

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 404

AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 16-18-2-266.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 266.4. (a) "Parent or legal guardian or custodian" means the following, except as provided in subsection (b):**

- (1) **A parent having legal custody of a child.**
- (2) **The biological father of a child who is married to the mother of the child:**
 - (A) **if the mother of the child has legal custody of the child;**
 - and**
 - (B) **even if the father does not have legal custody of the child.**
- (3) **The legal guardian of a child.**
- (4) **The legal custodian of a child.**

(b) The term does not include:

- (1) **the department of correction, if wardship of the child is transferred to the department for housing in a correctional facility for children;**
- (2) **a community based correctional facility for children, if wardship of the child is transferred to the correctional facility for children; or**
- (3) **a secure juvenile facility, if wardship is transferred to the**



secure juvenile facility.

If an entity described in this subsection has wardship, the person described in subsection (a) who had legal custody of the child (or, in the case of a father described in subsection (a)(2), was married to a mother with legal custody) at the time wardship was transferred is the parent, legal guardian, or custodian of the child unless a court has terminated that person's legal custody or guardianship rights.

SECTION 2. IC 16-21-2-2.5, AS AMENDED BY P.L.92-2015, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2.5. (a) The state department shall adopt rules under IC 4-22-2 to do the following concerning birthing centers and abortion clinics:

- (1) Establish minimum license qualifications.
- (2) Establish the following requirements:
 - (A) Sanitation standards.
 - (B) Staff qualifications.
 - (C) Necessary emergency equipment.
 - (D) Procedures to provide emergency care.
 - (E) Procedures to monitor patients after the administration of anesthesia.**
 - (F) Procedures to provide follow-up care for patient complications.**
 - ~~(G)~~ (G) Quality assurance standards.
 - ~~(H)~~ (H) Infection control.
 - (I) Provision of informed consent brochures, as described in IC 16-34-2-1.5, in English, Spanish, and a third language determined by the state department, inside abortion clinics.**
 - (J) Provision of a hotline telephone number that provides assistance for patients who are:**
 - (i) coerced into an abortion; or**
 - (ii) victims of sex trafficking.**
 - (K) Annual training by law enforcement officers on identifying and assisting women who are:**
 - (i) coerced into an abortion; or**
 - (ii) victims of sex trafficking.**
- (3) Prescribe the operating policies, supervision, and maintenance of medical records, **including the requirement that all forms that require a patient signature be stored in the patient's medical record.**
- (4) Establish procedures for the issuance, renewal, denial, and



revocation of licenses under this chapter. The rules adopted under this subsection must address the following:

- (A) The form and content of the license.
 - (B) The collection of an annual license fee.
- (5) Prescribe the procedures and standards for inspections.
- (6) Prescribe procedures for:**
- (A) implementing a plan of correction to address any violations of any provision of this chapter or any rules adopted under this chapter; and**
 - (B) implementing a system for the state department to follow if the abortion clinic or birthing center fails to comply with the plan of correction described in clause (A) and disciplinary action is needed.**
- (b) A person who knowingly or intentionally:
- (1) operates a birthing center or an abortion clinic that is not licensed under this chapter; or
 - (2) advertises the operation of a birthing center or an abortion clinic that is not licensed under this chapter;

commits a Class A misdemeanor.

- (c) Not later than January 1, 2019, the state department shall:**
- (1) adopt separate rules under IC 4-22-2, including those required under subsection (a), for abortion clinics that perform only surgical abortions;**
 - (2) adopt separate rules under IC 4-22-2, including those required under subsection (a), for abortion clinics that perform abortions only through the provision of an abortion inducing drug; and**
 - (3) establish procedures regarding the issuance of licenses to abortion clinics that:**
 - (A) perform only surgical abortions;**
 - (B) perform abortions only through the provision of an abortion inducing drug; or**
 - (C) perform both surgical abortions and abortions through the provision of abortion inducing drugs.**

SECTION 3. IC 16-34-1-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 10. If the state or an agency of the state has wardship or guardianship of an unemancipated pregnant minor, the state or agency of the state may not consent to an abortion unless the abortion is necessary to avert the pregnant minor's death or a substantial and irreversible impairment of a major bodily function of the pregnant minor, as determined by a physician who certifies**



the determination in writing.

SECTION 4. IC 16-34-2-4, AS AMENDED BY P.L.193-2011, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 4. (a) No physician shall perform an abortion on an unemancipated pregnant ~~woman~~ **minor** less than eighteen (18) years of age without first having obtained **from one (1) of the parents, a legal guardian, or a custodian accompanying the unemancipated pregnant minor:**

- (1) the written consent of ~~one (1) of the parents or the the parent,~~ legal guardian, **or custodian** of the ~~minor unemancipated pregnant woman;~~ **minor;**
- (2) **government issued proof of identification of the parent or the legal guardian or custodian of the unemancipated pregnant minor; and**
- (3) **some evidence, which may include identification or other written documentation that provides an articulable basis for a reasonably prudent person to believe that the person is the parent or legal guardian or custodian of the unemancipated pregnant minor.**

The physician shall keep records of the documents required under this subsection in the unemancipated pregnant minor's medical file for at least seven (7) years.

(b) A minor:

- (1) who objects to having to obtain the written consent of her parent or legal guardian **or custodian** under this section; or
- (2) whose parent or legal guardian **or custodian** refuses to consent to an abortion;

may petition, on her own behalf or by next friend, the juvenile court in the county in which the pregnant ~~woman~~ **minor** resides or in which the abortion is to be performed, for a waiver of the parental consent requirement under subsection (a) **and the parental notification requirement under subsection (d)**. A next friend may not be a physician or provider of abortion services, representative of the physician or provider, or other person that may receive a direct financial benefit from the performance of an abortion.

(c) A physician who feels that compliance with the parental consent requirement in subsection (a) would have an adverse effect on the welfare of the pregnant minor or on her pregnancy may petition the juvenile court within twenty-four (24) hours of the abortion request for a waiver of the parental consent requirement under subsection (a) **and the parental notification requirement under subsection (d)**.

(d) **Unless the juvenile court finds that it is in the best interests**



of an unemancipated pregnant minor to obtain an abortion without parental notification following a hearing on a petition filed under subsection (b) or (c), a parent, legal guardian, or custodian of a pregnant unemancipated minor is entitled to receive notice of the emancipated minor's intent to obtain an abortion before the abortion is performed on the unemancipated pregnant minor. The attorney representing the unemancipated pregnant minor shall serve the notice required by this subsection by certified mail or by personal service and provide the court with documentation of the attorney's good faith effort to serve the notice, including any return receipt for a certified mailing. The court shall retain the documentation provided in the confidential records of the waiver proceedings held under this section.

(e) The juvenile court must rule on a petition filed by a pregnant minor under subsection (b) or by her physician under subsection (c) within forty-eight (48) hours of the filing of the petition. Before ruling on the petition, the court shall consider the concerns expressed by the pregnant minor and her physician. The requirement of parental consent under this section shall be waived by the juvenile court if the court finds that the minor is mature enough to make the abortion decision independently or that an abortion would be in the minor's best interests. **The juvenile court shall waive the requirement of parental notification under subsection (d) if the court finds that obtaining an abortion without parental notification is in the best interests of the unemancipated pregnant minor. If the juvenile court does not find that obtaining an abortion without parental notification is in the best interests of the unemancipated pregnant minor, the court shall, subject to an appeal under subsection (g), order the attorney representing the unemancipated pregnant minor to serve the notice required under subsection (d).**

(~~e~~) (f) Unless the juvenile court finds that the pregnant minor is already represented by an attorney, the juvenile court shall appoint an attorney to represent the pregnant minor in a waiver proceeding brought by the minor under subsection (b) and on any appeals. The cost of legal representation appointed for the minor under this section shall be paid by the county.

(~~f~~) (g) A minor ~~or her~~ **or the minor's** physician who desires to appeal an adverse judgment of the juvenile court in a waiver proceeding under subsection (b) or (c) is entitled to an expedited appeal, under rules to be adopted by the supreme court.

(~~g~~) (h) All records of the juvenile court and of the supreme court or the court of appeals that are made as a result of proceedings conducted



under this section are confidential.

~~(h)~~ **(i)** A minor who initiates legal proceedings under this section is exempt from the payment of filing fees.

~~(i)~~ **(j)** This section ~~shall~~ **does** not apply where there is an emergency need for a medical procedure to be performed ~~such that continuation of the~~ **to avert the pregnant minor's death or a substantial and irreversible impairment of a major bodily function of the pregnant minor**, pregnancy provides an immediate threat and grave risk to the life or health of the pregnant woman and the attending physician so certifies **this** in writing.

(k) A physician receiving parental consent under subsection (a) shall execute an affidavit for inclusion in the unemancipated pregnant minor's medical record. The affidavit must contain the following information:

- (1)** The physician's name.
- (2)** Certification that, to the physician's best information and belief, a reasonable person under similar circumstances would rely on the information provided by the unemancipated pregnant minor and the unemancipated pregnant minor's parent or legal guardian or custodian as sufficient evidence of identity and relationship.
- (3)** The physician's signature.

(l) A person who, with intent to avoid the parental notification requirements described in subsection (a), falsely claims to be the parent or legal guardian or custodian of an unemancipated pregnant minor by:

- (1)** making a material misstatement while purportedly providing the written consent described in subsection (a)(1);
- or
- (2)** providing false or fraudulent identification to meet the requirement described in subsection (a)(2);

commits a Level 6 felony.

SECTION 5. IC 16-34-2-4.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 4.2. (a)** This section applies only if consent is required under section 4 of this chapter and has not been given.

(b) This section does not apply to a person who aids or assists an unemancipated pregnant minor who has obtained or is seeking to obtain:

- (1)** parental consent; or
 - (2)** a waiver of parental consent;
- under section 4 of this chapter.**



(c) A person may not knowingly or intentionally aid or assist an unemancipated pregnant minor in obtaining an abortion without the consent required by section 4 of this chapter.

(d) Except as provided in subsection (g), a person who violates subsection (c) is civilly liable to the unemancipated pregnant minor and the parent or legal guardian or custodian of the unemancipated pregnant minor. A court may award damages to the unemancipated pregnant minor or the parent or legal guardian or custodian of the unemancipated pregnant minor who is adversely affected by a violation of this section, including the following damages:

- (1) Compensation for physical or emotional injury, without the need of being physically present at the act or event.
- (2) Attorney's fees.
- (3) Court costs.
- (4) Punitive damages.

However, an adult who engaged in or consented to another person engaging in a sex act with a minor in violation of IC 35-42-4-3(a) or IC 35-42-4-9 that resulted in the pregnancy may not be awarded damages under this subsection.

(e) An unemancipated pregnant minor does not have the capacity to consent to any action in violation of this section or section 4 of this chapter. A person may not use as a defense to a violation of subsection (c) that the abortion was performed or induced with consent of the unemancipated pregnant minor and otherwise met the requirements of this chapter.

(f) The parent or legal guardian or custodian of the unemancipated pregnant minor may petition a court to enjoin conduct that would violate this section if the parent or legal guardian or custodian can show that the conduct is reasonably anticipated to occur in the future. A court may enjoin conduct that would violate this section.

(g) A person may not bring a cause of action under this section against a person who is related to the minor as a:

- (1) parent or stepparent;
- (2) grandparent or stepgrandparent; or
- (3) sibling or stepsibling.

SECTION 6. IC 16-34-2-5, AS AMENDED BY P.L.213-2016, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 5. (a) Every health care provider who performs a surgical abortion or provides, prescribes, administers, or dispenses an abortion inducing drug for the purposes of inducing an abortion shall



report the performance of the abortion or the provision, prescribing, administration, or dispensing of an abortion inducing drug on a form drafted by the state department, the purpose and function of which shall be the improvement of maternal health and life through the compilation of relevant maternal life and health factors and data, and a further purpose and function shall be to monitor all abortions performed in Indiana to assure the abortions are done only under the authorized provisions of the law. For each abortion performed and abortion inducing drug provided, prescribed, administered, or dispensed, the report shall include, among other things, the following:

- (1) The age of the patient.
- (2) The date and location the abortion was performed or the abortion inducing drug was provided, prescribed, administered, or dispensed.
- (3) The health care provider's full name and address, including the name of the physicians performing the abortion or providing, prescribing, administering, or dispensing the abortion inducing drug.
- (4) The name of the father if known.
- (5) The age of the father, or the approximate age of the father if the father's age is unknown.
- (6) The following information concerning the abortion or the provision, prescribing, administration, or dispensing of the abortion inducing drug:
 - (A) The postfertilization age of the fetus.
 - (B) The manner in which the postfertilization age was determined.
 - (C) The gender of the fetus, if detectable.
 - (D) Whether the fetus has been diagnosed with or has a potential diagnosis of having Down syndrome or any other disability.
 - (E) If after the earlier of the time the fetus obtains viability or the time the postfertilization age of the fetus is at least twenty (20) weeks, the medical reason for the performance of the abortion or the provision, prescribing, administration, or dispensing of the abortion inducing drug.
- (7) For a surgical abortion, the medical procedure used for the abortion and, if the fetus was viable or had a postfertilization age of at least twenty (20) weeks:
 - (A) whether the procedure, in the reasonable judgment of the health care provider, gave the fetus the best opportunity to survive; and



(B) the basis for the determination that the pregnant woman had a condition described in this chapter that required the abortion to avert the death of or serious impairment to the pregnant woman.

(8) For a nonsurgical abortion, the precise drugs provided, prescribed, administered, or dispensed, and the means of delivery of the drugs to the patient.

(9) For an early pre-viability termination, the medical indication by diagnosis code for the fetus and the mother.

(10) The mother's obstetrical history, including dates of other abortions, if any.

(11) The results of pathological examinations if performed.

(12) For a surgical abortion, whether the fetus was delivered alive, and if so, how long the fetus lived.

(13) Records of all maternal deaths occurring at the location where the abortion was performed or the abortion inducing drug was provided, prescribed, administered, or dispensed.

(14) The date the form was transmitted to the state department and, if applicable, separately to the department of child services.

(b) The health care provider shall complete the form provided for in subsection (a) and shall transmit the completed form to the state department, in the manner specified on the form, ~~not later than July 30 for each abortion occurring in the first six (6) months of that year and not later than January 30 for each abortion occurring in the last six (6) months of the preceding year.~~ **within thirty (30) days after the date of each abortion.** However, if an abortion is for a female who is less than ~~fourteen (14)~~ **sixteen (16)** years of age, the health care provider shall transmit the form to the state department of health and separately to the department of child services within three (3) days after the abortion is performed.

(c) The dates supplied on the form may not be redacted for any reason before the form is transmitted as provided in this section.

(d) Each failure to complete or timely transmit a form, as required under this section, for each abortion performed or abortion inducing drug that was provided, prescribed, administered, or dispensed, is a Class B misdemeanor.

(e) Not later than June 30 of each year, the state department shall compile a public report providing the following:

(1) Statistics for the previous calendar year from the information submitted under this section.

(2) Statistics for previous calendar years compiled by the state department under this subsection, with updated information for



the calendar year that was submitted to the state department after the compilation of the statistics.

The state department shall ensure that no identifying information of a pregnant woman is contained in the report.

SECTION 7. IC 25-1-9-4, AS AMENDED BY P.L.197-2007, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 4. (a) A practitioner shall conduct the practitioner's practice in accordance with the standards established by the board regulating the profession in question and is subject to the exercise of the disciplinary sanctions under section 9 of this chapter if, after a hearing, the board finds:

- (1) a practitioner has:
 - (A) engaged in or knowingly cooperated in fraud or material deception in order to obtain a license to practice, including cheating on a licensing examination;
 - (B) engaged in fraud or material deception in the course of professional services or activities;
 - (C) advertised services in a false or misleading manner; or
 - (D) been convicted of a crime or assessed a civil penalty involving fraudulent billing practices, including fraud under:
 - (i) Medicaid (42 U.S.C. 1396 et seq.);
 - (ii) Medicare (42 U.S.C. 1395 et seq.);
 - (iii) the children's health insurance program under IC 12-17.6; or
 - (iv) insurance claims;
- (2) a practitioner has been convicted of a crime that:
 - (A) has a direct bearing on the practitioner's ability to continue to practice competently; or
 - (B) is harmful to the public;
- (3) a practitioner has knowingly violated any state statute or rule, or federal statute or regulation, regulating the profession in question;
- (4) a practitioner has continued to practice although the practitioner has become unfit to practice due to:
 - (A) professional incompetence that:
 - (i) may include the undertaking of professional activities that the practitioner is not qualified by training or experience to undertake; and
 - (ii) does not include activities performed under IC 16-21-2-9;
 - (B) failure to keep abreast of current professional theory or practice;



- (C) physical or mental disability; or
- (D) addiction to, abuse of, or severe dependency upon alcohol or other drugs that endanger the public by impairing a practitioner's ability to practice safely;
- (5) a practitioner has engaged in a course of lewd or immoral conduct in connection with the delivery of services to the public;
- (6) a practitioner has allowed the practitioner's name or a license issued under this chapter to be used in connection with an individual who renders services beyond the scope of that individual's training, experience, or competence;
- (7) a practitioner has had disciplinary action taken against the practitioner or the practitioner's license to practice in any state or jurisdiction on grounds similar to those under this chapter;
- (8) a practitioner has diverted:
 - (A) a legend drug (as defined in IC 16-18-2-199); or
 - (B) any other drug or device issued under a drug order (as defined in IC 16-42-19-3) for another person;
- (9) a practitioner, except as otherwise provided by law, has knowingly prescribed, sold, or administered any drug classified as a narcotic, addicting, or dangerous drug to a habitue or addict;
- (10) a practitioner has failed to comply with an order imposing a sanction under section 9 of this chapter;
- (11) a practitioner has engaged in sexual contact with a patient under the practitioner's care or has used the practitioner-patient relationship to solicit sexual contact with a patient under the practitioner's care;
- (12) a practitioner who is a participating provider of a health maintenance organization has knowingly collected or attempted to collect from a subscriber or enrollee of the health maintenance organization any sums that are owed by the health maintenance organization; **or**
- (13) a practitioner has assisted another person in committing an act that would be grounds for disciplinary sanctions under this chapter; **or**
- (14) a practitioner has failed to report to the department of child services or a local law enforcement agency:**
 - (A) suspected child abuse in accordance with IC 31-33-5;**
 - or**
 - (B) that a patient may be the victim of human trafficking, if the practitioner has been presented with evidence that, if presented to a practitioner of similar background and training, would cause the practitioner to believe that the**



patient is a victim of human trafficking.

(b) A practitioner who provides health care services to the practitioner's spouse is not subject to disciplinary action under subsection (a)(11).

(c) A certified copy of the record of disciplinary action is conclusive evidence of the other jurisdiction's disciplinary action under subsection (a)(7).

SECTION 8. IC 25-22.5-8-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 6. (a) As used in this section, "abortion" has the meaning set forth in IC 16-18-2-1.**

(b) Notwithstanding IC 25-1-9, the board may revoke the license of a physician if, after appropriate notice and an opportunity for a hearing, the attorney general proves by a preponderance of the evidence that the physician:

- (1) failed to transmit the form to the state department of health as described in IC 16-34-2-5(b); or**
- (2) performed an abortion in violation of IC 16-34-2-7(a) through IC 16-34-2-7(c) with the intent to avoid the requirements of IC 16-34-2.**

SECTION 9. IC 35-52-16-20.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 20.7. IC 16-34-2-4 defines a crime concerning abortion.**



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

SEA 404 — Concur

