
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 642 Session of
2011

INTRODUCED BY CORMAN, SCARNATI, PILEGGI, GORDNER, BROWNE,
ALLOWAY, ARGALL, BRUBAKER, EICHELBERGER, ERICKSON, FOLMER,
FONTANA, KASUNIC, LEACH, MENSCH, ORIE, PICCOLA, PIPPY,
RAFFERTY, STACK, WARD, WASHINGTON, YUDICHAK AND WOZNIAK,
FEBRUARY 28, 2011

REFERRED TO PUBLIC HEALTH AND WELFARE, FEBRUARY 28, 2011

AN ACT

1 Providing for licensure of abortion facilities and for powers
2 and duties of the Department of Health; and imposing
3 penalties.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Abortion
8 Facilities Act.

9 Section 2. Findings and declarations.

10 The General Assembly finds that the health and welfare of the
11 citizens of this Commonwealth will be enhanced and protected by
12 the thorough regulation of abortion facilities, including annual
13 inspections of facilities and reporting by facilities. It is the
14 purpose of this act to protect and promote the public health and
15 welfare through the establishment and enforcement of minimum
16 standards for the maintenance and operation of abortion
17 facilities. The standards are intended to promote the health,

1 safety and adequate care of the patients of the facilities. It
2 is also the purpose of this act to assure quality care through
3 appropriate review and inspection of abortion facilities.

4 Section 3. Definitions.

5 The following words and phrases when used in this act shall
6 have the meanings given to them in this section unless the
7 context clearly indicates otherwise:

8 "Abortion." As defined in 18 Pa.C.S. § 3203 (relating to
9 definitions).

10 "Department." The Department of Health of the Commonwealth.

11 "Facility." A public or private hospital, clinic, center,
12 medical school, medical training institution, health care
13 facility, physician's office, infirmary, dispensary, ambulatory
14 surgical treatment center or other institution or location where
15 abortions are performed. This definition shall include all
16 facilities subject to licensure under the act of July 19, 1979
17 (P.L.130, No.48), known as the Health Care Facilities Act, where
18 abortions are provided.

19 "Inspection." An examination by the Department of Health or
20 its authorized representatives under section 9.

21 "License." A license to operate a facility that performs
22 abortions issued under section 7.

23 Section 4. Powers and duties of department.

24 The department shall have the power and its duty shall be:

25 (1) To exercise jurisdiction over facilities in
26 accordance with the provisions of this act.

27 (2) To issue licenses in accordance with this act.

28 (3) To require submission of periodic reports by
29 facilities and other persons subject to review.

30 (4) To collect and disseminate such other information as

1 may be appropriate to determine the appropriate review of
2 licenses.

3 (5) To inspect at least annually all facilities in this
4 Commonwealth.

5 (6) To coordinate any data collection activities
6 necessary for administration of this act so as not to
7 duplicate unnecessarily the data collection activities of
8 other Federal and State agencies.

9 Section 5. Licensure of facilities.

10 No person may operate a facility without first having
11 obtained a license issued by the department under section 7.

12 Section 6. Application for license.

13 (a) Submission to the department.--In order to receive a
14 license to operate a facility, a person shall submit an
15 application to the department.

16 (b) Applications.--Applications and renewal applications
17 shall be made upon forms prepared and furnished by the
18 department in accordance with its rules and regulations and
19 shall include information as required by the department.

20 (c) Fees.--An application for a license or for renewal of a
21 license shall be accompanied by a fee that shall be fixed by the
22 department by regulation and shall be subject to the act of June
23 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.
24 If the revenues raised by fees and civil penalties imposed under
25 section 14 are not sufficient to meet expenditures of the
26 department under this act over a two-year period, the department
27 shall increase those fees by regulation so that the projected
28 revenues will meet or exceed projected expenditures.

29 Section 7. Issuance and renewal of license.

30 (a) Requirements.--The department may issue a license to a

1 facility or renew the license of a facility when it is satisfied
2 that:

3 (1) The facility to be used to perform abortions is
4 adequately constructed, equipped, maintained and operated.

5 (2) The facility provides a service that is adequate for
6 the care, treatment and comfort of patients.

7 (3) There is no danger to the health of patients of the
8 facility.

9 (4) The facility is complying with the provisions of 18
10 Pa.C.S. Ch. 32 (relating to abortion) and the rules and
11 regulations adopted by the department pursuant to this act.

12 (b) Inspection and report.--Prior to issuance of a license
13 or renewal of a license, the department shall perform an onsite
14 inspection of the facility in accordance with section 9 to
15 determine whether the facility meets the requirements under
16 subsection (a) and shall prepare a report on the inspection.
17 Section 8. Term and contents of license.

18 (a) Term and contents.--A license issued by the department
19 under this act shall:

20 (1) Expire one year from the date of issue.

21 (2) Be on a form prescribed by the department.

22 (3) Not be transferable except upon prior written
23 approval of the department.

24 (4) Be issued only to the facility named on the
25 application.

26 (b) Posting.--A license shall at all times be posted in a
27 conspicuous place on the premises of a facility.

28 Section 9. Inspections.

29 (a) Purpose.--The department shall conduct inspections of
30 facilities to determine conformity to this act and to applicable

1 Federal, State and local law.

2 (b) Right to enter and inspect.--The department and its
3 authorized representatives may enter, visit and inspect the
4 building, grounds, equipment and supplies of any facility
5 licensed or requiring a license under this act and shall have
6 full and free access to the records of the facility and to the
7 patients and employees of the facility and their records.

8 (c) Interviews.--The department may interview the
9 individuals providing abortions, assisting in providing
10 abortions, the employees and the patients of the facility.

11 (d) Identification.--Upon entering a facility, the
12 inspectors shall identify themselves to the individual on the
13 premises that is charge of the facility.

14 (e) Frequency.--In addition to any inspections related to
15 the issuance or renewal of a license, unannounced inspections
16 shall occur, at a minimum, once a calendar year.

17 Section 10. Reports.

18 (a) Report of misconduct.--Notwithstanding any report
19 required under any other provision of law, a facility shall make
20 a report to the department within ten days of the occurrence of
21 any of the following:

22 (1) The termination or curtailment of the employment,
23 association or professional privileges of a physician,
24 licensed under the provisions of the act of October 5, 1978
25 (P.L.1109, No.261), known as the Osteopathic Medical Practice
26 Act, or the act of December 20, 1985 (P.L.457, No.112), known
27 as the Medical Practice Act of 1985, whichever the case may
28 be, with the facility where there exists reasonable cause to
29 believe misconduct has occurred.

30 (2) The resignation or withdrawal of association or of

1 privileges of a physician with a facility to avoid the
2 imposition of disciplinary measures.

3 (3) The receipt of written information that establishes
4 that a physician who has a right to practice or who has
5 applied to practice at a facility has been charged with or
6 convicted of a felony.

7 (b) Form and contents of report.--A report under subsection
8 (a) shall be made in writing to the department and shall include
9 the following information about the person involved:

10 (1) Name.

11 (2) Address.

12 (3) Profession and license number.

13 (4) Description of the action taken by the facility,
14 including the reason for the action.

15 (5) Any conviction of a felony of which the facility has
16 received written information.

17 (c) Patient safety plan.--A facility shall report its
18 patient safety plan, required under section 307 of the act of
19 March 20, 2002 (P.L.154, No.13), known as the Medical Care
20 Availability and Reduction of Error (Mcare) Act, to the
21 department when this act takes effect and whenever the patient
22 safety plan is altered or updated.

23 (d) Other reports.--A facility shall report to the
24 department all serious events, incidents and infrastructure
25 failures as defined in section 302 of the Medical Care
26 Availability and Reduction of Error (Mcare) Act consistent with
27 the requirements of that act. The department shall conduct an
28 onsite inspection of the facility within five days of receiving
29 the report.

30 (e) Confidentiality.--Any report or information furnished to

1 the department under this section shall be deemed a confidential
2 communication and shall not be subject to disclosure except upon
3 formal written request by a duly authorized public agency or
4 pursuant to a judicial subpoena issued in a pending action or
5 proceeding.

6 (f) Immunity from liability.--A person, facility or
7 corporation that makes a report under this section in good faith
8 and without malice shall have immunity from any liability, civil
9 or criminal, for having made a report. For the purpose of any
10 proceeding, civil or criminal, the good faith of any person
11 required to make a report shall be presumed. The person,
12 facility or corporation that makes the report shall not receive
13 immunity from liability if they are the subject of the report.
14 Section 11. Notice of violations.

15 (a) Notice.--Whenever the department, upon inspection,
16 investigation or complaint, finds a violation of this act or
17 regulations adopted by the department pursuant to this act or
18 Federal law, it shall give written notice specifying the
19 violation to the facility. The notice shall require the facility
20 to take action or to submit a plan of correction to bring the
21 facility into compliance with the applicable law or regulation
22 within a specified time.

23 (b) Plan of correction.--The plan of correction, if any,
24 shall be submitted by a facility within ten days of receipt of a
25 written notice under subsection (a) or sooner if directed to do
26 so by the department.

27 (c) Suspension or revocation.--The department may suspend or
28 revoke a license before a plan of correction is submitted
29 whenever the violations pose a significant threat to the health
30 of patients.

1 Section 12. Suspension, revocation or nonrenewal of license.

2 (a) Reasons.--The department may suspend, revoke or refuse
3 to renew a license of a facility for any of the following
4 reasons:

5 (1) Failure of a facility to correct violations in
6 accordance with a plan of correction submitted by the
7 facility under section 11 and agreed upon by the department.

8 (2) The existence of a pattern of repeated violations
9 that extends over a period of two or more years.

10 (3) Fraud or deceit in obtaining or renewing a license.

11 (4) Lending, borrowing or using the license of another
12 facility or knowingly aiding or abetting the improper
13 granting of a license.

14 (5) Failure to make a report required under section 10.

15 (6) Negligence or recklessness in operating the facility
16 or in providing care to patients.

17 (b) Other violations.--In addition to the provisions under
18 subsection (a), if a facility violates 18 Pa.C.S. Ch. 32
19 (relating to abortion), the act of March 20, 2002 (P.L.154,
20 No.13), known as the Medical Care Availability and Reduction of
21 Error (Mcare) Act, or commits any other act that seriously
22 threatens the health, safety and welfare of patients, the
23 department may impose the following sanctions:

24 (i) For the first violation, license suspension for
25 a period of six months.

26 (ii) For the second violation, license suspension
27 for a period of one year.

28 (iii) For the third violation, permanent license
29 revocation.

30 Section 13. Actions against facilities.

1 (a) Action in equity.--The department may bring an action in
2 the name of the Commonwealth for an injunction or other process
3 restraining or prohibiting a person from operating a facility
4 that does not have a valid license under this act to perform
5 abortions.

6 (b) Permanent injunction.--Should a person who is refused a
7 license or the renewal of a license to operate a facility or
8 whose license to operate a facility is suspended or revoked fail
9 to appeal, or should the appeal be decided finally favorable to
10 the department, then the court shall issue a permanent
11 injunction upon proof that the person is operating a facility
12 without a license as required under this act.

13 Section 14. Penalties.

14 (a) Civil penalty.--A person, including a facility,
15 regardless of whether the person is licensed, that violates any
16 of the provisions of this act or any rule or regulation issued
17 pursuant to this act, including failure to correct a violation
18 within the time specified in a notice of violation under section
19 11, may be assessed a civil penalty by an order of the
20 department of up to \$500 for each violation for each day that
21 each violation continues. Civil penalties shall be collected
22 from the date the facility receives notice of the violation
23 until the department confirms correction of the violation.

24 (b) Failure to report.--A person, including a facility,
25 regardless of whether the person is licensed, that fails to make
26 a report of a serious event as required under section 10(d) may
27 be assessed a civil penalty of up to \$1,000 per day for each day
28 from the date of the serious event until the report is made.

29 (c) Collection of penalties.--Funds collected as a result of
30 the assessment of a civil penalty under this section shall be

1 applied to the licensing operation of the department under this
2 act.

3 Section 15. Administration.

4 (a) Prevention of duplication.--In carrying out the
5 provisions of this act and other statutes of this Commonwealth
6 relating to facilities, the department and other agencies of the
7 Commonwealth and local governments shall make every reasonable
8 effort to prevent duplication of inspections.

9 (b) Reports.--The department shall report annually to the
10 General Assembly on the effectiveness of the licensing and
11 enforcement of this act. The report shall include specific data
12 relating to the licensed facilities, including the nature of
13 violations of regulations and the number of facilities against
14 which sanctions or penalties were imposed.

15 Section 16. Rules and regulations.

16 (a) Rulemaking.--The department shall adopt rules and
17 regulations to carry out the purposes of this act. Regulations
18 shall be adopted in conformity with the provisions of the act of
19 June 25, 1982 (P.L.633, No.181), known as the Regulatory Review
20 Act.

21 (b) Existing rules and regulations.--Existing rules and
22 regulations applicable to facilities not clearly inconsistent
23 with the provisions of this act shall remain in effect until
24 replaced, revised or amended.

25 Section 17. Existing facilities.

26 Each existing facility shall submit an application for
27 licensure in accordance with the rules and regulations
28 promulgated by the department under this act.

29 Section 18. Construction.

30 Nothing in this act may be construed to limit the provisions

1 of 18 Pa.C.S. Ch. 32 (relating to abortion) or limit any
2 regulation adopted under 18 Pa.C.S. § 3207 (relating to abortion
3 facilities).

4 Section 19. Effective date.

5 This act shall take effect as follows:

6 (1) Section 16 and this section shall take effect
7 immediately.

8 (2) The remainder of this act shall take effect in 90
9 days.