

By: Schaefer

H.B. No. 4304

A BILL TO BE ENTITLED

AN ACT

relating to information regarding perinatal palliative care.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 161, Health and Safety Code, is amended by adding Subchapter X to read as follows:

SUBCHAPTER X. PERINATAL PALLIATIVE CARE

Sec. 161.701. PURPOSE OF SUBCHAPTER. The purpose of this subchapter is to ensure that a pregnant woman who receives a diagnosis of a life-threatening disability of the woman's preborn child is informed of the availability of perinatal palliative care.

Sec. 161.702. DEFINITION. In this subchapter, "perinatal palliative care" means the provision of comprehensive, supportive care to reduce the suffering of a pregnant woman, her preborn child, and her family, from diagnosis of the preborn child's life-threatening disability through the delivery and possible death of the child as a result of the life-threatening disability. The term includes medical, social, and mental health care, including counseling and health care provided by maternal-fetal medical specialists, obstetricians, neonatologists, anesthesia specialists, specialty nurses, clergy, social workers, and other individuals focused on alleviating fear and pain and ensuring the pregnant woman, her preborn child, and her family experience a supportive environment.

Sec. 161.703. PERINATAL PALLIATIVE CARE INFORMATIONAL

1 MATERIALS. (a) The commission shall develop perinatal palliative
2 care informational materials and post the materials on the
3 commission's Internet website. The materials must include:

4 (1) a description of the health care and other
5 services available through perinatal palliative care; and

6 (2) information about medical assistance benefits
7 that may be available for prenatal care, childbirth, and perinatal
8 palliative care.

9 (b) The commission shall develop, regularly update, and
10 publish a geographically indexed list of all perinatal palliative
11 care providers and programs in this state. The commission may
12 include perinatal palliative care providers and programs in other
13 states that provide care to residents of this state but may not
14 include an abortion provider, as defined by Section 171.002, or an
15 affiliate, as defined by Section 2272.001, Government Code, as
16 added by Chapter 501 (S.B. 22), Acts of the 86th Legislature,
17 Regular Session, 2019, of an abortion provider. The commission
18 shall post the list of perinatal palliative care providers and
19 programs, including contact information, on the commission's
20 Internet website and note the providers and programs that provide
21 services free of charge.

22 Sec. 161.704. PERINATAL PALLIATIVE CARE CERTIFICATION
23 FORM. The commission shall develop a form on which a pregnant woman
24 certifies that she has received the perinatal palliative care
25 informational materials and list of the perinatal palliative care
26 providers and programs described by Section 161.703.

27 Sec. 161.705. HEALTH CARE PROVIDER DUTIES ON DIAGNOSIS OF

1 PREBORN CHILD'S LIFE-THREATENING DISABILITY. A health care
2 provider who diagnoses a pregnant woman's preborn child as having a
3 life-threatening disability shall, at the time of the diagnosis:

4 (1) provide the pregnant woman with a written copy of:

5 (A) the perinatal palliative care informational
6 materials and list of the perinatal palliative care providers and
7 programs described by Section 161.703; and

8 (B) the perinatal palliative care certification
9 form described by Section 161.704; and

10 (2) obtain from the pregnant woman the signed
11 perinatal palliative care certification form and place the form in
12 the pregnant woman's medical records.

13 Sec. 161.706. EXCEPTION. A health care provider is not
14 required to provide the perinatal palliative care informational
15 materials or perinatal palliative care certification form under
16 this subchapter if the health care provider verifies the pregnant
17 woman's medical record contains a signed perinatal palliative care
18 certification form for that pregnancy as required under Section
19 161.705(2).

20 SECTION 2. Section [171.002](#), Health and Safety Code, is
21 amended by adding Subdivision (3-a) to read as follows:

22 (3-a) "Preborn child" means an unborn child as defined
23 by Section [171.061](#).

24 SECTION 3. Section [171.012](#), Health and Safety Code, is
25 amended by adding Subsections (g) and (h) to read as follows:

26 (g) If the pregnant woman's preborn child has been diagnosed
27 with a life-threatening disability, the physician who is to perform

1 or induce the abortion shall, at least 24 hours before the abortion
2 or at least two hours before the abortion for a pregnant woman who
3 waives this requirement by certifying she currently lives 100 miles
4 or more from the nearest abortion provider that is a facility
5 licensed under Chapter 245 or a facility in which more than 50
6 abortions are performed in any 12-month period:

7 (1) orally and in person, inform the pregnant woman of
8 the availability of perinatal palliative care, as that term is
9 defined by Section 161.702; and

10 (2) provide the pregnant woman with a written copy of:

11 (A) the perinatal palliative care informational
12 materials and list of the perinatal palliative care providers and
13 programs described by Section 161.703; and

14 (B) the perinatal palliative care certification
15 form described by Section 161.704.

16 (h) If a pregnant woman described by Subsection (g), after
17 receiving from the physician who is to perform or induce the
18 abortion the perinatal palliative care informational materials and
19 certification form described by that subsection in the manner
20 required by that subsection, chooses to have an abortion instead of
21 continuing the pregnancy in perinatal palliative care, the
22 physician may perform or induce the abortion only after:

23 (1) the pregnant woman signs the certification form;
24 and

25 (2) the physician places the signed certification form
26 in the pregnant woman's medical records.

27 SECTION 4. Section 171.0121, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 171.0121. MEDICAL RECORD. (a) Before the abortion
3 begins, a copy of the signed, written certification received by the
4 physician under Section 171.012(a)(6) and, if applicable, under
5 Section 161.704 must be placed in the pregnant woman's medical
6 records.

7 (b) A copy of the signed, written certification required
8 under Sections 171.012(a)(5) and (6) and of any signed, written
9 certification required under Section 161.704 shall be retained by
10 the facility where the abortion is performed until:

11 (1) the seventh anniversary of the date the
12 certification [~~it~~] is signed; or

13 (2) if the pregnant woman is a minor, the later of:

14 (A) the seventh anniversary of the date the
15 certification [~~it~~] is signed; or

16 (B) the woman's 21st birthday.

17 SECTION 5. Section 171.014(a), Health and Safety Code, is
18 amended to read as follows:

19 (a) The department shall publish informational materials
20 that include:

21 (1) the information required to be provided under
22 Sections 171.012(a)(1)(B) and (D) and (a)(2)(A), (B), and (C); and

23 (2) the materials required by Sections 161.703,
24 171.015, and 171.016.

25 SECTION 6. Not later than December 1, 2021:

26 (1) the Health and Human Services Commission shall:

27 (A) develop the perinatal palliative care

1 informational materials, list of perinatal palliative care
2 providers and programs, and perinatal palliative care
3 certification form required by Subchapter X, Chapter 161, Health
4 and Safety Code, as added by this Act; and

5 (B) update any forms and informational materials
6 under Subchapter B, Chapter 171, Health and Safety Code, as amended
7 by this Act; and

8 (2) the executive commissioner of the Health and Human
9 Services Commission shall adopt any rules necessary to implement
10 Subchapter X, Chapter 161, Health and Safety Code, as added by this
11 Act and Subchapter B, Chapter 171, Health and Safety Code, as
12 amended by this Act.

13 SECTION 7. (a) Subchapter X, Chapter 161, Health and Safety
14 Code, as added by this Act, applies only to a diagnosis of a
15 life-threatening disability of a pregnant woman's preborn child
16 made on or after January 1, 2022.

17 (b) The changes in law made by this Act to Chapter 171,
18 Health and Safety Code, apply only to an abortion performed,
19 induced, or attempted or other conduct that occurred on or after
20 January 1, 2022. An abortion performed, induced, or attempted or
21 other conduct that occurred before that date is governed by the law
22 in effect immediately before the effective date of this Act, and
23 that law is continued in effect for that purpose.

24 SECTION 8. It is the intent of the legislature that every
25 provision, section, subsection, sentence, clause, phrase, or word
26 in this Act, and every application of the provisions in this Act to
27 each person or entity, are severable from each other. If any

1 application of any provision in this Act to any person, group of
2 persons, or circumstances is found by a court to be invalid for any
3 reason, the remaining applications of that provision to all other
4 persons and circumstances shall be severed and may not be affected.

5 SECTION 9. This Act takes effect September 1, 2021.