, c. 59, § 3, eff. Nov. 1, 2015.

### §63-1-737.10. Injunctive Relief

A. A cause of action for injunctive relief against a person who has performed or attempted to perform a dismemberment abortion in violation of Section 3 of this act may be maintained by:

1. A woman upon whom such a dismemberment abortion was performed or attempted to be performed;
2. A person who is the spouse, parent or guardian of, or a current or former licensed health care provider of, a woman upon whom such a dismemberment abortion was performed or attempted to be performed; or
3. A prosecuting attorney with appropriate jurisdiction.

B. The injunction shall prevent the defendant from performing or attempting to perform further dismemberment abortions in violation of Section 3 of this act.

Added by Laws 2015, c. 59, § 4, eff. Nov. 1, 2015.

### §63-1-737.11. Cause of Action for Civil Damages

A. A cause of action for civil damages against a person who has performed a dismemberment abortion in violation of Section 3 of this act may be maintained by:

1. Any woman upon whom a dismemberment abortion has been performed in violation of Section 3 of this act; or
2. If the woman had not attained the age of eighteen (18) years at the time of the dismemberment abortion or has died as a result of the abortion, the maternal grandparents of the unborn child.

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B. No damages may be awarded a plaintiff if the pregnancy resulted from the plaintiff's criminal conduct.

C. Damages awarded in such an action shall include:

1. Money damages for all injuries, psychological and physical, occasioned by the dismemberment abortion; and
2. Statutory damages equal to three times the cost of the dismemberment abortion.

Added by Laws 2015, c. 59, § 5, eff. Nov. 1, 2015.

### §63-1-737.12. Attorney Fees

A. If judgment is rendered in favor of the plaintiff in an action described in Section 4 or 5 of this act, the court shall also render judgment for a reasonable attorney fee in favor of the plaintiff against the defendant.

B. If judgment is rendered in favor of the defendant in an action described in Section 4 or 5 of this act and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall render judgment for a reasonable attorney fee in favor of the defendant against the plaintiff.

C. No attorney fee may be assessed against the woman upon whom an abortion was performed or attempted to be performed except in accordance with subsection B of this section.

Added by Laws 2015, c. 59, § 6, eff. Nov. 1, 2015.

### §63-1-737.13. Criminal Penalties

Whoever violates Section 3 of this act shall be fined Ten Thousand Dollars (\$10,000.00) or imprisoned for not more than two (2) years or both.

Added by Laws 2015, c. 59, § 7, eff. Nov. 1, 2015.

### §63-1-737.14. Public Disclosure of Identity

In every civil, criminal, or administrative proceeding or action brought under the Oklahoma Unborn Child Protection from Dismemberment Abortion Act, the court shall rule whether the identity of any woman

upon whom an abortion has been performed or attempted to be performed shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less-restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted to be performed, anyone other than a public official who brings an action under Section 4 or 5 of this act shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

Added by Laws 2015, c. 59, § 8, eff. Nov. 1, 2015.

### §63-1-737.15. No Recognition or Right to Abortion

Nothing in the Oklahoma Unborn Child Protection from Dismemberment Abortion Act shall be construed as creating or recognizing a right to abortion, nor a right to a particular method of abortion.

Added by Laws 2015, c. 59, § 9, eff. Nov. 1, 2015.

### §63-1-737.16. Severability

If any one or more provisions, sections, subsections, sentences, clauses, phrases or words of this act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed this act, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases or words be declared unconstitutional.

Added by Laws 2015, c. 59, § 10, eff. Nov. 1, 2015.

## STATISTICAL REPORTING OF ABORTION ACT

### §63-1-738i. Short Title

This act shall be known and may be cited as the "Statistical Abortion Reporting Act".

Added by Laws 2010, c. 276, § 1, eff. Nov. 1, 2010.

### §63-1-738j. Definitions – Forms and Laws to be Posted on Website of State Department of Health – Electronic Submission of Forms

A. As used in the Statistical Abortion Reporting Act:

1. "Abortion" means the term as defined in Section 1-730 of Title 63 of the Oklahoma Statutes;
2. "Complication" means any adverse physical or psychological condition arising from the performance of an abortion, which

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includes but is not limited to: uterine perforation, cervical perforation, infection, bleeding, hemorrhage, blood clots, failure to actually terminate the pregnancy, incomplete abortion (retained tissue), pelvic inflammatory disease, endometritis, missed ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure, metabolic disorder, shock, embolism, coma, placenta previa, preterm delivery in subsequent pregnancies, free fluid in abdomen, adverse reaction to anesthesia and other drugs, and mental and psychological complications such as depression, anxiety, sleeping disorders, psychiatric hospitalization, and emotional problems; and

3. "Stable Internet website" means a website that, to the extent reasonably practicable, is safeguarded from having its content altered other than by the State Department of Health.

B. By March 1, 2012, the State Department of Health shall make available, on its stable Internet website, an Individual Abortion Form as required by Section 3 of this act, and a form for a Complications of Induced Abortion Report as required by Section 4 of this act.

C. As required by Section 5 of this act, information from a completed Individual Abortion Form or a completed Complications of Induced Abortion Report shall be combined with information from all other such completed forms and reports submitted for the year. An Annual Abortion Report providing statistics for the previous calendar year compiled from all of that year's completed forms and reports submitted in accordance with the Statistical Abortion Reporting Act shall be published annually by the Department on its stable Internet website.

D. No Individual Abortion Forms or Complications of Induced Abortion Reports that have been completed and submitted to the Department by any physician pursuant to subsection B of Section 3 of this act or subsection C of Section 4 of this act shall be posted online.

E. By March 1, 2012, the State Department of Health shall, on its stable Internet website, provide the language of all Oklahoma Statutes and regulations directly relating to abortion, and shall promptly update its website to reflect subsequent statutory and regulatory changes. The Department shall also, by March 1, 2012, provide, on its stable Internet website, the means by which physicians may electronically submit the reports required by the Statistical Abortion Reporting Act. The Department shall include instructions on its stable Internet website regarding electronic submission. The Department shall take all necessary precautions to ensure the security of the electronically submitted reports so that the submitted data is able to be accessed only by specially authorized departmental personnel during and following the process of transmission.

Added by Laws 2010, c. 276, § 2, eff. Nov. 1, 2010.

### **§63-1-738k. Individual Abortion Form – Department to Post Individual Abortion Forms on Website**

A. Subsections B and C of this section shall become operative on the later of:

1. April 1, 2012; or

2. Thirty (30) calendar days following the date on which the State Department of Health posts on its website the Individual Abortion Form and instructions concerning its electronic submission referenced in this section.

B. The Department shall post the Individual Abortion Form and instructions concerning its electronic submission on its stable Internet website. Nothing in the Individual Abortion Form shall contain the name, address, hometown, county of residence, or any other information specifically identifying any patient. The Department's Individual Abortion Form shall be substantially similar to, but need not be in the specific format, provided in subsection F of this section.

C. Any physician performing abortions shall fully complete and submit, electronically, an Individual Abortion Form to the State Department of Health by the last business day of the calendar month following the month in which the physician performs an abortion, for each abortion the physician performs.

D. In cases in which a physician or the agent of a physician:

1. Mails the printed materials described in Section 1-738.3 of this title to a female specifically to comply with division (1) of subparagraph d of paragraph 2 of subsection B of Section 1-738.2 of this title;

2. Gives or mails the printed materials described in Section 1-738.10 of this title to a female specifically to comply with subsection A of Section 1-738.8 of this title; or

3. Provides notice to a parent in compliance with Section 1-740.2 of this title,

but does not subsequently perform an abortion on the female or minor, the physician shall electronically submit a completed Individual Abortion Form to the State Department of Health, and shall mark as "not applicable" those items of information that may accurately be provided only when an abortion is performed. The physician shall not submit such a form if the physician knows that an abortion was subsequently performed on the female or minor by another physician. Individual Abortion Forms required by this subsection shall be submitted by the last business day of the second calendar month following the calendar month in which the physician mails the printed materials or provides notice to a parent.

E. The Individual Abortion Form shall contain a notice containing an assurance that, in accordance with subsection F of Section 1-738m of this title, public reports based on the form submitted will not contain the name, address, hometown, county of residence, or any other identifying information of any individual female, that the State Department of Health will take care to ensure that none of the information included in its public reports could reasonably lead to the identification of any individual female about whom information is reported in accordance with the Statistical Abortion Reporting Act or of any physician providing information in accordance with the Statistical Abortion Reporting Act, and that such information is not subject to the Oklahoma Open Records Act.

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F. Individual Abortion Form. The Department's Individual Abortion Form shall be substantially similar to, but need not be in the specific format of, the following form:

Individual Abortion Form

(TO BE COMPLETED FOR EACH ABORTION PERFORMED)

- 1. Date of abortion: \_\_\_\_\_
- 2. County in which the abortion was performed: \_\_\_\_\_
- 3. Age of mother: \_\_\_\_\_
- 4. Marital status of mother: \_\_\_\_\_  
(specify married, divorced, separated, widowed, or never married)
- 5. Race of mother: \_\_\_\_\_
- 6. Years of education of mother: \_\_\_\_\_  
(specify highest year completed)
- 7. State or foreign country of residence of mother: \_\_\_\_\_
- 8. Total number of previous pregnancies of the mother: \_\_\_\_\_  
Live Births: \_\_\_\_\_  
Miscarriages: \_\_\_\_\_  
Induced Abortions: \_\_\_\_\_
- 9. Approximate gestational age in weeks, as measured from the last menstrual period of the mother, of the unborn child subject to abortion: \_\_\_\_\_
- 10. Method of abortion used:  
Suction Aspiration: \_\_\_\_\_  
Dilation and Curettage: \_\_\_\_\_  
RU 486: \_\_\_\_\_  
Methotrexate: \_\_\_\_\_  
Other drug/chemical/medicine (specify): \_\_\_\_\_  
Dilation and Evacuation: \_\_\_\_\_  
Saline: \_\_\_\_\_  
Urea: \_\_\_\_\_  
Prostaglandins: \_\_\_\_\_

Partial Birth Abortion: \_\_\_\_\_

Hysterotomy: \_\_\_\_\_

Other (specify): \_\_\_\_\_

11. Was there an infant born alive as a result of the abortion? \_\_\_\_

If yes:

Were life-sustaining measures undertaken? \_\_\_\_\_

How long did the infant survive? \_\_\_\_\_

12. Was anesthesia administered to mother? \_\_\_\_\_

If yes, what type? \_\_\_\_\_

13. Was anesthesia administered to the fetus? \_\_\_\_\_

If yes:

What type? \_\_\_\_\_

How was it administered? \_\_\_\_\_

14. Method of fetal tissue disposal: \_\_\_\_\_

15. Unless a medical emergency, as defined in Section 1-738.1A, or as applicable, Section 1-745.2 of Title 63 of the Oklahoma Statutes, exists, the abortion provider or agent shall ask the pregnant female to provide, orally or in writing, the reason(s) she is seeking the abortion. If such a medical emergency exists, the abortion provider or agent shall specify on the form the condition which necessitated the immediate abortion: \_\_\_\_\_

REASON GIVEN FOR ABORTION (check all applicable):

Having a baby:

Would dramatically change the life of the mother: \_\_\_\_\_

Would interfere with the education of the mother: \_\_\_\_\_

Would interfere with the job / employment / career of the mother: \_\_\_\_\_

Mother has other children or dependents: \_\_\_\_\_

Mother cannot afford the child: \_\_\_\_\_

Mother is unmarried: \_\_\_\_\_

Mother is a student or planning to be a student: \_\_\_\_\_

Mother cannot afford child care: \_\_\_\_\_

Mother cannot afford the basic needs of life: \_\_\_\_\_

Mother is unemployed: \_\_\_\_\_

Mother cannot leave job to care for a baby: \_\_\_\_\_

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Mother would have to find a new place to live: \_\_\_\_\_

Mother does not have enough support from a husband or partner: \_\_\_\_\_

Husband or partner is unemployed: \_\_\_\_\_

Mother is currently or temporarily on welfare or public assistance: \_\_\_\_\_

Mother does not want to be a single mother: \_\_\_\_\_

Mother is having relationship problems: \_\_\_\_\_

Mother is not certain of relationship with the father of the child: \_\_\_\_\_

Partner and mother are unable to or do not want to get married: \_\_\_\_\_

Mother is not currently in a relationship: \_\_\_\_\_

The relationship or marriage of the mother may soon break up: \_\_\_\_\_

Husband or partner is abusive to the mother or her children: \_\_\_\_\_

Mother has completed her childbearing: \_\_\_\_\_

Mother is not ready for a, or another, child: \_\_\_\_\_

Mother does not want people to know that she had sex or became pregnant: \_\_\_\_\_

Mother does not feel mature enough to raise a, or another, child: \_\_\_\_\_

Husband or partner wants mother to have an abortion: \_\_\_\_\_

There may be possible problem affecting the health of the fetus: \_\_\_\_\_

Physical health of the mother is at risk: \_\_\_\_\_

Parents want mother to have an abortion: \_\_\_\_\_

Emotional health of the mother is at risk: \_\_\_\_\_

Mother suffered from a medical emergency as defined in Section 1-738.1A of Title 63 of the Oklahoma Statutes: \_\_\_\_\_

Mother suffered from a medical emergency as defined in Section 1-745.2 of Title 63 of the Oklahoma Statutes: \_\_\_\_\_

Mother wanted a child of a different sex: \_\_\_\_\_

Abortion is necessary to avert the death of the mother: \_\_\_\_\_

Pregnancy was a result of forcible rape: \_\_\_\_\_

Pregnancy was a result of incest: \_\_\_\_\_

Other (specify): \_\_\_\_\_

Patient was asked why she is seeking an abortion, but she declined to give a reason: \_\_\_\_\_

16. Method of payment (check one):

Private insurance: \_\_\_\_\_

Public health plan: \_\_\_\_\_

Medicaid: \_\_\_\_\_

Private pay: \_\_\_\_\_

Other (specify): \_\_\_\_\_

17. Type of private medical health insurance coverage, if any (check one):

Fee-for-service insurance company: \_\_\_\_\_

Managed care company: \_\_\_\_\_

Other (specify): \_\_\_\_\_

18. Sum of fee(s) collected: \_\_\_\_\_

19. Time of fee collection (check one):

Full fee for abortion collected prior to or at the time the patient was provided the information required under subsection B of Section 1-738.2 of Title 63 of the Oklahoma Statutes: \_\_\_\_\_

Partial fee for abortion collected prior to or at the time the patient was provided the information required under subsection B of Section 1-738.2 of Title 63 of the Oklahoma Statutes: \_\_\_\_\_

Full fee for abortion collected at time the abortion was performed: \_\_\_\_\_

Other (specify): \_\_\_\_\_

20. Specialty area of medicine of the physician: \_\_\_\_\_

At which hospital(s) did the physician have hospital privileges at the time of the abortion?

\_\_\_\_\_

21. Was ultrasound equipment used before, during, or after the performance of this abortion?

Before? \_\_\_\_\_ Vaginal, abdominal, or both? \_\_\_\_\_

How long prior to the abortion was the ultrasound performed? \_\_\_\_\_

Was the mother under the effect of anesthesia at the time of the ultrasound? \_\_\_\_\_

During? \_\_\_\_\_ Vaginal, abdominal, or both? \_\_\_\_\_

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After? \_\_\_\_\_ Vaginal, abdominal, or both? \_\_\_\_\_

If an ultrasound was performed, what was the gestational age of the fetus at the time of the abortion, as determined by the ultrasound?  
\_\_\_\_\_

Attach to this form a copy or screenshot of the ultrasound, intact with the date on which the ultrasound was performed, and with the name of the mother redacted; provided, however, such ultrasound shall not be subject to an open records request and shall be subject to HIPAA regulations governing confidentiality and release of private medical records.

21A. If an ultrasound was not performed prior to the abortion, was the reason for not performing an ultrasound a medical emergency necessitating an immediate abortion:

To avert death: \_\_\_\_\_

To avert substantial and irreversible impairment of a major bodily function arising from continued pregnancy: \_\_\_\_\_

Other reason: \_\_\_\_\_

22. If ultrasound equipment was used, was the ultrasound performed by:

The physician performing the abortion: \_\_\_\_\_

A physician other than the physician performing the abortion: \_\_\_\_\_

Other (specify): \_\_\_\_\_

23. Was the information required by paragraph 1 of subsection B of Section 1-738.2 of Title 63 of the Oklahoma Statutes provided to the mother? \_\_\_\_\_

a. If yes, was it provided:

In person: \_\_\_\_\_

By telephone: \_\_\_\_\_

b. Was it provided by:

A referring physician: \_\_\_\_\_

The physician performing the abortion: \_\_\_\_\_

An agent of a referring physician: \_\_\_\_\_

An agent of the physician performing the abortion: \_\_\_\_\_

24. Was the information required by paragraph 2 of subsection B of Section 1-738.2 of Title 63 of the Oklahoma Statutes provided to the mother? \_\_\_\_\_

a. If yes, was it provided:

In person: \_\_\_\_\_

By telephone: \_\_\_\_\_

b. Was it provided by:

A referring physician: \_\_\_\_\_

An agent of a referring physician: \_\_\_\_\_

The physician performing the abortion: \_\_\_\_\_

An agent of the physician performing the abortion: \_\_\_\_\_

25. Did the mother avail herself of the opportunity to have the printed materials described in Section 1-738.3 of Title 63 of the Oklahoma Statutes mailed to her? \_\_\_\_\_

26. Were the informed consent requirements of subsection B of Section 1-738.2 of Title 63 of the Oklahoma Statutes dispensed with because of a medical emergency necessitating an immediate abortion:

To avert death: \_\_\_\_\_

To avert substantial and irreversible impairment of a major bodily function arising from continued pregnancy: \_\_\_\_\_

27. Was a determination of probable postfertilization age made as required by Section 1-745.5 of Title 63 of the Oklahoma Statutes? \_\_\_\_\_

a. If no, was the determination of probable postfertilization age dispensed with:

To avert death: \_\_\_\_\_

To avert substantial and irreversible impairment of a major bodily function arising from continued pregnancy: \_\_\_\_\_

b. If yes, what was the probable postfertilization age? \_\_\_\_\_

What was the method and basis of the determination? \_\_\_\_\_

What was the basis for the determination to perform the abortion:

To avert death: \_\_\_\_\_

To avert substantial and irreversible impairment of a major bodily function arising from continued pregnancy: \_\_\_\_\_

Was the method of abortion used one that, in reasonable medical judgment, provided the best opportunity for the unborn child to survive? \_\_\_\_\_

If yes, was there an infant born alive as a result of the abortion? \_\_\_\_\_

If no, what was the basis of the determination? \_\_\_\_\_

28. Was the abortion performed within the scope of employment of an Oklahoma state employee or an employee of an agency or political subdivision of the state? \_\_\_\_\_

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29. Was the abortion performed with the use of any public institution, public facility, public equipment, or other physical asset owned, leased, or controlled by this state, its agencies, or political subdivisions? \_\_\_\_\_

30. If the answer to question 28 or 29 is yes:

a. Was the abortion necessary to save the life of the mother? \_\_\_\_\_

If yes, what was the life-endangering condition? \_\_\_\_\_

b. Did the pregnancy result from an act of forcible rape? \_\_\_\_\_

If yes, list the law enforcement authority to which the rape was reported: \_\_\_\_\_

List the date of the report: \_\_\_\_\_

c. Did the pregnancy result from an act of incest committed against a minor? \_\_\_\_\_

If yes, list the law enforcement authority to which the perpetrator was reported: \_\_\_\_\_

List the date of the report: \_\_\_\_\_

THIS PORTION TO BE COMPLETED IN CASE OF MINOR

31. Minor's age at the time the abortion was performed: \_\_\_\_\_

32. Was a parent of the minor provided notice prior to the abortion as described in Section 1-740.2 of Title 63 of the Oklahoma Statutes? \_\_\_\_\_

a. If yes, how was the notice provided?

In person: \_\_\_\_\_

By mail: \_\_\_\_\_

b. If yes, to the best of the reporting physician's knowledge and belief, did the minor go on to obtain the abortion? \_\_\_\_\_

33. Was informed written consent of one parent obtained as described in Section 1-740.2 of Title 63 of the Oklahoma Statutes? \_\_\_\_\_

If yes, how was it secured?

In person: \_\_\_\_\_

Other (specify): \_\_\_\_\_

34. If no notice was provided nor consent obtained, indicate which of the following apply:

Minor was emancipated: \_\_\_\_\_

Abortion was necessary to prevent the death of the minor: \_\_\_\_\_

Medical emergency, as defined in Section 1-738.1A of Title 63 of the Oklahoma Statutes, existed: \_\_\_\_\_

Minor received judicial authorization to obtain abortion without parental notice or consent: \_\_\_\_\_

35. If no notice was provided nor consent obtained because a medical emergency existed, indicate:

Whether parent was subsequently notified (state period of time elapsed before notice was given): \_\_\_\_\_

Whether judicial waiver of notice requirement was obtained: \_\_\_\_\_

36. If the minor received judicial authorization to obtain an abortion without parental notice or consent, indicate which of the following applies:

Judge ruled that minor was mature enough to give informed consent on her own: \_\_\_\_\_

Judge ruled that abortion was in the best interest of the minor: \_\_\_\_\_

37. If the female was a minor at the time of conception, indicate the age of the father of the unborn child at the time of conception: \_\_\_\_\_

38. If at the time of conception the ages of the mother and father were such that a violation of Section 1111, 1112, 1114 or 1123 of Title 21 or Section 843.5 of Title 21 of the Oklahoma Statutes occurred, was the rape or abuse reported to the proper authorities? \_\_\_\_\_

39. Were the remains of the fetus after the abortion examined to ensure that all such remains were evacuated from the mother's body? \_\_\_\_\_

If the remains of the fetus were examined after the abortion, what was the sex of the child, as determined from such examination? \_\_\_\_\_

Was the sex of the child determined prior to the abortion? \_\_\_\_\_

If so, by whom? \_\_\_\_\_

If so, by what method? \_\_\_\_\_

If the sex of the child was determined prior to the abortion, was the mother given information of the child's sex prior to the abortion? \_\_\_\_\_

40. If the abortion was performed without surgery but rather as the result of the administration of chemicals, was the physician present in the same room as the woman to whom the chemicals were administered at the time any such chemicals were first administered? \_\_\_\_\_

41. Prior to the pregnant woman giving informed consent to having any part of the abortion performed or induced, if the pregnancy

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was at least eight (8) weeks after fertilization, was the pregnant woman told that it may be possible to make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear? \_\_\_\_\_

Was the pregnant woman asked if she would like to hear the heartbeat? \_\_\_\_\_

Was the embryonic or fetal heartbeat of the unborn child made audible for the pregnant woman to hear, using a Doppler fetal heart rate monitor? \_\_\_\_\_

If the response to any of the questions in this paragraph was anything other than an unqualified YES, how was the abortion performed in compliance with Sections 1-745.12 through 1-745.19 of Title 63 of the Oklahoma Statutes? \_\_\_\_\_

Filed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by:

\_\_\_\_\_

(Name of physician)

\_\_\_\_\_

(Physician's license number)

NOTICE: In accordance with subsection F of Section 1-738m of Title 63 of the Oklahoma Statutes, public reports based on this form will not contain the name, address, hometown, county of residence, or any other identifying information of any individual female. The State Department of Health shall take care to ensure that none of the information included in its public reports could reasonably lead to the identification of any individual female about whom information is reported or of any physician providing information in accordance with the Statistical Abortion Reporting Act. Such information is not subject to the Oklahoma Open Records Act.

Be advised that any complication(s) shall be detailed in a "Complications of Induced Abortion Report" and submitted to the Department as soon as is practicable after the encounter with the induced-abortion-related illness or injury, but in no case more than sixty (60) days after such an encounter.

Added by Laws 2010, c. 276, § 3, eff. Nov. 1, 2010; Amended by Laws 2013, c. 303, § 1, eff. Nov. 1, 2013.

§63-1-738I. Complications of Induced Abortion Report - Sample Form

A. Complications of Induced Abortion Report. By March 1, 2012, the State Department of Health shall prepare and make available, on its stable Internet website, a Complications of Induced Abortion Report for all physicians licensed and practicing in the State of Oklahoma.

B. Subsection C of this section shall become operative on the later of:

- 1. April 1, 2012; or

- 2. Thirty (30) calendar days following the date on which the State Department of Health posts on its stable Internet website the Individual Abortion Form and instructions concerning its electronic submission referenced in Section 3 of this act.

C. Any physician practicing in Oklahoma who encounters an illness or injury that a reasonably knowledgeable physician would judge is related to an induced abortion shall complete and submit, electronically or by regular mail, a Complications of Induced Abortion Report to the Department as soon as is practicable after the encounter with the induced-abortion-related illness or injury, but in no case more than sixty (60) days after such an encounter. Nothing in the Complications of Induced Abortion Report shall contain the name, address, hometown, county of residence, or any other information specifically identifying any patient. Knowing or reckless unreasonable delay or failure to submit a Complications of Induced Abortion Report shall be sanctioned according to the provisions of the Statistical Abortion Reporting Act.

D. The Complications of Induced Abortion Report shall contain a notice containing an assurance that in accordance with subsection F of Section 5 of this act, public reports based on the form submitted will not contain the name, address, hometown, county of residence, or any other identifying information of any individual female, that the State Department of Health will take care to ensure that none of the information included in its public reports could reasonably lead to the identification of any individual female about whom information is reported in accordance with the Statistical Abortion Reporting Act, or of any physician providing information in accordance with the Statistical Abortion Reporting Act, and that such information is not subject to the Oklahoma Open Records Act.

E. Complication(s) of Induced Abortion Report. The Complications of Induced Abortion Report shall be substantially similar to, but need not be in the specific format of, the following form:

Complications of Induced Abortion Report

- 1. Name and specialty field of medical practice of the physician filing the report: \_\_\_\_\_
- 2. Did the physician filing the report perform or induce the abortion? \_\_\_\_\_
- 3. Name, address, and telephone number of the health care facility where the induced abortion complication was discovered or treated: \_\_\_\_\_
- 4. Date on which the complication was discovered: \_\_\_\_\_
- 5. Date on which, and location of the facility where, the abortion was performed, if known: \_\_\_\_\_
- 6. Age of the patient experiencing the complication: \_\_\_\_\_
- 7. Describe the complication(s) resulting from the induced abortion: \_\_\_\_\_
- 8. Circle all that apply:

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- a. Death
- b. Cervical laceration requiring suture or repair
- c. Heavy bleeding/hemorrhage with estimated blood loss of greater than or equal to 500cc
- d. Uterine Perforation
- e. Infection
- f. Failed termination of pregnancy (continued viable pregnancy)
- g. Incomplete termination of pregnancy (Retained parts of fetus requiring re-evacuation)
- h. Other (May include psychological complications, future reproductive complications, or other illnesses or injuries that in the physician's medical judgment occurred as a result of an induced abortion. Specify diagnosis.): \_\_\_\_\_
9. Type of follow-up care, if any, recommended: \_\_\_\_\_
10. Will the physician filing the Complications of Induced Abortion Report be providing such follow-up care (if not, the name of the medical professional who will, if known)? \_\_\_\_\_
11. Name and license number of physician filing the Complications of Induced Abortion Report: \_\_\_\_\_

Added by Laws 2010, c. 276, § 4, eff. Nov. 1, 2010.

### **§63-1-738m. Annual Abortion Report - Annual Judicial Bypass of Abortion Parental Consent Summary Report**

A. Beginning in 2013, by June 1 of each year, the Department shall issue, on its stable Internet website, a public Annual Abortion Report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with the Statistical Abortion Reporting Act.

B. The Department's public report shall also provide statistics for all previous calendar years for which abortion-reporting requirements have been in effect, adjusted to reflect any additional information from late or corrected reports.

C. The Annual Abortion Report shall include, but not be limited to, the following information:

1. The number of induced abortions performed in the previous calendar year, broken down by month and county in which the abortion was performed;
2. The number of abortions classified by:
  - a. the state or foreign country of residence of the mother,
  - b. the age, marital status, and race of the mother, and

- c. the number of years of education of the mother;
3. The number of abortions classified by:
  - a. the number of previous pregnancies of the mother,
  - b. previous live births to the mother,
  - c. previous miscarriages, and
  - d. previous induced abortions;
4. The number of abortions by week of gestational age;
5. The number of abortions performed by each reported method;
6. The number of abortions resulting in an infant born alive; of these, the number of cases in which life-sustaining measures were taken; and a statistical summary of the length of survival of such infants;
7. The number of cases in which anesthesia was administered to the mother and the number of each type of anesthesia;
8. The number of cases in which anesthesia was administered to the unborn child, and the number of each type of anesthesia and of each method of administration;
9. The number of each reported method of fetal disposal;
10. The reasons reported for the abortions, and the number of times each reported reason was cited;
11. The number of abortions paid for by:
  - a. private insurance,
  - b. public health plan,
  - c. Medicaid,
  - d. private pay, or
  - e. other;
12. The number of abortions in which medical health insurance coverage was under:
  - a. a fee-for-service insurance company,
  - b. a managed care company, or
  - c. other;
13. A statistical summary of the fees collected;
14. Specialty area of medicine of the physician;
15. The number of abortions in which ultrasound equipment was used before, during, or after the abortion, and the number of times vaginal ultrasound, abdominal ultrasound, or both were used in each of the three circumstances;

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16. The number of abortions before which an ultrasound was performed by:

- a. the physician performing the abortion,
- b. a physician other than the physician performing the abortion, or
- c. other;

17. The number of abortions resulting in reported complications, and of those, how many were reported by the physician who performed the abortion, and how many were reported by another physician, the types of reported complications, and the number of each type based on data which shall be compiled and transmitted to the State Department of Health by the State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners;

18. The number of abortions resulting in the reported death of the mother;

19. The number of females to whom the physician provided the information in subparagraph a of paragraph 1 of subsection B of Section 1-738.2 of this title; of that number, the number provided by telephone and the number provided in person; and of each of those numbers, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion;

20. The number of females to whom physicians or agents of physicians provided the information in paragraph 2 of subsection B of Section 1-738.2 of this title; of that number, the number provided by telephone and the number provided in person; of each of those numbers, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion; and of each of those numbers, the number provided by the physician and the number provided by an agent of the physician;

21. The number of females who availed themselves of the opportunity to have a copy of the printed information described in Section 1-738.3 of this title mailed to them; and of that number, the number who, based on the submitted reports, did and did not obtain an abortion;

22. The number of abortions performed by the physician in which information otherwise required to be provided at least seventy-two (72) hours before the abortion was not so provided because an immediate abortion was necessary to avert the death of the female, and the number of abortions in which such information was not so provided because a delay would create serious risk of substantial and irreversible impairment of a major bodily function;

23. The number of females to whom physicians or their agents provided the information described in subsection A of Section 1-738.8 of this title; of that number:

- a. the number provided by telephone and the number provided in person; and of each of those numbers, the number

provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion, or by the agent of such physician, and

- b. the number of females who availed themselves of the opportunity to be given or mailed the materials described in Section 1-738.10 of this title, and the number who did not; and of each of those numbers, the number who, to the best of the information and belief of the reporting physician, went on to obtain the abortion;

24. The number of females to whom the information described in subsection A of Section 1-738.8 of this title would have had to be provided but for a medical emergency determination; of that number, the number for whom an immediate abortion was necessary to avert the death of the female, and the number for whom a delay would have created serious risk of substantial and irreversible impairment of a major bodily function;

25. The number of abortions performed within the scope of employment of Oklahoma state employees and employees of an agency or political subdivision of the state, the number of abortions performed with the use of public institutions, facilities, equipment, or other physical assets owned, leased, or controlled by this state, its agencies, or political subdivisions, and for each category:

- a. the number of abortions reported as necessary to save the life of the mother, the life-endangering conditions identified, and the number of each such condition reported,

- b. the number of abortions reported from pregnancies resulting from forcible rape, the number of such rapes reported to law enforcement authorities, general categories of law enforcement authorities to whom reports were made and the number made to each category, and a statistical summary of the length of time between the dates of reporting to law enforcement authorities and the dates of the abortions, and

- c. the number of abortions reported from pregnancies resulting from incest committed against a minor, the number of perpetrators of incest in such cases reported to law enforcement authorities, general categories of law enforcement authorities to whom reports were made and the number made to each category, and a statistical summary of the length of time between the dates of reporting to law enforcement authorities and the dates of the abortions;

26. The number of females to a parent of whom the physician provided notice as required by Section 1-740.2 of this title; of that number, the number provided personally as described in that section, and the number provided by mail as described in that section, and of each of those numbers, the number of females who, to the best of the information and belief of the reporting physician, went on to obtain the abortion;

27. The number of females upon whom the physician performed an abortion without the notice to or consent of the parent of the minor required by Section 1-740.2 of this title; of that number, the number who were emancipated minors and the number who suffered from a medical emergency, and of the latter, the number

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of cases in which a parent was notified subsequently and the number of cases in which a judicial waiver was obtained. In the case of medical emergencies in which a parent was informed subsequently, a statistical summary of the period of time elapsed before notification;

28. The number of abortions performed after receiving judicial authorization to do so without parental notice and consent;
29. The number of abortions performed on minors after judicial authorizations were granted because of a finding that the minor girl was mature and capable of giving informed consent;
30. The number of abortions performed on minors after judicial authorizations were granted because of a finding that the performance of the abortion without parental notification and consent was in the best interest of the minor;
31. The number of abortions performed after which the remains of the fetus after the abortion were examined to ensure that all such remains were evacuated from the mother's body;
32. The number of male children aborted and female children aborted, as determined from the examination of fetal remains after abortion;
33. The number of male children aborted and female children aborted, as determined by any method other than those reported in paragraph 32 of this subsection;
34. The number of instances in which the mother was informed prior to the abortion that the child to be aborted was a female;
35. The number of abortions performed without surgery but rather as the result of the administration of chemicals;
36. The number of abortions performed as reported in paragraph 35 of this subsection, in which the physician was present in the same room as the woman to whom the chemicals were administered at the time any such chemicals were first administered;
37. The number of abortions performed for each hospital at which the abortionist had hospital privileges at the time of the abortion;
38. The number of abortions performed at which ultrasound equipment was used before the abortion;
39. The number of abortions reported in paragraph 38 of this subsection, during which the mother was under the effect of anesthesia at the time of the ultrasound;
40. The number of abortions performed at which ultrasound equipment was used during the abortion;
41. The number of abortions reported in paragraph 40 of this subsection, during which the mother was under the effect of anesthesia at the time of the ultrasound;
42. The number of abortions performed at which ultrasound equipment was used after the abortion;

43. The number of abortions reported in paragraph 42 of this subsection, during which the mother was under the effect of anesthesia at the time of the ultrasound;

44. The mean gestational age of the fetus at the time of the abortion, as determined by ultrasounds reported;

45. The number of abortions for which no determination of probable postfertilization age was made as required by Section 1-745.5 of this title; and

46. The number of abortions in which the pregnant woman was told that it may be possible to make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear; the number of abortions in which the pregnant woman was asked if she would like to hear the heartbeat; and the number of abortions in which the embryonic or fetal heartbeat of the unborn child was made audible for the pregnant woman to hear, using a Doppler fetal heart rate monitor.

D. Beginning in 2013, by June 1 of each year, the State Department of Health shall post, on its stable Internet website, a public Annual Judicial Bypass of Abortion Parental Consent Summary Report providing statistics which shall be compiled and supplied to the Department by the Administrative Office of the Courts giving the total number of petitions or motions filed under Section 1-740.3 of this title and of that number, the number in which:

1. The court appointed a guardian ad litem;
2. The court appointed counsel;
3. The judge issued an order authorizing an abortion without parental notification or consent, and of those:
  - a. the number authorized due to a determination by the judge that the minor was mature and capable of giving consent to the proposed abortion, and
  - b. the number authorized due to a determination by the judge that an abortion was in the best interest of the minor; and
4. The judge denied such an order, and of this, the number of:
  - a. denials from which an appeal was filed,
  - b. the appeals that resulted in the denial being affirmed, and
  - c. appeals that resulted in reversals of the denials.

E. Each Annual Judicial Bypass of Abortion Parental Consent Summary Report shall also provide the statistics for all previous calendar years for which the public statistical report was required to be issued, adjusted to reflect any additional information from late or corrected reports.

F. The Department's public reports shall not contain the name, address, hometown, county of residence, or any other identifying information of any individual female, and shall take care to ensure that none of the information included in its public reports could reasonably lead to the identification of any individual female about

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whom information is reported in accordance with the Statistical Abortion Reporting Act or of any physician providing information in accordance with the Statistical Abortion Reporting Act. Nor shall the information described in the preceding sentence be subject to the Oklahoma Open Records Act.

Added by Laws 2010, c. 276, § 5, eff. Nov. 1, 2010;  
Amended by Laws 2013, c. 303, § 2, eff. Nov. 1, 2013;  
Laws 2015, c. 255, § 6, eff. Nov. 1, 2015.

### **§63-1-738n. Notice of Act Requirements – Failure to Submit Forms or Reports – Penalties – Compliance - Rules**

A. The State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall notify, by March 1, 2012, all physicians licensed to practice in this state over whom they have licensure authority of the requirements of the Statistical Abortion Reporting Act and of the addresses of the pages on the State Department of Health's secure Internet website providing access to the forms it requires and instructions for their electronic submission. The respective Board shall also notify each physician who subsequently becomes newly licensed to practice in this state, at the same time as an official notification to that physician, that the physician is so licensed.

B. Individual Abortion Forms or Complications of Induced Abortion Reports that are not submitted by the end of a grace period of thirty (30) days following the due date shall be subject to a late fee of Five Hundred Dollars (\$500.00) for each additional thirty-day period the forms or reports are overdue. Any monies collected under this subsection shall be deposited into an account created within the Department, which shall be used for the administration of the Statistical Abortion Reporting Act. Any physician required to report in accordance with the Statistical Abortion Reporting Act who has not completed and electronically submitted a form or report, or has submitted only an incomplete form or report, more than one (1) year following the due date shall be precluded from renewing his or her license until such fines are paid in full and outstanding forms or reports are submitted, and may, in an action brought by the State Department of Health, be directed by a court of competent jurisdiction to electronically submit completed forms or reports within a period stated by court order or be subject to sanctions for civil contempt.

C. Anyone who knowingly or recklessly fails to submit an Individual Abortion Form or Complications of Induced Abortion Report, or submits false information under the Statistical Abortion Reporting Act, shall be guilty of a misdemeanor.

D. The Department, the State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall ensure compliance with the Statistical Abortion Reporting Act and shall verify the data provided by periodic inspections of places where the Department, the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners know or have reason to believe abortions are performed.

E. The Department may promulgate rules in accordance with the Administrative Procedures Act to alter the dates established by the

Statistical Abortion Reporting Act to achieve administrative convenience, fiscal savings, or to reduce the burden of reporting requirements, so long as the forms and reports are made available, on its stable Internet website, to all licensed physicians in this state, and the public reports described in Section 1-738m of this title are issued at least once every year.

F. If the Department fails to issue the public reports described in Section 1-738m of this title, an action pursuant to Chapter 26 of Title 12 of the Oklahoma Statutes may be initiated. If judgment is rendered in favor of the plaintiff in any action described in this subsection, the court shall also render judgment for a reasonable attorney fee in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney fee in favor of the defendant against the plaintiff.

G. If an abortion provider fails to submit any report required pursuant to Section 1-738k of this title, upon the refusal, failure or neglect of the State Commissioner of Health, within twenty (20) days after written demand signed, verified and served upon the State Department of Health by at least ten registered voters of the state, to institute or diligently prosecute proper proceedings at law or in equity to compel an abortion provider to submit any report required pursuant to Section 1-738k of this title but not yet submitted to the State Department of Health, any resident taxpayer of the state after serving the notice aforesaid may in the name of the State of Oklahoma as plaintiff, institute and maintain any proper action which the State Department of Health might institute and maintain to compel the abortion provider to file such report. If a court of competent jurisdiction determines the claims to be meritorious, the abortionist shall be compelled to file the report and to pay the fee(s) prescribed in subsection B of this section, with costs and reasonable attorney fees. If all claims stated by the resident taxpayers in the written demand are determined in a court of competent jurisdiction to be frivolous and brought in bad faith, the resident taxpayers who signed such demand and who are parties to the lawsuit in which such claims are determined to be frivolous and brought in bad faith shall be jointly and severally liable for all reasonable attorney fees and court costs incurred by the abortionist.

Added by Laws 2010, c. 276, § 6, eff. Nov. 1, 2010;  
Amended by Laws 2013, c. 303, § 3, eff. Nov. 1, 2013.

### **§63-1-738o. Authority to Intervene by Right**

The Oklahoma Legislature, by joint resolution, may appoint one or more of its members who sponsored or cosponsored this act in his or her official capacity to intervene as a matter of right in any case in which the constitutionality of this law is challenged.

Added by Laws 2010, c. 276, § 7, eff. Nov. 1, 2010.

### **§63-1-738p. Judicial Order Restraining or Enjoining Statistical Abortion Reporting Act**

A. Sections 1-738.3a, 1-738.13 and 1-740.4a of Title 63 of the Oklahoma Statutes shall become ineffective and of no binding force on the date specified in subsection B of this section, but if the

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Statistical Abortion Reporting Act is ever temporarily or permanently restrained or enjoined by judicial order, these sections shall become effective and enforceable; provided, however, that if such temporary or permanent restraining order or injunction is ever stayed or dissolved, or otherwise ceases to have effect, these sections shall again become ineffective and of no binding force until or unless an injunction or restraining order against the Statistical Abortion Reporting Act is again in effect. If and to the extent the Statistical Abortion Reporting Act is restrained or enjoined in part, then only those provisions of these sections that neither conflict with nor substantively duplicate the provisions of the Statistical Abortion Reporting Act that are not enjoined shall have effect. As promptly as feasible following the issuance of any restraining order or injunction that enjoins part but not all of the Statistical Abortion Reporting Act, the Attorney General shall issue an opinion specifically identifying those provisions of these sections that are effective and enforceable in accordance with the preceding sentence.

B. The date specified in this subsection is the later of:

1. April 1, 2012; or

2. Thirty (30) calendar days following the date on which the State Department of Health posts on its secure Internet website the Individual Abortion Form and instructions concerning its electronic submission referenced in Section 3 of this act.

Added by Laws 2010, c. 276, § 8, eff. Nov. 1, 2010.

### **§63-1-738q. Effect of Temporary or Permanent Judicial Restraining Order of Injunction**

If some or all of the provisions of Sections 1-738k, 1-738m and 1-738n of Title 63 of the Oklahoma Statutes, as amended by Sections 1, 2 and 3 of this act, are ever temporarily or permanently restrained or enjoined by judicial order, these sections shall be enforced as though such restrained or enjoined provisions had not been adopted; provided, however, that whenever such temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

Added by Laws 2013, c. 303, § 4, eff. Nov. 1, 2013.

## **VOLUNTARY AND INFORMED CONSENT**

### **§63-1-738.1A. Definitions**

As used in this section and Sections 1-738.2 through 1-738.5 of Title 63 of the Oklahoma Statutes:

1. "Abortion" means the term as defined in Section 1-730 of Title 63 of the Oklahoma Statutes;
2. "Attempt to perform an abortion" means an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion in this state in violation of this act;
3. "Board" means the State Board of Medical Licensure and Supervision;
4. "Certified technician" means a Registered Diagnostic Medical Sonographer who is certified in obstetrics and gynecology by the American Registry for Diagnostic Medical Sonography (ARDMS), or a nurse midwife or Advance Practice Nurse Practitioner in obstetrics with certification in obstetrical ultrasonography;
5. "Medical emergency" means the existence of any physical condition, not including any emotional, psychological, or mental condition, which a reasonably prudent physician, with knowledge of the case and treatment possibilities with respect to the medical conditions involved, would determine necessitates the immediate abortion of the pregnancy of the female to avert her death or to avert substantial and irreversible impairment of a major bodily function arising from continued pregnancy;

6. "Physician" means a person licensed to practice medicine in this state pursuant to Sections 495 and 633 of Title 59 of the Oklahoma Statutes;

7. "Probable gestational age of the unborn child" means what, in the judgment of the physician, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed;

8. "Stable Internet website" means a website that, to the extent reasonably practicable, is safeguarded from having its content altered other than by the State Board of Medical Licensure and Supervision;

9. "Unborn child" means the term as is defined in Section 1-730 of Title 63 of the Oklahoma Statutes; and

10. "Woman" means a female human being whether or not she has reached the age of majority.

Added by Laws 2010, c. 173, § 1, emerg. eff. April 27, 2010.

### **§63-1-738.2. Voluntary and informed consent - Compliance by Physicians - Confirmation of Receipt of Medical Risk Information**

A. No abortion shall be performed in this state except with the voluntary and informed consent of the woman upon whom the abortion is to be performed.

B. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

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1. a. not less than seventy-two (72) hours prior to the performance of the abortion, the woman is told the following, by telephone or in person, by the physician who is to perform the abortion, or by a referring physician, or by an agent of either physician:

- (1) the name of the physician who will perform the abortion,
- (2) the medical risks associated with the particular abortion procedure to be employed,
- (3) the probable gestational age of the unborn child at the time the abortion is to be performed,
- (4) the medical risks associated with carrying her child to term, and
- (5) that ultrasound imaging and heart tone monitoring that enable the pregnant woman to view her unborn child or listen to the heartbeat of the unborn child are available to the pregnant woman. The physician or agent of the physician shall inform the pregnant woman that the website and printed materials described in Section 1-738.3 of this title, contain phone numbers and addresses for facilities that offer such services at no cost,

b. the information required by this paragraph may be provided by telephone without conducting a physical examination or tests of the woman. If the information is supplied by telephone, the information shall be based on facts supplied to the physician,

c. the information required by this paragraph shall not be provided by a tape recording, but shall be provided during a consultation in which the physician is able to ask questions of the woman and the woman is able to ask questions of the physician,

d. if a physical examination, tests, or other new information subsequently indicates, in the medical judgment of the physician, the need for a revision of the information previously supplied to the woman, that revised information may be communicated to the woman at any time prior to the performance of the abortion, and

e. nothing in subparagraph a of this paragraph may be construed to preclude provision of the required information in a language understood by the woman through a translator;

2. Not less than seventy-two (72) hours prior to the abortion, the woman is informed, by telephone or in person, by the physician who is to perform the abortion, by a referring physician, or by an agent of either physician:

- a. that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care,
- b. that the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion,
- c. that:

(1) she has the option to review the printed materials described in Section 1-738.3 of this title,

(2) those materials have been provided by the State Board of Medical Licensure and Supervision, and

(3) they describe the unborn child and list agencies that offer alternatives to abortion, and

d. (1) if the woman chooses to exercise her option to view the materials in a printed form, they shall be mailed to her, by a method chosen by the woman, or

(2) if the woman chooses to exercise her option to view the materials via the Internet, the woman shall be informed at least seventy-two (72) hours before the abortion of the specific address of the Internet website where the material can be accessed.

The information required by this paragraph may be provided by a tape recording if provision is made to record or otherwise register specifically whether the woman does or does not choose to review the printed materials;

3. The woman certifies in writing, prior to the abortion, that she has been told the information described in subparagraph a of paragraph 1 of this subsection and in subparagraphs a, b and c of paragraph 2 of this subsection and that she has been informed of her option to review or reject the printed information described in Section 1-738.3 of this title; and

4. Prior to the abortion, the physician who is to perform the abortion or the agent of the physician receives a copy of the written certification prescribed by paragraph 3 of this subsection.

C. The State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall promulgate rules to ensure that physicians who perform abortions and referring physicians or agents of either physician comply with all the requirements of this section.

D. Before the abortion procedure is performed, the physician shall confirm with the patient that she has received information regarding:

1. The medical risks associated with the particular abortion procedure to be employed;

2. The probable gestational age of the unborn child at the time the abortion is to be performed; and

3. The medical risks associated with carrying the unborn child to term.

**Added by Laws 2005, c. 200, § 7, emerg. eff. May 20, 2005;  
Amended by Laws 2006, c. 185, § 3, eff. Nov. 1, 2006;  
Laws 2015, c. 255, § 1, eff. Nov. 1, 2015.**

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### §63-1-738.3. Publication and Availability of Printed Informational Materials

A. Within one hundred twenty (120) days of the effective date of this act, the State Board of Medical Licensure and Supervision shall cause to be published, in English and in Spanish, and shall update on an annual basis, the following printed materials in such a way as to ensure that the information is easily comprehensible:

1. a. geographically indexed materials designed to inform the woman of public and private agencies, including adoption agencies and services that are available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including:
  - (1) a comprehensive list of the agencies available,
  - (2) a description of the services they offer, including which agencies offer, at no cost to the pregnant woman, ultrasound imaging that enables a pregnant woman to view the unborn child or heart tone monitoring that enables the pregnant woman to listen to the heartbeat of the unborn child, and
  - (3) a description of the manner, including telephone numbers, in which they might be contacted, or
- b. at the option of the Board a toll-free, twenty-four-hour-a-day telephone number which may be called to obtain, in a mechanical, automated, or auditory format, a list and description of agencies in the locality of the caller and of the services they offer; and
2. a. materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including:
  - (1) any relevant information on the possibility of the survival of the unborn child, and
  - (2) pictures or drawings representing the development of unborn children at two-week gestational increments, provided that the pictures or drawings shall describe the dimensions of the unborn child and shall be realistic and appropriate for the stage of pregnancy depicted,
- b. the materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages, and
- c. the material shall also contain objective information describing:
  - (1) the methods of abortion procedures commonly employed,
  - (2) the medical risks commonly associated with each of those procedures,
  - (3) the possible detrimental psychological effects of abortion and of carrying a child to term, and

(4) the medical risks commonly associated with carrying a child to term, and

d. the material shall contain the statement "Abortion shall terminate the life of a whole, separate, unique, living human being."

- B. 1. The materials referred to in subsection A of this section shall be printed in a typeface large enough to be clearly legible.
2. The materials required under this section shall be available at no cost from the State Board of Medical Licensure and Supervision and shall be distributed upon request in appropriate numbers to any person, facility, or hospital.
- C. 1. The Board shall provide on its stable Internet website the information described under subsection A of this section.
2. The website provided for in this subsection shall be maintained at a minimum resolution of 72 PPI.
- D. Any facility performing abortions that has a website shall publish an easily identifiable link on the homepage of such website that directly links to the Board's website, [www.awomansright.org](http://www.awomansright.org), that provides informed consent materials under the Woman's Right-to-Know Act. Such link shall read: "The State Board of Medical Licensure and Supervision maintains a website containing information about the development of the unborn child, as well as video of ultrasound images of the unborn child at various stages of development. The Board's website can be reached by clicking here: [www.awomansright.org](http://www.awomansright.org)."

Added by Laws 2005, c. 200, § 8, emerg. eff. May 20, 2005;  
Amended by Laws 2006, c. 185, § 4, eff. Nov. 1, 2006;  
Laws 2015, c. 255, § 2, eff. Nov. 1, 2015.

### §63-1-738.3a. Department of Health Web Site – Physician Reporting Requirements – Form for Physicians – Notice - Rules

A. By February 1, 2008, the State Department of Health shall prepare and make available on its stable Internet website the form described in subsection B of this section. A copy of this act shall be posted on the website. Physicians performing abortions shall complete and electronically submit the required forms to the Department no later than April 1 for the previous calendar year. Nothing in the report shall contain the name, address, or any other identifying information of any patient.

B. The form for physicians shall contain a listing for the following information:

1. The number of females to whom the physician, or an agent of the physician, provided the information described in Section 1-738.2 of Title 63 of the Oklahoma Statutes; of that number, the number provided the information by telephone and the number provided the information in person; and of each of those numbers, the number provided the information in the capacity of a referring physician and the number provided the information in the capacity of a physician who is to perform the abortion; and of each of those numbers, the number provided the information by the physician

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and the number provided the information by an agent of the physician;

2. The number of females who availed themselves of the opportunity to obtain a copy of the printed information described in Section 1-738.3 of Title 63 of the Oklahoma Statutes other than on the website, and the number who did not; and of each of those numbers, the number who, to the best of the information and belief of the reporting physician, went on to obtain the abortion; and

3. The number of abortions performed by the physician in which information otherwise required to be provided at least seventy-two (72) hours before the abortion was not so provided because an immediate abortion was necessary to avert the death of the female, and the number of abortions in which the information was not so provided because a delay would cause substantial and irreversible impairment of a major bodily function.

C. The State Department of Health shall ensure that the reporting forms described in subsection B of this section are posted, on its stable Internet website, within one hundred twenty (120) days after the effective date of this act. The State Department of Health shall notify the following of the requirements of this act:

1. By March 1, 2008, all physicians licensed to practice in this state;

2. Each physician who subsequently becomes newly licensed to practice in this state, at the same time as official notification to that physician that the physician is so licensed; and

3. By December 1 of each year, other than the calendar year in which forms are first made available to all physicians licensed to practice in this state.

D. By February 28 of each year following a calendar year in any part of which this section was in effect, each physician who provided, or whose agent provided, information to one or more females in accordance with Section 1-738.2 of Title 63 of the Oklahoma Statutes during the previous calendar year shall electronically submit to the State Department of Health the form described in subsection B of this section, with the requested data entered accurately and completely.

E. Reports that are not electronically submitted by the end of a grace period of thirty (30) days following the due date shall be subject to a late fee of Five Hundred Dollars (\$500.00) for each additional thirty-day period or portion of a thirty-day period the reports are overdue. Any physician required to report in accordance with this section who has not completed and electronically submitted a report, or has electronically submitted only an incomplete report, more than one (1) year following the due date, may, in an action brought by the State Department of Health, be directed by a court of competent jurisdiction to electronically submit a complete report within a period stated by court order or be subject to sanctions for civil contempt.

F. By June 30 of each year, the State Department of Health shall prepare and make available on its stable Internet website a public report providing statistics for the previous calendar year compiled from all items listed in subsection B of this section. Each report shall

also provide statistics for all previous calendar years, adjusted to reflect any additional information from late or corrected reports. The State Department of Health shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any individual providing or provided information in accordance with subsection B of this section.

G. The State Department of Health may promulgate rules in accordance with the Administrative Procedures Act to alter the dates established by this section or consolidate the form or report described in this section with other forms or reports to achieve administrative convenience, fiscal savings or to reduce the burden of reporting requirements, as long as reporting forms are made available, on its stable Internet website to all licensed physicians in the state, and the report described in this section is issued at least once every year.

Added by Laws 2007, c. 161, § 3, eff. Nov. 1, 2007;  
Amended by Laws 2015, c. 255, § 3, eff. Nov. 1, 2015.

### **§63-1-738.3d. Ultrasound Required Prior to Procedure - Written Certification - Medical Emergency Exception**

A. Any abortion provider who knowingly performs any abortion shall comply with the requirements of this section.

B. In order for the woman to make an informed decision, at least one (1) hour prior to a woman having any part of an abortion performed or induced, and prior to the administration of any anesthesia or medication in preparation for the abortion on the woman, the physician who is to perform or induce the abortion, or the certified technician working in conjunction with the physician, shall:

1. Perform an obstetric ultrasound on the pregnant woman, using either a vaginal transducer or an abdominal transducer, whichever would display the embryo or fetus more clearly;

2. Provide a simultaneous explanation of what the ultrasound is depicting;

3. Display the ultrasound images so that the pregnant woman may view them;

4. Provide a medical description of the ultrasound images, which shall include the dimensions of the embryo or fetus, the presence of cardiac activity, if present and viewable, and the presence of external members and internal organs, if present and viewable; and

5. Obtain a written certification from the woman, prior to the abortion, that the requirements of this subsection have been complied with; and

6. Retain a copy of the written certification prescribed by paragraph 5 of this subsection. The certification shall be placed in the medical file of the woman and shall be kept by the abortion provider for a period of not less than seven (7) years. If the woman is a minor, then the certification shall be placed in the medical file of the minor and kept for at least seven (7) years or for

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five (5) years after the minor reaches the age of majority, whichever is greater.

C. Nothing in this section shall be construed to prevent a pregnant woman from averting her eyes from the ultrasound images required to be provided to and reviewed with her. Neither the physician nor the pregnant woman shall be subject to any penalty if she refuses to look at the presented ultrasound images.

D. Upon a determination by an abortion provider that a medical emergency, as defined in Section 1 of this act, exists with respect to a pregnant woman, subsection B of this section shall not apply and the provider shall certify in writing the specific medical conditions that constitute the emergency. The certification shall be placed in the medical file of the woman and shall be kept by the abortion provider for a period of not less than seven (7) years. If the woman is a minor, then the certification shall be placed in the medical file of the minor and kept for at least seven (7) years or for five (5) years after the minor reaches the age of majority, whichever is greater.

E. An abortion provider who willfully falsifies a certification under subsection D of this section shall be subject to all penalties provided for under Section 3 of this act.

Added by Laws 2010, c. 173, § 2, emerg. eff. April 27, 2010.

### **§63-1-738.3e. Violation of Ultrasound Requirement - Injunctive Relief - Action for Damages - License Suspension**

A. An abortion provider who knowingly violates a provision of Section 2 of this act shall be liable for damages as provided in this section and may be enjoined from such acts in accordance with this section in an appropriate court.

B. A cause of action for injunctive relief against any person who has knowingly violated a provision of Section 2 of this act may be maintained by the woman upon whom an abortion was performed or attempted to be performed in violation of this act; any person who is the spouse, parent, sibling or guardian of, or a current or former licensed health care provider of, the female upon whom an abortion has been performed or attempted to be performed in violation of this act; by a district attorney with appropriate jurisdiction; or by the Attorney General. The injunction shall prevent the abortion provider from performing further abortions in violation of this act in the State of Oklahoma.

C. Any person who knowingly violates the terms of an injunction issued in accordance with this section shall be subject to civil contempt, and shall be fined Ten Thousand Dollars (\$10,000.00) for the first violation, Fifty Thousand Dollars (\$50,000.00) for the second violation, One Hundred Thousand Dollars (\$100,000.00) for the third violation, and for each succeeding violation an amount in excess of One Hundred Thousand Dollars (\$100,000.00) that is sufficient to deter future violations. The fines shall be the exclusive penalties for such contempt. Each performance or attempted performance of an abortion in violation of the terms of an injunction is a separate

violation. These fines shall be cumulative. No fine shall be assessed against the woman on whom an abortion is performed or attempted.

D. A pregnant woman upon whom an abortion has been performed in violation of Section 2 of this act, or the parent or legal guardian of the woman if she is an unemancipated minor, as defined in Section 1-740.1 of Title 63 of the Oklahoma Statutes, may commence a civil action against the abortion provider for any knowing or reckless violation of this act for actual and punitive damages.

E. An abortion provider who performed an abortion in violation of Section 2 of this act shall be considered to have engaged in unprofessional conduct for which the provider's certificate or license to provide health care services in this state may be suspended or revoked by the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners.

Added by Laws 2010, c. 173, § 3, emerg. eff. April 27, 2010.

### **§63-1-738.3f. Civil Action Against Abortion Provider and Others for Negligent Violation of State Statutes**

A woman upon whom an abortion has been performed in negligent violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes, or the parent or legal guardian of the woman if she is an unemancipated minor, as defined in Section 1-740.1 of Title 63 of the Oklahoma Statutes, may commence a civil action against the abortion provider, against the prescriber of any drug or chemical intended to induce abortion, and against any person or entity which referred the woman to the abortion provider or prescriber and which knew or reasonably should have known that the abortion provider or prescriber had acted in violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes for actual damages and, in cases of gross negligence, for punitive damages. The measure of damages shall include damages for the mental anguish and emotional distress of the plaintiff, in addition to all damages available for the wrongful death of the child whose life was aborted in negligent violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes, notwithstanding any exception for abortion provided in Section 1053 of Title 12 of the Oklahoma Statutes. Whether the individual or entity committed an abortion in negligent violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes shall be determined by the trier of fact in the civil action by the greater weight of the evidence. Unless the defendant can prove to the trier of fact by the greater weight of the evidence that the abortion was performed on a child who was already dead from natural causes before the abortion, and that the defendant informed the plaintiff that the child was already dead at the time of the abortion, it shall be a rebuttable presumption that if an abortion was performed, that the child whose life was aborted was alive until the abortion was performed, and was capable eventually of living a normal human lifespan had the abortion not occurred.

Added by Laws 2012, c. 198, § 1, eff. Sept. 1, 2012.

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### **§63-1-738.3g. Judgement for Costs and Fees**

If judgment is rendered in favor of the plaintiff in any action pursuant to Section 1 of this act, the court shall also render judgment for costs including reasonable expert witness fees and for a reasonable attorney fee in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous, unreasonable or without foundation, the court shall also render judgment for costs including reasonable expert witness fees and for a reasonable attorney fee in favor of the defendant against the plaintiff.

Added by Laws 2012, c. 198, § 2, eff. Sept. 1, 2012.

### **§63-1-738.3h. Anonymity of Female**

In every action brought under this act, the court shall rule whether the anonymity of any female upon whom an abortion has been performed or attempted shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the female should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the female upon whom an abortion has been performed or attempted, anyone, other than a public official, who brings an action under this act shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

Added by Laws 2012, c. 198, § 3, eff. Sept. 1, 2012.

### **§63-1-738.3i. Statute of Limitations**

An action pursuant to this act shall be brought within two (2) years of the date the woman upon whom an abortion has been performed in negligent violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes, or the parent or legal guardian of the woman if she is an unemancipated minor, as defined in Section 1-740.1 of Title 63 of the Oklahoma Statutes, knew or reasonably should have known of any information not provided by the defendant in negligent violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes. If any defendant disputes whether the action was brought within the time specified in this section, the question of whether the action was brought within the time specified in this section shall be determined by the trier of fact by the greater weight of the evidence.

Added by Laws 2012, c. 198, § 4, eff. Sept. 1, 2012.

### **§63-1-738.3j. Act Does Not Create or Recognize Right to Abortion – Act Does Not Apply to Hospital with Dedicated Emergency Department**

A. Nothing in this act shall be construed as creating or recognizing a right to abortion.

B. Nothing in this act shall apply to a hospital as defined in Section 1-701 of Title 63 of the Oklahoma Statutes which has a dedicated emergency department as defined in 42 CFR 489.24b.

Added by Laws 2012, c. 198, § 5, eff. Sept. 1, 2012.

### **§63-1-738.3k. Severability**

If any one or more provision, section, subsection, sentence, clause, phrase or word of this act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed this act and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.

Added by Laws 2012, c. 198, § 6, eff. Sept. 1, 2012.

### **§63-1-738.4. Abortion Compelled by Medical Emergency**

When a medical emergency compels the performance of an abortion, the physician shall inform the female, prior to the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or that a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

Added by Laws 2005, c. 200, § 9, emerg. eff. May 20, 2005.

### **§63-1-738.5. Performing or Attempting an Abortion in Violation of Act – No Penalty Assessed Against the Women - Felony**

A. Any physician who knowingly or recklessly performs or attempts to perform an abortion in violation of the provisions of this act shall be subject to disciplinary action by the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners.

B. No penalty may be assessed against the woman upon whom the abortion is performed or attempted to be performed.

C. No penalty or civil liability may be assessed for failure to comply with Section 1-738.2 of this title unless the State Board of Medical Licensure and Supervision has made the printed materials available at the time the physician or the agent of the physician is required to inform the woman of her right to review them.

D. Any person who knowingly or recklessly performs or attempts to perform an abortion in violation of this act shall be guilty of a felony.

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Added by Laws 2005, c. 200, § 10, emerg. eff. May 20, 2005;  
Amended by Laws 2006, c. 185, § 5, eff. Nov. 1, 2006.

### §63-1-738.5a. Severability

If some or all of the newly amended provisions of 63 O.S. 2011, Section 1-738.2; 63 O.S. 2011, Section 1-738.3; 63 O.S. 2011, Section 1-738.3a; 63 O.S. 2011, Section 1-738.8; 63 O.S. 2011, Section 1-738.13; 63 O.S. 2011, Section 1-738m, as amended by Section 2, Chapter 303, O.S.L. 2013 (63 O.S. Supp. 2014, Section 1-738m); Section 2, Chapter 175, O.S.L. 2014 (63 O.S. Supp. 2014, Section 1-746.2); or Section 6, Chapter 175, O.S.L. 2013 (63 O.S.

Supp. 2014, Section 1-746.6), resulting from the actions taken by the 2015 session of the Oklahoma legislature are ever temporarily or permanently restrained or enjoined by judicial order, these sections shall be enforced as though such restrained or enjoined provisions had not been adopted; provided, however, that whenever such temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

Added by Laws 2015, c. 255, § 9, eff. Nov. 1, 2015.

## UNBORN CHILD PAIN AWARENESS/PREVENTION ACT

### §63-1-738.6. Short Title

This act shall be known and may be cited as the “Unborn Child Pain Awareness/Prevention Act”.

Added by Laws 2006, c. 185, § 6, eff. Nov. 1, 2006.

6. “Probable gestational age” means the gestational age of the unborn child at the time the abortion is planned to be performed, as determined by the physician using reasonable probability.

Added by Laws 2006, c. 185, § 7, eff. Nov. 1, 2006;  
Amended by Laws 2007, c. 161, § 4, eff. Nov. 1, 2007.

### §63-1-738.7. Definitions

As used in the Unborn Child Pain Awareness/Prevention Act:

1. “Abortion” means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to remove an ectopic pregnancy, or to remove a dead fetus who dies as the result of a spontaneous miscarriage, accidental trauma or a criminal assault on the pregnant female or her unborn child;
2. “Attempt to perform an abortion” means an act, or an omission of a statutorily required act that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion in Oklahoma in violation of the Unborn Child Pain Awareness/Prevention Act;
3. “Unborn child” means a member of the species homo sapiens from fertilization until birth;
4. “Medical emergency” means the existence of any physical condition, not including any emotional, psychological, or mental condition, which a reasonably prudent physician, with knowledge of the case and treatment possibilities with respect to the medical conditions involved, would determine necessitates the immediate abortion of the pregnancy of the female to avert her death or to avert substantial and irreversible impairment of a major bodily function arising from continued pregnancy;
5. “Physician” means a person licensed to practice medicine in this state pursuant to Sections 495 and 633 of Title 59 of the Oklahoma Statutes; and

### §63-1-738.8. Provision of Information Prior to Abortion – Written Certification of Receipt

A. Except in the case of a medical emergency, at least seventy-two (72) hours prior to an abortion being performed on an unborn child whose probable gestational age is twenty (20) weeks or more, the physician performing the abortion or the agent of the physician shall inform the pregnant female, by telephone or in person, of the right to review the printed materials described in Section 1-738.10 of this title, that these materials are available on a state-sponsored website, and the web address of that website. The physician or the agent of the physician shall orally inform the female that the materials have been provided by the State of Oklahoma and that the materials contain information on pain and the unborn child. If the female chooses to view the materials other than on the website, the materials shall either be given to the female at least seventy-two (72) hours before the abortion, or received by the female at least seventy-two (72) hours before the abortion by certified mail, restricted delivery to the addressee. The information required by this subsection may be provided by a tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to receive the printed materials given or mailed.

B. The female shall certify in writing, prior to the abortion, that the information described in subsection A of this section has been furnished to the female and that the female has been informed of the opportunity to review the printed materials described in Section 1-738.10 of this title. Prior to the performance of the abortion, the physician who is to perform the abortion or the agent of the physician shall obtain a copy of the written certification and retain the copy on file with the medical record of the female for at least three (3) years following the date of receipt.

Added by Laws 2006, c. 185, § 8, eff. Nov. 1, 2006;  
Amended by Laws 2015, c. 255, § 4, eff. Nov. 1, 2015.

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### **§63-1-738.9. Information About and Administration of Anesthetic or Analgesic**

Except in the case of a medical emergency, before an abortion is performed on an unborn child who is twenty (20) weeks gestational age or more, the physician performing the abortion or the agent of the physician shall inform the female if an anesthetic or analgesic would eliminate or alleviate organic pain to the unborn child caused by the particular method of abortion to be employed and inform the female of the particular medical risks associated with the particular anesthetic or analgesic. With the consent of the female, the physician shall administer the anesthetic or analgesic.

Added by Laws 2006, c. 185, § 9, eff. Nov. 1, 2006.

### **§63-1-738.10. Materials Conveying Accurate, Scientific Information about Fetus at Various Gestational States**

A. Within ninety (90) days after the Unborn Child Pain Awareness/Prevention Act becomes law, the State Board of Medical Licensure and Supervision shall cause to be published, in English and in each language which is the primary language of two percent (2%) or more of the population of the state, and shall cause to be available on the state web site provided for in Section 11 of this act, printed materials with the following statement concerning unborn children of twenty (20) weeks gestational age: "By twenty (20) weeks gestation, the unborn child has the physical structures necessary to experience pain. There is evidence that by twenty (20) weeks gestation unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted to be a response to pain. Anesthesia is routinely administered to unborn children who are twenty (20) weeks gestational age or older who undergo prenatal surgery."

The materials shall be objective, nonjudgmental and designed to convey only accurate scientific information about the human fetus at the various gestational ages.

B. The materials referred to in subsection A of this section shall be printed in a typeface large enough to be clearly legible. The web site provided for in Section 11 of this act shall be maintained at a minimum resolution of 70 DPI (dots per inch). All pictures appearing on this web site shall be a minimum of 200x300 pixels. All letters on the web site shall be a minimum of 11 point font. All information and pictures shall be accessible with an industry standard browser requiring no additional plug-ins.

C. The materials required under this section shall be available at no cost from the State Board of Medical Licensure and Supervision upon request and in appropriate number to any person, facility, or hospital.

Added by Laws 2006, c. 185, § 10, eff. Nov. 1, 2006.

### **§63-1-738.11. Internet Website**

The State Board of Medical Licensure and Supervision shall develop and maintain a stable Internet web site to provide the information described under Section 10 of this act. No information regarding who uses the web site shall be collected or maintained. The State Board

of Medical Licensure and Supervision shall monitor the web site on a daily basis to prevent and correct tampering.

Added by Laws 2006, c. 185, § 11, eff. Nov. 1, 2006.

### **§63-1-738.12. Information to be Provided When Medical Emergency Compels Performance of Abortion**

When a medical emergency compels the performance of an abortion, the physician shall inform the female, prior to the abortion if possible, of the medical indications supporting the judgment of the physician that an abortion is necessary to avert the death of the female or that a twenty-four-hour delay will create serious risk of substantial and irreversible impairment of a major bodily function.

Added by Laws 2006, c. 185, § 12, eff. Nov. 1, 2006.

### **§63-1-738.13. Physician's Reporting Form**

A. Within ninety (90) days after the Unborn Child Pain Awareness/Prevention Act becomes law, the State Department of Health shall prepare a reporting form for physicians containing a reprint of the Unborn Child Pain Awareness/Prevention Act and listing:

1. The number of females to whom the physician or an agent of the physician provided the information described in subsection A of Section 1-738.8 of this title; of that number, the number provided by telephone and the number provided in person; and of each of those numbers, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion or agent of such a physician;
2. The number of females who availed themselves of the opportunity to obtain a copy of the printed information described in Section 1-738.10 of this title other than on the website, and the number who did not; and of each of those numbers, the number who, to the best of the information and belief of the reporting physician, went on to obtain the abortion; and
3. The number of abortions performed by the physician in which information otherwise required to be provided at least seventy-two (72) hours before the abortion was not so provided because an immediate abortion was necessary to avert the death of the female, and the number of abortions in which such information was not so provided because a delay would create serious risk of substantial and irreversible impairment of a major bodily function.

B. The Department shall ensure that copies of the reporting forms described in subsection A of this section are provided:

1. Within one hundred twenty (120) days after the Unborn Child Pain Awareness/Prevention Act becomes law, to all physicians licensed to practice in this state;
2. To each physician who subsequently becomes newly licensed to practice in this state, at the same time as official notification to that physician that the physician is so licensed; and

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3. By December 1 of each year, other than the calendar year in which forms are distributed in accordance with paragraph 1 of this subsection, to all physicians licensed to practice in this state.

C. By February 28 of each year following a calendar year in any part of which the Unborn Child Pain Awareness/Prevention Act was in effect, each physician who provided, or whose agent provided, information to one or more females in accordance with Section 1-738.8 of this title during the previous calendar year shall submit to the Department a copy of the form described in subsection A of this section, with the requested data entered accurately and completely.

D. Reports that are not submitted by the end of a grace period of thirty (30) days following the due date shall be subject to a late fee of Five Hundred Dollars (\$500.00) for each additional thirty-day period or portion of a thirty-day period the reports are overdue. Any physician required to report in accordance with this section who has not submitted a report, or has submitted only an incomplete report, more than one (1) year following the due date may, in an action brought by the State Board of Medical Licensure and Supervision, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to sanctions for civil contempt.

E. By June 30 of each year, the Department shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection A of this section. Each such report shall also provide the statistics for all previous calendar years, adjusted to reflect any additional information from late or corrected reports. The Department shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any individual providing or provided information in accordance with subsection A or B of Section 1-738.8 of this title.

F. The Department, by rule promulgated in accordance with the Administrative Procedures Act, may alter the dates established by paragraph 3 of subsection B, subsection C, or subsection E of this section or consolidate the forms or reports described in this section with other forms or reports to achieve administrative convenience or fiscal savings or to reduce the burden of reporting requirements, so long as reporting forms are sent to all licensed physicians in the state at least once every year and the report described in subsection E of this section is issued at least once every year.

Added by Laws 2006, c. 185, § 13, eff. Nov. 1, 2006;  
Amended by Laws 2015, c. 255, § 5, eff. Nov. 1, 2015.

### **§63-1-738.14. Violation - Penalties**

Any person who knowingly or recklessly performs or attempts to perform an abortion in violation of the Unborn Child Pain Awareness/Prevention Act shall be guilty of a felony. Any physician who knowingly or recklessly submits a false report under subsection C of Section 13 of this act shall be guilty of a misdemeanor. No penalty may be assessed against the female upon whom the abortion is performed or attempted to be performed. No penalty or civil liability may be assessed for failure to comply with Section 8 of this act requiring a written certification that the female has been

informed of the opportunity to review the information referred to in Section 8 of this act unless the State Department of Health has made the printed materials available at the time the physician or the agent of the physician is required to inform the female of the right to review the materials.

Added by Laws 2006, c. 185, § 14, eff. Nov. 1, 2006.

### **§63-1-738.15. Civil Actions**

A. Any person upon whom an abortion has been performed without the Unborn Child Pain Awareness/Prevention Act having been complied with, the father of the unborn child who was the subject of such an abortion, or the grandparent of such an unborn child may maintain an action against the person who performed the abortion in knowing or reckless violation of the Unborn Child Pain Awareness/Prevention Act for actual and punitive damages. Any person upon whom an abortion has been attempted without the Unborn Child Pain Awareness/Prevention Act having been complied with may maintain an action against the person who attempted to perform the abortion in knowing or reckless violation of the Unborn Child Pain Awareness/Prevention Act for actual and punitive damages.

B. If the Department fails to issue the public report required by the Statistical Reporting of Abortion Act of Oklahoma, an action pursuant to Title 12 of the Oklahoma Statutes may be initiated.

Added by Laws 2006, c. 185, § 15, eff. Nov. 1, 2006.

### **§63-1-738.16. Ruling Concerning Public Disclosure of Identity of Female - Order**

In every civil or criminal proceeding or action brought under the Unborn Child Pain Awareness/Prevention Act, the court shall rule whether the anonymity of any female upon whom an abortion has been performed or attempted shall be preserved from public disclosure if the female does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that the anonymity of the female should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the identity of the female from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the female should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the female upon whom an abortion has been performed or attempted, anyone, other than a public official, who brings an action under subsection A of Section 15 of this act shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

Added by Laws 2006, c. 185, § 16, eff. Nov. 1, 2006.

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### §63-1-738.17. Severability

If any one or more provision, section, subsection, sentence, clause, phrase or word of the Unborn Child Pain Awareness/Prevention Act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of the Unborn Child Pain Awareness/Prevention Act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed the Unborn Child Pain Awareness/Prevention Act, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.

Added by Laws 2006, c. 185, § 17, eff. Nov. 1, 2006.

### §63-1-739. Records

All hospitals shall keep records, including admission and discharge notes, histories, results of tests and examinations, nurses

worksheets, social service records and progress notes of patients. All abortion facilities and hospitals in which abortions are performed shall also keep certifications of medical necessity, certifications of nonviability, certifications of nonavailability, abortion reports and complication reports as required in this act. Such records shall be maintained in the permanent files of the hospital for a period of not less than seven (7) years.

Added by Laws 1978, c. 207, § 11, eff. Oct. 1, 1978.

### §63-1-740. Abortion on Minor Without Parental Consent

Any person who performs an abortion on a minor without parental consent or knowledge shall be liable for the cost of any subsequent medical treatment such minor might require because of the abortion.

Added by Laws 2001, c. 379, § 2, emerg. eff. June 4, 2001.

## ABORTION PERFORMED UPON EMANCIPATED MINORS

### §63-1-740.1. Definitions

As used in Sections 1-740.1 through 1-740.5 of this title:

1. "Abortion" means the term as is defined in Section 1-730 of this title;
2. "Medical emergency" means the existence of any physical condition, not including any emotional, psychological, or mental condition, which a reasonably prudent physician, with knowledge of the case and treatment possibilities with respect to the medical conditions involved, would determine necessitates the immediate abortion of the pregnancy of the minor in order to avert her death or to avert substantial and irreversible impairment of a major bodily function arising from continued pregnancy, and there is insufficient time to provide the required notice and obtain the written informed consent of one parent;
3. "Parent" means one parent of the pregnant unemancipated minor or guardian if the pregnant unemancipated minor has one; and
4. "Unemancipated minor" means any person less than eighteen (18) years of age who is not or has not been married or who is under the care, custody and control of the person's parent or parents, guardian or juvenile court of competent jurisdiction.

Added by Laws 2005, c. 200, § 11, emerg. eff. May 20, 2005;  
Amended by Laws 2007, c. 161, § 5, eff. Nov. 1, 2007.

### §63-1-740.2. Parental Notification

A. Except in the case of a medical emergency, a physician may not perform an abortion on a pregnant female unless the physician has:

1. Obtained proof of age demonstrating that the female is not a minor;

2. Obtained proof that the female, although a minor, is emancipated; or

3. Complied with Section 1-740.3 of this title.

B. No abortion shall be performed upon an unemancipated minor or upon a female for whom a guardian has been appointed pursuant to Section 1-113 of Title 30 of the Oklahoma Statutes because of a finding of incompetency, except in a medical emergency or where a judicial waiver was obtained pursuant to Section 1-740.3 of this title, until at least forty-eight (48) hours after the request for written informed consent for the pending abortion has been delivered in the manner specified in this subsection and the attending physician has secured proof of identification and the written informed consent of one parent.

1. The request for written informed consent of one parent shall be addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent.

2. In lieu of the delivery required by paragraph 1 of this subsection, the request for written informed consent of one parent shall be made by certified mail addressed to the parent at the usual place of abode of the parent with return-receipt requested and restricted delivery to the addressee, which means a postal employee can only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 noon on the third day on which regular mail delivery takes place, subsequent to mailing. The information concerning the address of the parent shall be that which a reasonable and prudent person, under similar circumstances, would have relied upon as sufficient evidence that the parent resides at that address.

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Laws 2013, c. 320, § 2, eff. Nov. 1, 2013.

3. a. The parent who provides consent shall provide to the physician a copy of a government-issued proof of identification and written documentation that establishes that he or she is the lawful parent of the pregnant female. The parent shall certify in a signed, dated, notarized statement, initialed on each page that he or she consents to the abortion. The signed, dated, and notarized statement shall include: "I certify that I, (insert name of parent), am the parent of (insert name of minor daughter) and give consent for (insert name of physician) to perform an abortion on my daughter. I understand that any person who knowingly makes a fraudulent statement in this regard commits a felony."

b. The physician shall keep a copy of the proof of identification of the parent and the certified statement in the medical file of the minor for five (5) years past the majority of the minor, but in no event less than seven (7) years.

c. A physician receiving parental consent under this section shall execute for inclusion in the medical record of the minor an affidavit stating: "I, (insert name of physician), certify that according to my best information and belief, a reasonable person under similar circumstances would rely on the information presented by both the minor and her parent as sufficient evidence of identity."

C. No request for written informed consent of one parent shall be required under this section if the attending physician certifies in the medical records of the pregnant unemancipated minor that a medical emergency exists; provided, however, that the attending physician or an agent shall, within twenty-four (24) hours after completion of the abortion, notify one of the parents of the minor in the manner provided in this section that an emergency abortion was performed on the minor and of the circumstances that warranted invocation of this subsection.

D. The attending physician, or the agent of the physician, shall verbally inform the parent of the minor within twenty-four (24) hours after the performance of a medical emergency abortion or an abortion that was performed to prevent her death that an abortion was performed on the unemancipated minor. The attending physician, or the agent of the attending physician, shall also inform the parent of the basis for the certification of the physician required under subsection C of this section. The attending physician, or the agent of the attending physician, shall also send a written notice of the performed abortion via the United States Post Office to the last-known address of the parent, restricted delivery, return receipt requested. The information concerning the address of the parent shall be that which a reasonable and prudent person, under similar circumstances, would have relied upon as sufficient evidence that the parent resides at that address.

E. The State Board of Health shall adopt the forms necessary for physicians to obtain the certifications required by this section.

Added by Laws 2005, c. 200, § 12, emerg. eff. May 20, 2005;  
Amended by Laws 2006, c. 185, § 18, eff. Nov. 1, 2006;  
Laws 2007, c. 161, § 6, eff. Nov. 1, 2007;  
Laws 2009, c. 234, § 152, emerg. eff. May 21, 2009;  
Laws 2013, c. 268, § 1, eff. Nov. 1, 2013;

### **§63-1-740.2A. Court-Ordered Evaluation and Counseling Session with a Mental Health Professional – Purpose – Report to Court**

A. Prior to the court hearing for judicial waiver pursuant to Section 1-740.3 of Title 63 of the Oklahoma Statutes, the court may require the pregnant unemancipated minor to participate in an evaluation and counseling session with a mental health professional from the State Department of Health. Such evaluation shall be confidential and scheduled expeditiously.

B. Such evaluation and counseling session shall be for the purpose of developing trustworthy and reliable expert opinion concerning the pregnant unemancipated minor's sufficiency of knowledge, insight, judgment, and maturity with regard to her abortion decision in order to aid the court in its decision and to make the resources of the state available to the court for this purpose. Persons conducting such sessions may employ the information and printed materials referred to in Sections 1-738.2 and 1-738.3 of Title 63 of the Oklahoma Statutes in examining how well the pregnant unemancipated minor is informed about pregnancy, fetal development, abortion risks and consequences, and abortion alternatives, and should also endeavor to verify that the pregnant unemancipated minor is seeking an abortion of her own free will and is not acting under coercion, intimidation, threats, abuse, undue pressure, or extortion by any other persons.

C. The results of such evaluation and counseling shall be reported to the court by the most expeditious means, commensurate with security and confidentiality, to assure receipt by the court prior to a hearing on the petition of the pregnant unemancipated minor.

Added by Laws 2013, c. 268, § 2, eff. Nov. 1, 2013.

### **§63-1-740.3. Judicial Authorization of Abortion Without Parental Notification – Participation by Minor in Court Proceedings – Confidentiality - Appeal**

A. If a pregnant unemancipated minor elects not to allow the request for written informed consent of her parent, any judge of a district court in the county in which the pregnant unemancipated minor resides shall, upon petition or motion, and after an appropriate hearing, authorize a physician to perform the abortion if the judge determines, by clear and convincing evidence, that the pregnant unemancipated minor is mature and capable of giving informed consent to the proposed abortion based upon her experience level, perspective, and judgment. If the judge determines that the pregnant unemancipated minor is not mature, or if the pregnant unemancipated minor does not claim to be mature, the judge shall determine, by clear and convincing evidence, whether the performance of an abortion upon her without written informed consent of her parent would be in her best interest and shall authorize a physician to perform the abortion without written informed consent if the judge concludes that the best interests of the pregnant unemancipated minor would be served thereby.

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In assessing the experience level of the pregnant unemancipated minor, the court may consider, among other relevant factors, the age of the pregnant unemancipated minor and experiences working outside the home, living away from home, traveling on her own, handling personal finances, and making other significant decisions. In assessing the perspective of the pregnant unemancipated minor, the court may consider, among other relevant factors, what steps the pregnant unemancipated minor took to explore her options and the extent to which she considered and weighed the potential consequences of each option. In assessing the judgment of the pregnant unemancipated minor, the court may consider, among other relevant factors, the conduct of the pregnant unemancipated minor since learning of her pregnancy and her intellectual ability to understand her options and to make an informed decision. In assessing whether, by clear and convincing evidence, obtaining the written informed consent of the parent of the pregnant unemancipated minor is not in her best interest, a court may not consider the potential financial impact on the pregnant unemancipated minor or the family of the pregnant unemancipated minor if she does not have an abortion.

B. A pregnant unemancipated minor may participate in proceedings in the court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall advise the pregnant unemancipated minor that she has a right to court-appointed counsel and, upon her request, shall provide her with counsel.

C. Proceedings in the court under this section shall be confidential and shall be given precedence over other pending matters so that the court may reach a decision promptly and without delay so as to serve the best interests of the pregnant unemancipated minor. A judge of the court who conducts proceedings under this section shall make, in writing, specific factual findings and legal conclusions supporting the decision and shall order a record of the evidence to be maintained, including the findings and conclusions of the court.

D. An expedited confidential appeal shall be available to any pregnant unemancipated minor for whom the court denies an order authorizing an abortion without written informed consent of one parent. An order authorizing an abortion without written informed consent of one parent shall not be subject to appeal. No filing fees shall be required of any pregnant unemancipated minor at either the trial or the appellate level. Access to the trial court for the purpose of a petition or motion, and access to the appellate courts for the purpose of making an appeal from the denial of same, shall be afforded a pregnant unemancipated minor twenty-four (24) hours a day, seven (7) days a week.

Added by Laws 2005, c. 200, § 13, emerg. eff. May 20, 2005;  
Amended by Laws 2006, c. 185, § 19, eff. Nov. 1, 2006;  
Laws 2007, c. 161, § 7, eff. Nov. 1, 2007;  
Laws 2013, c. 268, § 3, eff. Nov. 1, 2013;  
Laws 2013, c. 320, § 3, eff. Nov. 1, 2013.

## §63-1-740.4. Violations – Misdemeanor – Civil Actions

Performance of an abortion in knowing or reckless violation of Sections 1-740.1 through 1-740.5 of this title shall be a misdemeanor. Performance of an abortion in violation of Sections 1-740.1 through 1-740.5 of this title shall be grounds for actual and

punitive damages in a civil action pursuant to Sections 1-738.3f through 1-738.3k of this title.

Added by Laws 2005, c. 200, § 14, emerg. eff. May 20, 2005;  
Amended by Laws 2006, c. 185, § 20, eff. Nov. 1, 2006;  
Laws 2013, c. 320, § 4, eff. Nov. 1, 2013.

## §63-1-740.4a. Physicians Reporting Procedures for Abortions Performed on Unemancipated Minors – Department of Health Web Site – Notice – Public Statistical Report

A. Any physician performing an abortion upon an unemancipated minor shall complete and electronically transmit to the State Department of Health a report of the procedure within thirty (30) days after having performed the abortion. Within ninety (90) days after this act becomes law, the State Department of Health shall prepare and make available on its stable Internet web site the reporting forms for this purpose to all physicians required to be licensed in this state and health facilities licensed in accordance with Section 1-702 of Title 63 of the Oklahoma Statutes. The reporting form regarding the minor receiving the abortion shall include, but not be limited to:

1. Age;
2. Educational level;
3. Number of previous pregnancies;
4. Number of previous live births;
5. Number of previous abortions;
6. Complications, if any, of the abortion being reported;
7. The city and county in which the abortion was performed;
8. Whether a parent gave consent to the physician, or an agent of the physician, pursuant to Section 1-740.2 of Title 63 of the Oklahoma Statutes; or
9. Whether the physician performed the abortion without first obtaining the consent of the parent of the minor as described in Section 1-740.2 of Title 63 of the Oklahoma Statutes; if so:
  - a. whether the minor was emancipated,
  - b. whether the abortion was performed because of a medical emergency,
  - c. whether the abortion was performed to prevent the death of the minor,
  - d. whether the parent was notified after the performance of a medical emergency abortion, and
  - e. whether the parent was notified after the performance of an abortion to prevent the death of the minor;
10. Whether a judicial waiver was obtained after the performance of a medical emergency abortion; and

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11. Whether a judicial waiver was obtained after the performance of an abortion to prevent the death of the minor.

B. The State Department of Health shall ensure that the reporting forms described in this section, together with a reprint of this act, are posted on its stable Internet web site, within one hundred twenty (120) days after the effective date of this act. The State Department of Health shall notify:

1. Each physician who subsequently becomes newly licensed to practice in this state, simultaneously with the receipt of official notification to that physician that the physician is so licensed, of the requirements of this act; and

2. By December 1 of every year, other than the calendar year in which forms are made available in accordance with subsection A of this section, all physicians licensed to practice in this state.

C. By February 28 of each year following a calendar year in any part of which this act was in effect, each physician, or agent of a physician, who obtained the consent described in Section 1-740.2 of Title 63 of the Oklahoma Statutes, and any physician who knowingly performed an abortion upon a pregnant minor or upon a female for whom a guardian or conservator had been appointed pursuant to applicable federal law or as provided by Section 1-113 of Title 30 of the Oklahoma Statutes because of incompetency during the previous calendar year shall complete and electronically submit to the State Department of Health the form described in subsection A of this section, with the requested data entered accurately and completely. Any such report shall not contain the name, address, or other information by which the minor receiving the abortion may be identified.

D. Reports that are not submitted by the end of a grace period of thirty (30) days following the due date shall be subject to a late fee of Five Hundred Dollars (\$500.00) for each additional thirty-day period or portion of a thirty-day period the reports are overdue. Any physician required to report in accordance with this section who has not electronically submitted a report, or has electronically submitted only an incomplete report, more than one (1) year following the due date, may, in an action brought by the State Department of Health, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to sanctions for civil contempt.

E. By June 30 of each year, the State Department of Health shall post, on its stable Internet web site, a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection A of this section. The report shall also include statistics giving the total number of petitions or motions filed under Section 1-740.3 of Title 63 of the Oklahoma Statutes and of that number:

1. The number in which the court appointed a guardian ad litem;
2. The number in which the court appointed counsel;
3. The number in which the judge issued an order authorizing an abortion without notification; and

4. The number in which the judge denied such an order, and of this:

- a. the number of denials from which an appeal was filed,
- b. the number of the appeals that resulted in the denial being affirmed, and
- c. the number of appeals that resulted in reversals of the denials.

Each report shall also provide the statistics for all previous calendar years for which the public statistical report was required to be issued, adjusted to reflect any additional information from late or corrected reports. The State Department of Health shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any individual female.

F. The State Department of Health may promulgate rules in accordance with the Administrative Procedures Act to alter the dates established by this section or consolidate the forms or reports to achieve administrative convenience, fiscal savings, or to reduce the burden of reporting requirements, as long as reporting forms are made available on its web site, to all licensed physicians in the state at least once every year and the report described in subsection E of this section is posted at least once every year.

G. If the State Department of Health fails to post the public report required by subsection E of this section, an action may be initiated pursuant to Title 12 of the Oklahoma Statutes.

H. If judgment is rendered in favor of the plaintiff in any action described in this section, the court shall also render judgment for a reasonable attorney fee in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney fee in favor of the defendant against the plaintiff.

Added by Laws 2007, c. 161, § 8, eff. Nov. 1, 2007.

### **§63-1-740.4b. Criminal Violations – Penalties – Defenses – Civil Liability - Injunction**

A. A person who knowingly or recklessly uses a false governmental record or makes a fraudulent representation or statement in order to obtain an abortion for a minor in violation of this title or intentionally causes, aids, abets or assists an unemancipated minor to obtain an abortion without the consent required by Section 1-740.2 of this title commits a felony.

B. A physician who intentionally or knowingly performs an abortion on a pregnant unemancipated minor in violation of this title commits a felony.

C. 1. It is a defense to prosecution under subsection B of this section if the person falsely representing himself or herself as the parent or guardian of the minor displayed an apparently valid governmental record of identification such that a reasonable

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person, under similar circumstances, would have relied on the representation.

2. The defense does not apply if the physician, or agent of the physician, failed to use due diligence in determining the age of the minor or the identity of the person represented as the parent or guardian of the minor.

D. A person who knowingly or recklessly uses a false governmental record or makes a fraudulent representation or statement in order to obtain an abortion for a minor in violation of this title or intentionally causes, aids, abets or assists an unemancipated minor to obtain an abortion without the consent required by Section 1-740.2 of this title or any physician who intentionally or knowingly performs an abortion on a pregnant unemancipated minor in violation of this title shall be civilly liable to the minor and to the person or persons required to give consent pursuant to the provisions of Section 1-740.2 of this title. A court may award damages to the person or persons adversely affected by a violation of this section including compensation for emotional injury without the need for personal presence at the act or event, and the court may further award attorney fees, litigation costs, and punitive damages. Any adult who engages in or consents to another person engaging in a sexual act with a minor, which results in the minor's pregnancy, shall not be awarded damages under this section.

E. A court of competent jurisdiction may enjoin conduct that would be in violation of this section upon petition by the Attorney General, a district attorney or any person adversely affected or who reasonably may be adversely affected by such conduct, upon a showing that such conduct:

1. Is reasonably anticipated to occur in the future; or
2. Has occurred in the past, whether with the same minor or others, and that it is reasonably expected to be repeated.

F. It is not a defense to a claim brought pursuant to this section that the minor gave informed and voluntary consent.

G. An unemancipated minor does not have the capacity to consent to any action that violates this title.

Added by Laws 2007, c. 161, § 9, eff. Nov. 1, 2007;  
Amended by Laws 2015, c. 386, § 1, eff. Nov. 1, 2015.

### **§63-1-740.5. Severability – Savings Clause**

If any one or more provision, section, subsection, sentence, clause, phrase or word of this act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase or word be declared unconstitutional.

Added by Laws 2005, c. 200, § 15, emerg. eff. May 20, 2005.

### **§63-1-740.6. Effect of Court Injunction, Suspension, or Delays of Implementation of Act**

If any court of law enjoins, suspends, or delays the implementation of the provisions of this act, the provisions of Sections 1-730, 1-738.1, 1-738.7, 1-740.1, 1-740.2 and 1-740.3 of Title 63 of the Oklahoma Statutes, as of December 31, 2006, are effective during the injunction, suspension, or delayed implementation.

Added by Laws 2007, c. 161, § 10, eff. Nov. 1, 2007.

## **ALTERNATIVES-TO-ABORTION SERVICES**

### **§63-1-740.11. Funding to Nongovernmental Entities That Provide Alternative-to-Abortion Services**

A. Before July 1, 2007, the State Department of Health shall establish and implement a program to facilitate funding to nongovernmental entities that provide alternatives-to-abortion services. The services must be outcome-based with positive outcome-based results.

B. During the 2006 interim, the State Department of Health shall make annual reports to the Speaker of the House of Representatives and the President Pro Tempore of the Senate regarding the status of the alternatives-to-abortion services funding, the first of which must be made by December 1, 2006.

C. The Department may contract with nongovernmental health care and special service organizations to provide services offered under the program. The services must be outcome-based with positive

outcome-based results. The Department may not contract with a provider of adoption services not licensed by the state.

D. The State Department of Health shall promulgate rules necessary to implement the provisions of this act.

E. As used in this section, "alternatives-to-abortion services" means those services that promote childbirth instead of abortion by providing information, counseling, and support services that assist pregnant women or women who believe they may be pregnant to choose childbirth and to make informed decisions regarding the choice of adoption or parenting with respect to their children.

The information, counseling and services provided under this program may include, but are not limited to:

1. Medical care;
2. Nutritional services;

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3. Housing assistance;
4. Adoption services;
5. Educational and employment assistance, including services that support the continuation and completion of high school;
6. Child care assistance; and
7. Parenting education and support services.

Added by Laws 2006, c. 185, § 21, eff. Nov. 1, 2006.

### **§63-1-740.12. Alternatives-to-Abortion Services Revolving Fund**

There is hereby created in the State Treasury a revolving fund for the State Department of Health to be designated the "Alternatives-to-Abortion Services Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies deposited to the credit of the fund by law. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the State Department of Health as provided in subsection A of Section 1-740.11 of this title. The fund shall not be available to any organization or affiliate of an organization which provides or promotes abortions or directly refers for abortion; provided, however, any nondirective counseling relating to the pregnancy shall not disqualify an organization from receiving these funds. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

Added by Laws 2006, c. 185, § 22, eff. Nov. 1, 2006.  
Amended by Laws 2012, c. 304, § 485.

### **§63-1-740.13. Form Used to Obtain Consent of a Minor – Validity – Required Contents**

A. A form created by the State Department of Health shall be used by physicians to obtain the consent required prior to performing an abortion on a minor who is not emancipated.

B. A form is not valid, and therefore consent is not sufficient, unless:

1. A parent or legal guardian initials each page of the form, indicating that he or she has read and understands the information included on that page;
2. A parent or legal guardian signs the last page of the form in front of a person who is a notary public;
3. The minor initials each list of risks and hazards listed in subsection C of this section;
4. The minor signs a consent statement described in subsection C of this section; and
5. The physician signs the declaration described in subsection C of this section.

C. The form shall include, but not be limited to, the following:

1. A description of the minor's rights, including her right to informed consent;
2. A description of the parent or legal guardian's rights pursuant to Oklahoma law;
3. A detailed description of the surgical and medical procedures that are planned to be performed on the minor;
4. A detailed list of the risks and hazards related to the surgical and medical procedures planned for the minor, including but not limited to:
  - a. risks and hazards that may occur in connection with any surgical, medical, or diagnostic procedure, including but not limited to infection, blood clots in veins and lungs, hemorrhage, allergic reactions, and death,
  - b. risks and hazards that may occur with surgical abortion, including but not limited to hemorrhage, uterine perforation, sterility, injuries to the bowel and bladder, hysterectomy as a result of complication or injury during the procedure, and failure to remove all products of conception that may result in an additional procedure,
  - c. risks and hazards that may occur with a medical or nonsurgical abortion, including but not limited to hemorrhage, failure to remove all products of conception that may result in an additional procedure, sterility, and possible continuation of pregnancy, and
  - d. risks and hazards of the particular procedure planned for the minor, including but not limited to cramping of the uterus, pelvic pain, infection of the uterus, tubes, and ovaries, cervical laceration, incompetent cervix, and emergency treatment for any of the above named complications;
5. A description of additional information that must be provided by the physician to the minor pursuant to the provisions of Section 1-730 et seq. of this title;
6. A consent statement which must be signed by the minor. The consent statement must include, but not be limited to, the following requirements, which must each be individually initialed by the minor:
  - a. that the minor understands that the doctor is going to perform an abortion on her which will end her pregnancy and result in the death of her unborn child,
  - b. that the minor is not being forced to have an abortion and that she has the choice not to have the abortion and may withdraw consent prior to the abortion,
  - c. that the minor gives permission for the procedure,
  - d. that the minor understands that there are risks and hazards that could affect the minor if she has the surgical or medical procedures planned for her,

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- e. that the minor has been given the opportunity to ask questions about her condition, alternative forms of treatment, risks of not receiving treatment, the procedures to be used, and the risks and hazards involved,
  - f. that the minor has been given information required by Section 1-730 et seq. of this title, and
  - g. that the minor has sufficient information to give informed consent;
7. A physician declaration, which must be signed by the physician, stating that the physician or his or her assistant has explained the procedure and the contents of this form to the minor and her parent or legal guardian, as required, and has answered all questions. Further, to the best of the physician's knowledge, the patient and her parent or legal guardian have been adequately informed and have consented to the procedure;
8. A parental consent statement stating that the signing parent or legal guardian:
- a. understands that the doctor signing the physician declaration is going to perform an abortion on the minor which will end her pregnancy and result in the death of her unborn child,
  - b. that the parent or legal guardian had the opportunity to read this form or have it read to him or her and has initialed each page,
  - c. that the parent or legal guardian had the opportunity to ask questions to the physician or the physician's assistant about the

information in this form and the surgical and medical procedures to be performed on the minor,

- d. that the parent or legal guardian believes he or she has sufficient information to give informed consent, and
  - e. that by the parent or legal guardian's signature, the parent or legal guardian affirms that he or she is the minor's parent or legal guardian;
9. A page for the parent or legal guardian's signature that must be notarized by a notary public; and
10. Any additional information that must be provided pursuant to applicable laws of this state.

Added by Laws 2013, c. 268, § 4, eff. Nov. 1, 2013.

### §63-1-740.14. Effect of Temporary or Permanent Judicial Orders

If some or all of the provisions of Sections 1-740.2 and 1-740.3 of Title 63 of the Oklahoma Statutes, as amended by Sections 1 and 3 of this act, are ever temporarily or permanently restrained or enjoined by judicial order, these sections shall be enforced as though such restrained or enjoined provisions had not been adopted; provided, however, that whenever such temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

Added by Laws 2013, c. 268, § 5, eff. Nov. 1, 2013.

## CHOOSING CHILDBIRTH ACT

### §63-1-740.15. Short Title

This act shall be known and may be cited as the "Choosing Childbirth Act".

Added by Laws 2017, c. 308, § 1, eff. Nov. 1, 2017.

### §63-1-740.16. Definitions

As used in the Choosing Childbirth Act:

1. "Abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device to intentionally:
  - a. kill the unborn child of a woman known to be pregnant, or
  - b. terminate the pregnancy of a woman known to be pregnant, with an intention other than:
    - (1) after viability of the unborn child, to produce a live birth and preserve the life and health of the child born alive, or
    - (2) to remove a dead unborn child;

2. "Unborn child" means an individual organism of the species Homo sapiens from fertilization until birth; and

3. "Grant-supervising entity" means a private entity which approves all grants provided under the Choosing Childbirth Act and which:

a. is organized as a not-for-profit corporation in Oklahoma and as a 501(c)3 entity under the federal Internal Revenue Code, and

b. does not encourage or counsel any woman to have an abortion not necessary to prevent her death, to provide her such an abortion or to refer her for such an abortion, and does not accept funds or services knowingly from any entity which performs abortions or receives money for abortions.

Added by Laws 2017, c. 308, § 2, eff. Nov. 1, 2017.

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### **§63-1-740.17. Grant Requirements for Reimbursement to Private Non-Profits Organizations Providing Women's Health Services**

A. The State Department of Health shall make grants, from funds appropriated by the Legislature specifically for this purpose, to a grant-supervising entity for the purpose of reimbursing private organizations in Oklahoma for the reasonable expenses of programs providing the following services:

1. Providing information on, referral to, and assistance in securing the services of relevant existing programs or agencies that assist women in Oklahoma to carry their children to term, and/or providing services that assist women to carry their children to term, including, but not limited to, agencies and programs that will provide medical attention for the pregnant woman for the duration of her pregnancy, nutritional support services, housing assistance, adoption services, education and employment assistance and parenting education and support services; and
2. Providing women in Oklahoma, in person and through community outreach, information and/or services that encourage and assist them to carry their children to term.
3. Providing services including, but not limited to, healthcare services to mothers and infants for the purpose of reducing the rates of maternal mortality and infant mortality in this state by three percent (3%) within five (5) years of the effective date of this act; provided, however, no funds shall be provided to an organization that provides, or whose affiliates provide, abortion services.

B. To be eligible for a service grant, an organization shall:

1. Be registered with the Oklahoma Secretary of State as a not-for-profit corporation located in Oklahoma;
2. Have the grant amount approved by a grant-supervising entity;
3. For services described in paragraphs 1 and 2 of subsection A of this section, provide each pregnant woman counseled with accurate information on the developmental characteristics of unborn children, including offering the printed information described in Section 1-738.3 of Title 63 of the Oklahoma Statutes;
4. Assure that the grant's sole purposes are to assist and encourage women to carry their children to term and to maximize their potentials thereafter; or to reduce the rates of maternal mortality and infant mortality in this state as provided in paragraph 3 of subsection A of this section; and
5. Assure that none of the funds provided pursuant to the Choosing Childbirth Act, nor any other funds or services provided by the organization, are used to encourage or counsel a woman to

have an abortion not necessary to prevent her death, to provide her such an abortion or to refer her for such an abortion.

Added by Laws 2017, c. 308, § 3, eff. Nov. 1, 2017.  
Amended by Laws 2021, SB 960, c. 313, § 3, emerg. eff. July 1, 2021.

### **§63-1-740.18. Grant Compliance and Monitoring**

The State Department of Health shall make grants to a grant-supervising entity under the Choosing Childbirth Act from funds appropriated by the Legislature specifically for this purpose. The State Department of Health shall annually monitor and review the grant-supervising entity to assure that the grant-supervising entity carefully adheres to the purposes and requirements of the Choosing Childbirth Act, and it shall cease funding a grant-supervising entity that fails to do so if the Department proves specific findings of noncompliance, subject to judicial review.

Added by Laws 2017, c. 308, § 4, eff. Nov. 1, 2017.

### **§63-1-740.19. Invalidity of Act**

If any provision, word, phrase or clause of the Choosing Childbirth Act or the application thereof to any person or circumstance is held invalid, such invalidity shall make the entire Act invalid and to this end, the provisions, works, phrases and clauses of the Choosing Childbirth Act are declared to be inseverable.

Added by Laws 2017, c. 308, § 5, eff. Nov. 1, 2017.

### **§63-1-741. Abortions - Refusal to Perform or Participate - Exemptions**

A. No private hospital, hospital director or governing board of a private hospital in Oklahoma, is required to permit abortions to be performed or induced in such hospital. Refusal to permit an abortion, in accordance with a standard policy, is not grounds for civil liability nor a basis for disciplinary or other recriminatory action.

B. No person may be required to perform, induce or participate in medical procedures which result in an abortion which are in preparation for an abortion or which involve aftercare of an abortion patient, except when the aftercare involves emergency medical procedures which are necessary to protect the life of the patient, and refusal to perform or participate in such medical procedures is not grounds for civil liability nor a basis for disciplinary or other recriminatory action.

C. The rights and immunities granted by this section shall not include medical procedures in which a woman is in the process of the spontaneous, inevitable abortion of an unborn child, the death of the child is imminent, and the procedures are necessary to prevent the death of the mother.

Laws 1978, c. 158, § 1.

## VIOLATIONS

### **§63-1-741.1. Prohibition Against Use of State Assistance or Resources to Encourage or Perform Abortion - Exceptions**

A. It shall be unlawful for any person employed by this state or any agency or political subdivision thereof, within the scope of the person's employment, to perform or assist an abortion not necessary to save the life of the mother except when the pregnancy resulted from an act of forcible rape which was reported to the proper law enforcement authorities or when the pregnancy resulted from an act of incest committed against a minor and the perpetrator has been reported to the proper law enforcement authorities. It shall be unlawful for any public institution, public facility, public equipment, or other physical asset owned, leased or controlled by this state or any agency or political subdivisions thereof to be used for the purpose of performing or assisting an abortion not necessary to save the life of the mother except when the pregnancy resulted from an act of forcible rape which was reported to the proper law enforcement authorities or when the pregnancy resulted from an act of incest committed against a minor and the perpetrator has been reported to the proper law enforcement authorities. This subsection shall not be construed to prohibit use by private entities of public utilities or the services of firefighters or police.

B. It shall be unlawful for any funds received or controlled by this state or any agency or political subdivision thereof, including, but not limited to, funds derived from federal, state or local taxes, gifts or grants, federal grants or payments, or intergovernmental transfers, to be used to encourage a woman to have an abortion not necessary to save her life, except to the extent required for continued participation in a federal program. Nothing in this subsection shall be construed to prohibit a physician from discussing options with a patient through nondirective counseling.

Added by Laws 2007, c. 161, § 11, eff. Nov. 1, 2007.

### **§63-1-741.3. Health Plans – Coverage for Abortion – Elective Abortion Coverage - Employers**

A. Pursuant to the Patient Protection and Affordable Care Act, P.L. 111-148, all qualified health plans offered through an Exchange established in the state are prohibited from including elective abortion coverage. Nothing in this section shall be construed as preventing anyone from purchasing optional supplemental coverage for elective abortions for which there must be paid a separate premium in accordance with subsection D of this section in the health insurance market outside of the Exchange.

B. No health plan, including health insurance contracts, plans or policies, offered outside of an Exchange, but within the state, shall provide coverage for elective abortions except by optional separate supplemental coverage for abortion for which there must be paid a separate premium in accordance with subsection D of this section.

C. For purposes of this section, "elective abortion" means an abortion for any reason other than to prevent the death of the mother

upon whom the abortion is performed; provided, however, that an abortion may not be deemed one to prevent the death of the mother based on a claim or diagnosis that she will engage in conduct which will result in her death.

D. The issuer of any health plan providing elective abortion coverage shall:

1. Calculate the premium for such coverage so that it fully covers the estimated cost of covering elective abortions per enrollee as determined on an average actuarial basis. In calculating such premium, the issuer of the plan shall not take into account any cost reduction in any health plan covering an enrollee estimated to result from the provision of abortion coverage, including prenatal care, delivery or postnatal care;

2. If the enrollee is enrolling in a health plan providing any other coverage at the same time as the enrollee is enrolling in a plan providing elective abortion coverage, require a separate signature, distinct from that to enroll in the health plan providing other coverage, in order to enroll in the separate supplemental plan providing elective abortion coverage; and

3. Provide a notice to enrollees at the time of enrollment that:

- a. specifically states the cost of the separate premium for coverage of elective abortions distinct and apart from the cost of the premium for any health plan providing any other coverage in any health plan covering an enrollee,

- b. states that enrollment in elective abortion coverage is optional, and

- c. if the enrollee is enrolling in a health plan providing any other coverage at the same time as the enrollee is enrolling in a plan providing elective abortion coverage, states that the enrollee may choose to enroll in the plan providing other coverage without enrolling in the plan providing elective abortion coverage.

E. The issuer of any health plan providing any coverage other than elective abortion shall not discount or reduce the premium for such coverage on the basis that an enrollee has elective abortion coverage.

F. Any employer who offers employees a health plan providing elective abortion coverage shall, at the time of beginning employment and at least once in each calendar year thereafter, provide each employee the option to choose or reject the separate supplemental elective abortion coverage.

G. Any entity offering a group health plan providing separate supplemental elective abortion coverage, other than employers offering such a plan to their employees, shall, at the time each group member begins coverage and at least once in each calendar year thereafter, provide each group member the option to choose or reject the separate supplemental elective abortion coverage.

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H. Nothing in this section shall be construed to apply in circumstances in which federal law preempts state health insurance regulation.

Added by Laws 2011, c. 92, § 1, eff. Nov. 1, 2011.

### §63-1-741.12. Wrongful Life Action – Wrongful Birth Action – Limitation on Damages

A. It is the intent of the Legislature that the birth of a child does not constitute a legally recognizable injury and that it is contrary to public policy to award damages because of the birth of a child or for the rearing of that child.

B. For the purposes of this section:

1. "Abortion" means the term as is defined in Section 1-730 of Title 63 of the Oklahoma Statutes;
2. "Wrongful life action" means a cause of action that is brought by or on behalf of a child, which seeks economic or noneconomic damages for the child because of a condition of the child that existed at the time of the child's birth, and which is based on a

claim that a person's act or omission contributed to the mother's not having obtained an abortion; and

3. "Wrongful birth action" means a cause of action that is brought by a parent or other person who is legally required to provide for the support of a child, which seeks economic or noneconomic damages because of a condition of the child that existed at the time of the child's birth, and which is based on a claim that a person's act or omission contributed to the mother's not having obtained an abortion.

C. In a wrongful life action or a wrongful birth action, no damages may be recovered for any condition that existed at the time of a child's birth if the claim is that the defendant's act or omission contributed to the mother's not having obtained an abortion.

D. This section shall not preclude causes of action based on claims that, but for a wrongful act or omission, maternal death or injury would not have occurred, or handicap, disease, or disability of an individual prior to birth would have been prevented, cured, or ameliorated in a manner that preserved the health and life of the affected individual.

Added by Laws 2010, c. 171, § 1, emerg. eff. April 27, 2010.

## PARENTAL NOTIFICATION FOR ABORTION ACT

### §63-1-744. Short Title

This act shall be known and may be cited as the "Parental Notification for Abortion Act".

Added by Laws 2013, c. 320, § 1, eff. Nov. 1, 2013.

### §63-1-744.1. Definitions

As used in the Parental Notification for Abortion Act:

1. "Parent" means one parent of the pregnant minor, or the guardian or conservator if the pregnant female has one;
2. "Abortion" means the use of any means intentionally to terminate the pregnancy of a female known to be pregnant with knowledge that the termination with those means will, with reasonable likelihood, cause the death of the fetus;
3. "Fetus" means any individual human organism from fertilization to birth;
4. "Medical emergency" means the existence of any physical condition, not including any emotional, psychological, or mental condition, which a reasonably prudent physician would determine necessitates the immediate abortion of the female's pregnancy to avert her death or to avert substantial and irreversible impairment of a major bodily function arising from continued pregnancy;
5. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician,

knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved; and

6. "Physician" means any person licensed to practice medicine and surgery or osteopathic medicine and surgery in this state.

Added by Laws 2013, c. 320, § 5, eff. Nov. 1, 2013.

### §63-1-744.2. Written Notice Required for Unemancipated Minors and Females Found to be Incompetent

No abortion shall be performed or induced upon an unemancipated minor or upon a female for whom a guardian or conservator has been appointed pursuant to the Oklahoma Guardianship and Conservatorship Act because of a finding of incompetency, until at least forty-eight (48) hours after written notice of the pending abortion has been delivered in the manner specified in Sections 7 through 9 of this act to one of the parents of the minor upon whom the abortion is contemplated or to the guardian or conservator of the female upon whom the abortion is contemplated.

1. The notice shall be addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent.
2. In lieu of the delivery required by paragraph 1 of this section, notice shall be made by certified mail addressed to the parent at the usual place of abode of the parent with return receipt requested and restricted delivery to the addressee, which means a postal employee can deliver the mail only to the authorized

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addressee. Time of delivery shall be deemed to occur at noon on the third day on which regular mail delivery takes place, subsequent to mailing. The information concerning the address of the parent shall be that which a reasonable and prudent person, under similar circumstances, would have relied upon as sufficient evidence that the parent resides at that address.

Added by Laws 2013, c. 320, § 6, eff. Nov. 1, 2013.

### §63-1-744.3. Exception from Advance Notice Requirements in Cases of Medical Emergency

Immediate notice shall not be required if the attending physician certifies in the pregnant female's record that, in reasonable medical judgment, a medical emergency exists and there is insufficient time to provide the prior notification required by Section 6 of this act. The attending physician or the physician's agent shall verbally inform the parent within twenty-four (24) hours after the performance of a medical emergency abortion, that a medical emergency abortion was performed on the unemancipated minor or on the female for whom a guardian or conservator has been appointed and shall also send a written notice within twenty-four (24) hours after the performance of a medical emergency abortion to the last-known address of the parent, of the performed medical emergency abortion. The written notice shall follow the requirements in paragraph 2 of Section 6 of this act.

Added by Laws 2013, c. 320, § 7, eff. Nov. 1, 2013.

### §63-1-744.4. Exceptions from Notice Requirement – Prior Notice – Victims of Sexual or Physical Abuse

No notice shall be required under this act if:

1. The person who is entitled to notice states in notarized writing that he or she has been notified and the statement is placed in the female's medical record; or

2. The pregnant female declares that she is a victim of sexual or physical abuse by her parent as defined in Section 1111 et seq. of Title 21 of the Oklahoma Statutes and the attending physician has notified child abuse authorities about the alleged parental sexual or physical abuse. In such circumstances, the physician shall notify child abuse authorities of the name and address of the abusing parent so that they can investigate. The child abuse authorities shall maintain the confidentiality of the fact that the minor has sought or obtained an abortion and shall take all necessary steps to ensure that this information is not revealed to the female's parents or guardians.

Added by Laws 2013, c. 320, § 8, eff. Nov. 1, 2013.

### §63-1-744.5. Violations – Misdemeanor – Civil Actions

Performance of an abortion in knowing or reckless violation of this act shall be a misdemeanor. Performance of an abortion in violation of this act shall be grounds for a civil action pursuant to Sections 1-738.3f through 1-738.3k of Title 63 of the Oklahoma Statutes.

Added by Laws 2013, c. 320, § 9, eff. Nov. 1, 2013.

### §63-1-744.6. Effect of Restraining Order or Injunction

If some or all of the provisions of Sections 1-740.2, 1-740.3 and 1-740.4 of Title 63 of the Oklahoma Statutes, as amended by Sections 2, 3 and 4 of this act, are ever temporarily or permanently restrained or enjoined by judicial order, these sections shall be enforced as though such restrained or enjoined provisions had not been adopted; provided, however, that whenever such temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

Added by Laws 2013, c. 320, § 10, eff. Nov. 1, 2013.

## PAIN-CAPABLE UNBORN CHILD PROTECTION ACT

### §63-1-745.1. Short Title

This act shall be known and may be cited as the "Pain-Capable Unborn Child Protection Act".

Added by Laws 2011, c. 89, § 1, eff. Nov. 1, 2011.

### §63-1-745.2. Definitions

As used in the Pain-Capable Unborn Child Protection Act only:

1. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma, or a criminal assault on the pregnant woman or

her unborn child, and which causes the premature termination of the pregnancy;

2. "Attempt to perform or induce an abortion" means an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in this state in violation of the Pain-Capable Unborn Child Protection Act;

3. "Postfertilization age" means the age of the unborn child as calculated from the fertilization of the human ovum;

4. "Fertilization" means the fusion of a human spermatozoon with a human ovum;

5. "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the

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pregnant woman that it necessitates the immediate abortion of her pregnancy without first determining postfertilization age to avert her death or for which the delay necessary to determine postfertilization age will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function;

6. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved;
7. "Physician" means any person licensed to practice medicine and surgery or osteopathic medicine and surgery in this state;
8. "Probable postfertilization age of the unborn child" means what, in reasonable medical judgment, will with reasonable probability be the postfertilization age of the unborn child at the time the abortion is planned to be performed or induced;
9. "Unborn child" or "fetus" each means an individual organism of the species homo sapiens from fertilization until live birth; and
10. "Woman" means a female human being whether or not she has reached the age of majority.

Added by Laws 2011, c. 89, § 2, eff. Nov. 1, 2011.

### §63-1-745.3. Legislative Findings

The Legislature of the State of Oklahoma finds that:

1. Pain receptors (nociceptors) are present throughout the unborn child's entire body by no later than sixteen (16) weeks after fertilization and nerves link these receptors to the brain's thalamus and subcortical plate by no later than twenty (20) weeks;
2. By eight (8) weeks after fertilization, the unborn child reacts to touch. After twenty (20) weeks, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example by recoiling;
3. In the unborn child, application of such painful stimuli is associated with significant increases in stress hormones known as the stress response;
4. Subjection to such painful stimuli is associated with long-term harmful neurodevelopmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral, and learning disabilities later in life;
5. For the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to their level when painful stimuli are applied without such anesthesia;

6. The position, asserted by some medical experts, that the unborn child is incapable of experiencing pain until a point later in pregnancy than twenty (20) weeks after fertilization predominately rests on the assumption that the ability to experience pain depends on the cerebral cortex and requires nerve connections between the thalamus and the cortex. However, recent medical research and analysis, especially since 2007, provides strong evidence for the conclusion that a functioning cortex is not necessary to experience pain;

7. Substantial evidence indicates that children born missing the bulk of the cerebral cortex, those with hydranencephaly, nevertheless experience pain;

8. In adults, stimulation or ablation of the cerebral cortex does not alter pain perception, while stimulation or ablation of the thalamus does;

9. Substantial evidence indicates that structures used for pain processing in early development differ from those of adults, using different neural elements available at specific times during development, such as the subcortical plate, to fulfill the role of pain processing;

10. The position, asserted by some, that the unborn child remains in a coma-like sleep state that precludes the unborn child from experiencing pain is inconsistent with the documented reaction of unborn children to painful stimuli and with the experience of fetal surgeons who have found it necessary to sedate the unborn child with anesthesia to prevent the unborn child from thrashing about in reaction to invasive surgery;

11. Consequently, there is substantial medical evidence that an unborn child is capable of experiencing pain by twenty (20) weeks after fertilization;

12. It is the purpose of the State of Oklahoma to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain; and

13. Oklahoma's compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain is intended to be separate from and independent of Oklahoma's compelling state interest in protecting the lives of unborn children from the stage of viability, and neither state interest is intended to replace the other.

Added by Laws 2011, c. 89, § 3, eff. Nov. 1, 2011.

### §63-1-745.4. Probable Postfertilization Age of Unborn Child – Unprofessional Conduct

A. Except in the case of a medical emergency, no abortion shall be performed or induced or be attempted to be performed or induced unless the physician performing or inducing it has first made a determination of the probable postfertilization age of the unborn child or relied upon such a determination made by another physician. In making such a determination, the physician shall make such inquiries

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of the woman and perform or cause to be performed such medical examinations and tests as a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to perform in making an accurate diagnosis with respect to postfertilization age.

B. Knowing or reckless failure by any physician to conform to any requirement of this section constitutes "unprofessional conduct".

Added by Laws 2011, c. 89, § 4, eff. Nov. 1, 2011.

### §63-1-745.5. Prohibited Abortions – Physician Judgment

A. No person shall perform or induce or attempt to perform or induce an abortion upon a woman when it has been determined, by the physician performing or inducing or attempting to perform or induce the abortion or by another physician upon whose determination that physician relies, that the probable postfertilization age of the woman's unborn child is twenty (20) or more weeks, unless, in reasonable medical judgment, she has a condition which so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No such condition shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

B. When an abortion upon a woman whose unborn child has been determined to have a probable postfertilization age of twenty (20) or more weeks is not prohibited by this section, the physician shall terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive, unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, of the woman than would other available methods. No such greater risk shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

Added by Laws 2011, c. 89, § 5, eff. Nov. 1, 2011.

### §63-1-745.6. Physician Reporting Requirements – Department of Health Report - Fines

A. Any physician who performs or induces or attempts to perform or induce an abortion shall report to the State Department of Health, on a schedule and in accordance with forms and rules and regulations adopted and promulgated by the State Board of Health that include:

1. If a determination of probable postfertilization age was made, the probable postfertilization age determined and the method and basis of the determination;

2. If a determination of probable postfertilization age was not made, the basis of the determination that a medical emergency existed;

3. If the probable postfertilization age was determined to be twenty (20) or more weeks, the basis of the determination that the pregnant woman had a condition which so complicated her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions; and

4. The method used for the abortion and, in the case of an abortion performed when the probable postfertilization age was determined to be twenty (20) or more weeks:

a. whether the method used was one that, in reasonable medical judgment, provided the best opportunity for the unborn child to survive, or

b. if such a method was not used, the basis of the determination that termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, of the woman than would other available methods.

B. By June 30 of each year, the State Department of Health shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection A of this section. Each such report shall also provide the statistics for all previous calendar years during which this section was in effect, adjusted to reflect any additional information from late or corrected reports. The State Department of Health shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any pregnant woman upon whom an abortion was performed or attempted.

C. Any physician who fails to submit a report by the end of thirty (30) days following the due date shall be subject to a late fee of Five Hundred Dollars (\$500.00) for each additional thirty-day period or portion of a thirty-day period the report is overdue. Any physician required to report in accordance with this act who has not submitted a report, or has submitted only an incomplete report, more than one (1) year following the due date, may, in an action brought by the State Department of Health or by the State Board of Medical Licensure and Supervision, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to civil contempt. Knowing or reckless failure by any physician to conform to any requirement of this section, other than late filing of a report, constitutes "unprofessional conduct" pursuant to Section 509 of Title 59 of the Oklahoma Statutes. Knowing or reckless failure by any physician to submit a complete report in accordance with a court order constitutes "unprofessional conduct" pursuant to Section 509 of Title 59 of the Oklahoma Statutes. Knowing or reckless falsification of any report required under this section is a misdemeanor.

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D. By February 1, 2012, the State Board of Health shall adopt and promulgate rules and regulations to assist in compliance with this section. Subsection A of this section shall take effect so as to require reports regarding all abortions performed or induced on and after the first day of the first calendar month following the effective date of such rules.

Added by Laws 2011, c. 89, § 6, eff. Nov. 1, 2011.

### §63-1-745.7. Violations of Act

Any person who knowingly or recklessly performs or induces or attempts to perform or induce an abortion in violation of the Pain-Capable Unborn Child Protection Act shall be guilty of a felony. No penalty may be assessed against the woman upon whom the abortion is performed or induced or attempted to be performed or induced.

Added by Laws 2011, c. 89, § 7, eff. Nov. 1, 2011.

### §63-1-745.8. Liability – Cause of Action – Judgment and Attorney Fees - Damages

A. Any woman upon whom an abortion has been performed in violation of the Pain-Capable Unborn Child Protection Act, or the father of the unborn child who was the subject of such an abortion, may maintain an action against the person who performed or induced the abortion in knowing or reckless violation of the Pain-Capable Unborn Child Protection Act for actual and punitive damages. Any woman upon whom an abortion has been attempted in violation of the Pain-Capable Unborn Child Protection Act may maintain an action against the person who attempted to perform or induce the abortion in knowing or reckless violation of the Pain-Capable Unborn Child Protection Act for actual and punitive damages.

B. A cause of action for injunctive relief against any person who has knowingly or recklessly violated the Pain-Capable Unborn Child Protection Act may be maintained by the woman upon whom an abortion was performed or induced or attempted to be performed or induced in violation of the Pain-Capable Unborn Child Protection Act; by any person who is the spouse, parent, sibling or guardian of, or a current or former licensed health care provider of, the woman upon whom an abortion has been performed or induced or attempted to be performed or induced in violation of the Pain-Capable Unborn Child Protection Act; by a district attorney with appropriate jurisdiction; or by the Attorney General. The injunction shall prevent the abortion provider from performing or inducing or attempting to perform or induce further abortions in violation of the Pain-Capable Unborn Child Protection Act in the State of Oklahoma.

C. If judgment is rendered in favor of the plaintiff in an action described in this section, the court shall also render judgment for a reasonable attorney fee in favor of the plaintiff against the defendant.

D. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney fee in favor of the defendant against the plaintiff.

E. No damages or attorney fee may be assessed against the woman upon whom an abortion was performed or attempted to be performed except in accordance with subsection D of this section.

Added by Laws 2011, c. 89, § 8, eff. Nov. 1, 2011.

### §63-1-745.9. Civil and Criminal Proceedings Brought Under Act

In every civil or criminal proceeding or action brought under the Pain-Capable Unborn Child Protection Act, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or induced or attempted to be performed or induced shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or induced or attempted to be performed or induced, anyone, other than a public official, who brings an action under subsections A or B of Section 8 of this act shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

Added by Laws 2011, c. 89, § 9, eff. Nov. 1, 2011.

### §63-1-745.10. Constitutionality and Severability

A. If any one or more provisions, sections, subsections, sentences, clauses, phrases or words of the Pain-Capable Unborn Child Protection Act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of the Pain-Capable Unborn Child Protection Act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed the Pain-Capable Unborn Child Protection Act, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases, or words of the Pain-Capable Unborn Child Protection Act, or the application of the Pain-Capable Unborn Child Protection Act, would be declared unconstitutional.

B. The Pain-Capable Unborn Child Protection Act shall not be construed to repeal, by implication or otherwise, Section 1-732 of Title 63 of the Oklahoma Statutes, or any otherwise applicable provision of Oklahoma's laws regulating or restricting abortion. An abortion that complies with this act but violates the provisions of Section 1-732 of Title 63 of the Oklahoma Statutes, or any otherwise applicable provision of Oklahoma's laws shall be deemed unlawful as provided in such provision. An abortion that complies with the

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provisions of Section 1-732 of Title 63 of the Oklahoma Statutes, or any otherwise applicable provision of Oklahoma's laws regulating or restricting abortion but violates this act shall be deemed unlawful as provided in this act.

Added by Laws 2011, c. 89, § 10, eff. Nov. 1, 2011.

## §63-1-745.11. No Right to Abortion by Act

Nothing in the Pain-Capable Unborn Child Protection Act shall be construed as creating or recognizing a right to abortion.

Added by Laws 2011, c. 89, § 11, eff. Nov. 1, 2011.

## HEARTBEAT INFORMED CONSENT ACT

### §63-1-745.12. Heartbeat Informed Consent Act

This act shall be known and may be cited as the "Heartbeat Informed Consent Act".

Added by Laws 2012, c. 159, § 1, eff. Nov. 1, 2012.

### §63-1-745.13. Definitions

As used in the Heartbeat Informed Consent Act:

1. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device to cause the premature termination of the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma, or a criminal assault on the pregnant woman or her unborn child;
2. "Abortion provider" means any person legally qualified to perform an abortion under state law;
3. "Embryonic or fetal heartbeat" means embryonic or fetal cardiac activity or the steady and repetitive rhythmic contraction of the embryonic or fetal heart;
4. "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates the immediate abortion of her pregnancy to avert her death or for which the delay will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function;
5. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician;
6. "Unborn child" means a member of the species *Homo sapiens* from fertilization until live birth; and
7. "Woman" means a female human being, whether or not she has reached the age of majority.

Added by Laws 2012, c. 159, § 3, eff. Nov. 1, 2012.

### §63-1-745.14. Duties of Abortion Providers

A. Any abortion provider who knowingly performs or induces any abortion shall comply with the requirements of the Heartbeat Informed Consent Act.

B. Prior to a woman giving informed consent to having any part of an abortion performed or induced, if the pregnancy is at least eight (8) weeks after fertilization, the abortion provider who is to perform or induce the abortion or an agent of the abortion provider shall tell the woman that it may be possible to make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear and ask the woman if she would like to hear the heartbeat. If the woman would like to hear the heartbeat, the abortion provider shall, using a Doppler fetal heart rate monitor, make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear. An abortion provider or an agent of the abortion provider shall not be in violation of the requirements of this subsection if:

1. The provider or agent has attempted, consistent with standard medical practice, to make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear using a Doppler fetal heart rate monitor;
2. That attempt does not result in the heartbeat being made audible; and
3. The provider has offered to attempt to make the heartbeat audible at a subsequent date.

C. Nothing in this section shall be construed to prevent the pregnant woman from not listening to the sounds detected by the Doppler fetal heart rate monitor pursuant to the requirements of subsection B of this section.

Added by Laws 2012, c. 159, § 4, eff. Nov. 1, 2012.

### §63-1-745.15. Exceptions – Averting Mother's Death – Medical Emergencies

A. The provisions of Section 4 of this act shall not apply to an abortion provider in the case that the abortion is necessary to avert the mother's death or in the case of a medical emergency.

B. Upon a determination by an abortion provider under subsection A of this section that an abortion is necessary to avert the death of the mother or that there is a medical emergency, such provider shall certify the specific medical conditions that support such determination and include such certification in the medical file of the pregnant woman.

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C. An abortion provider who knowingly or recklessly falsifies a certification made pursuant to subsection B of this section shall be deemed to have knowingly or recklessly failed to comply with this act for purposes of Section 6 of this act.

Added by Laws 2012, c. 159, § 5, eff. Nov. 1, 2012.

### **§63-1-745.16. Intentional or Reckless Violations of Act – Misdemeanor – Civil Action - Remedies**

A. Any person who intentionally or recklessly performs or induces an abortion in violation of the Heartbeat Informed Consent Act shall be guilty of a misdemeanor. No penalty shall be assessed against the woman upon whom the abortion is performed or induced or attempted to be performed or induced.

B. Any woman upon whom an abortion has been performed or induced in violation of this act, or the father of the unborn child who was the subject of such an abortion, may maintain an action against the person who performed or induced the abortion in intentional or reckless violation of this act for actual and punitive damages. Any woman upon whom an abortion has been attempted in violation of this act may maintain an action against the person who attempted to perform or induce the abortion in an intentional or reckless violation of this act for actual and punitive damages.

C. A cause of action for injunctive relief against any person who has intentionally or recklessly violated this act may be maintained by the woman upon whom an abortion was performed or induced in violation of this act; by any person who is the spouse, parent, sibling, or guardian of, or a current or former licensed health care provider of, the woman upon whom an abortion has been performed or induced in violation of this act; by a district attorney with appropriate jurisdiction; or by the Attorney General. The injunction shall prevent the abortion provider from performing or inducing further abortions in violation of this act in the state.

D. If judgment is rendered in favor of the plaintiff in an action described in this section, the court shall also render judgment for a reasonable attorney fee in favor of the plaintiff against the defendant.

E. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney fee in favor of the defendant against the plaintiff.

F. No damages or attorney fee may be assessed against the woman upon whom an abortion was performed or attempted to be performed or induced except in accordance with subsection E of this section.

Added by Laws 2012, c. 159, § 6, eff. Nov. 1, 2012.

### **§63-1-745.17. Anonymity of Woman**

In every civil or criminal proceeding or action brought under the Heartbeat Informed Consent Act, the court shall rule whether the identity of any woman upon whom an abortion has been performed or induced or attempted to be performed or induced shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her identity should be preserved from public disclosure, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Such an order shall be accompanied by specific written findings explaining why the identity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable, less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or induced or attempted to be performed or induced, anyone, other than a public official, who brings an action under Section 6 of this act shall do so under a pseudonym. This section shall not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

Added by Laws 2012, c. 159, § 7, eff. Nov. 1, 2012.

### **§63-1-745.18. Act Does Not Create or Recognize Right to Abortion**

Nothing in the Heartbeat Informed Consent Act shall be construed as creating or recognizing a right to abortion.

Added by Laws 2012, c. 159, § 8, eff. Nov. 1, 2012.

### **§63-1-745.19. Severability**

If any one or more provision, section, subsection, sentence, clause, phrase, or word of this act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this act shall remain effective notwithstanding such unconstitutionality. The Oklahoma Legislature hereby declares that it would have passed this act, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.

Added by Laws 2012, c. 159, § 9, eff. Nov. 1, 2012.

## **ABORTIONS (cont.)**

### **§63-1-746.1. Definitions**

As used in this act, the term:

1. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an

intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to remove an ectopic pregnancy or to remove a dead unborn child who died as a result of a spontaneous abortion, accidental trauma or a criminal assault on the pregnant female or her unborn child;

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2. "Attempt to perform or induce an abortion" means an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion in Oklahoma in violation of this act;

3. "Fetal anomaly incompatible with life" means a profound and irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth. Fetal anomaly incompatible with life does not include conditions which can be treated;

4. "Medical emergency" means any condition which, on the basis of the physician's good-faith clinical judgment, so complicates the medical condition of a pregnant female as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function;

5. "Perinatal hospice" means comprehensive support that includes support from the time of diagnosis through the time of birth and death of the infant and through the postpartum period. Supportive care may include maternal-fetal medical specialists, obstetricians, neonatologists, anesthesia specialists, psychiatrists, psychologists, or other mental health professionals, clergy, social workers, and specialty nurses; and

6. "Physician" means a person licensed to practice medicine in this state pursuant to Sections 495 and 633 of Title 59 of the Oklahoma Statutes.

Added by Laws 2014, c. 175, § 1, eff. Nov. 1, 2014.

### §63-1-746.2. Informed and Voluntary Consent – Duty to Provide Information to Female Seeking Abortion – Certification of Receipt

No abortion shall be performed or induced or attempted to be performed or induced without the voluntary and informed consent of the female upon whom the abortion is to be performed or induced or attempted to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if, at least seventy-two (72) hours before the abortion:

1. In the case of a female seeking an abortion of her unborn child diagnosed with a fetal anomaly incompatible with life, the female is informed, by telephone or in person, by the physician who is to perform the abortion or the physician's agent:

- a. that perinatal hospice services are available,
- b. this service is an alternative to abortion,
- c. that she has the right to review the printed materials described in this section,
- d. that these materials are available on a state-sponsored website, and

e. what the website address is where she can access this information.

The information required by this paragraph may be provided by a tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to have the printed materials given or mailed to her;

2. The physician or the physician's agent shall orally inform the female that the materials have been provided by the State of Oklahoma and that they list the places which offer perinatal hospice services both in her state and nationally. If the female chooses to view the materials other than on the website, they shall either be given to her at least seventy-two (72) hours before the abortion, or received by her at least seventy-two (72) hours before the abortion by certified mail, restricted delivery to addressee, which means the postal employee can only deliver the mail to the addressee;

3. The female certifies in writing, prior to the abortion, that the information described in paragraphs 1 and 2 of this section has been furnished her, and that she has been informed of her opportunity to review the information referred to in paragraph 2 of this section; and

4. Prior to the performance of the abortion, the physician who is to perform the abortion or the physician's agent receives a copy of the written certification prescribed by paragraph 3 of this section. This certification shall be maintained in the female patient's file for not less than five (5) years.

Added by Laws 2014, c. 175, § 2, eff. Nov. 1, 2014.  
Amended by Laws 2015, c. 255, § 7, eff. Nov. 1, 2015.

### §63-1-746.3. Online Publication of Information and Materials

A. Within ninety (90) days after this act is enacted, the State Board of Medical Licensure and Supervision shall cause to be published, in English and in each language which is the primary language of two percent (2%) or more of the state's population, and shall cause to be available on the state website provided for in Section 4 of this act, the following printed materials in such a way as to ensure that the information is easily comprehensible: geographically indexed materials designed to inform the female who has been told her unborn child has a fetal anomaly incompatible with life of public and private agencies and services available to her which offer perinatal hospice and palliative care if she chooses to continue her pregnancy. The material shall include a comprehensive list of the agencies available, a description of the services they offer, and a description of the manner, including telephone numbers, in which they might be contacted or, at the option of the Board, printed materials including a toll-free, twenty-four-hour-a-day telephone number which may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer.

B. The materials referred to in subsection A of this section shall be printed in a typeface large enough to be clearly legible. The website provided for in Section 4 of this act shall be maintained at a minimum resolution of 70 DPI (dots per inch). All letters on the website shall

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be a minimum of 11-point font. All information shall be accessible with an industry standard browser, requiring no additional plug-ins.

C. The materials required under this section shall be available at no cost from the Board upon request and in appropriate number to any person, facility or hospital.

Added by Laws 2014, c. 175, § 3, eff. Nov. 1, 2014.

### §63-1-746.4. Public Website

A. The State Board of Medical Licensure and Supervision shall develop and maintain a stable Internet website to provide the information described under Section 2 of this act. No information regarding who uses the website shall be collected or maintained. The State Board of Medical Licensure and Supervision shall monitor the website on a daily basis to prevent and correct tampering and shall immediately notify abortion providers of any change in the location of the material on its website.

B. The website:

1. Must use enhanced, user-friendly search capabilities to ensure that the information described in Section 2 of this act is easily accessible and must be searchable by keywords and phrases, specifically to ensure that entering the terms "abortion" and "fetal anomaly" yield the materials described in Section 2 of this act, regardless of how the materials are labeled;
2. Must ensure that the materials described in Section 2 of this act are printable;
3. Must give clear prominent instructions on how to receive the information in printed form; and
4. Must be accessible to the public without requiring registration or use of a user name, a password or another user identification.

Added by Laws 2014, c. 175, § 4, eff. Nov. 1, 2014.

### §63-1-746.5. Notification by Physician of Medical Emergency that Compels Performance of Abortion

When a medical emergency compels the performance of an abortion, the physician shall inform the female, prior to the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or that a twenty-four-hour delay will create serious risk of substantial and irreversible impairment of a major bodily function.

Added by Laws 2014, c. 175, § 5, eff. Nov. 1, 2014.

### §63-1-746.6. Reporting by Physicians - Forms

A. Within ninety (90) days after this act is enacted, the State Board of Medical Licensure and Supervision shall prepare a reporting form for physicians containing a reprint of this act and listing:

1. The number of females to whom the physician or an agent of the physician provided the information described in paragraph 1 of Section 2 of this act; of that number, the number provided by

telephone and the number provided in person; of each of those numbers, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion; and of each of those numbers, the number provided by the physician and the number provided by an agent of the physician;

2. The number of females who availed themselves of the opportunity to obtain a copy of the printed information described in Section 3 of this act other than on the website, and the number who did not; and of each of those numbers, the number who, to the best of the reporting physician's information and belief, went on to obtain the abortion; and

3. The number of abortions performed by the physician in which information otherwise required to be provided at least seventy-two (72) hours before the abortion was not so provided because an immediate abortion was necessary to avert the female's death, and the number of abortions in which such information was not so provided because a delay would create serious risk of substantial and irreversible impairment of a major bodily function.

B. The Board shall ensure that copies of the reporting forms described in subsection A of this section are provided:

1. Within one hundred twenty (120) days after this act is enacted, to all physicians licensed to practice in this state;
2. To each physician who subsequently becomes newly licensed to practice in this state, at the same time as official notification to that physician that the physician is so licensed; and
3. By December 1 of each year, other than the calendar year in which forms are distributed in accordance with paragraph 1 of this subsection, to all physicians licensed to practice in this state.

C. By February 28 of each year following a calendar year in any part of which this act was in effect, each physician who provided, or whose agent provided, information to one or more females in accordance with Section 2 of this act during the previous calendar year shall submit to the Board a copy of the form described in subsection A of this section, with the requested data entered accurately and completely.

D. Reports that are not submitted by the end of a grace period of thirty (30) days following the due date shall be subject to a late fee of Five Hundred Dollars (\$500.00) for each additional thirty-day period or portion of a thirty-day period they are overdue. Any physician required to report in accordance with this section who has not submitted a report, or has submitted only an incomplete report, more than one (1) year following the due date, may, in an action brought by the Board, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to sanctions for civil contempt.

E. By June 30 of each year the State Board of Medical Licensure and Supervision shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection A of this section. Each such report shall also

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provide the statistics for all previous calendar years, adjusted to reflect any additional information from late or corrected reports. The Board shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any individual provided information in accordance with paragraph 1 of Section 2 of this act.

F. The Board may by rule alter the dates established by paragraph 3 of subsection B or subsection C or E of this section or consolidate the forms or reports described in this section with other forms or reports to achieve administrative convenience or fiscal savings or to reduce the burden of reporting requirements, so long as reporting forms are sent to all licensed physicians in the state at least once every year and the report described in subsection E of this section is issued at least once every year.

Added by Laws 2014, c. 175, § 6, eff. Nov. 1, 2014.  
Amended by Laws 2015, c. 255, § 8, eff. Nov. 1, 2015.

### **§63-1-746.7. Penalties for Violations of Act**

Any person who knowingly or recklessly performs or attempts to perform an abortion in violation of this act shall be guilty of a felony. No penalty may be assessed against the female upon whom the abortion is performed or attempted to be performed.

No penalty or civil liability may be assessed for failure to comply with paragraph 1 or 2 of Section 2 of this act or that portion of paragraph 3 of Section 2 of this act requiring a written certification that the female has been informed of her opportunity to review the information referred to in paragraph 1 of Section 2 of this act unless the Board has made the printed materials available at the time the physician or the physician's agent is required to inform the female of her right to review them.

Added by Laws 2014, c. 175, § 7, eff. Nov. 1, 2014.

### **§63-1-746.8. Civil Action by Female, Father, or Grandparent Following Unlawful Abortion**

Any person upon whom an abortion has been performed or induced without this act being complied with, the father of the unborn child who was the subject of such an abortion, or the grandparent of such an unborn child may maintain an action pursuant to Sections 1-738.3f through 1-738.3k of Title 63 of the Oklahoma Statutes against any person or entity which performed or induced or attempted to perform or induce the abortion in violation of this act, or against any person or entity which made a referral as defined in Sections 1-738.3f through 1-738.3k of Title 63 of the Oklahoma Statutes

regarding this particular abortion. The procedure and remedy in a civil action brought pursuant to this section shall be the same as the procedure and remedy in other suits brought pursuant to Sections 1-738.3f through 1-738.3k of Title 63 of the Oklahoma Statutes.

Added by Laws 2014, c. 175, § 8, eff. Nov. 1, 2014.

### **§63-1-746.9. Criminal and Civil Actions – Court to Rule on Anonymity of Female Upon Whom Abortion Performed**

In every civil or criminal proceeding or action brought under this act, the court shall rule whether the anonymity of any female upon whom an abortion has been performed or attempted shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the female should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less-restrictive alternative exists. In the absence of written consent of the female upon whom an abortion has been performed or attempted, anyone, other than a public official, who brings an action under Section 8 of this act shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

Added by Laws 2014, c. 175, § 9, eff. Nov. 1, 2014.

### **§63-1-746.10. Severability**

If any one or more provision, section, subsection, sentence, clause, phrase or word of this act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed this act, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase or word be declared unconstitutional.

Added by Laws 2014, c. 175, § 10, eff. Nov. 1, 2014.

## PRIORITIZATION OF PUBLIC FUNDING IN THE PURCHASING OF FAMILY PLANNING AND COUNSELING SERVICES ACT

### **§63-1-748. Standards for Abortion Facilities – Physician with Admitting Privileges – Training of Assistants – Patient Screening and Evaluation – Abortion Procedure and Post Procedure Follow-up Care – Records and Reports – Penalties for Violations**

A. The State Board of Health shall establish abortion facility supplies and equipment standards, including equipment required to be immediately available for use in an emergency. Such standards shall, at a minimum:

1. Specify required equipment and supplies, including medications, required for the performance of abortion procedures and for monitoring the progress of each patient throughout the abortion procedure and post-procedure recovery period;
2. Require that the number or amount of equipment and supplies at the facility is adequate at all times to assure sufficient quantities of clean and sterilized durable equipment and supplies to meet the needs of each patient;
3. Specify the mandated equipment and supplies for required laboratory tests and the requirements for protocols to calibrate and maintain laboratory equipment at the abortion facility or operated by facility staff;
4. Require ultrasound equipment in all abortion facilities; and
5. Require that all equipment is safe for the patient and facility staff, meets applicable federal standards, and is checked annually to ensure safety and appropriate calibration.

B. On any day when any abortion is performed in a facility providing abortions, a physician with admitting privileges at a general medical surgical hospital which offers obstetrical or gynecological care in this state within thirty (30) miles of where the abortion is being performed must remain on the premises of the facility to facilitate the transfer of emergency cases if hospitalization of an abortion patient or a child born alive is necessary and until all abortion patients are stable and ready to leave the recovery room.

C. The State Board of Health shall adopt standards relating to the training physician assistants licensed pursuant to the provisions of Section 519.1 of Title 59 of the Oklahoma Statutes and employed by or providing services in a facility providing abortions shall receive in counseling, patient advocacy, and the specific medical and other services.

D. The State Board of Health shall adopt standards related to the training that volunteers at facilities providing abortions shall receive in the specific services that the volunteers provide, including counseling and patient advocacy.

E. The State Board of Health shall adopt standards related to the medical screening and evaluation of each abortion patient. At minimum these standards shall require:

1. A medical history, including the following:
  - a. reported allergies to medications, antiseptic solutions, and latex,
  - b. obstetric and gynecological history,
  - c. past surgeries, and
  - d. medication the patient is currently taking;
2. A physical examination, including a bimanual examination estimating uterine size and palpation of the adnexa; and
3. The appropriate preprocedure testing, including:
  - a. urine or blood tests for pregnancy, if ordered by a physician,
  - b. a test for anemia,
  - c. Rh typing, unless reliable written documentation of blood type is available, and
  - d. an ultrasound evaluation for all patients who elect to have an abortion. The physician performing the abortion is responsible for estimating the gestational age of the unborn child based on the ultrasound examination and established standards of obstetrical care and shall write the estimate in the patient's medical record. An original print of each ultrasound examination of the patient shall be kept in the patient's medical record.

F. The State Board of Health shall adopt standards related to the performance of the abortion procedure and post-procedure follow-up care. At minimum these standards shall require:

1. That medical personnel are available to all abortion patients throughout the procedure;
2. The appropriate use of local anesthesia, analgesia, and sedation if ordered by the physician performing the procedure;
3. The use of appropriate precautions, such as the establishment of intravenous access;
4. That the physician performing the abortion procedure monitors the patient's vital signs and other defined signs and markers of the patient's status throughout the procedure and during the recovery period until the patient's condition is deemed to be stable in the recovery room;

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5. Immediate post-procedure care and observation in a supervised recovery room for as long as the patient's condition warrants;
  6. That the facility in which the abortion procedure is performed arranges for a patient's hospitalization if any complication beyond the management capability of the abortion facility's medical staff occurs or is suspected;
  7. That a licensed health-care professional trained in the management of the recovery room and capable of providing cardiopulmonary resuscitation actively monitors patients in the recovery room;
  8. That there is a specified minimum time that a patient remains in the recovery room by type of abortion procedure and duration of gestation;
  9. That a physician discusses RhO(D) immune globulin with each patient for whom it is indicated and assures it is offered to the patient in the immediate post-operative period or that it will be available to her within seventy-two (72) hours after completion of the abortion procedure. If the patient refuses, a refusal form approved by the State Board of Health shall be signed by the patient and a witness and included in the medical record;
  10. Written instructions with regard to post-abortion coitus, signs of possible complications, and general aftercare are given to each patient. Each patient shall have specific instructions regarding access to medical care for complications, including a telephone number to call for medical emergencies;
  11. That the physician ensures that a licensed health-care professional from the abortion facility makes a good faith effort to contact the patient by phone, with the patient's consent, within twenty-four (24) hours after procedure to assess the patient's recovery;
  12. Equipment and services are located in the recovery room to provide appropriate emergency and resuscitative life-support procedures pending the transfer of the patient or a child born alive in the facility;
  13. That a post-abortion medical visit shall be offered to each abortion patient and, if requested, scheduled for two (2) to three (3) weeks after the abortion procedure and shall include a medical examination and a review of the results of all laboratory tests; and
  14. That a urine or blood test shall be obtained at the time of the follow-up visit to rule out continued pregnancy. If a continuing pregnancy is suspected, the patient shall be appropriately evaluated; and a physician who performs abortions shall be consulted.
- G. Facilities performing abortions shall record each incident resulting in a patient's or a born-alive child's injury occurring at the facility and shall report incidents in writing to the State Board of Health within ten (10) days of the incident. For the purposes of this subsection, "injury" shall mean an injury that occurs at the facility and creates a serious risk of substantial impairment of a major body organ or function.
- H. If a patient's death occurs, other than the death of an unborn child properly reported pursuant to law, the facility performing abortions shall report the death to the State Board of Health no later than the next business day.
- I. Incident reports shall be filed with the State Board of Health and all appropriate professional licensing and regulatory boards, including, but not limited to, the State Board of Medical Licensure and Supervision and the Oklahoma Board of Nursing.
- J. Whoever operates a facility performing abortions without a valid license shall be guilty of a felony. Any person who intentionally, knowingly, or recklessly violates the provisions of this act or any standards adopted by the State Board of Health in accordance with this act shall be guilty of a felony.
- K. Any violation of this act or any standards adopted under this act may be subject to a civil penalty or fine up to Twenty-five Thousand Dollars (\$25,000.00) imposed by the State Board of Health. Each day of violation constitutes a separate violation for purposes of assessing civil penalties or fines. In deciding whether and to what extent to impose civil penalties or fines, the State Board of Health shall consider the following factors:
1. Gravity of the violation, including the probability that death or serious physical harm to a patient or individual will result or has resulted;
  2. Size of the population at risk as a consequence of the violation;
  3. Severity and scope of the actual or potential harm;
  4. Extent to which the provisions of the applicable statutes or regulations were violated;
  5. Any indications of good faith exercised by facility;
  6. The duration, frequency, and relevance of any previous violations committed by the facility; and
  7. Financial benefit to the facility of committing or continuing the violation.
- L. In addition to any other penalty provided by law, whenever in the judgment of the State Commissioner of Health any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of this act, or any standard adopted in accordance with this act, the Commissioner shall make application to any court of competent jurisdiction for an order enjoining such acts and practices. Upon a showing by the Commissioner that such person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate shall be granted by such court without bond.

Added by Laws 2014, c. 370, § 1, eff. Nov. 1, 2014.

## HUMANITY OF THE UNBORN CHILD ACT

### §63-1-753. Short Title

This act shall be known and may be cited as the "Humanity of the Unborn Child Act".

Laws 2016, HB 2797, c. 353, § 1, eff. November 1, 2016.

### §63-1-753. Distribution of Information and Materials Concerning Nature of and Alternatives to Abortion

Contingent on the availability of funds being appropriated by the Legislature specifically for this purpose, the State Department of Health shall:

1. Develop and make available materials designed to provide accurate, scientifically verifiable information concerning the probable anatomical and physiological characteristics of the unborn child at two-week gestational intervals. The Department may utilize as a resource the material dealing with characteristics of the unborn child created pursuant to Section 1-738.3 of Title 63 of the Oklahoma Statutes and as located on the website [www.awomansright.org](http://www.awomansright.org) under the link "Characteristics of the Unborn Child";
2. Develop and distribute educational and informational materials to provide public information through public service announcements, media and otherwise for the purpose of achieving an abortion-free society. Such materials shall be developed from the most readily available, accurate and up-to-date information and shall clearly and consistently teach that abortion kills a living human being. All efforts by the Department in this regard shall be reported annually to the Chair and Vice Chair of the Senate Health and Human Services Committee and the House Public Health Committee;
3. Provide technical assistance to help community-based organizations in the planning and implementation of abortion prevention, alternatives to abortion referral and education programs regarding the humanity of the unborn child;
4. Provide outreach, consultation, training and alternatives to abortion referral services to schools, organizations and members of the community;
5. Distribute educational and informational material concerning maternal behavior during pregnancy which is helpful to a human child in utero, including avoidance of tobacco, alcohol and other drugs; proper nutrition and prenatal vitamins; and utilization of and resources available for prenatal medical and wellness care; and
6. Recommend to the State Department of Education scientifically verifiable information concerning the unborn child in the educational standards of science, family and consumer sciences and health classes.

Added by Laws 2016, c. 353, § 3, eff. Nov. 1, 2016.

### §63-1-756. Mifepristone – Signage – Informed Consent – Penalties for Violations

A. As used in this section:

1. "Abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device:
  - (a) to intentionally kill the unborn child of a woman known to be pregnant; or
  - (b) to intentionally terminate the pregnancy of a woman known to be pregnant, with an intention other than to remove a dead unborn child or, after viability, to produce a live birth and preserve the life and health of the child born alive;
2. "Medical emergency" means a condition which, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function; and
3. "Medication abortion" means the use or prescription of an abortion-inducing drug or drugs dispensed with the intent to cause the death of the unborn child.

- B. 1. Any private office, freestanding outpatient clinic, hospital or other facility or clinic in which medication abortions that use mifepristone are provided shall conspicuously post a sign in a location defined in paragraph 3 of this subsection so as to be clearly visible to patients, which reads:

"NOTICE TO PATIENTS HAVING MEDICATION ABORTIONS WHICH USE MIFEPRISTONE: Mifepristone, also known as RU-486 or Mifeprex, alone is not always effective in ending a pregnancy. It may be possible to reverse its intended effect if the second pill or tablet has not been taken or administered. If you change your mind and wish to try to continue the pregnancy, you can get immediate help by calling the Abortion Pill Reversal 24-hour Hotline at 877-558-0333 or going to website <https://www.abortionpillreversal.com/>. Additional information is available on the State Board of Medical Licensure and Supervision's website, [www.awomansright.org](http://www.awomansright.org), which provides informed consent materials under the Woman's Right-to-Know Act, including information about the development of the unborn child and video of ultrasound images of the unborn child at various stages of development."

2. The sign required pursuant to paragraph 1 of this subsection shall be printed with lettering that is legible and shall be at least three-fourths (3/4) of an inch boldfaced type.
3. A facility in which medication abortions that use mifepristone are provided that is a private office or a freestanding outpatient

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clinic shall post the required sign in each patient waiting room and patient consultation room used by patients to whom such medication abortions are provided. A hospital or any other facility in which medication abortions are performed that is not a private office or freestanding outpatient clinic shall post the required sign in each patient admission area used by patients on whom abortions are performed.

C. 1. Except in the case of a medical emergency, a medication abortion that uses mifepristone shall not be provided or induced or attempted to be provided or induced without informing the female, by telephone or in person, by the physician who is to dispense or provide the abortion drug or drugs, by a referring physician or by an agent of either physician at least seventy-two (72) hours before the abortion:

a. that it may be possible to reverse the intended effects of a medication abortion that uses mifepristone if the woman changes her mind but that time is of the essence, and

b. of information on reversing the effects of a medication abortion that uses mifepristone, which is available on the website of the State Board of Medical Licensure and Supervision, and included in such information is the Abortion Pill Reversal 24-hour Hotline number: 877-558-0333 and website address: <https://www.abortionpillreversal.com>.

2. After the first drug, mifepristone, is dispensed or provided to the patient, the physician or an agent of the physician shall provide written instructions to the pregnant woman which shall include the statement:

"NOTICE TO PATIENTS HAVING MEDICATION ABORTIONS WHICH USE MIFEPRISTONE: Mifepristone, also known as RU-486 or Mifeprex, alone is not always effective in ending a pregnancy. It may be possible to reverse its intended effect if the second pill or tablet has not been taken or administered. If you change your mind and wish to try to continue the pregnancy, you can get immediate help by calling the Abortion Pill Reversal 24-hour Hotline at 877-558-0333 or going to Abortion Pill Reversal website, <https://www.abortionpillreversal.com>. Additional information is available on the State Board of Medical Licensure and Supervision's website, [www.awomansright.org](http://www.awomansright.org), which provides informed consent materials under the Woman's Right-to-Know Act, including information about the development of the unborn child and video of ultrasound images of the unborn child at various stages of development."

D. When a medical emergency compels the performance of an abortion, the physician shall inform the female, prior to the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or that a seventy-two-hour delay will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions.

E. Within ninety (90) days after this act is enacted, the State Board of Medical Licensure and Supervision shall cause to be published, in English and in each language which is the primary language of two percent (2%) or more of the state's population, in print and on the

website required to be developed and maintained under Section 1-738.11 of Title 63 of the Oklahoma Statutes, comprehensible materials designed to inform the female of the possibility of reversing the effects of a medication abortion that uses mifepristone, also known as RU-486 or Mifeprex, and information on resources that may be available to help her reverse its effects. The website shall include the Abortion Pill Reversal 24-hour Hotline number 877-558-0333 and the Abortion Pill Reversal website address <https://www.abortionpillreversal.com>.

F. Any person who knowingly or recklessly provides or induces or attempts to provide or induce an abortion in violation of this section shall be guilty of a felony. No penalty may be assessed against the female to whom the medication abortion is provided or induced or attempted to be provided or induced. No penalty or civil liability may be assessed for failure to comply with subsection C of this section unless the State Board of Medical Licensure and Supervision has made the information available on the website at the time the physician or the physician's agent is required to inform the female.

G. Any private office, freestanding outpatient clinic or other facility or clinic that fails to post a sign required in subsection B of this section in knowing, reckless or negligent violation of this act shall be assessed a fine of Ten Thousand Dollars (\$10,000.00) by the State Board of Medical Licensure and Supervision. Each day on which a medication abortion that uses mifepristone, other than a medication abortion that is necessary to prevent the death of the pregnant female, is provided in any private office, freestanding outpatient clinic or other facility or clinic during which the required sign is not posted during a portion of business hours when patients or perspective patients are present is a separate violation.

H. 1. Any person upon whom an abortion has been performed without this section having been complied with, the father of the unborn child who was the subject of such an abortion, or, if the female had not attained the age of eighteen (18) years at the time of the medication abortion or has died as a result of the medication abortion, the grandparent of such an unborn child may maintain an action against the person who provided the medication abortion in knowing or reckless violation of this section for actual and punitive damages. Any person upon whom an abortion has been attempted without this section having been complied with may maintain an action against the person who attempted to provide the abortion in knowing or reckless violation of this section for actual and punitive damages. No damages may be awarded a plaintiff if the pregnancy resulted from the plaintiff's criminal conduct.

2. If judgment is rendered in favor of the plaintiff in any action described in this subsection, the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney's fee in favor of the defendant against the plaintiff.

I. In every civil or criminal proceeding or action brought under this section, the court shall rule whether the anonymity of any female to whom a medication abortion has been provided or attempted shall be

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preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the female should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest and why no reasonable less restrictive alternative exists. In the absence of written consent of the female to whom an abortion drug or drugs has been provided or attempted to be provided, anyone, other than a public official, who brings an action under subsection D of this section shall do so under a pseudonym.

This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

J. If any one or more provision, section, subsection, sentence, clause, phrase or word of this act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed this act, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase or word be declared unconstitutional.

Added by Laws 2019, c. 174, § 1, eff. Nov. 1, 2019.

## Oklahoma Abortion-Inducing Drug Risk Protocol Act

### §63-1-756.1. Short Title

This act shall be known and may be cited as the “Oklahoma Abortion-Inducing Drug Risk Protocol Act”.

Laws 2021, SB 778, c. 577, § 1, eff. November 1, 2021.

### §63-1-756.2. Definitions

As used in this act:

1. “Abortion” means the use or prescription of any instrument, medicine, drug or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to remove an ectopic pregnancy or to remove a dead unborn child who died as the result of a spontaneous miscarriage, accidental trauma or a criminal assault on the pregnant female or her unborn child;
2. “Abortion-inducing drug” means a medicine, drug or any other substance prescribed or dispensed with the intent of terminating the pregnancy of a woman known to be pregnant, with knowledge that the termination will with reasonable likelihood cause the death of the unborn child. This includes the off-label use of drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion, such as mifepristone (Mifeprex), misoprostol (Cytotec) and methotrexate. This definition does not apply to drugs that may be known to cause an abortion, but which are prescribed for other medical indications, such as chemotherapeutic agents and diagnostic drugs. The use of such drugs to induce abortion is also known as “medical”, “medication”, “RU-486”, “chemical”, “Mifeprex regimen” or “drug-induced” abortion;
3. “Adverse Event”, according to the Food and Drug Administration, means any untoward medical occurrence associated with the use of a drug in humans, whether or not considered drug-related. It does not include an adverse event or suspected adverse reaction that, had it occurred in a more severe form, might have caused death;

4. “Associated physician” means a person licensed to practice medicine in the state including medical doctors and doctors of osteopathy, that has entered into an associated physician agreement;

5. “Complication” means any adverse physical or psychological condition arising from the performance of an abortion which includes, but is not limited to, uterine perforation, cervical perforation, infection, heavy or uncontrolled bleeding, hemorrhage, blood clots resulting in pulmonary embolism or deep vein thrombosis, failure to actually terminate the pregnancy, incomplete abortion (retained tissue), pelvic inflammatory disease, endometritis, missed ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure, metabolic disorder, shock, embolism, coma, placenta previa in subsequent pregnancies, preterm delivery in subsequent pregnancies, free fluid in the abdomen, hemolytic reaction due to the administration of ABO-incompatible blood or blood products, adverse reactions to anesthesia and other drugs, subsequent development of breast cancer, psychological complications such as depression, suicidal ideation, anxiety, sleeping disorders, death and any other adverse event as defined by the Food and Drug Administration criteria provided in the Medwatch Reporting System;

6. “Gestational age” means the time that has elapsed since the first day of the woman’s last menstrual period, also known as “last menstrual period” or “LMP”;

7. “Hospital” means an institution providing medical and surgical treatment and nursing care for sick or injured people, or institutions defined under Section 1-701 of Title 63 of the Oklahoma Statutes;

8. “Physician” means any person licensed to practice medicine in this state. The term includes medical doctors and doctors of osteopathy;

9. “Pregnant” or “pregnancy” means that female reproductive condition of having an unborn child in the mother’s uterus;

10. “Provide” or “provision” means, when used regarding abortion-inducing drugs, any act of giving, selling, dispensing, administering,

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transferring possession to or otherwise providing or prescribing an abortion-inducing drug;

11. "Qualified physician" means a physician licensed in this state who has the ability to:

- a. identify and document a viable intrauterine pregnancy,
- b. assess the gestational age of pregnancy and to inform the patient of gestational age-specific risks,
- c. diagnose ectopic pregnancy,
- d. determine blood type and administer RhoGAM if a woman is Rh negative,
- e. assess for signs of domestic abuse, reproductive control, human trafficking and other signals of coerced abortion,
- f. provide surgical intervention or has entered into a contract with another qualified physician to provide surgical intervention, and
- g. supervise and bear legal responsibility for any agent, employee or contractor who is participating in any part of procedure including, but not limited to, pre-procedure evaluation and care;

12. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved; and

13. "Unborn child" means an individual organism of the species homo sapiens, beginning at fertilization, until the point of being born-alive as defined in Title 1 U.S.C., Section 8(b).

Laws 2021, SB 778, c. 577, § 2, eff. November 1, 2021.

### §63-1-756.3 Abortion-Inducing Drugs Must Be Provided by Qualified Physician

Abortion-inducing drugs shall only be provided by a qualified physician following procedures laid out in this act. It shall be unlawful for any manufacturer, supplier, physician, qualified physician or any other person to provide any abortion-inducing drug via courier, delivery or mail service.

Laws 2021, SB 778, c. 577, § 3, eff. November 1, 2021.

### §63-1-756.4 - Duties of Qualified Physician

A. The qualified physician providing an abortion-inducing drug shall examine the woman in person, and prior to providing an abortion-inducing drug, shall:

1. Independently verify that a pregnancy exists;
2. Determine the woman's blood type, and if she is Rh negative, be able to and offer to administer RhoGAM at the time of the abortion;
3. Inform the patient that she may see the remains of her unborn child in the process of completing the abortion; and

4. Document, in the woman's medical chart, the gestational age and intrauterine location of the pregnancy, and whether she received treatment for Rh negativity, as diagnosed by the most accurate standard of medical care.

B. A qualified physician providing an abortion-inducing drug shall be credentialed and competent to handle complication management including emergency transfer, or shall have a signed contract with an associated physician who is credentialed to handle complications and be able to produce that signed contract on demand by the pregnant woman, by the State Board of Medical Licensure and Supervision or by the State Department of Health. Every pregnant woman to whom a qualified physician provides any abortion-inducing drug shall be given the name and phone number of the associated physician.

C. The qualified physician providing any abortion-inducing drug or an agent of the qualified physician shall schedule a follow-up visit for the woman at approximately seven (7) to fourteen (14) days after administration of the abortion-inducing drug to confirm that the pregnancy is completely terminated and to assess the degree of bleeding. The qualified physician shall make all reasonable efforts to ensure that the woman returns for the scheduled appointment. A brief description of the efforts made to comply with this subsection including the date, time and identification by name of the person making such efforts, shall be included in the woman's medical record.

Laws 2021, SB 778, c. 577, § 4, eff. November 1, 2021.

### §63-1-756.5 - No Abortion-Inducing Drugs Provided in School Facility or State Grounds

Notwithstanding any other provision of this act or the laws of this state, abortion-inducing drugs shall not be provided in any school facility or on state grounds including, but not limited to, elementary, secondary and institutions of higher education in this state.

Laws 2021, SB 778, c. 577, § 5, eff. November 1, 2021.

### §63-1-756.6 - Informed Consent - Exceptions - Consent Form - Qualified Physician Declaration

A. No abortion-inducing drug shall be provided without the informed consent of the pregnant woman as described in this section to whom the abortion-inducing drug is provided.

B. Informed consent to a chemical abortion shall be obtained at least seventy-two (72) hours before the abortion-inducing drug is provided to the pregnant woman, except if in reasonable medical judgment, compliance with this subsection would pose a greater risk of:

1. The death of the pregnant woman; or
2. The substantial and irreversible physical impairment of a major bodily function not including psychological or emotional conditions, of the pregnant woman.

C. A form created by the State Department of Health shall be used by a qualified physician to obtain the consent required prior to providing an abortion-inducing drug.

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D. A consent form is not valid and consent is not sufficient, unless:

1. The patient initials each entry, list, description or declaration required to be on the consent form as detailed in paragraphs 1 through 6 of subsection E of this section;
2. The patient signs the “consent statement” described in paragraph 11 of subsection E of this section; and
3. The qualified physician signs the “qualified physician declaration” described in paragraph 12 of subsection E of this section.

E. The consent form shall include, but is not limited to, the following:

1. The probable gestational age of the unborn child as determined by both patient history and by ultrasound results used to confirm gestational age;
2. A detailed description of the steps to complete the chemical abortion;
3. A detailed list of the risks related to the specific abortion-inducing drug or drugs to be used including, but not limited to, hemorrhaging, failure to remove all tissue of the unborn child which may require an additional procedure, sepsis, sterility and possible continuation of pregnancy;
4. Information about Rh incompatibility including that if she has an Rh-negative blood type, she should receive an injection of Rh immunoglobulin at the time of the abortion to prevent Rh incompatibility in future pregnancies;
5. That the risks of complications from a chemical abortion including incomplete abortion, increase with advancing gestational age;
6. That it may be possible to reverse the effects of the chemical abortion should she change her mind, but that time is of the essence;
7. That she may see the remains of her unborn child in the process of completing the abortion;
8. That initial studies suggest that children born after reversing the effects of Mifeprex/mifepristone have no greater risk of birth defects than the general population;
9. That initial studies suggest there is no increased risk of maternal mortality after reversing the effects of Mifeprex/mifepristone;
10. That information on and assistance with reversing the effects of abortion-inducing drugs are available in the state-prepared materials;
11. An “acknowledgment of risks and consent statement” which shall be signed by the patient. The statement shall include, but is not limited to, the following declarations, which shall be individually initialed by the patient:

a. that the patient understands that the abortion-inducing drug regimen or procedure is intended to end her pregnancy and will result in the death of her unborn child,

- b. that the patient is not being forced to have an abortion, that she has the choice not to have the abortion and that she may withdraw her consent to the abortion-inducing drug regimen even after she has begun the abortion-inducing drug regimen,
  - c. that the patient understands that the chemical abortion regimen or procedure to be used has specific risks and may result in specific complications,
  - d. that the patient has been given the opportunity to ask questions about her pregnancy, the development of her unborn child, alternatives to abortion, the abortion-inducing drug or drugs to be used and the risks and complications inherent to the abortion-inducing drug or drugs to be used,
  - e. that she was specifically told that “Information on the potential ability of qualified medical professionals to reverse the effects of an abortion obtained through the use of abortion-inducing drugs is available at [www.abortionpillreversal.com](http://www.abortionpillreversal.com), or you can contact (877) 558-0333 for assistance in locating a medical professional that can aide in the reversal of an abortion.”,
  - f. that she has been provided access to state-prepared, printed materials on informed consent for abortion and the state-prepared and maintained website on informed consent for abortion,
  - g. if applicable, that she has been given the name and phone number of the associated physician who has agreed to provide medical care and treatment in the event of complications associated with the abortion-inducing drug regimen or procedure,
  - h. that the qualified physician will schedule an in-person follow-up visit for the patient at approximately seven (7) to fourteen (14) days after providing the abortion-inducing drug or drugs to confirm that the pregnancy is completely terminated and to assess the degree of bleeding and other complications, and
  - i. that the patient has received or been given sufficient information to give her informed consent to the abortion-inducing drug regimen or procedure, and
  - j. that the patient has a private right of action to sue the qualified physician under the laws of this state if she feels that she has been coerced or misled prior to obtaining an abortion, and how to access state resources regarding her legal right to obtain relief; and
12. A “qualified physician declaration”, which shall be signed by the qualified physician, stating that the qualified physician has explained the abortion-inducing drug or drugs to be used, has provided all of the information required in subsection E of this section, and has answered all of the woman’s questions.

Laws 2021, SB 778, c. 577, § 6, eff. November 1, 2021.

### **§63-1-756.7 - Distribution of Information and Materials Concerning Abortion Pill Reversal - Physician Requirement to Inform About Reversal**

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A. The State Board of Medical Licensure and Supervision shall cause to be published in the state-prepared, printed materials on informed consent for abortion and the state-prepared and maintained website on informed consent for abortion the following statement:

“Information on the potential ability of qualified medical professionals to reverse the effects of an abortion obtained through the use of abortion-inducing drugs is available at [www.abortionpillreversal.com](http://www.abortionpillreversal.com), or you can contact (877) 558-0333 for assistance in locating a medical professional that can aid in the reversal of an abortion.”

B. On an annual basis, the State Board of Medical Licensure and Supervision shall review and update, if necessary, the statement required in subsection A of this Section.

C. As part of the informed consent counseling required in Section 5 of this act, the qualified physician shall inform the pregnant woman about abortion pill reversal and provide her with the state-prepared materials and website link as proscribed by Section 6 of this act.

Laws 2021, SB 778, c. 577, § 7, eff. November 1, 2021.

### **§63-1-756.8 - Report of Drug-Induced Abortions Performed - Report of Adverse Event - Annual Statistical Report - Disclosure of Data and Reports - Notice of Reporting Requirements**

A. For the purpose of promoting maternal health and adding to the sum of medical and public health knowledge through the compilation of relevant data, a report of each drug-induced abortion performed shall be made to the State Department of Health on forms prescribed by it. The reports shall be completed by the hospital or other licensed facility in which the abortion-inducing drug was given, sold, dispensed, administered or otherwise provided or prescribed; signed by the qualified physician who gave, sold, dispensed, administered or otherwise provided or prescribed the abortion-inducing drug; and transmitted to the Department within fifteen (15) days after each reporting month.

B. Each report shall include, at minimum, the following information:

1. Identification of the qualified physician who provided the abortion-inducing drug;
2. Whether the chemical abortion was completed at the hospital or licensed facility in which the abortion-inducing drug was provided or at an alternative location;
3. The referring physician, agency or service, if any;
4. The pregnant woman's age and race;
5. The number of previous pregnancies, number of live births and number of previous abortions of the pregnant woman;
6. The probable gestational age of the unborn child as determined by both patient history and by ultrasound results used to confirm the gestational age. The report shall include the date of the ultrasound and gestational age determined on that date;
7. The abortion-inducing drug or drugs used, the date each was provided to the pregnant woman and the reason for the abortion, if known;

8. Preexisting medical conditions of the pregnant woman which would complicate her pregnancy, if any;

9. Whether the woman returned for a follow-up examination to determine completion of the abortion procedure and to assess bleeding and the date and results of any such follow-up examination, and what reasonable efforts were made by the qualified physician to encourage that she return for a follow-up examination if she did not;

10. Whether the woman suffered any complications, and what specific complications arose and any follow-up treatment needed; and

11. The amount billed to cover the treatment for specific complications including whether the treatment was billed to Medicaid, private insurance, private pay or other method. This shall include charges for any physician, hospital, emergency room, prescription or other drugs, laboratory tests and any other costs for treatment rendered.

C. Reports required under this subsection shall not contain:

1. The name of the pregnant woman;
2. Common identifiers such as her social security number or driver license number; or
3. Other information or identifiers that would make it possible to identify, in any manner or under any circumstances, a woman who has obtained or seeks to obtain a chemical abortion.

D. If a qualified physician provides an abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion as authorized in Sections 2 and 3 of this act, and if the qualified physician knows that the woman who uses the abortion-inducing drug for the purpose of inducing an abortion experiences, during or after the use of the abortion-inducing drug, an adverse event, the qualified physician shall provide a written report of the adverse event within three (3) days of the event to the Food and Drug Administration via the Medwatch Reporting System, and to the Department and to the State Board of Medical Licensure and Supervision.

E. Any physician, qualified physician, associated physician or other healthcare provider who treats a woman, either contemporaneously to or at any time after the procedure, for an adverse event or complication related to a chemical abortion shall make a report of the adverse event to the Department on forms prescribed by it. The reports shall be completed by the hospital or other facility in which the adverse event treatment was provided; signed by the physician, qualified physician or other healthcare provider who treated the adverse event; and transmitted to the Department within (15) days after each reporting month.

F. The Department shall prepare a comprehensive annual statistical report for the Legislature based upon the data gathered from reports under this section. The aggregated data shall also be made available to the public by the Department in a downloadable format.

G. The Department shall summarize aggregate data from the reports required under this act and submit the data to the Centers for Disease Control and Prevention.

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H. Reports filed pursuant to this section shall be public records and shall be available to the public in accordance with the confidentiality and public records reporting laws of this state. Copies of all reports filed under this subsection shall be available to the State Board of Medical Licensure and Supervision, State Board of Pharmacy, state law enforcement offices and child protective services for use in the performance of their official duties.

I. Absent a valid court order or judicial subpoena, neither the Department, any other state department, agency or office nor any employees thereof shall compare data concerning abortions or abortion complications maintained in an electronic or other information system file with data in any other electronic or other information system with the intention of identifying, in any manner or under any circumstances, a woman obtaining or seeking to obtain a drug-induced abortion.

J. Statistical information that may reveal the identity of a woman obtaining or seeking to obtain a drug-induced abortion shall not be publicly disclosed by the Department, any other state department, agency, office or any employee or contractor thereof.

K. Copies of all reports filed under this section shall be available to the Department and the State Board of Medical Licensure and Supervision for use in the performance of its official duties.

L. The Department shall communicate the reporting requirements in this section to all medical professional organizations, licensed physicians, hospitals, emergency rooms, abortion facilities, clinics, ambulatory surgical facilities and other healthcare facilities operating in this state.

M. Any physician including emergency medical personnel, who treats a woman for complications or adverse event arising from an abortion, shall file a written report as required by this section of this act with the Department.

N. A physician filing a written report with the Department after treating a woman for complications or otherwise in an emergency capacity shall make reasonable efforts to include all of the required information that may be obtained without violating the privacy of the woman.

Laws 2021, SB 778, c. 577, § 8, eff. November 1, 2021.

## §63-1-756.9 - State Department of Health – Forms

The State Department of Health shall create and distribute the forms required by this act within sixty (60) days after the effective date of this act. No provision of this act requiring the reporting of information on forms published by the Department shall be applicable until ten (10) days after the requisite forms are first created and distributed or until the effective date of this act, whichever is later.

Laws 2021, SB 778, c. 577, § 9, eff. November 1, 2021.

## §63-1-756.10 - Criminal Actions

A. A person who intentionally, knowingly or recklessly violates any provision of this act is guilty of a misdemeanor.

B. A person who intentionally, knowingly or recklessly violates any provision of this act by fraudulent use of an abortion-inducing drug, with or without the knowledge of the pregnant woman, is guilty of a felony.

C. No criminal penalty may be assessed against the pregnant woman upon whom the drug-induced abortion is attempted, induced or performed.

Laws 2021, SB 778, c. 577, § 10, eff. November 1, 2021.

## §63-1-756.11 - Civil and Professional Disciplinary Actions

A. In addition to whatever remedies are available under the common or statutory law of this state, failure to comply with the requirements of this act shall:

1. Provide a basis for a civil malpractice action for actual and punitive damages;
2. Provide a basis for a professional disciplinary action;
3. Provide a basis for recovery for the woman's survivors for the wrongful death of the woman; and
4. Provide a basis for a cause of action for injunctive relief against a person who has provided an abortion-inducing drug in violation of this act. Such an action may be maintained by:
  - a. a woman to whom such an abortion-inducing drug was provided,
  - b. a person who is the spouse, parent or guardian of, or a current or former licensed health care provider of, a woman to whom an abortion-producing drug was provided, or
  - c. a prosecuting attorney with appropriate jurisdiction.

The injunction shall prevent the defendant from providing further abortion-inducing drugs in violation of this act.

B. No civil liability may be assessed against the pregnant woman upon whom the drug-induced abortion is attempted, induced or performed.

C. When requested, the court shall allow a woman to proceed using solely her initials or a pseudonym and may close any proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the drug-induced abortion was attempted, induced or performed.

D. If judgment is rendered in favor of the plaintiff, the court shall also render judgment for reasonable attorney fees in favor of the plaintiff against the defendant.

E. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court may render judgment for reasonable attorney fees in favor of the defendant against the plaintiff.

Laws 2021, SB 778, c. 577, § 11, eff. November 1, 2021.

**§63-1-756.12 - No Right to Abortion by Act**

Laws 2021, SB 778, c. 577, § 13, eff. November 1, 2021.

A. Nothing in this act shall be construed as creating or recognizing a right to abortion.

B. It is not the intention of this act to make lawful an abortion that is otherwise unlawful.

C. Nothing in this act repeals, replaces or otherwise invalidates existing federal or state laws, regulations or policies.

Laws 2021, SB 778, c. 577, § 12, eff. November 1, 2021.

**§63-1-756.13 - Legislative Right to Intervene in Action Challenging Constitutionality**

The Legislature, by joint resolution, may appoint one or more of its members, who sponsored or cosponsored this act in his or her official capacity, to intervene as a matter of right in any case in which the constitutionality of this act is challenged.

Laws 2021, SB 778, c. 577, § 14, eff. November 1, 2021.

**§63-1-756.14 – Severability**

If any one or more provisions, sections, subsections, sentences, clauses, phrases or words of this act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed this act, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases or words be declared unconstitutional.

**Oklahoma Abortion-Inducing Drug Certification Program Act**

**§63-1-757.1 - Short Title**

Sections 1 through 16 of this act shall be known and may be cited as the “Oklahoma Abortion-Inducing Drug Certification Program Act”.

Laws 2021, SB 779, c. 578, § 1, eff. November 1, 2021.

**§63-1-757.2 – Definitions**

1. “Abortion” means the act of using or prescribing any instrument, medicine, drug or any other substance, device or means with the intent to terminate the pregnancy of a woman known to be pregnant, with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription or means is not an abortion if done with the intent to:

- a. save the life or preserve the health of the unborn child,
- b. remove a dead unborn child caused by spontaneous abortion, accidental trauma or a criminal assault on the pregnant woman or her unborn child,
- c. remove an ectopic pregnancy, or
- d. treat a maternal disease or illness for which the prescribed drug is indicated;

2. “Abortion-inducing drug” means a medicine, drug or any other substance prescribed or dispensed with the intent of terminating the pregnancy of a woman known to be pregnant, with knowledge that the termination will with reasonable likelihood cause the death of the unborn child. This includes the off-label use of drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion, such as mifepristone (Mifeprex), misoprostol (Cytotec) and methotrexate. This definition does not apply to drugs that may be known to cause an abortion, but which are prescribed for other medical indications, such as chemotherapeutic agents and diagnostic drugs. The use of such

drugs to induce abortion is also known as “medical”, “medication”, “RU-486”, “chemical”, “Mifeprex regimen” or “drug-induced” abortion;

3. “Adverse event”, according to the Food and Drug Administration, means any untoward medical occurrence associated with the use of a drug in humans, whether or not considered drug-related. It does not include an adverse event or suspected adverse reaction that, had it occurred in a more severe form, might have caused death;

4. “Associated physician” means a person fully licensed and in good standing to practice medicine in the state including medical doctors and doctors of osteopathy, who has entered into an associated physician agreement;

5. “Complication” means any adverse physical or psychological condition arising from the performance of an abortion which includes, but is not limited to, uterine perforation, cervical perforation, infection, heavy or uncontrolled bleeding, hemorrhage, blood clots resulting in pulmonary embolism or deep vein thrombosis, failure to actually terminate the pregnancy, incomplete abortion (retained tissue), pelvic inflammatory disease, endometritis, missed ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure, metabolic disorder, shock, embolism, coma, placenta previa in subsequent pregnancies, preterm delivery in subsequent pregnancies, free fluid in the abdomen, hemolytic reaction due to the administration of ABO-incompatible blood or blood products, adverse reactions to anesthesia and other drugs, subsequent development of breast cancer, psychological complications such as depression, suicidal ideation, anxiety, sleeping disorders, death and any other adverse event as defined by the Food and Drug Administration criteria provided in the Medwatch Reporting System;

6. “Gestational age” means the time that has elapsed since the first day of the woman’s last menstrual period, also known as “last menstrual period” or “LMP”;

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7. "Hospital" means an institution providing medical and surgical treatment and nursing care for sick or injured people, or institutions defined under Section 1-701 of Title 63 of the Oklahoma Statutes;

8. "Manufacturers and distributors" means individuals or entities that create, produce, supply, transport or sell drugs, which include:

- a. any substances recognized by an official pharmacopoeia or formulary,
- b. any substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease,
- c. any substances other than food intended to affect the structure or any function of the body, or
- d. any substances intended for use as a component of a medicine but not a device or a component, part or accessory of a device;

9. "Obstetrician/gynecologist", also known as OB/GYN, means a licensed physician who specializes in the care of women during pregnancy and childbirth and in the diagnosis and treatment of diseases of the female reproductive organs and specializes in other women's health issues such as menopause, hormone problems, contraception or birth control, and infertility;

10. "Physician" means any person fully licensed by and in good standing with the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners to practice medicine in this state. The term includes medical doctors and doctors of osteopathy;

11. "Pregnant" or "pregnancy" means that female reproductive condition of having an unborn child in the mother's uterus;

12. "Provide" or "provision" means, when used regarding abortion-inducing drugs, any act of giving, selling, dispensing, administering, transferring possession to or otherwise providing or prescribing an abortion-inducing drug; and

13. "Unborn child" means an individual organism of the species *Homo sapiens*, beginning at fertilization, until the point of being born-alive as defined in Title 1 U.S.C., Section 8(b).

Laws 2021, SB 779, c. 578, § 2, eff. November 1, 2021.

### §63-1-757.3 - To Whom this Act Applies

This act applies to any physician, health care provider or other person who is providing abortion-inducing drugs for use within this state, or any manufacturer or distributor providing abortion-inducing drugs within this state.

Laws 2021, SB 779, c. 578, § 3, eff. November 1, 2021.

### §63-1-757.4 - State Boards Create Program - Abortion-inducing Drugs not Provided Outside of the Program

A. The State Board of Pharmacy, the State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall create a certification program for abortion-inducing

drugs. The program shall be known as the Oklahoma Abortion-Inducing Drug Certification Program.

B. The State Board of Medical Licensure and Supervision, the State Board of Osteopathic Examiners and the State Board of Pharmacy may assess reasonable fees on their respective licensees and enter into contracts with persons or entities to implement the Oklahoma Abortion-Inducing Drug Certification Program.

C. Abortion-inducing drugs shall not be provided directly to the patient through the mail, telemedicine or otherwise outside of the parameters of the Oklahoma Abortion-Inducing Drug Certification Program.

Laws 2021, SB 779, c. 578, § 4, eff. November 1, 2021.

### §63-1-757.5 - Duties - State Board of Pharmacy and State Board of Medical Licensure and Supervision

A. The State Board of Pharmacy shall promulgate rules to create a certification program to oversee and regulate the manufacture and distribution of abortion-inducing drugs by manufacturers and distributors licensed by the State Board of Pharmacy.

B. The State Board of Pharmacy shall establish the following requirements for manufacturers and distributors of abortion-inducing drugs, at a minimum:

1. Require completion of the certification process for manufacturers and distributors as described in Section 6 of this act;
2. Require that abortion-inducing drugs be transported and provided in this state only by manufacturers or distributors certified to do so under this program;
3. Notify manufacturers and distributors of physicians certified under the Oklahoma Abortion-Inducing Drug Certification Program;
4. Prohibit shipment of abortion-inducing drugs to physicians who become de-certified from the Oklahoma Abortion-Inducing Drug Certification Program;
5. Audit newly certified manufacturers and distributors within ninety (90) calendar days after the manufacturer or distributor is authorized, and annually thereafter, to ensure that all processes and procedures are in place and functioning to support the requirements of the Oklahoma Abortion-Inducing Drug Certification Program;
6. If a manufacturer or distributor is found to be noncompliant, immediately suspend manufacturer's or distributor's certification until the manufacturer or distributor demonstrates full compliance; and
7. Enforce compliance according to Section 12 of this act.

C. The State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall promulgate rules to create a certification program to oversee and regulate the provision of abortion-inducing drugs by physicians licensed by the respective state licensing board. The drugs shall only be provided to patients by

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fully licensed physicians certified to do so under this program by their respective state licensing boards.

D. The State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall establish the following requirements for physicians providing abortion-inducing drugs, at a minimum:

1. Require completion of the certification process for physicians as described in Section 7 of this act;
2. Audit newly certified physicians within ninety (90) calendar days after the physician is authorized, and annually thereafter, to ensure that all required processes and procedures are in place and functioning to support the requirements of the Oklahoma Abortion-Inducing Drug Certification Program;
3. If a physician is found to be noncompliant, immediately suspend the physician's certification until such time that the physician demonstrates full compliance;
4. Develop a reporting system as specified in Section 9 of this act; and
5. Enforce compliance according to Section 12 of this act.

Laws 2021, SB 779, c. 578, § 5, eff. November 1, 2021.

## §63-1-757.6 - Manufacturers and Distributors - Certification Eligibility Requirements

The State Board of Pharmacy shall adopt a certification system for any manufacturer or distributor intending to provide abortion-inducing drugs in the state. To be eligible to be certified under this section, manufacturers and distributors shall:

1. Be licensed by the Board;
2. Only distribute to physicians certified under this act;
3. Record each serial number from pharmaceutical packages distributed to each certified physician;
4. Abide by all applicable standards of the Utilization Review Accreditation Commission (URAC) or National Association of Boards of Pharmacy (NABP);
5. For online sales or orders, hold a current ".pharmacy" or ".pharma" domain and abide by all the standards required by the NABP to maintain the domain;
6. Follow all other applicable state or federal laws related to the distribution or delivery of legend drugs including abortion-inducing drugs; and
7. Follow all acceptable processes and procedures to maintain a distribution or delivery system that is secure, confidential and follows all processes and procedures including those for storage, handling, shipping, tracking package serial numbers, proof of delivery and controlled returns of abortion-inducing drugs.

Laws 2021, SB 779, c. 578, § 6, eff. November 1, 2021.

## §63-1-757.7 - Physicians - Certification Eligibility Requirements

The State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall adopt a certification system for any physician intending to provide abortion-inducing drugs to patients in the state. Individuals or physicians providing abortion-inducing drugs in other states are not automatically certified in this state, and shall be fully certified under this law prior to providing any abortion-inducing drugs to any pregnant women in this state. To be eligible to be certified under this section physicians shall:

1. Be fully licensed by and in good standing with either the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners to practice medicine in the state;
2. Examine any patient in person prior to providing abortion-inducing drugs;
3. Sign an annual "Dispensing Agreement Form", to be developed and provided by the physician's state licensing board, before providing abortion-inducing drugs;
4. Inform the patient of gestational age-specific risks of using abortion-inducing drugs;
5. Assess for signs of domestic abuse, reproductive control, human trafficking and other signals of coerced abortion, per current state guidelines;
6. Adequately inform the patient of gestational age-specific age risks of using abortion-inducing drugs;
7. Inform the patient that she may see the remains of her unborn child in the process of completing the abortion;
8. Inform the patient that studies show that babies born following the abortion reversal process have a rate of birth defects no higher than the general population;
9. Inform the patient that studies show that following this reversal process or otherwise treating a woman with progesterone during pregnancy does not lead to increased mortality rates;
10. Refrain from knowingly supplying abortion-inducing drugs to patients who present with any of the following:
  - a. absence of a pregnancy,
  - b. being post-seventy days gestation or post-ten weeks of pregnancy, and
  - c. having risk factors associated with abortion-inducing drugs including, but not limited to:
    - (1) ectopic pregnancies,
    - (2) problems with the adrenal glands near the kidneys,
    - (3) being treated with long-term corticosteroid therapy,
    - (4) allergic reactions to abortion-inducing drugs, mifepristone, misoprostol or similar drugs,

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- (5) bleeding problems or is taking anticoagulant drug products,
  - (6) has inherited porphyria,
  - (7) has an intrauterine device in place, or
  - (8) being Rh Negative, requiring administration of Rhogam before providing abortion-inducing drugs;
11. Provide or refer for emergency surgical intervention in cases of incomplete abortion, severe bleeding or other medical complications, through maintaining hospital admitting privileges or entering into a written agreement with an associated physician as specified in Section 8 of this act;
12. Assure patient access to medical facilities equipped to provide blood transfusions and resuscitation or other necessary treatments, if necessary;
13. Sign, and ensure that the patient signs, all legally required informed consent material, providing patient with a copy showing both signatures, and placing the original in the patient's medical record;
14. Record the serial number from each package of each abortion-inducing drug given to the patient in her medical record;
15. Submit a written protocol of how efforts will be made to schedule with the patient the medically indicated follow-up appointment within fourteen (14) days to assure a completed abortion;
16. Report to the State Board of Pharmacy, the physician's state licensing board and the Food and Drug Administration, any death associated with abortion-inducing drugs with the following guidelines:
- a. the patient shall be noted by a non-identifiable reference and the serial number from each package of abortion-inducing drug given, whether or not considered drug-related,
  - b. this shall be done as soon as possible but no later than fifteen (15) calendar days from the initial receipt of the information by the physician, and
  - c. this requirement does not affect the physician's other reporting and follow-up requirements under the Oklahoma Abortion-Inducing Drug Certification Program or any additional requirements by another department that oversees the abortion industry in this state;
17. Submit a written protocol of how complications will be handled by the certified physician and submit a copy of a signed contract with an associated physician credentialed to handle certain complications as outlined in Section 8 of this act;
18. Abide by all applicable state and federal laws regarding medical records retention, confidentiality and privacy; and
19. Agree to follow and document compliance with all other legally required conditions for performing abortion in the state where the patient presents for her appointment including, but not limited to, waiting periods, informed consent requirements,

statistical reporting, parental consent or notification and required inspections.

Laws 2021, SB 779, c. 578, § 7, eff. November 1, 2021.

## §63-1-757.8 - Certified Physicians – Requirements

The State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall also require the following of certified physicians:

1. Maintaining hospital admitting privileges at one or more hospitals in the county or contiguous county where the abortion-inducing drug was provided, and informing the patient of any hospital where the physician holds admitting privileges; or
2. Alternatively, the physician may enter into a written agreement with an associated physician in the county or contiguous county where the abortion-inducing drug was provided. The written agreement shall meet these conditions:
  - a. a physician who provides an abortion-inducing drug shall notify the patient of the location of the hospital at which the associated physician has admitting privileges,
  - b. the physician shall keep, at the location of his or her practice, a copy of the written agreement,
  - c. the physician shall submit a copy of the written agreement to their state licensing board and the State Department of Health as part of any required clinic licensure,
  - d. the State Department of Health shall verify the validity of the document, and shall remove any personal identifying information of the patient from the document before releasing the document in accordance with the following:
    - (1) the State Department of Health shall annually submit a copy of the written agreement described in this paragraph to each hospital located in the county or a county that is contiguous to the county where the abortion was performed, and
    - (2) the State Department of Health shall confirm to a member of the public, upon request, that the written agreement required to be submitted under this section for an abortion clinic has been received by the Department,
- e. the agreement shall be renewed annually, or more often as required by the physician's state licensing board,
- f. the agreement shall include a requirement that the physician provide to the patient and require the patient to sign all legally required informed consent material, and
- g. the agreement shall require the adherence to all reporting requirements from the State Department of Health and the physician's licensing board.

Laws 2021, SB 779, c. 578, § 8, eff. November 1, 2021.

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### **§63-1-757.9 - Electronically Based Reporting – Requirements**

A. The State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall adopt an electronically based reporting system for certified physicians to report annually the following:

1. The number of patients served;
2. Age of patients served;
3. Race of patients served;
4. County and state of residence of patients served;
5. If the patient resides outside the United States, city and country of residence;
6. County and state of service;
7. A list of staff attending patients including licensing numbers and evidence of other qualifications;
8. Each medication used or provided per patient, by date;
9. Any known complications or adverse events, and how they were addressed, by date; and
10. Unresolved cases.

B. This reporting system shall also be used by emergency department physicians and private physicians who treat post-abortion complications.

C. Physicians shall protect from disclosure any personally identifiable information of the patient in accordance with applicable federal and state law.

D. A certified physician shall also report to their licensing board, the State Board of Pharmacy and the Medwatch Reporting System of the Food and Drug Administration (FDA), any complication or adverse event as defined according to the FDA criteria given in the Medwatch Reporting System.

E. The State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall develop a system of reporting adverse events from the use of abortion-inducing drugs for this state. The system shall require reporting of complications and adverse events including, but not limited to:

1. Death;
2. Blood loss including hemorrhage;
3. Infection including sepsis;
4. Blood transfusions;
5. Administer drug for an ectopic pregnancy; and
6. Other adverse effects requiring hospitalization or additional medical care.

F. The State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall require the following

providers and entities to report complications and adverse events in writing:

1. Physicians certified to provide abortion-inducing drugs;
2. Emergency room physicians;
3. Any doctor licensed in this state including an obstetrician/gynecologist who treats women with adverse events;
4. Provision of certification requires that the physician shall also report adverse events and any patient deaths to the FDA; and
5. Other individuals or entities as determined by the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners.

Laws 2021, SB 779, c. 578, § 9, eff. November 1, 2021.

### **§63-1-757.10 - Violations - Criminal Penalties**

A. Individuals or entities not certified under the Oklahoma Abortion-Inducing Drug Certification Program that provide drugs for the purpose of inducing abortion are in violation of this act.

B. Individuals or entities that provide abortion-inducing drugs to any person or entity that is not certified, or otherwise authorized, to provide abortion-inducing drugs under the Oklahoma Abortion-Inducing Drug Certification Program are in violation of this act.

C. A person who intentionally, knowingly or recklessly violates any provision of this act is guilty of a misdemeanor.

D. A person who intentionally, knowingly or recklessly violates any provision of this act by fraudulent use of an abortion-inducing drug, with or without the knowledge of the pregnant woman, is guilty of a felony.

E. No civil or criminal penalty may be assessed against the pregnant woman upon whom the drug-induced abortion is attempted, induced or performed.

Laws 2021, SB 779, c. 578, § 10, eff. November 1, 2021.

### **§63-1-757.11 - Violations – Remedies**

A. In addition to whatever remedies are available under the common or statutory law of this state, failure to comply with the requirements of this act shall:

1. Provide a basis for a civil malpractice action for actual and punitive damages;
2. Provide a basis for a professional disciplinary action; and
3. Provide a basis for recovery for the woman's survivors for the wrongful death of the woman.

B. When requested, the court shall allow a woman to proceed using solely her initials or a pseudonym and may close any proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the drug-induced abortion was attempted, induced or performed.

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C. If judgment is rendered in favor of the plaintiff, the court shall also render judgment for reasonable attorney fees in favor of the plaintiff against the defendant.

D. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court may render judgment for reasonable attorney fees in favor of the defendant against the plaintiff.

E. A cause of action for injunctive relief against a person who has provided an abortion-inducing drug in violation of this act may be maintained by:

1. A woman to whom such an abortion-inducing drug was provided;
2. A person who is the spouse, parent or guardian of, or a current or former licensed health care provider of, a woman to whom such an abortion-inducing drug was provided; or
3. A prosecuting attorney with appropriate jurisdiction.

The injunction shall prevent the defendant from providing further abortion-inducing drugs in violation of this act.

Laws 2021, SB 779, c. 578, § 11, eff. November 1, 2021.

### §63-1-757.12 - Restitution and Enforcement Scheme for Licensees

A. The State Board of Pharmacy, the State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall develop an enforcement scheme for their licensees to enforce this act, which includes:

1. When an individual or entity provides abortion-inducing drugs without first seeking certification under this act, the appropriate licensing board shall:
  - a. immediately report the illegal act to local law enforcement, or other applicable state and local agencies for investigation or other appropriate action, where appropriate, and
  - b. impose a fine of no less than Five Million Dollars (\$5,000,000.00) for manufacturers or distributors and Two Hundred Fifty Thousand Dollars (\$250,000.00) for physicians;
2. When a certified manufacturer, distributor or physician is determined to be in noncompliance, suspend certification until compliance is proven to the satisfaction of their licensing board;
3. Where a current or previously certified manufacturer or distributor is found to have intentionally or knowingly violated this act, or refuses to bring operations into compliance within ninety (90) calendar days, remove certification and prohibit continued provision of abortion-inducing drugs by the manufacturer or distributor until compliance is demonstrated to the satisfaction of their licensing board;
4. When a certified manufacturer, distributor or physician is in noncompliance, suspend all annual recertification until compliance is demonstrated to the satisfaction of their licensing board; and

5. Where a current or previously certified manufacturer, distributor or physician is found to have intentionally or knowingly violated this act, or refuses to bring operations into compliance:

- a. immediately suspend the manufacturer's, distributor's or physician's certification until full compliance is demonstrated,
- b. for certified manufacturers or distributors, impose fines of not less than One Million Dollars (\$1,000,000.00) per offense, by the State Board of Pharmacy,
- c. for certified physicians, impose fines of not less than One Hundred Thousand Dollars (\$100,000.00) per offense, by the physician's licensing board,
- d. permanently revoke the certification of the offender if offender fails to demonstrate compliance with their licensing board within ninety (90) calendar days,
- e. impose remedial actions, which may include additional education, additional reporting or other actions as required by the relevant licensing board,
- f. in the case of a manufacturer or distributor, recommend sanctioning to the appropriate disciplinary committee of the State Board of Pharmacy,
- g. in the case of a physician, report the violation to the appropriate physician licensing board,
- h. publicly report any disciplinary actions, consistent with the practices of the relevant licensing board,
- i. permanently revoke the certification of the offender,
- j. in the case of a licensed manufacturer or distributor, recommend permanent revocation of licensure,
- k. in the case of a physician, recommend appropriate sanctioning to the appropriate physician licensing board, and
- l. publicly report any disciplinary actions consistent with the practices of the relevant licensing board.

B. Individuals have a Private Right of Action to seek restitution in any court of law with appropriate jurisdiction for any and all damages suffered due to a violation of this act.

Laws 2021, SB 779, c. 578, § 12, eff. November 1, 2021.

### §63-1-757.13 - State Boards – Websites

A. The State Board of Pharmacy shall develop on its website a complaint portal for patients, pharmacy, nursing and medical professionals and the public to submit information about potential violations by nonphysicians at no charge to the parties named in this subsection.

B. The State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall develop on their respective websites a complaint portal for patients, pharmacy, nursing and medical professionals and the public to submit information about potential violations by physicians at no charge to the parties named in this subsection.

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C. The portal developed by the State Board of Pharmacy shall list the names of manufacturers and distributors that are certified under the program.

D. The portals developed by the State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall list the names of the fully licensed physicians certified under the program.

E. The portal shall allow the party to make a complaint anonymously.

F. The State Board of Pharmacy and physician licensing boards shall review each complaint and determine a disposition including referral to another appropriate state agency, within thirty (30) days of receipt of a complaint.

G. Confidentiality of the originator of the complaint shall be protected at all times except for intra-state referrals for investigation or if any disciplinary action is brought by a licensing board pursuant to this act.

Laws 2021, SB 779, c. 578, § 13, eff. November 1, 2021.

### **§63-1-757.14 - This Act Does Not Create a Right to Abortion, Make Lawful Otherwise Unlawful Abortions, or Repeal, Replace or Otherwise Invalidate Existing Federal or State Laws, Regulations or Policies**

A. Nothing in this act shall be construed as creating or recognizing a right to abortion.

B. It is not the intention of this act to make lawful an abortion that is otherwise unlawful.

C. Nothing in this act repeals, replaces or otherwise invalidates existing federal or state laws, regulations or policies.

Laws 2021, SB 779, c. 578, § 14, eff. November 1, 2021.

### **§63-1-757.15 - Intervention in Cases of Constitutionality Challenges**

The Legislature, by joint resolution, may appoint one or more of its members, who sponsored or cosponsored this act in his or her official capacity, to intervene as a matter of right in any case in which the constitutionality of this act is challenged.

Laws 2021, SB 779, c. 578, § 15, eff. November 1, 2021.

### **§63-1-757.16 - Unconstitutional Provisions, Sections, Subsections, Sentences, Clauses, Phrases, or Words – Severability**

If any one or more provisions, sections, subsections, sentences, clauses, phrases or words of this act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this act shall remain effective notwithstanding such unconstitutionality. The

Legislature hereby declares that it would have passed this act, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases or words be declared unconstitutional.

Laws 2021, SB 779, c. 578, § 16, eff. November 1, 2021.

**Oklahoma Administrative Code and Register  
Office of Administrative Rules**

**317:30-3-59. General Program Exclusions – Adults**

The following are excluded from SoonerCare coverage for adults:

- (1) Inpatient admission for diagnostic studies that could be performed on an outpatient basis.
- (2) Services or any expense incurred for cosmetic surgery.
- (3) Services of two physicians for the same type of service to the same member on the same day, except when supplemental skills are required and different specialties are involved.
- (4) Refractions and visual aids.
- (5) Pre-operative care within 24 hours of the day of admission for surgery and routine post-operative care as defined under the global surgery guidelines promulgated by Current Procedural Terminology (CPT) and the Centers for Medicare and Medicaid Services (CMS).
- (6) Sterilization of members who are under 21 years of age, mentally incompetent, or institutionalized or reversal of sterilization procedures for the purposes of conception.
- (7) Non-therapeutic hysterectomies.
- (8) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (Refer to OAC 317:30-5-6 or 317:30-5-50.)
- (9) Medical services considered experimental or investigational.
- (10) Services of a Certified Surgical Assistant.
- (11) Services of a Chiropractor. Payment is made for Chiropractor services on Crossover claims for coinsurance and/or deductible only.
- (12) Services of an independent licensed Physical and/or Occupational Therapist.
- (13) Services of a Psychologist.
- (14) Services of an independent licensed Speech and Hearing Therapist.
- (15) Payment for more than four outpatient visits per month (home or office) per member, except those visits in connection with family planning or related to emergency medical conditions.
- (16) Payment for more than two nursing facility visits per month.
- (17) More than one inpatient visit per day per physician.
- (18) Payment for removal of benign skin lesions.
- (19) Physician services which are administrative in nature and not a direct service to the member including such items as quality assurance, utilization review, treatment staffing, tumor board review or multidisciplinary opinion, dictation, and similar functions.
- (20) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.
- (21) Payment for the services of social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out in OHCA rules.

- (22) Mileage.
- (23) A routine hospital visit on the date of discharge unless the member expired.
- (24) Direct payment to perfusionist as this is considered part of the hospital reimbursement.
- (25) Inpatient chemical dependency treatment.
- (26) Fertility treatment.
- (27) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.
- (28) Sleep studies.

**Added at 12 Ok Reg 751, eff 1-5-95 through 7-14-95 (emergency);**  
**Added at 12 Ok Reg 3131, eff 7-27-95;**  
**Amended at 14 Ok Reg 3077, eff 7-1-97 (emergency);**  
**Amended at 15 Ok Reg 1528, eff 5-11-98;**  
**Amended at 15 Ok Reg 4194, eff 7-20-98 (emergency);**  
**Amended at 16 Ok Reg 1429, eff 5-27-99;**  
**Amended at 16 Ok Reg 3413, eff 7-1-99 (emergency);**  
**Amended at 17 Ok Reg 2373, eff 6-26-00;**  
**Amended at 17 Ok Reg 3469, eff 8-1-00 (emergency);**  
**Amended at 18 Ok Reg 2566, eff 6-25-01;**  
**Amended at 20 Ok Reg 1924, eff 6-26-03;**  
**Amended at 21 Ok Reg 501, eff 1-1-04 (emergency);**  
**Amended at 21 Ok Reg 2176, eff 6-25-04;**  
**Amended at 23 Ok Reg 239, eff 10-3-05 (emergency);**  
**Amended at 23 Ok Reg 2487, eff 6-25-06;**  
**Amended at 24 Ok Reg 141, eff 10-8-16 (emergency);**  
**Amended at 24 Ok Reg 890, eff 5-11-07;**  
**Amended at 25 Ok Reg 112, eff 10-1-07 (emergency);**  
**Amended at 25 Ok Reg 1192, eff 5-25-08;**  
**Amended at 27 Ok Reg 294, eff 11-3-09 (emergency);**  
**Amended at 27 Ok Reg 1439, eff 6-11-10;**  
**Amended at 28 Ok Reg 1412, eff 6-25-11;**  
**Amended at 32 Ok Reg 721, eff 7-1-15 (emergency);**  
**Amended at 33 Ok Reg 801, eff 9-1-16.**

**317:30-3-60. General Program Exclusions - Children**

(a) The following are excluded from SoonerCare coverage for children:

- (1) Inpatient admission for diagnostic studies that could be performed on an outpatient basis.
- (2) Services or any expense incurred for cosmetic surgery unless the physician certifies the procedure emotionally necessary.
- (3) Services of two (2) physicians for the same type of service to the same member on the same day, except when supplemental skills are required and different specialties are involved.
- (4) Pre-operative care within twenty-four (24) hours of the day of admission for surgery and routine post-operative care as defined under the global surgery guidelines promulgated by Current Procedural Terminology (CPT) and the Centers for Medicare and Medicaid Services (CMS).
- (5) Sterilization of members who are under twenty-one (21) years of age, mentally incompetent, or institutionalized or reversal of sterilization procedures for the purposes of conception.
- (6) Non-therapeutic hysterectomies.

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- (7) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. [See Oklahoma Administrative Code (OAC) 317:30-5-6 or 317:30-5-50].
- (8) Medical services considered experimental or investigational. For more information regarding experimental or investigational including clinical trials, see OAC 317:30-3-57.1.
- (9) Services of a Certified Surgical Assistant.
- (10) Services of a Chiropractor.
- (11) More than one (1) inpatient visit per day per physician.
- (12) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.
- (13) Physician services which are administrative in nature and not a direct service to the member including such items as quality assurance, utilization review, treatment staffing, tumor board review or multidisciplinary opinion, dictation, and similar functions.
- (14) Payment for the services of social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out in Oklahoma Health Care Authority (OHCA) rules.
- (15) Direct payment to perfusionist as this is considered part of the hospital reimbursement.
- (16) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.
- (17) Mileage.
- (18) A routine hospital visit on date of discharge unless the member expired.

(b) Notwithstanding the exclusions listed in (1)-(18) of subsection (a), the Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDT) provides for coverage of needed medical services normally outside the scope of the medical program when performed in connection with an EPSDT screening and prior authorized.

**Added at 12 Ok Reg 751, eff 1-5-95 through 7-14-95 (emergency);**

**Added at 12 Ok Reg 3131, eff 7-27-95;**

**Amended at 15 Ok Reg 4194, eff 7-20-98 (emergency);**

**Amended at 15 Ok Reg 4182, eff 8-5-98 (emergency);**

**Amended at 16 Ok Reg 1429, eff 5-27-99;**

**Amended at 17 Ok Reg 2373, eff 6-26-00;**

**Amended at 27 Ok Reg 294, eff 11-3-09 (emergency);**

**Amended at 27 Ok Reg 1439, eff 6-11-10;**

**Amended at 28 Ok Reg 1412, eff 6-25-11;**

**Amended at 38 Ok Reg 970, eff 9-1-21.**

### 317:30-5-2. General Coverage by Category

(a) **Adults.** Payment for adults is made to physicians for medical and surgical services within the scope of the Oklahoma Health Care Authority's (OHCA) SoonerCare program, provided the services are reasonable and necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Coverage of certain services must be based on a determination made by the OHCA's medical consultant in individual circumstances.

- (1) Coverage includes, but is not limited to, the following medically necessary services:

- (A) Inpatient hospital visits for all SoonerCare covered stays. All inpatient services are subject to post-payment review by the OHCA, or its designated agent.
- (B) Inpatient psychotherapy by a physician.
- (C) Inpatient psychological testing by a physician.
- (D) One (1) inpatient visit per day, per physician.
- (E) Certain surgical procedures performed in a Medicare certified free-standing ambulatory surgery center (ASC) or a Medicare certified hospital that offers outpatient surgical services.
- (F) Therapeutic radiology or chemotherapy on an outpatient basis without limitation to the number of treatments per month for members with proven malignancies.
- (G) Physician services on an outpatient basis include:
  - (i) A maximum of four (4) visits per member per month, including primary care or specialty, with the exception of SoonerCare Choice members.
  - (ii) Additional visits are allowed per month for treatment related to emergency medical conditions and family planning services.
- (H) Direct physician services in a nursing facility.
  - (i) A maximum of two (2) nursing facility visits per month are allowed; and if the visit (s) is for psychiatric services, it must be provided by a psychiatrist or a physician with appropriate behavioral health training.
  - (ii) To receive payment for a second nursing facility visit in a month denied by Medicare for a Medicare/SoonerCare member, attach the explanation of Medicare benefits (EOMB) showing denial and mark "carrier denied coverage."
- (I) Diagnostic x-ray and laboratory services.
- (J) Mammography screening and additional follow-up mammograms as per current guidelines.
- (K) Obstetrical care.
- (L) Pacemakers and prostheses inserted during the course of a surgical procedure.
- (M) Prior authorized examinations for the purpose of determining medical eligibility for programs administered by OHCA. A copy of the authorization, Oklahoma Department of Human Services (OKDHS) form 08MA016E, Authorization for Examination and Billing, must accompany the claim.
- (N) If a physician renders direct care to a member on the same day as a dialysis treatment, payment is allowed for a separately identifiable service unrelated to the dialysis.
- (O) Family planning includes sterilization procedures for legally competent members twenty-one (21) years of age and over who voluntarily request such a procedure and execute the federally mandated consent form with his/her physician. A copy of the consent form must be attached to the claim form. Separate payment is allowed for the insertion and/or implantation of contraceptive devices during an office visit. Certain family planning products may be obtained through the Vendor Drug Program. Reversal of sterilization procedures for the purposes of conception is not allowed. Reversal of sterilization procedures are allowed when medically indicated and substantiating documentation is attached to the claim.
- (P) Genetic counseling.
- (Q) Laboratory testing.
- (R) Payment for ultrasounds for pregnant women as specified in Oklahoma Administrative Code (OAC) 317:30-5-22.

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(S) Payment to the attending physician in a teaching medical facility for compensable services when the physician signs as claimant and renders personal and identifiable services to the member in conformity with federal regulations.

(T) Payment to the attending physician for the services of a currently Oklahoma licensed physician in training when the following conditions are met:

- (i) Attending physician performs chart review and signs off on the billed encounter;
- (ii) Attending physician is present in the clinic/or hospital setting and available for consultation; and
- (iii) Documentation of written policy and applicable training of physicians in the training program regarding when to seek the consultation of the attending physician.

(U) Payment for services rendered by medical residents in an outpatient academic setting when the following conditions are met:

- (i) The resident has obtained a medical license or a special license for training from the appropriate regulatory state medical board; and
- (ii) Has the appropriate contract on file with the OHCA to render services within the scope of their licensure.

(V) The payment to a physician for medically directing the services of a certified registered nurse anesthetist (CRNA) or for the direct supervision of the services of an anesthesiologist assistant (AA) is limited. The maximum allowable fee for the services of both providers combined is limited to the maximum allowable had the service been performed solely by the anesthesiologist.

(W) Screening and follow up pap smears as per current guidelines.

(X) Medically necessary organ and tissue transplantation services for children and adults are covered services based upon the conditions listed in (i)-(v) of this subparagraph:

- (i) All transplantation services, except kidney and cornea, must be prior authorized;
- (ii) All transplant procedures are reviewed and prior authorization is based upon appropriate medical criteria;
- (iii) All organ transplants must be performed at a Medicare-approved transplantation center;
- (iv) Procedures considered experimental or investigational are not covered. For more information regarding experimental or investigational including clinical trials, see OAC 317:30-3-57.1; and
- (v) Donor search and procurement services are covered for transplants consistent with the methods used by the Medicare program for organ acquisition costs.

(Y) Donor expenses incurred for complications are covered only if they are directly and immediately attributable to the donation procedure. Donor expenses that occur after the ninety (90) day global reimbursement period must be submitted to the OHCA for review.

(Z) Total parenteral nutritional (TPN) therapy for identified diagnoses and when prior authorized.

(AA) Ventilator equipment.

(BB) Home dialysis equipment and supplies.

(CC) Ambulatory services for treatment of members with tuberculosis (TB). This includes, but is not limited to, physician visits, outpatient hospital services, rural health clinic visits and

prescriptions. Drugs prescribed for the treatment of TB beyond the prescriptions covered under SoonerCare require prior authorization by the University of Oklahoma College of Pharmacy Help Desk using form "Petition for TB Related Therapy." Ambulatory services to members infected with TB are not limited to the scope of the SoonerCare program, but require prior authorization when the scope is exceeded.

(DD) Smoking and tobacco use cessation counseling for treatment of members using tobacco.

(i) Smoking and tobacco use cessation counseling consists of the 5As:

- (I) Asking the member to describe their smoking use;
- (II) Advising the member to quit;
- (III) Assessing the willingness of the member to quit;
- (IV) Assisting the member with referrals and plans to quit; and
- (V) Arranging for follow-up.

(ii) Up to eight (8) sessions are covered per year per individual.

(iii) Smoking and tobacco use cessation counseling is a covered service when performed by physicians, physician assistants (PA), advanced registered nurse practitioners (ARNP), certified nurse midwives (CNM), dentists, Oklahoma State Health Department (OSDH) and Federally Qualified Health Center (FQHC) nursing staff, and maternal/child health licensed clinical social worker trained as a certified tobacco treatment specialist (CTTS). It is reimbursed in addition to any other appropriate global payments for obstetrical care, primary care provider (PCP) care coordination payments, evaluation and management codes, or other appropriate services rendered. It must be a significant, separately identifiable service, unique from any other service provided on the same day.

(iv) Chart documentation must include a separate note that addresses the 5A's and office note signature along with the member specific information addressed in the five (5) steps and the time spent by the practitioner performing the counseling. Anything under three (3) minutes is considered part of a routine visit and not separately billable.

(EE) Immunizations as specified by the Advisory Committee on Immunization Practices (ACIP) guidelines.

(FF) Genetic testing and other molecular pathology services are covered when medically necessary. Genetic testing may be considered medically necessary when the following conditions are met:

(i) The member displays clinical features of a suspected genetic condition, is at direct risk of inheriting the genetic condition in question (e.g., a causative familial variant has been identified) or has been diagnosed with a condition where identification of specific genetic changes will impact treatment or management; and

(ii) Clinical studies published in peer-reviewed literature have established strong evidence that the result of the test will positively impact the clinical decision-making or clinical outcome for the member; and

(iii) The testing method is proven to be scientifically valid for the identification of a specific genetically-linked inheritable disease or clinically important molecular marker; and

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- (iv) A medical geneticist, physician, or licensed genetic counselor provides documentation that supports the recommendation for testing based on a review of risk factors, clinical scenario, and family history.
- (2) General coverage exclusions include, but is not limited to, the following:
  - (A) Inpatient admission for diagnostic studies that could be performed on an outpatient basis.
  - (B) Services or any expense incurred for cosmetic surgery.
  - (C) Services of two (2) physicians for the same type of service to the same member on the same day, except when supplemental skills are required and different specialties are involved.
  - (D) Routine eye examinations for the sole purpose of prescribing glasses or visual aids, determination of refractive state, treatment of refractive errors or purchase of lenses, frames or visual aids.
  - (E) Pre-operative care within twenty-four (24) hours of the day of admission for surgery and routine post-operative care as defined under the global surgery guidelines promulgated by Current Procedural Terminology (CPT) and the Centers for Medicare and Medicaid Services (CMS).
  - (F) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.
  - (G) Sterilization of members who are under twenty-one (21) years of age, mentally incompetent, or institutionalized or reversal of sterilization procedures for the purposes of conception.
  - (H) Non-therapeutic hysterectomies.
  - (I) Medical services considered experimental or investigational. For more information regarding experimental or investigational including clinical trials, see OAC 317:30-3-57.1.
  - (J) Payment for more than four (4) outpatient visits per member (home or office) per month, except visits in connection with family planning, services related to emergency medical conditions, or primary care services provided to SoonerCare Choice members.
  - (K) Payment for more than two (2) nursing facility visits per month.
  - (L) More than one (1) inpatient visit per day per physician.
  - (M) Physician services which are administrative in nature and not a direct service to the member including such items as quality assurance, utilization review, treatment staffing, tumor board review or multidisciplinary opinion, dictation, and similar functions.
  - (N) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.
  - (O) Payment for the services of social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out in OHCA rules.
  - (P) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (Refer to OAC 317:30-5-6 or 317:30-5-50).
  - (Q) Speech and hearing services.
  - (R) Mileage.
  - (S) A routine hospital visit on the date of discharge unless the member expired.
  - (T) Direct payment to perfusionist as this is considered part of the hospital reimbursement.
  - (U) Inpatient chemical dependency treatment.
  - (V) Fertility treatment.
  - (W) Payment for removal of benign skin lesions.
- (b) **Children.** Payment is made to physicians for medical and surgical services for members under the age of twenty-one (21) within the scope of the SoonerCare program, provided the services are medically necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Medical and surgical services for children are comparable to those listed for adults. For services rendered to a minor child, the child's parent or court-appointed legal guardian must provide written authorization prior to the service being rendered, unless there is an explicit state or federal exception to this requirement. In addition to those services listed for adults, the following services are covered for children.
  - (1) **Pre-authorization of inpatient psychiatric services.** All inpatient psychiatric services for members under twenty-one (21) years of age must be prior authorized by an agency designated by the OHCA. All psychiatric services are prior authorized for an approved length of stay. Non-authorized inpatient psychiatric services are not SoonerCare compensable.
    - (A) All inpatient psychiatric services are authorized based on the medical necessity criteria as described in OAC 317:30-5-95.25, 317:30-5-95.27 and 317:30-5-95.29.
    - (B) For out of state placements, refer to OAC 317:30-3-89 through 317:30-3-92.
  - (2) **General Acute inpatient service limitations.** All general Acute inpatient hospital services for members under the age of twenty-one (21) are not limited. All inpatient care must be medically necessary.
  - (3) **Procedures for requesting extensions for inpatient services.** The physician and/or facility must provide necessary justification to enable OHCA, or its designated agent, to make a determination of medical necessity and appropriateness of treatment options. Extension requests for psychiatric admissions must be submitted to the OHCA or its designated agent. Extension requests must contain the appropriate documentation validating the need for continued treatment in accordance with the medical necessity criteria described in OAC 317:30-5-95.26, 317:30-5-95.28 and 317:30-5-95.30. Requests must be made prior to the expiration of the approved inpatient stay. All decisions of OHCA or its designated agent are final.
  - (4) **Utilization control requirements for psychiatric beds.** Utilization control requirements for inpatient psychiatric services for members under twenty-one (21) years of age apply to all hospitals and residential psychiatric treatment facilities.
  - (5) **Early and periodic screening diagnosis and treatment (EPSDT) program.** Payment is made to eligible providers for EPDST of members under age twenty-one (21). These services include medical, dental, vision, hearing and other necessary health care. Refer to OAC 317:30-3-65.2 through 317:30-3-65.12 for specific guidelines.
  - (6) **Reporting suspected abuse and/or neglect.** Instances of child abuse and/or neglect are to be reported in accordance with state law, including, but not limited to, Section 1-2-101 of Title 10A

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of the Oklahoma Statutes and 43A O.S. § 10-104. Any person suspecting child abuse or neglect shall immediately report it to the Oklahoma Department of Human Services (OKDHS) hotline, at 1-800-522-3511; any person suspecting abuse, neglect, or exploitation of a vulnerable adult shall immediately report it to the local OKDHS county office, municipal or county law enforcement authorities, or, if the report occurs after normal business hours, the OKDHS hotline. Health care professionals who are requested to report incidents of domestic abuse by adult victims with legal capacity shall promptly make a report to the nearest law enforcement agency, per 22 O.S. § 58.

(7) **General exclusions.** The following are excluded from coverage for members under the age of twenty-one (21):

(A) Inpatient admission for diagnostic studies that could be performed on an outpatient basis.

(B) Services or any expense incurred for cosmetic surgery unless the physician certifies the procedure emotionally necessary.

(C) Services of two (2) physicians for the same type of service to the same member on the same day, except when supplemental skills are required and different specialties are involved.

(D) Pre-operative care within twenty-four (24) hours of the day of admission for surgery and routine post-operative care as defined under the global surgery guidelines promulgated by CPT and CMS.

(E) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.

(F) Sterilization of members who are under twenty-one (21) years of age, mentally incompetent, or institutionalized or reversal of sterilization procedures for the purposes of conception.

(G) Non-therapeutic hysterectomies.

(H) Medical services considered experimental or investigational. For more information regarding experimental or investigational including clinical trials, see OAC 317:30-3-57.1.

(I) More than one (1) inpatient visit per day per physician.

(J) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (Refer to OAC 317:30-5-6 or 317:30-5-50).

(K) Physician services which are administrative in nature and not a direct service to the member including such items as quality assurance, utilization review, treatment staffing, tumor board review or multidisciplinary opinion, dictation, and similar functions.

(L) Payment for the services of social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out in OHCA rules.

(M) Direct payment to perfusionist as this is considered part of the hospital reimbursement.

(N) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.

(O) Mileage.

(P) A routine hospital visit on date of discharge unless the member expired.

(c) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the OHCA allowable for comparable services. Claims filed with Medicare Part B should automatically cross over to OHCA. The EOMB reflects a message that the claim was referred to SoonerCare. If such a message is not present, a claim for coinsurance and deductible must be filed with the OHCA within ninety (90) days of the date of Medicare payment and within one (1) year of the date of service in order to be considered timely filed.

(1) In certain circumstances, some claims do not automatically "cross over." Providers must file a claim for coinsurance and/or deductible to SoonerCare within ninety (90) days of the Medicare payment and within one (1) year from the date of service.

(2) If payment was denied by Medicare Part B and the service is a SoonerCare covered service, mark the claim "denied by Medicare" and attach the EOMB showing the reason for the denial.

Added at 12 Ok Reg 751, eff 1-5-95 through 7-14-95 (emergency);

Added at 12 Ok Reg 3131, eff 7-27-95;

Amended at 13 Ok Reg 899, eff 8-1-95 (emergency);

Amended at 13 Ok Reg 1645, eff 5-27-96;

Amended at 13 Ok Reg 3607, eff 6-18-96 (emergency);

Amended at 13 Ok Reg 3585, eff 7-16-96 (emergency);

Amended at 14 Ok Reg 151, eff 10-24-96 (emergency);

Amended at 14 Ok Reg 524, eff 12-24-96 (emergency);

Amended at 14 Ok Reg 750, eff 1-24-97 (emergency);

Amended at 14 Ok Reg 3077, eff 7-1-97 (emergency);

Amended at 15 Ok Reg 1083, eff 12-15-97 (emergency);

Amended at 15 Ok Reg 1528, eff 5-11-98;

Amended at 15 Ok Reg 4194, eff 7-20-98 (emergency);

Amended at 15 Ok Reg 4182, eff 8-5-98 (emergency);

Amended at 16 Ok Reg 1429, eff 5-27-99;

Amended at 16 Ok Reg 3413, eff 7-1-99 (emergency);

Amended at 17 Ok Reg 805, eff 7-16-99 (emergency);

Amended at 17 Ok Reg 2373, eff 6-26-00;

Amended at 17 Ok Reg 3469, eff 8-1-00 (emergency);

Amended at 18 Ok Reg 245, eff 10-7-00 (emergency);

Amended at 18 Ok Reg 761, eff 1-23-01 (emergency);

Amended at 18 Ok Reg 1130, eff 5-11-01;

Amended at 19 Ok Reg 63, eff 9-1-01 (emergency);

Amended at 19 Ok Reg 2127, eff 6-27-02;

Amended at 19 Ok Reg 2922, eff 7-1-02 (emergency);

Amended at 20 Ok Reg 1193, eff 5-27-03;

Amended at 21 Ok Reg 398, eff 1-1-04 (emergency);

Amended at 21 Ok Reg 501, eff 1-1-04 (emergency);

Amended at 21 Ok Reg 2176, eff 6-25-04;

Amended at 23 Ok Reg 239, eff 10-3-05 (emergency);

Amended at 23 Ok Reg 2477, eff 6-25-06;

Amended at 24 Ok Reg 143, eff 10-8-06 (emergency);

Amended at 24 Ok Reg 311, eff 12-1-06 (emergency);

Amended at 24 Ok Reg 660, eff 2-1-07 (emergency);

Amended at 24 Ok Reg 2060, eff 6-25-07;

Amended at 25 Ok Reg 114, eff 9-1-07 (emergency);

Amended at 24 Ok Reg 648, eff 1-1-08 (emergency);

Amended at 25 Ok Reg 1161, eff 5-25-08;

Amended at 26 Ok Reg 2081, eff 6-25-09;

Amended at 26 Ok Reg 1759, eff 7-1-09 (emergency);

Amended at 27 Ok Reg 294, eff 11-3-09 (emergency);

Amended at 27 Ok Reg 1439, eff 6-11-10;

Amended at 28 Ok Reg 1412, eff 6-25-11;

Amended at 30 Ok Reg 327, eff 1-14-13 (emergency);

Amended at 30 Ok Reg 1133, eff 7-1-13;

Amended at 31 Ok Reg 1631, eff 9-12-14<sup>1</sup>;

Amended at 31 Ok Reg 1637, eff 9-12-14<sup>1</sup>;

Amended at 32 Ok Reg 721, eff 7-1-15 (emergency);

Amended at 33 Ok Reg 801, eff 9-1-16<sup>2</sup>;

Amended at 34 Ok Reg 188, eff 11-22-16 (emergency);

Amended at 34 Ok Reg 645, eff 9-1-17;

Amended at 36 Ok Reg 882, eff 9-1-19;

Amended at 37 Ok Reg 1492, eff 9-14-20;

Amended at 38 Ok Reg 970, eff 9-1-21.

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### 317:30-5-6. Abortions

(a) Payment is made only for abortions in those instances where the abortion is necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed, or where the pregnancy is the result of an act of rape or incest. Medicaid coverage for abortions to terminate pregnancies that are the result of rape or incest will only be provided as long as Congress considers abortions in cases of rape or incest to be medically necessary services and federal financial participation is available specifically for these services.

(1) For abortions necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, the physician must complete the Certification for Medicaid Funded Abortion and certify in writing that the abortion is being performed due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed. The patient's name and address must be included in the certification and the certification must be signed and dated by the physician. The certification must be attached to the claim.

(2) For abortions in cases of rape or incest, there are two requirements for the payment of a claim. First, the physician must fully complete the Certification for Medicaid Funded Abortion. Second, the patient must have made a police report or counselor's report of the rape or incest. In cases where an official report of the rape or incest is not available, the physician must certify in writing and provide documentation that in his or her professional opinion, the patient was unable, for physical or psychological reasons, to comply with the requirement. The statement explains the reason the rape or incest was not reported. The patient's name and address must be included in the certification and the certification must be signed and dated by the physician and the patient. In cases where a physician provides certification and documentation of a patient's inability to file a report, the Authority will perform a prepayment review of all records to ensure there is sufficient documentation to support the physician's certification.

(b) The Oklahoma Health Care Authority performs a "look-behind" procedure for abortion claims paid from Medicaid funds. This procedure will require that this Agency obtain the complete medical records for abortions paid under Medicaid. On a post-payment basis, this Authority will obtain the complete medical records on all claims paid for abortions.

(c) Claims for spontaneous abortions, including dilation and curettage do not require certification. The following situations also do not require certification:

- (1) If the physician has not induced the abortion, counseled or otherwise collaborated in inducing the abortion; and
- (2) If the process has irreversibly commenced at the point of the physician's medical intervention.

(d) Claims for the diagnosis "incomplete abortion" require medical review.

(e) The appropriate diagnosis codes should be used indicating spontaneous abortion, etc., otherwise the procedure will be denied.

Amended at 16 Ok Reg , eff 5-27-99;

Added at 12 Ok Reg 751, eff 1-5-95 through 7-14-95 (emergency);

Added at 12 Ok Reg 3131, eff 7-27-95;  
Amended at 13 Ok Reg 2521, eff 6-27-96;  
Amended at 15 Ok Reg 4194, eff 7-20-98 (emergency);  
Amended at 16 Ok Reg 1429, eff 5-27-99;  
Amended at 38 Ok Reg 1000, eff 9-1-21.

### 317:30-5-50. Abortions

(a) Payment is made only for abortions in those instances where the abortion is necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed, or where the pregnancy is the result of an act of rape or incest. SoonerCare coverage for abortions to terminate pregnancies that are the result of rape or incest are considered to be medically necessary services and federal financial participation is available specifically for these services.

(1) For abortions necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, the physician must complete the Certification for Medicaid Funded Abortion and certify in writing that the abortion is being performed due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed. The patient's name and address must be included in the certification and the certification must be signed and dated by the physician. The certification must be attached to the claim.

(2) For abortions in cases of rape or incest, there are two requirements for the payment of a claim. First, the physician must fully complete the Certification for Medicaid Funded Abortion. Second, the patient must have made a police report or counselor's report of the rape or incest. In cases where an official report of the rape or incest is not available, the physician must certify in writing and provide documentation that in his or her professional opinion, the patient was unable, for physical or psychological reasons, to comply with the requirement. The statement explains the reason the rape or incest was not reported. The patient's name and address must be included in the certification and the certification must be signed and dated by the physician and the patient. In cases where a physician provides certification and documentation of a patient's inability to file a report, the Oklahoma Health Care Authority (OHCA) will perform a prepayment review of all records to ensure there is sufficient documentation to support the physician's certification.

(b) The OHCA performs a look-behind procedure for abortion claims paid from SoonerCare funds. This procedure will require that this Agency obtain the complete medical records for abortions paid under SoonerCare. On a post payment basis, this Authority will obtain the complete medical records on all claims paid for abortions.

(c) Claims for spontaneous abortions, including Dilation and Curettage do not require certification. The following situations also do not require certification:

- (1) If the physician has not induced the abortion, counseled or otherwise collaborated in inducing the abortion, and

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Added at 24 Ok Reg 2070, eff 6-25-07.

- (2) If the process has irreversibly commenced at the point of the physician's medical intervention.
- (d) Claims for the diagnosis incomplete abortion require medical review. The appropriate diagnosis codes should be used indicating spontaneous abortion, etc.; otherwise the procedure will be denied.

Added at 12 Ok Reg 751, eff 1-5-95 through 7-14-95 (emergency);  
Added at 12 Ok Reg 3131, eff 7-27-95;  
Amended at 13 Ok Reg 2521, eff 6-27-96;  
Amended at 15 Ok Reg 4194, eff 7-20-98 (emergency);  
Amended at 16 Ok Reg 1429, eff 5-27-99;  
Amended at 24 Ok Reg 317, eff 12-1-06 (emergency);  
Amended at 24 Ok Reg 905, eff 5-11-07;  
Amended at 38 Ok Reg 1000, eff 9-1-21.

### **317:30-5-1160. Public Health Nursing Services for First Time Mothers and their Infants/Children (Children's First Program)**

(a) The purpose of the Children's First program is to make home visits to low income, first time parents teaching them about pregnancy, nutrition, fetal development and how to care for themselves and their baby after delivery. A first time mother is:

- (1) a woman who is expecting her first live birth, has never parented and plans on parenting this child;
- (2) a woman who is expecting her first live birth, has never parented and is contemplating placing the child for adoption;
- (3) a woman who has been pregnant, but has not delivered a child due to abortion or miscarriage;
- (4) a woman who is expecting her first live birth, but has parented stepchildren or younger siblings;
- (5) a woman who has delivered a child, but her parental rights were legally terminated within the first few months of that child's life; or
- (6) a woman who has delivered a child, but the child died within the first few months of life.

(b) The pregnant woman must enter the program prior to the 28th week of gestation. Services may be provided until the infant's/child's second birthday.

(c) Reimbursement is limited to one nursing service per day provided during the pre and postnatal period of the first time mother and for the first two years of the infant's/child's life.

Public health nurse clinic services are limited to five services per month per eligible member/child.

### **335:15-3-9. Employment Policies Relating to Pregnancy and Childbirth**

- (a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is in prima facie violation of the Oklahoma Anti-Discrimination Act.
- (b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, or related medical conditions, for all job-related purposes, shall be treated the same as disabilities caused or contributed to by other medical conditions, under any health or disability insurance or sick leave plan available in connection with employment. Written or unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, and reinstatement, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to temporary disabilities.
- (c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

### **435:10-21-1. Informed Consent**

- (a) No abortion shall be performed in this state except with the voluntary and informed consent of the woman upon whom the abortion is to be performed.
- (b) Requirements for obtaining voluntary and informed consent are set forth in Title 63, O.S., §1-738.2.
- (c) Any physician performing an abortion in violation of Title 63, O.S., §1-738.2 shall be subject to disciplinary action by the Board.

Added at 24 Ok Reg 214, eff 10-26-06 (emergency);  
Added at 24 Ok Reg 2248, eff 6-25-07.

## **CHAPTER 600 – ABORTION FACILITY REGULATIONS**

### **Subchapter 1 General Provisions**

#### **310:600-1-1. Purpose**

The Chapter provides standards for abortions facilities under authority of the following laws: 63 O.S. Supp. 1997, Sections 1-705 and 1-737; and 75 O.S. Supp. 1997, Sections 250.1 through 323, (Administrative Procedures Act).

Added at 15 Ok Reg 3172, eff 7-13-98.

#### **310:600-1-2. Definitions**

The following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

*"Abortion"* means the purposeful termination of a human pregnancy, by any person with an intention other than to produce a live birth or to remove a dead unborn child {63 O.S. 1991 § 1-730}.

*"Abortion facility"* means a specialized hospital that provides abortions on an out-patient basis during the first trimester of pregnancy. The term abortion facility does not include licensed general medical surgical hospitals that provide abortions in addition to other procedures provided in the facility.

*"Bed"* means each procedure table, gurney, or recovery bed that may be occupied by patients undergoing or recovering from abortions.

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**"Department"** means the Oklahoma State Department of Health.

**"First trimester"** means a period of a pregnancy measured from the first day of the last normal menses through the end of the fourteenth week or the first twelve (12) weeks of pregnancy as determined by physician examination.

**"Governing body"** means that person, persons, or legal entity legally responsible for the conduct of the abortion facility that carries out the functions of ownership and governance.

**"Licensed practical nurse"** means a person currently licensed to practice practical nursing in Oklahoma.

**"Registered nurse"** means a person currently licensed to practice registered nursing in Oklahoma.

Added at 15 Ok Reg 3172, eff 7-13-98.

## Subchapter 3 Licenses

### 310:600-3-1. Application for License

(a) No person or entity shall operate an abortion facility without first obtaining a license from the Department.

(b) The legal entity responsible for operation of the abortion facility shall be the applicant for the license.

Added at 15 Ok Reg 3172, eff 7-13-98.

### 310:600-3-2. Fee for License

(a) The fee for initial license shall be ten dollars (\$10.00) for each bed in the facility. No such fee shall be refunded unless the abortion facility is refused a license. The term of the initial license shall be twelve (12) months.

(b) The fee for a renewal license shall be ten dollars (\$10.00) for each bed in the facility. The term of a renewal license shall be twelve (12) months.

Added at 15 Ok Reg 3172, eff 7-13-98.

### 310:600-3-3. Deadlines for Filing

The license application shall be filed in accordance with the following deadlines:

(1) The application for an initial license of an abortion facility in operation upon the effective date of this Chapter shall be filed within ninety (90) days of the effective date.

(2) The application for an initial license of a new abortion facility shall be filed at least sixty (60) days before the facility begins operations.

(3) The application for a renewal license shall be filed at least thirty (30) days before the expiration date of the current license.

(4) No application shall be considered filed unless it is accompanied by the appropriate fee.

Added at 15 Ok Reg 3172, eff 7-13-98.

### 310:600-3-4. Where to File

The application and the license fee shall be delivered or sent to the Department. The effective date shall be the date the application and fee are received.

Added at 15 Ok Reg 3172, eff 7-13-98.

### 310:600-3-5. Forms

The applicant for a license shall file application forms as follows:

(1) For an initial license the applicant shall file these forms: Application for License to Operate an Abortion Facility and an Operational Program Narrative.

(2) For renewal of an abortion facility license, the applicant shall file the Application for License to Operate an Abortion Facility and an Operational Program Narrative Update.

Added at 15 Ok Reg 3172, eff 7-13-98.

### 310:600-3-6. Description of Forms

The forms used to apply for an abortion facility license are the following:

(1) The Application For License to Operate an Abortion Facility requests: The name and address of the facility; name, address, and type of the operating entity; number of beds; the administrator's name; and an affidavit attesting the signature of the applicant.

(2) The Operational Program Narrative requests: A descriptive outlined narrative of facility operations.

(3) The Operational Program Narrative Update requests: An update of the facility operation program narrative previously filed.

Added at 15 Ok Reg 3172, eff 7-13-98.

### 310:600-3-7. Transfer or Change of Ownership

(a) The license is not transferable or assignable.

(b) If an abortion facility undergoes a change in the legal operating entity, the new entity that will operate the facility shall file an application for initial license sixty (60) days in advance of the change.

(c) A sale of stock in an operating corporation or a sale of membership shares in a limited liability company operating entity shall not be considered a change in ownership if these sales do not result in a change in facility operations.

Added at 15 Ok Reg 3172, eff 7-13-98.

## Subchapter 5 Approval or Denial of Application

### 310:600-5-1. Eligibility for License

An abortion facility filing an accepted application that has been determined to comply with this Chapter is eligible for a license.

Added at 15 Ok Reg 3172, eff 7-13-98.

### 310:600-5-2. Application Review

(a) Within thirty (30) days after the application is filed, the Department shall notify the applicant if the abortion facility application is incomplete, accepted or denied.

(b) If the application is incomplete, the applicant shall have thirty (30) days to file the requested clarifying or additional information. If

the applicant fails to complete the application within thirty (30) days after notification of an incomplete application, the application shall be summarily dismissed by the Department.

(c) If the application is denied, the applicant shall have thirty (30) days to respond to the Department's decision to deny the application. If the applicant adequately responds to the basis for the Department's denial within thirty (30) days, the Department will reconsider and may approve the application.

(d) If the Department denies an application, the applicant may request a hearing pursuant to the Administrative Procedures Act and OAC 310:002.

Added at 15 Ok Reg 3172, eff 7-13-98.

## Subchapter 7 Enforcement

### 310:600-7-1. Inspections

Each abortion facility is subject to inspection by the Department. These inspections may be routine or conducted as a result of a complaint. Department staff shall have access to any facility or patient record. However, the Department shall not disclose the name of any patient treated in the facility or create a public record that identifies patients. During inspections, Department staff shall respect the privacy of patients and ensure patient confidentiality is maintained.

Added at 15 Ok Reg 3172, eff 7-13-98.

### 310:600-7-3. Adverse Actions

The State Commissioner of Health may suspend or revoke any abortion facility license based on any of the following:

(1) violation of any provisions of 63 O.S. 1991, § 1-701 et seq. or this Chapter;

(2) permitting, aiding or abetting the commission of any illegal act in the licensed abortion facility; or

(3) conduct or practices deemed by the Commissioner to be detrimental to the welfare of patients of the abortion facility.

Added at 15 Ok Reg 3172, eff 7-13-98.

### 310:600-7-2. Complaints

The Department shall investigate complaints that allege violations of this Chapter or statutory license provisions. The Department shall accept signed, written complaints from a patient, another treating physician, or an immediate family member.

Added at 15 Ok Reg 3172, eff 7-13-98.

### 310:600-7-4. Hearings

Hearings shall be conducted in compliance with the Administrative Procedures Act and OAC 310:002.

Added at 15 Ok Reg 3172, eff 7-13-98.

### 310:600-7-5. Appeals

A final order of the Commissioner of Health may be appealed as provided in the Administrative Procedures Act.

Added at 15 Ok Reg 3172, eff 7-13-98.

## Subchapter 9 Abortion Facility Regulations

### 310:600-9-1. Governance and Administration

(a) Each abortion facility shall have an operational program narrative that has been approved by the governing body and accepted by the Department. The facility shall provide services as outlined by the narrative. If facility operations specified in the narrative are modified, the governing body and this Department shall approve the modifications before facility practices are modified.

(b) The narrative shall describe the following:

(1) how the governing body is established by the legal operating entity;

(2) the organizational structure of the body;

(3) how member(s) are appointed and replaced;

(4) the frequency of meetings; and

(5) procedures for the governing body to approve, reapprove, delineate, restrict and deny privileges for physicians and other practitioners providing services in the facility.

(c) The narrative shall describe the process of appointing an administrator who shall be the governing body's on-site designee responsible for the conduct of all affairs of the abortion facility and who is answerable to the governing body for the day-to-day facility operation.

Added at 15 Ok Reg 3172, eff 7-13-98.

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### 310:600-9-2. Patient Rights

The abortion facility shall protect and promote each patient's rights as specified in this section. Policies describing mechanisms by which patient rights are protected shall be formulated, approved by the governing body and followed by all staff. Policies shall include but not be limited to the following:

- (1) The right to receive confidential treatment in a safe environment from considerate professionals;
- (2) The right to be informed of the customary charges and acceptable method of payment for the procedure in advance;
- (3) The right to be fully advised in understandable terms of the nature of the procedure and possible complications in advance;
- (4) The right to receive professional counseling either in the facility or by referral before and after the abortion. Available counseling shall include information on alternatives to abortion and the availability of agencies or services to assist the patient; and
- (5) The right to be informed whether or not the attending physician has malpractice insurance coverage.
- (6) The right to file a grievance regarding care received and notification of who the patient shall contact at the facility to lodge a complaint.

Added at 15 Ok Reg 3172, eff 7-13-98.

### 310:600-9-3. Staffing and Personnel

- (a) The narrative shall specify facility staffing and stipulate staff approved to assist with procedures and to recover patients. Staffing for services provided shall be based on the volume of procedures performed and acuity level of the patients. Staffing shall ensure desired outcomes of care are achieved and negative outcomes are avoided. Registered nurses and licensed practical nurses providing services shall be identified in the narrative.
- (b) Training, continuing education, health examinations, job descriptions and performance appraisal requirements for staff providing patient care shall be stipulated.
- (c) The organization of physicians and practitioners with delineated privileges shall be described. The narrative shall explain methods used to recommend appointments and review clinical practice.
- (d) Security provisions and practices that ensure patient and staff safety shall be described. The narrative shall stipulate facility protocols and practices for any anticipated external or internal emergency. An evacuation plan and protocol shall be provided or described.

Added at 15 Ok Reg 3172, eff 7-13-98.

### 310:600-9-4. Clinical Services

- (a) The narrative shall describe all abortion procedures performed, equipment and supplies used for each procedure, and staff required to assist the physician. The narrative shall demonstrate the quantities of supplies, instruments, and equipment available in the facility are sufficient to provide emergency care and support the number of abortions performed on a daily basis.
- (b) Drugs and biologicals maintained and administered in the facility shall be specified in the narrative. The narrative shall describe how the facility complies with federal and state laws regarding drug storage, administration and accountability.

(c) If the physician performing the abortion is not certified by the American Board of Obstetrics and Gynecology or the American Osteopathic Board of Obstetrics and Gynecology or an active board eligible candidate for certification in one (1) of the above, the narrative shall stipulate the facility protocols in place to assure consultation from a physician with these qualifications when required.

(d) Anesthesia services provided in the facility shall be fully described. The narrative shall stipulate the qualifications of the staff administering the anesthesia, if these individuals are supervised, and the level of service they are approved to deliver. The narrative shall demonstrate required services are provided by competent individuals in compliance with federal and state law as follows:

(1) An orderly preoperative anesthetic risk evaluation is to be done by the responsible physician and recorded on the chart in all elective cases, and in urgent emergency cases, the anesthetic evaluations will be recorded as soon as feasible.

(2) Every patient receiving general anesthesia, spinal anesthesia, or managed intravenous anesthesia (i.e. local standby, monitored anesthesia or conscious sedation), shall have arterial blood pressure and heart rate measured and recorded at least every five (5) minutes where not clinically impractical, in which case the responsible physician may waive this requirement stating the clinical circumstances and reasons in writing in the patient's chart.

(3) Every patient shall have the electrocardiogram continuously displayed from the induction and during maintenance of general anesthesia. In patients receiving managed intravenous anesthesia, electrocardiographic monitoring should be used in patients with significant cardiovascular disease as well as during procedures where dysrhythmias are anticipated.

(4) During all anesthetics, patient oxygenation will be continuously monitored with a pulse oximeter, and, whenever an endotracheal tube is inserted, correct positioning in the trachea and function will be monitored by end-tidal CO<sub>2</sub> analysis (capnography) throughout the time of placement.

(A) Additional monitoring for ventilation will include palpation or observation of the reservoir breathing bag, and auscultation of breath sounds.

(B) Additional monitoring for circulation will include at least on of the following: Palpation of the pulse, auscultation of heart sounds, monitoring of a tracing of intra-arterial pressure, pulse plethysmography, or ultrasound peripheral pulse monitoring.

(5) When ventilation is controlled by an automatic mechanical ventilator, there shall be in continuous use a device that is capable of detecting disconnection of any component of the breathing system. The device must give an audible signal when its alarm threshold is exceeded.

(6) During every administration of general anesthesia using an anesthesia machine, the concentration of oxygen in the patient's breathing system will be measured by a functioning oxygen analyzer with low concentration audible limit alarm in use.

(7) During every administration of general anesthesia, there shall be readily available a means to measure the patient's temperature.

(8) Availability of qualified trained personnel dedicated solely to patient monitoring.

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(9) These desiderata apply for any administration of anesthesia, including general, spinal, and managed intravenous anesthetics (i.e. local standby, monitored anesthesia or conscious sedation), administered in designated anesthetizing locations and any location where conscious sedation is performed. "Conscious sedation" means a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command, produced by a pharmacologic or non-pharmacologic method, or a combination thereof.

(10) In emergency circumstances in any situation, immediate life support measures can be started with attention returning to these monitoring criteria as soon as possible and practical.

(e) The maintenance of adequate sterile supplies and linens shall be described. If the facility sterilizes instruments and supplies, the narrative shall indicate how sterilization is achieved, maintained, and documented. The procedure for linen procurement, storage, and processing shall be defined.

(f) The narrative shall describe how informative, timely, confidential, and complete medical records are documented, filed, and maintained for each patient as required by state law. The composition of a complete record shall be described.

(g) The availability of clinical laboratory services required by physicians performing abortions shall be indicated. The narrative shall stipulate clinical laboratory services, including tissue examinations, are provided by laboratories possessing a current certificate appropriate for the extent of testing required issued by the Department of Health and Human Services.

(h) The narrative shall ensure that patients are informed of birth control methods that may be used after the procedure, advised of diseases that are sexually transmitted, and provided instructions regarding possible complications and activities to be avoided. The instructions shall include information on how to contact the attending physician or abortion facility should a complication arise. The instructions shall also specify when the patient shall return for follow-up care.

Added at 15 Ok Reg 3172, eff 7-13-98.

### **310:600-9-5. Quality Assessment and Performance Improvement**

(a) The narrative shall indicate the abortion facility has developed a quality assessment and performance improvement program that is effective, data-driven, and implements actions that result in improvements in patient care. The program shall access patient care, staff performance, complaints and grievances, diagnostic and therapeutic services, medication and anesthesia administration, emergencies, safety issues, clinical records, complications, infection control, errors in diagnosis, and problems complying with this Chapter or other federal, state or local laws. The program shall measure, analyze, and track quality indicators or other measures of performance and recommend actions that improve care to the governing body.

(b) Facility infection control shall be an integral part of the quality assessment and performance improvement program described in the narrative. Infection control procedures shall indicate a sanitary environment is maintained, transmission of infections and

communicable diseases is avoided, and post procedure infections are tracked.

Added at 15 Ok Reg 3172, eff 7-13-98.

### **310:600-9-6. Examinations, Tests and Procedures**

In addition to the provisions specified individually in each facility's operational program narrative, each abortion facility shall comply with the following:

(1) Each patient shall have a medical history and physical including pelvic examination recorded by the physician performing the abortion prior to the procedure. The physician shall determine and document the duration of gestation, identify preexisting medical or other complications, and observe any factors which may influence the choice of the procedure, anesthesia, or care provided.

(2) Not more than seventy-two (72) hours prior to the procedure, each patient shall receive clinical laboratory testing which shall include a hemoglobin and/or hematocrit, Rh type, and pregnancy test.

(3) All tissue removed during the abortion shall be examined by a physician and stored in ten (10) percent formalin for thirty (30) days or until after the follow-up examination. If the attending physician orders a pathological examination, the tissue shall be examined by a physician who is certified in anatomical pathology by the American Board of Pathology or American Osteopathic Board of Pathology or by a physician who is an active candidate for certification by these boards.

(4) After the follow-up examination or thirty (30) days, tissue not maintained for additional microscopic examination removed during the abortion shall be disposed of in an incinerator designed and approved for the disposal of pathological specimens. The abortion facility may accept a written statement from the pathologist attesting the tissue has been properly incinerated.

(5) Anti-Rh immune globulin therapy shall be given to Rh negative patients that are candidates for the therapy upon completion of the abortion procedure. If the patient refuses this therapy, the physician shall document the refusal in the medical record and if possible obtain the signature of the patient on an appropriate release.

(6) All patients recovering from an abortion shall be released from the facility by order of a physician. A physician or licensed nurse shall remain in the facility until all patients are recovered and released.

(7) Each facility shall maintain supplies and equipment for initial emergency medical care of problems that may arise in the facility (e.g. bleeding, shock, disseminated intravascular coagulations, seizures, and respiratory and cardiac arrest). The equipment and supplies shall be immediately available to the procedure and recovery room.

(8) Emergency drugs, oxygen, and intravenous fluids shall be available in the procedure and recovery room. A manual breathing bag, suction machine, and endotracheal equipment shall be located for immediate access.

(9) Each facility shall establish a written protocol for the transfer of patients requiring emergency treatment that can not be provided

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on-site. The protocol shall include procedures to contact the local ambulance service and expedite the transfer to the receiving hospital. Appropriate clinical patient information shall be provided to the receiving facility. If the attending physician does not have admitting privileges at a local general hospital, the physician shall

attest arrangements have been made with a physician having hospital privileges to receive emergency cases.

Added at 15 Ok Reg 3172, eff 7-13-98.

## Subchapter 11 Physical Plant

### 310:600-11-1. Facility Design and Construction

- (a) The operational program narrative shall include scaled drawings of facility construction. The drawings shall locate and identify the following:
- (1) An entrance, located at grade level, able to accommodate wheelchairs.
  - (2) A reception and waiting area, and information counter or desk.
  - (3) Conveniently accessible public toilet.
  - (4) Conveniently accessible public telephone.
  - (5) Interview space(s) for private interviews related to social service, credit, and counseling.
  - (6) Secure general or individual office(s) for business transactions, records, administrative, and professional staff.
  - (7) Clerical space or rooms separated from public areas for confidentiality.
  - (8) Storage space for staff personal effects with locking drawers, cabinets or desks near individual work-stations that are staff controlled.
  - (9) General storage facilities for supplies and equipment needed for continuing operation.
  - (10) General purpose examination room(s) equipped to perform pelvic and medical examinations. Rooms shall have a minimum floor area of eighty (80) square feet, excluding vestibules, toilets, and closets. Room arrangement shall permit at least two (2) feet and eight (8) inches clearance at each side and at the foot of the examination table. A handwashing fixture and counter or shelf for writing shall be provided.
  - (11) Nurses station(s) with work counter, communication system, space for supplies, and provisions for charting.
  - (12) Drug distribution station which may be part of the nurse station but shall include a work counter, sink, refrigerator, and locked storage for biologicals and drugs.
  - (13) A separate clean storage room or closet for storing clean and sterile supplies. This area shall be in addition to cabinets and shelves.
  - (14) A soiled holding area for separate collection, storage, and disposal of soiled materials.
  - (15) A sterilizing room or area if instruments and supplies are sterilized on-site. If sterilizing is accomplished off-site or if disposable sterile supplies are used, the facility shall provide a system for processing and storage.
  - (16) Wheelchair storage space out of the direct line of traffic.
  - (17) Procedure room(s) with a minimum area of one hundred forty-four (144) square feet, exclusive of vestibule, toilets, or closets. The minimum room dimension shall be twelve (12) feet. A

handwashing fixture and counter or shelf for writing shall be provided. The sink may be within the procedure room or immediately outside. An emergency communication system connected to the nurse station shall be provided.

- (18) A designated supervised recovery patient lounge. This lounge shall contain a control station, space for family members, and provisions for privacy. It shall have convenient patient access to toilets large enough to accommodate a patient and an assistant. Handwashing and nourishment facilities shall be included.
  - (19) Clothing change areas for staff which shall contain lockers, toilets, lavatories for handwashing.
  - (20) A housekeeping room containing a floor receptor or service sink and storage space for housekeeping supplies and equipment.
- (b) The Department shall review the scaled drawings for compliance and return the drawings to the facility upon licensure.

Added at 15 Ok Reg 3172, eff 7-13-98.

### 310:600-11-2. Construction Drawings

- (a) The construction drawings submitted with the operational program narrative shall indicate the following:
- (1) Separation and access to the abortion facility is maintained as described by National Fire Protection Association code 101,1997 edition, if the facility is part of another building. Building entrances used to reach the abortion facility shall be at grade level, clearly marked, and located so that patients need not go through other activity areas. Lobbies of multi-occupancy buildings maybe shared. Design shall preclude unrelated traffic within the abortion facility.
  - (2) Facility design ensures patient audible and visual privacy and dignity during interviews, examinations, procedures and recovery.
  - (3) Provisions for convenient access to and use of emergency equipment.
  - (4) Ceilings and walls in the procedure room are readily washable.
  - (5) Toilet rooms in recovery areas for patient use are equipped with doors and hardware that permit access from the outside in emergencies. When such rooms have only one opening or are small, the doors shall open outward or be otherwise designed to open without pressing against a patient who may have collapsed within the room.
  - (6) The building has an elevator with a minimum car inside floor dimension of not less that five (5) feet, if the abortion facility is located above or below the ground floor level of a multi-story building.
  - (7) Airflow and exhaust are controlled to ensure movement of air from clean to less clean areas to maintain asepsis control.

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(b) An abortion facility built after the effective date of this Chapter shall comply with National Fire Protection Association code 101, 1997 edition, Chapter 26, "New Business Occupancies," which is incorporated by reference. (c) An abortion facility existing at the time of the effective date of this Chapter shall comply with National Fire

Protection Association code 101, 1997 edition, Chapter 27 "Existing Business Occupancies," which is incorporated by reference. (d) The Department shall return construction drawings to the facility upon licensure.

Added at 15 Ok Reg 3172, eff 7-13-98.

## Subchapter 13 Federal, State and Local Laws

### 310:600-13-1. Licensure or Registration of Personnel

Staff of the facility shall be licensed or registered in accordance with applicable federal, state and local laws.

Added at 15 Ok Reg 3172, eff 7-13-98.

### 310:600-13-2. Conformity with Other Laws

The facility shall conform with all applicable federal, state, and local laws including but not limited to the following:

- (1) fire safety or building codes;
- (2) communicable and reportable diseases;
- (3) occupational health and safety matters for employees and staff; and
- (4) hazardous and infectious waste disposal.

Added at 15 Ok Reg 3172, eff 7-13-98.

### 310:600-13-3. Reporting of Procedures

Each attending physician performing an abortion shall complete a form documenting all medical facts pertinent to the procedure and other personal facts volunteered by the patient or the physician, pursuant to 63 O.S. Supp. 1997, Section 1-738. The facility shall forward all such reports to the Department monthly. The report shall be confidential and shall not contain the name of the patient.

Added at 15 Ok Reg 3172, eff 7-13-98.

### 310:667-19-2. Reports and Records

(a) Reports shall be made by each hospital to the appropriate agency, including but not limited to the following:

- (1) Communicable disease.
- (2) Births and deaths.
- (3) Periodic reports to the Department on forms supplied for this purpose.
- (4) Newborn hearing screening. The hospital shall proceed pursuant to 310:540-1-3 (relating to newborn hearing screening).
- (5) Newborn metabolic disorder screening.
  - (A) **Testing of newborns.** The hospital shall proceed pursuant to 310:550-3-1 (relating to newborn metabolic disorder screening).
  - (B) **Blood specimen collection for hospital births.** The hospital shall proceed pursuant to 310:550-5-1 (relating to newborn metabolic disorder screening).
  - (C) **Pulse oximetry screening for birthing hospitals.** The hospital shall proceed pursuant to 310:550-5-2 (relating to pulse oximetry screening).

(D) **Screening for premature/sick infants.** The hospital shall proceed to 310:550-5-1 (relating to newborn metabolic disorder screening).

(E) **Newborn screening hospital recording.** The hospital shall proceed pursuant to 310:550-7-1 (relating to newborn metabolic disorder screening).

(F) **Pulse oximetry screening hospital recording.** The hospital shall proceed pursuant to 310:550-7-1 (relating to newborn pulse oximetry screening).

(G) **Parent, guardian and health care provider education.** The hospital shall proceed pursuant to 310:550-13-1 (relating to newborn disorder screening).

(H) **Training.** The hospital shall proceed pursuant to 310:550-13-1 (relating to newborn disorder screening).

(6) **Birth defects.** Each hospital shall have the capability of producing a list of patients up to six (6) years of age who have been diagnosed with a birth defect(s), and all women discharged with a diagnosis of stillbirth, miscarriage, or poor reproductive outcome. On request, each hospital shall make the medical records of these individuals available to the State Department of Health.

(7) **Abortions.** Attending physicians shall complete and submit to the Department a report form for each abortion performed or induced as required by 63 O.S. 1999, Section 1-738.

#### (b) Record of patient admission.

(1) All persons admitted to any institution covered by these standards shall be under the care of a doctor of medicine (M.D.) or osteopathy (D.O.) duly licensed to practice medicine and surgery in the State of Oklahoma or a licensed independent practitioner, whose name shall be shown on the admitting record.

(2) The hospital admitting record also shall show the following for each patient.

(A) Full name of patient with age, sex, address, marital status, birth date, home phone number, date of admission, and admitting diagnosis.

(B) Next of kin, with address, phone number, and relationship.

(C) Date and time of admission, the admission and final diagnoses, and the name of physician or licensed independent practitioner.

(D) Any advanced directive for health care as defined in the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act.

(3) Special clinical reports shall be kept, including the following:

(A) Obstetrical patients throughout labor, delivery, and post-partum.

(B) Newborn, giving the infant's weight, length, and other notes relative to physical examination.

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(C) Surgical and operative procedures, including pathological reports.

(D) Record of anesthesia administration.

### (c) Orders for medications, treatments, and tests.

(1) All medication orders shall be written in ink and signed by the ordering physician or practitioner authorized by law to order the medication, with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician-approved hospital policy after an assessment for contraindications. The order shall be preserved on the patient's chart.

(2) All orders shall be written in ink and signed by the ordering physician or practitioner. Orders received by resident physicians shall be co-signed if required by medical staff bylaws. The order shall be preserved on the patient's chart.

(3) All orders taken from the physician or practitioner, for entry by persons other than the physician or practitioner, shall be countersigned.

(4) Telephone or verbal orders may be authenticated by an authorized physician or practitioner other than the ordering physician or practitioner when this practice is defined and approved in the medical staff bylaws. If allowed, medical staff bylaws must identify the physicians or practitioners who may authenticate another physician's or practitioner's telephone or verbal order, e.g. physician partners or attending physicians or practitioners, and define the circumstances under which this practice is allowed. The bylaws must also specify that when a covering or attending physician or practitioner authenticates the ordering physician's or practitioner's telephone or verbal order, such an authentication indicates that the covering or attending physician or practitioner assumes responsibility for his or her colleague's order and verifies the order is complete, accurate, appropriate, and final. The person taking the telephone or verbal order shall read the order back to the physician or practitioner to ensure it was correctly understood and verify on the order the fact that the order was read back. Each facility, within its own procedures and protocols, shall establish a verification process to be placed on orders to demonstrate that the order was read back to the physician.

Added at 12 Ok Reg 1555, eff 4-12-95 (emergency);  
Added at 12 Ok Reg 2429, eff 6-26-95;  
Amended at 18 Ok Reg 2032, eff 6-11-01;  
Amended at 20 Ok Reg 1664, eff 6-12-03;  
Amended at 24 Ok Reg 1189, eff 4-2-07 (emergency);  
Amended at 25 Ok Reg 2472, eff 7-11-08;  
Amended at 30 Ok Reg 1966, eff 7-25-13;  
Amended at 31 Ok Reg 1619, eff 9-12-14;  
Amended at 36 Ok Reg 1730, eff 9-13-19;  
Amended at 38 Ok Reg 2066, eff 9-11-21.

## 365:10-1-9. Eliminating Unfair Discrimination

(a) **Purpose.** The purpose of this section is to eliminate the act of denying benefits or coverage unfairly in the terms and conditions of insurance contracts and in the underwriting criteria of insurance carriers. It is not intended to prohibit reasonable and justifiable differences in premium rates based upon sound actuarial principles or actual or reasonably anticipated experience.

### (b) Definitions.

(1) **"Contract"** means any insurance policy, plan or binder, including any rider or endorsement thereto offered by an insurer.

(2) **"Insurer"** includes:

(A) Every person engaged in the business of making contracts of insurance or indemnity.

(B) A nonprofit hospital service and medical indemnity corporation is an insurer within the meaning of the Code.

(C) Burial associations shall be deemed not to be insurers.

### (c) Applicability and scope.

(1) This section shall apply to all contracts delivered or issued for delivery in this state by an insurer on or after July 1, 1993, to all existing group, franchise or blanket contracts which are amended or renewed on or after July 1, 1993 and to all policy forms submitted for approval on or after July 1, 1993, provided however that in the case of contracts issued pursuant to all collective bargaining agreements this section shall apply on the first date after July 1, 1993 upon which any new bargaining agreement first becomes effective.

(2) This section does not apply to or affect the right of fraternal benefit societies to determine eligibility requirements for membership. If a fraternal benefit society does, however, admit members of both sexes, this section is applicable to the insurance benefits available to members thereof.

### (d) Availability requirements.

(1) Availability of any insurance contract shall not be denied to an insured or prospective insured solely on the basis of sex or marital status of the insured or prospective insured. The amount of benefits payable, or any term, conditions or type of coverage shall not be restricted, modified, excluded, or reduced solely on the basis of the sex or marital status of the insured or prospective insured except to the extent that amount of benefits, term, conditions or type of coverage vary as a result of the application of rate differentials permitted under the Oklahoma Insurance Code. However, nothing in this section shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependents benefits. Specific examples of practices prohibited by this section include but are not limited to the following:

(A) Denying coverage to females gainfully employed at home, employed part-time or employed by relatives when coverage is offered to males similarly employed.

(B) Denying policy riders to females when the riders are available to males.

(C) Denying maternity benefits to unmarried females covered under a contract if maternity coverage is available to married females under such contract, provided that this shall not be construed to require that benefits must be payable for normal pregnancies under either group or individual insurance contracts.

(D) Denying, under group contracts, dependent coverage to husbands of female employees, when dependent coverage is available to wives of male employees.

(E) Denying disability income contracts to employed women when coverage is offered to men similarly employed.

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(F) Treating complications of pregnancy differently from any other illness or sickness under the contract. Complications of pregnancy means:

- (i) conditions, requiring hospital confinement (when the pregnancy is not terminated), whose diagnoses are distinct from pregnancy but are adversely affected by pregnancy or are caused by pregnancy, such as acute nephritis, nephrosis, cardiac decompensation, missed abortion and similar medical and surgical conditions of comparable severity, but shall not include false labor, occasional spotting, physician prescribed rest during the period of pregnancy, morning sickness, hyperemesis gravidarum, and similar conditions associated with the management of a difficult pregnancy not constituting a nosological distinct complication of pregnancy; and
- (ii) non-elective cesarean section, ectopic pregnancy which is terminated and spontaneous termination of pregnancy, which occurs during a period of gestation in which a viable birth is not possible.

(G) Restricting, reducing, modifying, or excluding benefits payable for disorders of the genital organs of only one sex.

(H) Offering lower maximum monthly benefits to women than to men who are in the same classification under a disability income contract.

(I) Offering more restrictive benefit periods and more restrictive definitions of disability to women than to men in the same classification under a disability income contract.

(J) Establishing different conditions by sex under which the policyholder may renew a contract or exercise benefit options contained in the contract.

(K) Limiting the amount of coverage an insured or prospective insured may purchase based upon the insured's or prospective insured's marital status unless such limitation is for the purpose of defining persons eligible for dependents benefits.

Added at 10 Ok Reg 1469, eff 5-1-93.

### 365:10-5-66. Standard of Benefits for Credit Accident and Health Insurance

(a) **Purpose.** The purpose of this Part is to, with respect to credit accident and health insurance:

- (1) Establish standards;
- (2) Provide a mathematical formula for rates for premiums;
- (3) Establish to whom such insurance contract may be issued; and
- (4) Define "total disability".

(b) **Standards and principles.** The standards and principles for the application of the presumptively reasonable rates set forth in this Part for credit accident and health insurance are as follows:

- (1) The initial amount of insured indebtedness to which the rate is applied shall not exceed the aggregate of the insured portion of the periodic scheduled unpaid installments of the indebtedness.
- (2) The indebtedness must be repayable in monthly or other periodic installments during the period of coverage.
- (3) The rates for premiums payable on other than a single premium basis shall be the mathematical equivalent of the rates set forth in 365:10-5-65. Such premium rates will be deemed the mathematic equivalent of the foregoing single premium rates, if such rates produce a total premium for any duration and amount of

insurance equal to the corresponding single premium for the same duration and amount of insurance.

$$O P_n = \frac{20}{n + 1} > \times (S P_n)$$

Where Spn = Single Premium Rate per \$100 of initial insured indebtedness repayable in "n" equal monthly installments, Opn = Monthly Outstanding Balance Premium Rate per \$1,000 n = Original repayment period, in months.

(4) If premiums are paid on the basis of a premium rate per month per thousand of outstanding insured indebtedness, these premiums shall be computed according to the formula as set forth in 365:10-5-66(b)(3). The actuarial equivalent of such formula shall be used if the coverage provided is a constant maximum indemnity for a given period of time.

(5) The credit accident and health insurance contract may require, at the time of application for insurance and periodically thereafter, written and signed evidence of insurability (inclusive of age and employment) and where offered, shall be offered to all eligible debtors, and shall, as a condition precedent to use of the presumptively reasonable accident and health rates, contain:

(A) No provisions excluding a claim for disability resulting from pre-existing conditions, except for those conditions for which the insured debtor received medical diagnosis or treatment within the one (1) year period immediately preceding the date of application for such insurance, or of which the insured suffered symptoms which would cause an ordinarily prudent person to seek diagnosis, care or treatment within the one (1) year period immediately preceding the date of application for such insurance, and which caused a period of loss within six (6) months following the date of application for such insurance; provided, however, that any subsequent period of disability resulting from such condition that commences or recommences more than six (6) months after the date of the application for such insurance shall be covered under the provisions of the policy.

(B) Failure to comply with the requirements set forth in this paragraph (5), in violation of this Part, shall be subject to any applicable fine set forth in the Oklahoma Insurance Code and this Part, including retroactive premium refunds as provided in 365:10-5-72.

(C) No provision more restrictive as to validity of insurance than contestability based upon material misrepresentation and no other provision which excludes or restricts liability in the event of disability caused in a specified manner except that it may contain provisions excluding or restricting coverage in the event of:

- (i) elective abortion;
- (ii) normal pregnancy, except for complications of pregnancy;
- (iii) intentionally self-inflicted injuries;
- (iv) flight in non-scheduled aircraft;
- (v) foreign travel or residence; and,
- (vi) loss resulting from war or military service An insurer may not rely on material misrepresentation as a defense against the payment of a claim unless the insurer required the insured to sign a written statement in which the alleged material misrepresentation was made.

(D) No age restrictions except restrictions making ineligible for coverage debtors sixty-five (65) years of age or over at the time

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that the indebtedness is incurred or debtors who have attained sixty-six (66) years of age or over on the maturity date of the indebtedness, or else no age restriction.

(E) A definition of "total disability" which provides that during the first eighteen (18) months of such disability, the definition of "total disability" must relate such disability to the occupation of the debtor at the time the disability occurred. After such disability continues for more than eighteen (18) months, the definition of "total disability" may relate such continuing disability to the inability to perform any occupation for which the debtor is reasonably fitted by education, training or experience.

(6) The benefit provided under such credit accident and health insurance contract shall be payable on the basis of a daily benefit equal to 1/30 of the scheduled monthly benefit.

**Amended at 10 Ok Reg 3049, eff 10-1-93;  
Amended at 11 Ok Reg 1847, eff 5-15-94.**