

SENATE BILL 1222

By Rose

AN ACT to amend Tennessee Code Annotated, Section 10-7-504; Title 39; Title 63 and Title 68, relative to the Every Mom Matters Act.

WHEREAS, the general assembly finds that:

(1) The inability to provide for the nurture and care of an infant is a cruelty to the child and an anguish to the parent, *Planned Parenthood v. Casey*, 505 U.S. 833, 853 (1992);

(2) A woman's concern that she is unable to provide for a child, should he or she be born, and the fear attendant to that concern, are prevalent motivating factors for many abortions in Tennessee;

(3) The state has an interest in promoting the welfare of pregnant women, mothers, and their children, born and unborn;

(4) The state also has an interest in promoting childbirth as an alternative to abortion, *Casey*, 505 U.S. at 884;

(5) There exist in Tennessee public and private resources that offer short- and long-term support to mothers and children related to pregnancy, childbirth, and parenting;

(6) Obtaining support concerning continuing a pregnancy to term, placing a child for adoption, obtaining child support, and raising a child may cause a woman, of her own free choice, to decide to continue a pregnancy to term rather than terminate it, *Casey*, 505 U.S. at 883;

(7) The state, therefore, has an interest in ensuring women considering abortion know about and have a meaningful opportunity to utilize support programs offered by the state of Tennessee and other institutions, *Casey*, 505 U.S. at 872;

(8) In order to effectuate this interest, the state currently requires the attending or referring physician to inform the pregnant woman that numerous public and private agencies and services are available to assist her during her pregnancy and after the birth of her child, if she chooses not to have the abortion, whether she wishes to keep her child or place the child for adoption, and that her attending physician or referring physician will provide her with a list of the agencies and the services available if she so requests, pursuant to § 39-15-202(b)(4);

(9) Physicians providing abortions and the physicians' agents have a financial interest in the provision of abortion services;

(10) The state cannot guarantee physicians providing abortions or the physician's agents are trained or equipped to assist women in coordinating public and private resources that offer short- and long-term support;

(11) Existing abortion providers are not trained or equipped to assist women in coordinating public and private resources that offer short- and long-term support;

(12) To better serve the interests of promoting the welfare of pregnant women, mothers, and children; of promoting childbirth as an alternative to abortion; and of ensuring women considering abortion know about and have a meaningful opportunity to utilize support programs offered by the state of Tennessee and other institutions, it is necessary to ensure each woman considering abortion has a live telephonic or televisual interaction with an agent of the state who has no financial conflict of interest concerning the provision of abortion services, who is able to verbally describe services offered through this act, and who can immediately connect a woman via telephonic or televisual

means to a support professional funded through this act who is trained and equipped to assist women in coordinating public and private resources that offer short- and long-term support;

(13) The services established by this act and the requirement of a pre-abortion resource access consultation are necessary to ensure that every woman obtaining an abortion in Tennessee is aware of supportive services offered in this state and has an immediate, actionable opportunity to engage those services;

(14) The state of Tennessee also has an interest in the psychological well-being of women obtaining an abortion in the state, *Casey*, 505 U.S. at 882;

(15) The psychological well-being of a woman who undergoes an abortion may be affected by learning after the abortion information concerning resources the state of Tennessee or other institutions would have offered to support the woman in continuing the pregnancy to full term, placing the child for adoption, and raising the child, *Casey*, 505 U.S. at 872, 882;

(16) The opportunity to speak to a trained professional will provide an opportunity for reflection that will assist a more informed and more deliberate decision, *Casey*, 505 U.S. at 885; and

(17) The services established by this act and the requirement of a resource access consultation are necessary to ensure every woman obtaining an abortion in Tennessee has the opportunity to discuss that decision with a trained professional who is equipped to assist in obtaining social and economic support and who has no conflict of interest concerning the completion of the abortion; and

WHEREAS, it is the intent of the general assembly, through this act and any rules and policies promulgated pursuant to this act, to:

(1) Enable pregnant women to carry pregnancies to term by offering them the ability to connect to public and private services and resources the women need;

(2) Ensure women considering abortion know about and have a meaningful opportunity to utilize support programs offered by the state and other institutions;

(3) Ensure each woman considering abortion has a live telephonic or televisual interaction with an agent of the state who has no financial conflict of interest concerning the provision of abortion services, who is able to verbally describe services offered through this act, and who can immediately connect a woman via telephonic or televisual means to a support professional funded through this act who is trained and equipped to assist women in coordinating public and private resources that offer short- and long-term support;

(4) Ensure that every woman obtaining an abortion in Tennessee is aware of supportive services offered in the state and has an immediate, actionable opportunity to engage those services;

(5) Ensure every woman obtaining an abortion in Tennessee has the opportunity to discuss her decision with a trained professional who is equipped to assist in obtaining social and economic support and who has no conflict of interest concerning the completion of the abortion; and

(6) Establish a process by which to promote the state of Tennessee's interest in protecting the life of the unborn child and to ensure women have a meaningful opportunity to access alternatives to abortion; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, is amended by adding the following as a new chapter:

68-33-101. This chapter is known and may be cited as the "Every Mom Matters Act."

68-33-102. As used in this chapter:

(1) "Abortion coercion" means behavior of a family member, current or former intimate partner, a family member of a current or former intimate partner, or an employer that interferes with a woman's autonomy with respect to her obtaining an abortion by the promise of giving or threat of withholding economic support or the use or threat of physical violence;

(2) "Business day" means any day other than a Saturday, Sunday, or legal holiday;

(3) "Care agent" means a person employed by the department to provide the services required by this chapter;

(4) "Care plan" means a plan that defines steps to address specific needs, identifies resources to meet those needs, and assigns responsibilities and timing for those steps; and

(5) "Department" means the department of health.

68-33-103.

(a) In addition to the informed consent requirements under § 39-15-202, except during a medical emergency, as defined in § 39-15-202(f), the state shall provide and the pregnant woman must complete a free resource access consultation that complies with the requirements of this section before an abortion is performed on the woman.

(b) A resource access consultation consists of the following elements:

(1) A care agent shall explain the services offered under this chapter to the pregnant woman;

(2) A care agent shall inform the pregnant woman of the availability of free care plan coordination and make care plan coordination available to her;

(3) A care agent shall inform the pregnant woman of the availability of a free healthy pregnancy program and provide her the opportunity to participate in the healthy pregnancy program; and

(4) A care agent shall offer assistance for violence, abuse, and neglect victimization; abortion coercion; and human trafficking.

68-33-104.

(a) The department of health shall make free care plan coordination available to each pregnant woman who receives a resource access consultation, other pregnant women residing in Tennessee, the biological father of any pregnant woman's unborn child, and the parents or legal guardians of a pregnant minor. The department must prioritize care plan coordination for women who have completed a resource access consultation, pursuant to § 68-33-103.

(b) A pregnant woman is not required to obtain care plan coordination services to obtain an abortion.

(c) A pregnant woman is not required to disclose the identity of the woman's parents or the unborn child's father or inform her parents or her unborn child's father of the right to participate in care plan coordination.

(d) Care plan coordination under this section includes:

(1) Education on available public and private resources to address the pregnant woman's or biological father's socioeconomic needs;

(2) Assistance identifying and addressing factors pertaining to the pregnant woman's health, well-being, or ability to care for her unborn child;

(3) Social services or assistance in obtaining social services that the pregnant woman or biological father may need or be eligible for, including abuse or neglect assistance, education, professional certification, housing, employment

assistance, resume development, child care, adoption services, financial assistance, substance or alcohol abuse assistance, and health benefit plan coverage;

(4) Assistance obtaining obstetric care, primary care, or mental health or behavioral counseling; and

(5) Development of a personalized care plan.

(e) Care plan coordination shall not include referrals for abortion, promotion of abortion, support of abortion as a method of family planning, or any other affirmative action to assist a woman in obtaining an abortion.

(f) The department shall make care plan coordination available for two (2) years from the date of the initial resource access consultation, regardless of the outcome of the pregnant woman's pregnancy.

(g) A care agent providing care plan coordination under this section must either be licensed as a counselor, psychologist, physician, social worker, nurse, nurse practitioner, physician's assistant, or marriage and family therapist; be acting under the supervision of an individual possessing one (1) of those licenses; or be acting under the direction of a person possessing an advanced degree in community health, public health, social work, nursing, or medicine.

68-33-105.

(a) The department shall make a healthy pregnancy program available to each pregnant woman who receives a resource access consultation, other pregnant women residing in this state, and the parents of legal guardians of a pregnant minor residing in this state.

(b) A pregnant woman is not required to obtain services from a healthy pregnancy program in order to obtain an abortion.

(c) A pregnant woman is not required to disclose the identity of the woman's parents or inform her parents of the right to obtain healthy pregnancy program services.

(d) A healthy pregnancy program under this section must include:

(1) Assistance identifying the determinants the pregnant woman considers to be affecting her pregnancy;

(2) A discussion of those determinants, the effect of the determinants on the woman's pregnancy decision, and how those determinants may be addressed;

(3) Assistance addressing issues related to the pregnant woman's health, the unborn child's health, the well-being of the pregnant woman or the pregnant woman's family, pregnancy, birth, abortion, adoption, or parenting with a professional qualified to provide medically accurate information and appropriate referrals other than referrals for abortion; and

(4) Services or assistance in obtaining services other than abortion that the pregnant woman, unborn child, or biological father of the unborn child may need or be eligible for to promote and support a healthy pregnancy, including, but not limited to, those services identified in § 68-33-104(d)(3).

(e) Healthy pregnancy program services must not include referrals for abortion, promotion of abortion, support of abortion as a method family planning, or any other affirmative action to assist a woman in obtaining an abortion.

(f) The department of health shall make healthy pregnancy program services available until the end of the pregnant woman's pregnancy.

(g) The care agent providing healthy pregnancy program services under this section must be licensed in this state as a counselor, psychologist, physician, social worker, nurse, certified nurse practitioner, physician's assistant, or marriage and family

therapist. However, a caregiver providing healthy pregnancy program services pursuant to subdivision (d)(3) must be licensed in this state as a nurse or certified nurse practitioner, physician's assistant, physician, or osteopathic physician.

(h) Healthy pregnancy program services must be available to any woman, regardless of whether she has completed a resource access consultation. Participating in care plan coordination does not fulfill the requirements of § 68-33-103. The department must prioritize care plan coordination for women who have completed a resource access consultation.

68-33-106.

(a) The department shall employ a sufficient number of care agents to ensure that every woman seeking an abortion in this state receives a resource access consultation as well as the opportunity to receive free care plan coordination and free healthy pregnancy program services.

(b) The department shall:

(1) Establish a single toll-free number by which all pregnant women seeking an abortion in this state may immediately receive a resource access consultation. The toll-free number must automatically route the pregnant woman to a care agent;

(2) Develop and maintain a secure database for the completion of the requirements of subsections (c) and (d) that must:

(A) Be capable of generating a unique identifying number that is devoid of personally-identifying information;

(B) Be accessible only to the physician who is to perform the abortion or physician's agent and the department; and

(C) Not communicate any information to the care agent concerning the identity or location of the physician who may perform the abortion or the facility at which the abortion may occur, nor may the secure database communicate to the physician providing the abortion or the physician's agent the identity of the care agent providing the resource access consultation; and

(3) Provide an annual report to the general assembly regarding the number of pregnant women who were provided a resource access consultation by the department and the number of women who subsequently obtained an abortion in the state.

(c) A physician who is to perform an abortion or the physician's agent shall perform all of the following, before accepting any payment for abortion-related services, performing an abortion, or administering any sedative or anesthesia:

(1) Register each prospective abortion in the department's secure database and obtain a unique identifying number for the abortion to be performed;

(2) Provide the pregnant woman seeking abortion services with a unique identifying number;

(3) Record the unique identifying number specific to the woman's abortion in the woman's medical file;

(4) Verify through the department's secure database that the woman has received a resource access consultation;

(5) Document the verification in the commission's secure database; and

(6) Record the verification in the woman's medical record.

(d) A physician who performs an abortion or the physician's agent shall, within two (2) business days of the completion of an abortion, report to the department the unique identifying number for each abortion performed and the date and time the abortion was performed. The department shall use the unique identifying number to confirm in the secure database that the pregnant woman completed the resource access consultation prior to the abortion. The department shall make the confirmation within one (1) business day of receiving the report.

(e) Care agents shall:

(1) Provide the resource access consultation, care coordination, and healthy pregnancy program services; and

(2) Record the information required by subsection (f) or department rule.

(f) By February 1, 2023, and February 1 of each year thereafter, the department shall record and report to the general assembly the following information:

(1) For resource access consultations performed during the prior year:

(A) The number of pregnant women who identify they are subject to intimate partner violence, abuse, neglect, abortion coercion, sexual coercion, or human trafficking;

(B) The number of pregnant women, biological fathers, and parents of a pregnant minor who request care plan coordination; and

(C) The number of pregnant women who request healthy pregnancy program services;

(2) For care plan coordination and healthy pregnancy programs provided during the prior year:

(A) The number of pregnant women, biological fathers, or parents or guardians of a pregnant minor identifying a need for support in the

following categories: abuse or neglect; education or training for a professional certification; housing; employment; resume development; child care; adoption services; financial assistance; substance abuse treatment; medical care; and health benefit coverage;

(B) The resources, services, and referrals provided by the department; and

(C) The number of pregnant women who stated an intent to carry the pregnancy to term.

68-33-107.

(a) In order to enforce compliance with this chapter, the department shall audit the medical records kept by every physician who performs an abortion according to the following process:

(1) By December 31, 2022, and at least once each following year, the department shall audit at random, unannounced, and reasonable times as necessary the medical records of no less than ten percent (10%) of the women who obtained an abortion from that doctor;

(2) The department shall determine for each audited medical record whether the physician fully complied with § 68-33-106(c) and (d); and

(3) If the department finds that for five percent (5%) or more of the audited medical records the physician failed to comply with § 68-33-106(c) and (d), the department shall audit the remainder of medical records of patients who obtained an abortion from that physician since the last inspection performed pursuant to this section.

(b) Any physician who fails to comply with § 68-33-106(c) and (d) is subject to a civil penalty of five thousand dollars (\$5,000) for each abortion performed without complying with § 68-33-106(c) and (d).

(c) An abortion provider is jointly and severally liable for each fine associated with an abortion performed at the facility with which the provider is employed or affiliated.

(d) The attorney general may file an action to recover a civil penalty assessed under this section and may recover attorney's fees and costs incurred in bringing the action.

(e) The civil penalty imposed by this section is in addition any criminal liability under title 39, chapter 15, part 2.

(f) The board for licensing health care facilities shall revoke the license of a facility licensed under chapter 11, part 2 of this title if greater than five percent (5%) of the medical records audited at that facility do not comply with § 68-33-106(c) and (d).

68-33-108.

All information and records held by the department pursuant to this chapter are confidential and are not public records for purposes of title 10, chapter 7. The information and records shall not be released or made public on subpoena or otherwise, except that the department may release information and records:

(1) For statistical purposes, but only if a care agent, pregnant woman, biological father, or healthcare facility is not identified;

(2) With the consent of each person, patient, and facility identified in the information released;

(3) To physicians providing abortion, to the extent necessary to fulfill the physician's obligations under this chapter;

(4) To appropriate state agencies or county and district courts to enforce this chapter;

(5) To appropriate state licensing boards to enforce state licensing laws;

or

(6) To licensed medical or healthcare personnel currently treating the patient who is identified in the record.

68-33-109.

This chapter must be construed, as a matter of law, to be enforceable up to but no further than the maximum possible extent consistent with federal law and constitutional requirements, even if that construction is not readily apparent, as such constructions are authorized only to the extent necessary to save the statute from judicial invalidation.

68-33-110.

(a) No later than January 1, 2022, the department shall create a website specific to the program established in this chapter that describes the services offered by the department.

(b) The department may create materials using other media, including both print and electronic, to convey information about the program to the public.

68-33-111.

This chapter does not mandate and the department shall not require that a care agent refer a woman for any social or medical service to which that care agent has a moral or ethical obligation.

SECTION 3. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that

can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 4. For the purposes of implementation, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect January 1, 2022, the public welfare requiring it.