

Model Legislation: “Act to Restore Women’s Right to Accurate Informed Consent in Abortion Care” or “Abortion with Dignity Act”

Introduction

The *Act to Restore Women’s Right to Accurate Informed Consent in Abortion Care* addresses the serious and growing problem of laws that impose politics and ideology on clinical care. This dangerous trend threatens evidence-based, patient-centered medicine, the delivery of quality care, and public health. Restrictions on how providers may deliver care have impaired health care professionals’ ability to give patients medically appropriate care and counseling on issues such as gun safety, environmental risk factors and abortion care.¹

The *Act to Restore Women’s Right to Accurate Informed Consent in Abortion Care* would give patients back their right to true informed consent when seeking abortion care by allowing them to waive non-medical, ideological state requirements that are not intended to enhance informed consent.

This bill recognizes that after receiving medically appropriate counseling and information from her physician or health care provider, it is not in the patient’s best interests to force her to receive additional, non-medical information, or wait a blanket, state-imposed period of time, if she and her health care provider do not believe that such actions would add to her ability to make an informed medical decision. The bill is unique in that the harm to women can be framed a number of different ways:

- ▶ Violating women’s religious beliefs and conscience;
- ▶ Coercing women who have already made a decision into feeling ashamed;
- ▶ Significant economic harms, especially for poor and low-wage workers, as women seeking abortion care and faced with a mandatory waiting period may have to miss work and pay for child care, travel, or lodging, and more than half of women who get abortions spend the equivalent of more than one-third of their monthly income on the procedure and its associated costs; and/or

¹ Weinberger, S.E., Lawrence, III, H.C., Henley, D.E., Alden, E.R., & Hoyt, D.B. (2012, October 18). Legislative Interference with the Patient–Physician Relationship. *New England Journal of Medicine* 367, p. 1557. Retrieved 9 September 2015, from <http://www.nejm.org/doi/full/10.1056/NEJMs1209858>

- ▶ Increased risk of violence from a partner, as a notable recent study showed that restrictions on access to abortion can tether a woman to a violent partner, making it more difficult to leave an abusive situation.

A [recent poll](#) showed near-universal support for laws that allow health care providers to care for patients based on their professional medical judgment without political interference. In a 2016 nationwide poll, the overwhelming majority of respondents said they would like an abortion to be informed by medically accurate information, respectful of a woman's decision and supportive. (See polling data below.) This model legislation would be a first step in that direction.

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Model Language

I. Findings/Purpose (*note that not all states include findings as part of the code)

1. The Legislature of THIS STATE finds that all patients deserve accurate information about their medical options and pregnant women are entitled to accurate information about all of their pregnancy options. Nonetheless, a number of states have enacted laws that force doctors to provide state-mandated, ideological scripts to their patients, require patients to undergo mandatory ultrasounds, and impose mandatory waiting periods on patients and providers for no medical reason. These laws are not medically necessary and do not improve patient care or information – instead, they are intended to shame and demean women, and to coerce them into making a different decision.
2. The Legislature recognizes that true informed consent, based on medical provider expertise and the patient’s individualized situation, is a critical part of health care. All patients have the right to be given information about the medical treatment they may undergo and to consider for themselves, in consultation with their health care provider, the risks and benefits of that care before they accept the treatment.² The concept of informed consent comes from the basic fact that all patients have “a right to determine what shall be done with his [or her] body.”³ Therefore, health care providers must disclose to their patients “all medical information that a reasonably prudent patient would find material before deciding whether to undergo a medical procedure” so that the patient can “make an informed decision in foregoing or assenting to a medical procedure.”⁴ Moreover, medical ethics require that patients be offered objective, accurate information so that they can make their own decisions about treatment, and obligate health care providers to “present the medical facts accurately to the patient . . . and to make recommendations for management in accordance with good medical practice.”⁵ Laws that require patients to hear or receive state-drafted information that the patient does not want or need, and that the physician believes is irrelevant to the patient’s care, biased, misleading or false, violate the basic tenants of informed consent and the standards of medical ethics.
3. Further, laws that impose waiting periods, require patients to undergo unnecessary diagnostic tests or procedures and force doctors to give false or misleading information to patients cause a variety of other harms to women, including: violating women’s religious beliefs and conscience; coercing women who have already made a decision into feeling ashamed; significant economic harms, especially for poor and low-wage workers, as women seeking abortion care and faced with a mandatory waiting period may have to miss work and pay for child care, travel, or lodging, and more than half of women who get abortions spend the equivalent of more than one-third of their monthly income on the procedure and

² “Traditional informed consent requirements derive from the principle of patient autonomy in medical treatment. Grounded in self-determination, obtaining informed consent prior to medical treatment is meant to ensure that each patient has ‘the information she needs to meaningfully consent to medical procedures.’ . . . Free consent, as it suggests, requires that the patient be able to exercise her autonomy free from coercion. It may even include at times the choice not to receive certain pertinent information and to rely instead on the judgment of the doctor.” *Stuart v. Canmitz*, 774 F.3d 238, 251-52 (4th Cir. 2014) (quoting brief from the American College of Obstetricians and Gynecologists and the American Medical Association, striking down law that required patient to be given ultrasound in advance of abortion, to be shown the image and to hear a detailed description of the image).

³ *Schloendorff v. Society of New York Hospital*, 105 N.E. 92 (N.Y. 1914).

⁴ *Acuna*, 930 A.2d at 425.

⁵ American Medical Association, *AMA Code of Medical Ethics*, Opinion 8.08 (2006), available at <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion808.page>.

its associated costs; and increased risk of violence from a partner, as a notable recent study showed that restrictions on access to abortion can tether a woman to a violent partner, making it more difficult to leave an abusive situation.

II. Restoring Informed Consent

1. In the interests of ensuring true informed consent, any patient seeking an abortion in this state may decide not to receive or review state-mandated informational materials, wait a particular state-mandated period of time before obtaining an abortion, or view an ultrasound image or listen to auscultation of the ultrasound, which would otherwise be required by [STATE statute citation].
2. A health care provider shall document the patient's decision in writing and that documentation must be kept in the patient's file.
3. In the event a patient has exercised her right to waive certain requirements under this section, the patient's health care provider shall not be subject to any criminal, civil or administrative penalties for failure to comply with [list appropriate statutes].
4. Nothing in this act shall be construed to alter the health care provider's duty to obtain the informed consent required for all medical procedures pursuant to [insert appropriate statute]

III. Severability

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

IV. Effective Date

This Act shall take effect on XXXX 1, 2016.

Polling: Provision of Medical Information

In a [January 2016 poll](#) of over 1,100 registered voters nationwide, respondents showed strong support for policy proposals that prevent political interference with abortion care:

- ▶ 86% of respondents support proposals that allow health care providers to care for patients based on their best medical expertise without interference from politicians.
- ▶ 84% of respondents favor policies that ensure that laws regulating abortion providers are based on medical evidence and best practices instead of political beliefs.
- ▶ 83% of respondents approve of policy proposals that prevent politicians from forcing doctors to give women medically inaccurate information about abortion.

The overwhelming majority of respondents, when asked how they would like the experience of a woman who has decided to have an abortion to be, said that they would like the experience to be:

- ▶ informed by medically accurate information (94%)
- ▶ respectful of a woman's decision (84%) and
- ▶ supportive (75%).

In a fall 2014 poll of voters in Pennsylvania and New York, respondents supported proactive measures to protect abortion care.

- ▶ 82% of Pennsylvania respondents support making sure politicians can't force doctors to give patients medically inaccurate information about abortion (66% strongly support; 16% support).
- ▶ 73% of New York respondents support including proactive abortion policies in women's agenda legislation.
- ▶ 76% of Pennsylvania respondents support including proactive abortion policies in women's agenda legislation (42% very important; 34% somewhat important).

In a fall 2013 national poll of over 800 registered voters in swing and red states, voters were strongly in support of ensuring that patients get complete, accurate medical information.

- ▶ 86% of respondents felt that it is important for elected officials in their state to work on ensuring all patients get complete, accurate medical information on all their health care options, regardless of where they seek treatment (72% extremely important; 14% quite important).
- ▶ 64% of respondents favor possible legislation to bar the state from forcing doctors to provide medically inaccurate information to their patients (55% strongly favor; 9% somewhat favor).
- ▶ 54% of respondents favor possible legislation to prohibit penalizing providers for giving standard reproductive health care, including referral/counseling, or accepted medical procedures consistent with patient needs and consent (41% strongly favor; 13% somewhat favor).

- ▶ 45% of respondents would be more likely to vote for a candidate who supported the kinds of reproductive rights policies included in the poll; for 24%, it wouldn't affect their vote either way.
- ▶ 54% of respondents favor (including 37% who strongly favor) a state law that protects doctors from having to read pre-written scripts written by politicians to their patients before providing abortion services:
 - ▶ Applies across party lines (Democrats +32; Republicans +7; Independents +26)
 - ▶ Framing pre-written scripts as forcing doctors to say things they may deem as medically inaccurate or unsound is extremely effective: This measure would force doctors to say things they deem medically inaccurate or unsound, add unnecessary bureaucracy, and interfere with doctors' ability to talk freely and openly with their patients.

Polling: Interference in Abortion Care

In the same fall 2013 national poll of over 800 registered voters:

- ▶ 61% of respondents favor (including 49% who strongly favor) a state law that protects the rights of women who specifically say they do not want to view their ultrasounds before having an abortion from having to do so.
 - ▶ Applies across party lines (Democrats +50; Republicans +7; Independents +32)
 - ▶ Stating that requiring women to view their ultrasounds is medically unnecessary and demeaning is more persuasive than stating that women need full information.
 - ▶ It is demeaning and intrusive to force women to view ultrasound images against their will, and all patients deserve to make their own personal health care decisions, especially in cases involving rape and incest or when there are severe fetal abnormalities.
 - ▶ Requiring women to view their ultrasounds is medically unnecessary and patients and doctors, not politicians, should decide what options are best in each individual situation, and politicians should not try to control personal, private health decisions.

Medical Group Statements on Political Interference

This is a sampling of statements by medical groups that could be referenced to support the principle underlying the legislation. There are many more available, including some state specific entities.

Leadership of the American Academy of Family Physicians, the American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, the American College of Physicians, and the American College of Surgeons in the New England Journal of Medicine, October 2012

- ▶ “[L]egislators in the United States have been overstepping the proper limits of their role in the health care of Americans to dictate the nature and content of patients’ interactions with their physicians. Some recent laws and proposed legislation inappropriately infringe on clinical practice and patient–physician relationships, crossing traditional boundaries and intruding into the realm of medical professionalism.”⁶
- ▶ “Legislators, regrettably, often propose new laws or regulations for political or other reasons unrelated to the scientific evidence and counter to the health care needs of patients. Legislative mandates regarding the practice of medicine do not allow for the infinite array of exceptions – cases in which the mandate may be unnecessary, inappropriate, or even harmful to an individual patient.”⁷

American College of Obstetricians and Gynecologists

- ▶ “We maintain our position that decisions about an individual’s medical care are best made between the patient and his or her physician. Lawmakers should not be taking it upon themselves to define, mandate, or prohibit medical practices or to require doctors to read any, especially inaccurate, information off a government script to their patients.”⁸
- ▶ “The patient-physician relationship is essential to the provision of safe and quality medical care and should be protected from unnecessary governmental intrusion. Efforts to legislate elements of patient care and counseling can drive a wedge between a patient and her health care provider, be that a physician, certified nurse-midwife, certified midwife, nurse practitioner, or physician assistant. Laws should not interfere with the ability of physicians to determine appropriate treatment options and have open, honest, and confidential communications with their patients. Nor should laws interfere with the patient’s right to be counseled by a physician according to the best currently available medical evidence and the physician’s professional medical judgment.”⁹

6 Weinberger, S. E., Lawrence, III, H. C., Henley, D. E., Alden, E. R., and Hoyt, D. B. (2012, October). [Legislative Interference with the Patient–Physician Relationship](#). *New England Journal of Medicine*, 367(16), 1557–1559.

7 Weinberger, S. E., Lawrence, III, H. C., Henley, D. E., Alden, E. R., and Hoyt, D. B. (2012, October). [Legislative Interference with the Patient–Physician Relationship](#). *New England Journal of Medicine*, 367(16), 1557–1559.

8 Breeden, J. & Lawrence, H. the American Congress of Obstetricians and Gynecologists. (2012, May 20). Letter to the Editor. *USA Today*.

9 Executive Board, American College of Obstetricians and Gynecologists & American Congress of Obstetricians and Gynecologists. (2013). *Statement of Policy, Legislative Interference with Patient Care, Medical Decisions, and the Patient-Physician Relationship*.

American Medical Association

- ▶ “Intrusive legislation sets a dangerous precedent that would allow government and/or other third parties to mandate what tests, procedures or medicines must be provided to patients. If these efforts are not stopped, patients and our health care system will lose.”¹⁰
- ▶ “1. Our AMA vigorously and actively defends the physician-patient-family relationship and actively opposes state and/or federal efforts to interfere in the content of communication in clinical care delivery between clinicians and patients.
2. Our AMA strongly condemns any interference by government or other third parties that compromise a physician’s ability to use his or her medical judgment as to the information or treatment that is in the best interest of their patients.”¹¹

American College of Physicians

- ▶ “Medical practice should reflect current scientific evidence and medical knowledge, which may evolve over time. Physicians should be guided by evidence-based clinical guidelines that allow flexibility to adapt to individual patient circumstances. Statutory and regulatory standards of care may become ‘set in concrete’ and not reflect the latest evidence and applicable medical knowledge.”¹²

¹⁰ Wah, R. of the American Medical Association. (2012, May 28). Letter to the Editor, *USA Today*.

¹¹ House of Delegates, American Medical Association. (2013). *Resolution 717, Government Interference in the Patient-Physician Relationship*.

¹² American College of Physicians. (2012, July). [Statement of Principles on the Role of Governments in Regulating the Patient-Physician Relationship](#) (p. 6.)