

SUBJECT: Requiring resource assistance offer before an abortion is performed

COMMITTEE: Public Health — favorable, without amendment

VOTE: 6 ayes — Klick, Allison, Jetton, Oliverson, Price, Smith

4 nays — Campos, Coleman, Collier, Zwiener

1 absent — Guerra

SENATE VOTE: On final passage, March 30 — 20-11 (Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, West, Whitmire)

WITNESSES: No public hearing.

BACKGROUND: Health and Safety Code ch. 171 establishes certain regulations for abortions in Texas.

Sec. 245.002 defines "abortion" as the act of using or prescribing an instrument, drug, medicine, or any other substance, device, or means with the intent to cause an unborn child's death. The term excludes birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to:

- save the life or preserve the health of an unborn child;
- remove a dead, unborn child whose death was caused by spontaneous abortion; or
- remove an ectopic pregnancy.

Sec. 171.002 defines "medical emergency" as a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

Sec. 171.012 requires voluntary and informed consent by a pregnant

woman before a physician performs or induces an abortion. Sec. 171.014 requires the provision of certain informational materials to the pregnant woman.

Some have suggested that women equipped with various resources to receive stabilizing care often decide not to get an abortion. Suggestions have been made to increase awareness of available resources for pregnant women, especially for those who are victims of domestic violence or human trafficking.

DIGEST:

SB 802 would require a physician to confirm a pregnant woman had received a resource access assistance offer from a care agent before an abortion was performed or induced.

Confirmation of resource assistance offer. The bill would require a physician, before an abortion was performed or induced, to confirm the pregnant woman received a pre-abortion resource access assistance offer by verifying the unique identifying number, devoid of the pregnant woman's personally identifiable information, in an authentication system established by the Health and Human Services Commission (HHSC). These provisions would not apply during a medical emergency.

The resource access assistance offer would have to be provided by and on behalf of the state at no cost to the pregnant woman from a qualified care agent.

Resource access assistance offer. By April 1, 2023, HHSC would be required to contract with one or more contracting agencies that employed care agents to provide the pre-abortion resource access assistance offer and assistance in obtaining support services.

A care agent would have to request a unique identifying number from the system developed by HHSC to certify that the woman received the resource access assistance offer.

The care agent during a resource access assistance offer would have to

provide:

- medically accurate information using informational materials described in current law;
- an assessment of eligibility for an offer of assistance in obtaining specified support services other than abortion for the woman or unborn child's biological father; and
- education on available public and private resource to address the woman's or biological father's socioeconomic needs.

The care agent also would have to provide a screening for:

- family violence, abuse, and neglect victimization;
- coercion of abortion; and
- human trafficking victimization.

Care agent requirements and prohibitions. The bill would require a care agent providing a resource access assistance offer to:

- be licensed or supervised by an authorized license holder as specified in the bill;
- be authorized under a contract with HHSC to provide resource access assistance offers and support services on behalf of the state;
- complete a training program on identifying and assisting victims of human trafficking; and
- comply with medical records privacy laws.

A care agent providing a resource access assistance offer could not refer a woman to an abortion provider, or in the last two years, have performed or induced an abortion or have served as a director, board member, officer, volunteer, or employee for a licensed abortion facility.

Authentication system. The bill would require HHSC to develop and maintain an authentication system that provided the pregnant woman a unique identifying number. The system would have to:

- allow a care agent to request a unique identifying number for the pregnant woman;
- allow a physician who was to perform or induce an abortion to verify the number;
- ensure that the identify of an individual pregnant woman, care agent, or physician who was to perform or induce the abortion was not disclosed in the system; and
- remove any personal information for the pregnant woman, care agent, or physician as soon as the information was not needed to verify the number.

Toll-free telephone number. HHSC would have to establish a single, 24-hour toll-free telephone number through which a woman seeking an abortion in the state could receive a resource access assistance offer. HHSC would have to ensure the placed call automatically routed the woman to a care agent at a contracting agency to provide the offer.

Permissions. Under the bill, the pregnant woman:

- would not have to provide any information to the care agent or contracting agency or initiate or complete offered services;
- could decline services at any time; and
- if accepting a resource access assistance offer, would retain access to the offer until the second anniversary of the acceptance date, regardless of the woman's pregnancy.

Records retention. The bill would require documentation of receipt of the resource access assistance offer to be placed in the pregnant woman's medical records before an abortion began and retained by the facility where the abortion was performed.

Severability. If any application of any bill provision to any person, group of persons, or circumstances was found by a court to be invalid, the remaining applications of that provision to all other persons and circumstances would have to be severed and could not be affected.

Other provisions. HHSC would be required to implement the bill only if the Legislature appropriated money specifically for that purpose. If the Legislature did not appropriate money, HHSC could, but would not be required to, implement the bill using other appropriations available for that purpose.

The bill would not require a physician to comply with the bill's provisions before April 1, 2023.

By August 31, 2022, the executive commissioner of HHSC would have to adopt rules to implement the bill's provisions.

The bill would take effect September 1, 2021.

NOTES:

According to the Legislative Budget Board, the bill would have an estimated negative impact of \$13.6 million to general revenue through fiscal 2023.

The House companion bill, HB 2313 by Leach, was considered by the House Public Health Committee in a public hearing on April 7, reported favorably on April 15, and sent to the Calendars Committee.