

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

2

HOUSE BILL 465
Committee Substitute Favorable 4/22/15

Short Title: 72 Hours Informed Consent by Person or Phone.

(Public)

Sponsors:

Referred to:

April 2, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE 72 HOURS FOR THE PROVISION OF INFORMED CONSENT,
3 EITHER BY TELEPHONE OR IN PERSON, AND TO CLARIFY AND MODIFY
4 CERTAIN LAWS PERTAINING TO ABORTION.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 14-45.1 reads as rewritten:

7 "§ 14-45.1. When abortion not unlawful.

8 (a) Notwithstanding any of the provisions of G.S. 14-44 and 14-45, it shall not be
9 unlawful, during the first 20 weeks of a woman's pregnancy, to advise, procure, or cause a
10 miscarriage or abortion when the procedure is performed by a physician licensed to practice
11 medicine in North Carolina in a hospital or clinic certified by the Department of Health and
12 Human Services to be a suitable facility for the performance of abortions.

13 (b) Notwithstanding any of the provisions of G.S. 14-44 and 14-45, it shall not be
14 unlawful, after the twentieth week of a woman's pregnancy, to advise, procure or cause a
15 miscarriage or abortion when the procedure is performed by a physician licensed to practice
16 medicine in North Carolina in a hospital licensed by the Department of Health and Human
17 Services, if there is substantial risk that continuance of the pregnancy would threaten the life or
18 gravely impair the health of the woman.

19 (b1) A physician who advises, procures, or causes a miscarriage or abortion after the
20 eighteenth week of a woman's pregnancy shall record all of the following: the method used by
21 the physician to determine the probable gestational age of the unborn child at the time the
22 procedure is to be performed; the results of the methodology, including the measurements of
23 the unborn child; and an ultrasound image of the unborn child that depicts the measurements.
24 The physician shall provide this information, including the ultrasound image, to the Department
25 of Health and Human Services pursuant to G.S. 14-45.1(c).

26 A physician who procures or causes a miscarriage or abortion after the twentieth week of a
27 woman's pregnancy shall record the findings and analysis on which the physician based the
28 determination that continuance of the pregnancy would threaten the life or gravely impair the
29 health of the woman and shall provide that information to the Department of Health and
30 Human Services pursuant to G.S. 14-45.1(c).

31 The information provided under this subsection shall be for statistical purposes only, and
32 the confidentiality of the patient shall be protected. It is the duty of the physician to submit
33 information to the Department of Health and Human Services that omits identifying
34 information of the patient and complies with Health Insurance Portability and Accountability
35 Act of 1996 (HIPAA).



1 (c) The Department of Health and Human Services shall prescribe and collect on an
2 annual basis, from hospitals or ~~clinics~~ clinics, including ambulatory surgical facilities, where
3 abortions are performed, ~~such representative samplings of~~ statistical summary reports
4 concerning the medical and demographic characteristics of the abortions provided for in this
5 ~~section~~ section, including the information described in subsection (b1) of this section as it shall
6 deem to be in the public interest. Hospitals or clinics where abortions are performed shall be
7 responsible for providing these statistical summary reports to the Department of Health and
8 Human Services. The reports shall be for statistical purposes only and the confidentiality of the
9 patient relationship shall be protected.

10 (d) The requirements of ~~G.S. 130-43~~ G.S. 130A-114 are not applicable to abortions
11 performed pursuant to this section.

12 (e) ~~Nothing in this section shall require a physician licensed to practice medicine in~~
13 ~~North Carolina, any~~ No physician, nurse, or any other health care provider who shall state an
14 objection to abortion on moral, ethical, or religious ~~grounds~~, grounds shall be required to
15 perform or participate in medical procedures which result in an abortion. The refusal of a
16 physician, nurse, or health care provider to perform or participate in these medical procedures
17 shall not be a basis for damages for the refusal, or for any disciplinary or any other
18 recriminatory action against the physician, nurse, or health care provider. For purposes of this
19 section, the phrase "health care provider" shall have the same meaning as defined under
20 G.S. 90-410(1).

21 (f) Nothing in this section shall require a hospital, other health care institution, or other
22 health care provider to perform an abortion or to provide abortion services."

23 **SECTION 2.** G.S. 90-21.82 reads as rewritten:

24 **"§ 90-21.82. Informed consent to abortion.**

25 No abortion shall be performed upon a woman in this State without her voluntary and
26 informed consent. Except in the case of a medical emergency, consent to an abortion is
27 voluntary and informed only if all of the following conditions are satisfied:

28 (1) At least ~~24 hours~~ 72 hours prior to the abortion, a physician or qualified
29 professional has orally informed the woman, by telephone or in person, of all
30 of the following:

31 ...

32 If the physician or qualified professional does not know the information
33 required in sub-subdivisions a., f., or g. of this subdivision, the woman shall
34 be advised that this information will be directly available from the physician
35 who is to perform the abortion. However, the fact that the physician or
36 qualified professional does not know the information required in
37 sub-subdivisions a., f., or g. shall not restart the ~~24-hour~~ 72-hour period. The
38 information required by this subdivision shall be provided in English and in
39 each language that is the primary language of at least two percent (2%) of
40 the State's population. The information may be provided orally either by
41 telephone or in person, in which case the required information may be based
42 on facts supplied by the woman to the physician and whatever other relevant
43 information is reasonably available. The information required by this
44 subdivision may not be provided by a tape recording but shall be provided
45 during a consultation in which the physician is able to ask questions of the
46 patient and the patient is able to ask questions of the physician. If, in the
47 medical judgment of the physician, a physical examination, tests, or the
48 availability of other information to the physician subsequently indicates a
49 revision of the information previously supplied to the patient, then that
50 revised information may be communicated to the patient at any time before
51 the performance of the abortion. Nothing in this section may be construed to

- 1 preclude provision of required information in a language understood by the
2 patient through a translator.
- 3 (2) The physician or qualified professional has informed the woman, either by
4 telephone or in person, of each of the following at least ~~24 hours~~ 72 hours
5 before the abortion:
- 6 a. That medical assistance benefits may be available for prenatal care,
7 childbirth, and neonatal care.
- 8 b. That public assistance programs under Chapter 108A of the General
9 Statutes may or may not be available as benefits under federal and
10 State assistance programs.
- 11 c. That the father is liable to assist in the support of the child, even if
12 the father has offered to pay for the abortion.
- 13 d. That the woman has other alternatives to abortion, including keeping
14 the baby or placing the baby for adoption.
- 15 e. That the woman has the right to review the printed materials
16 described in G.S. 90-21.83, that these materials are available on a
17 State-sponsored Web site, and the address of the State-sponsored
18 Web site. The physician or a qualified professional shall orally
19 inform the woman that the materials have been provided by the
20 Department and that they describe the unborn child and list agencies
21 that offer alternatives to abortion. If the woman chooses to view the
22 materials other than on the Web site, the materials shall either be
23 given to her at least ~~24 hours~~ 72 hours before the abortion or be
24 mailed to her at least 72 hours before the abortion by certified mail,
25 restricted delivery to addressee.
- 26 f. That the woman is free to withhold or withdraw her consent to the
27 abortion at any time before or during the abortion without affecting
28 her right to future care or treatment and without the loss of any State
29 or federally funded benefits to which she might otherwise be entitled.
- 30 The information required by this subdivision shall be provided in English
31 and in each language that is the primary language of at least two percent
32 (2%) of the State's population. The information required by this subdivision
33 may be provided by a tape recording if provision is made to record or
34 otherwise register specifically whether the woman does or does not choose
35 to have the printed materials given or mailed to her. Nothing in this
36 subdivision shall be construed to prohibit the physician or qualified
37 professional from e-mailing a Web site link to the materials described in this
38 subdivision or G.S. 90-21.83.

39

40 **SECTION 3.** G.S. 90-21.86 reads as rewritten:

41 "**§ 90-21.86. Procedure in case of medical emergency.**

42 When a medical emergency compels the performance of an abortion, the physician shall
43 inform the woman, before the abortion if possible, of the medical indications supporting the
44 physician's judgment that an abortion is necessary to avert her death or that a ~~24-hour~~ 72-hour
45 delay will create a serious risk of substantial and irreversible impairment of a major bodily
46 function, not including psychological or emotional conditions. As soon as feasible, the
47 physician shall document in writing the medical indications upon which the physician relied
48 and shall cause the original of the writing to be maintained in the woman's medical records and
49 a copy given to her."

50 **SECTION 4.** If any provision of this act or its application is held invalid, the
51 invalidity does not affect other provisions or applications of this act that can be given effect

1 without the invalid provisions or application, and to this end the provisions of this act are
2 severable. If any provision of this act is temporarily or permanently restrained or enjoined by
3 judicial order, this act shall be enforced as though such restrained or enjoined provisions had
4 not been adopted, provided that whenever such temporary or permanent restraining order or
5 injunction is stayed, dissolved, or otherwise ceases to have effect, such provisions shall have
6 full force and effect.

7 **SECTION 5.** This section and Section 4 are effective when this act becomes law.
8 G.S. 14-45.1(b1) and G.S. 14-45.1(c) as enacted by Section 1 of this act become effective
9 January 1, 2016, and apply to abortions performed or attempted on or after January 1, 2016.
10 The remainder of this act becomes effective October 1, 2015, and applies to abortions
11 performed or attempted on or after October 1, 2015.