SYNOPSIS
"New Jersey Abortion Statistical Data Law"

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 5/6/2003)
AN ACT concerning the reporting and record-keeping requirements for facilities providing abortions in this State and supplementing Title 26 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. This act shall be known and may be cited as the "New Jersey Abortion Statistical Data Law."

2. The Legislature finds and declares that:
   a. The promotion of maternal health and life and the protection of potential life are legitimate public purposes;
   b. Reporting and record-keeping provisions, which are reasonably directed at advancing these goals and properly respect a patient's confidentiality and privacy, are within the realm of permissible legislative activity;
   c. The compilation of relevant data on abortion services, including the number and type of abortions performed, the viability of the fetus at the time of abortion, the type and frequency of complications arising during abortions and the number of maternal deaths occurring as a result of abortion procedures, is a vital element of medical research and shall serve to increase the medical and public health knowledge in this State;
   d. The aforementioned reporting and record-keeping requirements may increase slightly the operating costs of facilities and doctors who provide abortion services; however, they will not cause abortions to become prohibitively expensive or otherwise serve as an obstacle to women in exercising their right to obtain an abortion; and
   e. It is, therefore, the purpose of this act to require every facility and doctor's office in this State to gather certain information on all abortions performed during the course of a calendar year and to provide the information to the Department of Health and Senior Services; the information shall be made available to the public in a form that properly protects the privacy interests of the patients and doctors involved in the abortion procedure.

3. As used in this act:
   "Abortion" means the use of any instrument or device with the intent to terminate the pregnancy of a woman known to be pregnant.
   "Abortion report" means a report created pursuant to section 4 of this act.
   "Complications report" means a report created pursuant to section 6 of this act.
   "Department" means the Department of Health and Senior Services.
   "Facility" means any public or private hospital, clinic, center,
medical school, medical training institution, health care facility, physician's office, infirmary, dispensary, ambulatory surgery facility or other institution or location in which one or more abortions are performed during the calendar year.

"Gestational age" means the time that has elapsed since the first day of the woman's last menstrual period.

"Maternal health report" means a report created pursuant to section 7 of this act.

"Patient" means a woman who has obtained an abortion in a facility.

"Physician" means any person licensed to practice medicine and surgery in this State.

"Unemancipated minor" means a female under the age of 18 years who is unmarried and is not currently serving active duty in one of the military services of the United States of America or a female for whom a guardian has been appointed pursuant to N.J.S.3B:12-25 because of a finding of incompetency. For the purposes of this act, pregnancy does not emancipate a female under the age of 18 years.

4. a. In addition to the reporting requirements of section 3 of P.L.1983, c.291 (C.26:8-40.22), a facility shall compile information about an abortion performed in its facility on an abortion report form established pursuant to subsection c. of this section. The facility shall forward the completed form to the department within 30 days of an abortion having been performed in its facility. The abortion report shall not identify the individual patient receiving the abortion by name and shall include the following information:

(1) the identity of the physician who performed the abortion, including the name and license number of the physician;

(2) the name and address of the facility where the abortion was performed;

(3) the name and address of the patient's treating physician or general practitioner, if any;

(4) the state and county in which the patient resides;

(5) the patient's age;

(6) if the patient is an unemancipated minor, a statement as to whether or not the patient's parent or guardian was notified about the patient's intent to obtain an abortion, if known;

(7) the number of prior pregnancies and abortions of the patient;

(8) the probable gestational age of the fetus;

(9) if the fetus showed evidence of life when removed from the patient, a statement as to whether or not the facility made an effort to protect or preserve the life and health of the fetus and a description of all the procedures employed in this regard;

(10) the type of abortion procedure performed;

(11) the date on which the abortion was performed;

(12) the patient's preexisting medical condition that complicated the
pregnancy, if any;
   (13) the medical complications that resulted from the abortion, if
any; and
   (14) the length and weight of the aborted fetus.
   b. An abortion report required pursuant to subsection a. of this
section shall be signed by the physician who performed the abortion,
and the signature shall be made before a person authorized to take
oaths in this State.
   c. The department shall establish the abortion report form on which
a facility shall compile information to fulfill the reporting requirements
of subsection a. of this section.
   d. The department shall create a depository for original reports
generated under subsection a. of this section and maintain the reports
for a period of seven years.
   e. A facility that creates a report pursuant to subsection a. of this
section shall maintain a copy of the report for two years.

5. a. If an abortion is performed during the first trimester of
pregnancy, the tissue that is removed shall be subjected to a gross or
microscopic examination, as needed, by the physician or a qualified
person designated by the physician, to determine if a pregnancy existed
and was terminated. If the examination indicates no fetal remains, that
information shall be made known immediately to the physician and sent
to the department within 15 days of the analysis performed under this
section.
   b. If an abortion is performed after the first trimester of pregnancy
and the physician has certified the fetus was not viable, the dead fetus
and all tissue removed at the time of the abortion shall be submitted
for tissue analysis to a board-eligible or certified pathologist. If the
pathologist's analysis reveals evidence of viability or a live birth, the
pathologist shall report the findings to the department within 15 days,
and a copy of the report also shall be sent to the physician who
performed the abortion.

6. a. A physician who is called upon to provide medical care or
treatment to a woman, who is in need of medical care because of a
complication resulting from having undergone an abortion or
attempted abortion, shall prepare a complications report and file the
report with the department within 30 days of the date of the
physician's first examination of the woman. A determination as to
whether or not a complication results from an abortion shall be based
upon the physician's good faith judgment.
   b. A complications report shall contain the following information:
   (1) the age of the patient;
   (2) the number of prior pregnancies;
   (3) the number and type of abortions the patient may have had prior
to the subject abortion;

(4) the name and address of the facility where the abortion was performed;

(5) the gestational age of the fetus at the time of the abortion, if known;

(6) the type of abortion performed;

(7) the nature of the complication, if any;

(8) the medical treatment provided; and

(9) the name and extent, if known, of any permanent condition attributable to the complication.

c. A complications report required pursuant to subsection a. of this section shall be in addition to any report filed by the physician or facility pursuant to section 4 of this act.

7. a. A physician who performs an abortion, which results in the death of the patient, shall prepare and file with the department a separate maternal death report, which shall contain the following information:

(1) the cause of death;

(2) the duration of the patient's pregnancy when her death occurred; and

(3) a statement as to whether or not the patient was under the care of a physician during her pregnancy.

b. For the purposes of this act, a woman shall be deemed to have been under the care of a physician prior to her death when, preceding the woman's death at any time that is both 21 or more days after the date she became pregnant, as calculated by a physician, and within 60 days prior to her death, she had either been examined or treated by a physician, excluding any examination or treatment in connection with emergency care for a complication of her pregnancy or abortion.

c. A maternal death report required pursuant to subsection a. of this section shall be in addition to any report filed by the physician or facility pursuant to section 4 of this act.

8. a. The department shall prepare a comprehensive annual statistical report for distribution to the members of the Legislature based upon the data gathered under sections 4 through 7 of this act. The annual statistical report shall be available for public inspection and copying. The department may charge a reasonable fee for copying and preparing requested materials to carry out this subsection.

b. The annual statistical report shall not disclose the identity of any person involved in an abortion that is the subject of a report filed pursuant to sections 4 through 7 of this act.

c. All reports created and filed pursuant to sections 4 of through 7 of this act shall be confidential and shall not be considered a public record under P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et al.).
9. a. A person who intentionally, knowingly, recklessly or negligently fails to comply with the provisions of section 4 of this act shall be subject to a civil penalty of not more than $5,000 for each offense, and if the person is a physician, shall forfeit his license to practice medicine and surgery upon a third offense of intentionally, knowingly, recklessly or negligently failing to comply with the provisions of section 4 of this act.

b. A person who willfully delivers or discloses to the department any report, record or information known to him to be false is guilty of a crime of the third degree.

c. A person who willfully discloses confidential information contained in an individual abortion report shall be subject to a civil penalty of not less than $1,000 for each offense. If the offender is an employee of the department, the employee, in addition to the civil penalty, shall be suspended upon a first offense and terminated from employment upon a subsequent offense.

d. A physician who intentionally, knowingly, recklessly or negligently fails to submit a fetus or tissue remains to a pathologist, as required by section 5 of this act, shall be subject to a fine of not more than $10,000 for each offense and shall forfeit his license to practice medicine and surgery upon a third offense.

e. A physician who intentionally, knowingly, recklessly or negligently fails to report any evidence of a live birth or viability to the department, in the manner and within the time prescribed by section 5 of this act, shall be subject to a fine of not more than $10,000 for each offense and shall forfeit his license to practice medicine and surgery upon a third offense.

f. Failure by a physician to comply with the requirements of this act shall provide a basis for disciplinary action by the State Board of Medical Examiners.

g. Penalties authorized by this section shall be collected by a summary proceeding instituted by the Attorney General, at the request of the Department of Health and Senior Services or the State Board of Medical Examiners, as appropriate, pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

10. Nothing in this act shall be construed as creating or recognizing a statutory right to abortion. An abortion that is unlawful on the effective date of this act, or which subsequently becomes unlawful, shall not be made lawful by virtue of this act.

11. Pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Department of Health and Senior Services, in conjunction with the State Board of Medical Examiners, shall adopt rules and regulations to implement the provisions of this act within 180 days following the date of enactment of this act.
12. This act shall take effect on the 180th day after enactment, except that section 11 shall take effect immediately.

STATEMENT

This bill, designated the "New Jersey Abortion Statistical Data Law," requires a facility (including a physician's office) to report abortions performed in its facility to the Department of Health and Senior Services and also requires the completion of a complications or maternal death report, under certain circumstances. In addition, the bill requires examination or analysis of tissue removed during an abortion, under certain conditions. The bill defines "abortion" as "the use of any instrument or device with the intent to terminate the pregnancy of a woman known to be pregnant."

Under the provisions of the bill, in addition to the reporting requirements of N.J.S.A. 26:8-40.22 (requiring confidential reporting of a pregnancy that results in a naturally aborted fetus or infant affected by a birth defect and an electively aborted fetus that exhibits a birth defect after 15 weeks of gestation), a facility would compile information about an abortion performed in its facility on an abortion report form, which would be established by the department. The facility would forward the completed form to the department within 30 days of an abortion having been performed in its facility. The report would not identify the individual patient and would include the following information:

C the identity of the physician who performed the abortion, including the name and license number of the physician;
C the name and address of the facility where the abortion was performed;
C the name and address of the patient's treating physician or general practitioner, if any;
C the state and county in which the patient resides;
C the patient's age;
C if the patient is an unemancipated minor, a statement as to whether or not the patient's parent or guardian was notified about the patient's intent to obtain an abortion, if known;
C the number of prior pregnancies and abortions of the patient;
C the probable gestational age of the fetus;
C if the fetus showed evidence of life when removed from the patient, a statement as to whether or not the facility made an effort to protect or preserve the life and health of the fetus and a description of all the procedures employed in this regard;
C the type of abortion procedure performed;
C the date on which the abortion was performed;
C the patient's preexisting medical condition that complicated the
pregnancy, if any;
and
the length and weight of the aborted fetus.
The physician who performed the abortion would sign the abortion report. In addition, the department would create a depository for original abortion reports and maintain the reports for a period of seven years. A facility would maintain a copy of the report for two years.
The bill also provides that if an abortion is performed during the first trimester of pregnancy, the tissue that is removed would be subjected to a gross or microscopic examination, as needed, by the physician or a qualified person designated by the physician, to determine if a pregnancy existed and was terminated. If the examination indicates no fetal remains, that information would be made known immediately to the physician and sent to the department within 15 days of the analysis. If an abortion is performed after the first trimester of pregnancy and the physician has certified the fetus was not viable, the dead fetus and all tissue removed at the time of the abortion would be submitted for tissue analysis to a board-eligible or certified pathologist. If the analysis reveals evidence of viability or a live birth, the pathologist would report the findings to the department within 15 days, and a copy of the report also would be sent to the physician who performed the abortion.
A complications report would be required if a physician is called upon to provide medical care or treatment to a woman who is in need of medical care because of a complication resulting from having undergone an abortion or attempted abortion. The report would be filed with the department within 30 days of the date of the physician's first examination of the woman. A determination as to whether or not a complication results from an abortion would be based upon the physician's good faith judgment. A complications report would contain:
the age of the patient;
the number of prior pregnancies;
the number and type of abortions the patient may have had prior to the subject abortion;
the name and address of the facility where the abortion was performed;
the gestational age of the fetus at the time of the abortion, if known;
the type of abortion performed;
the nature of the complication, if any;
the medical treatment provided; and
the name and extent, if known, of any permanent condition attributable to the complication.
A separate maternal death report would be filed with the
department by a physician who performs an abortion that results in the
death of the patient. A maternal death report would contain:
C the cause of death;
C the duration of the patient's pregnancy when her death occurred;
and
C a statement as to whether or not the patient was under the care of
a physician during her pregnancy.

The bill also requires the department to prepare a comprehensive
annual statistical report for distribution to the members of the
Legislature based upon the data gathered under the provisions of the
bill. The report would be available for public inspection and copying
and the bill permits the department to charge a reasonable fee for
copying and preparing requested materials. The bill also provides that
an annual statistical report would not disclose the identity of any
person involved in an abortion that is the subject of a report filed
under the bill and all reports created and filed pursuant to would be
confidential and not considered a public record under the open public
records laws, N.J.S.A.47:1A-1 et seq. or N.J.S.A.47:1A-5 et al.

The bill provides penalties as follows:
C A person who intentionally, knowingly, recklessly or negligently
fails to comply with the abortion report requirement of the bill
would be subject to a civil penalty of not more than $5,000 for each
offense, and if the person is a physician, would forfeit his license to
practice medicine and surgery upon a third offense of intentionally,
knowingly, recklessly or negligently failing to comply with this
requirement;
C A person who willfully delivers or discloses to the department any
report, record or information known to him to be false is guilty of
a crime of the third degree;
C A person who willfully discloses confidential information contained
in an individual abortion report would be subject to a civil penalty
of not less than $1,000 for each offense. If the offender is an
employee of the department, the employee, in addition to the civil
penalty, would be suspended upon a first offense and terminated
from employment upon a subsequent offense;
C A physician who intentionally, knowingly, recklessly or negligently
fails to submit a fetus or tissue remains to a pathologist, as required
by this bill, would be subject to a fine or not more than $10,000 for
each offense and would forfeit his license to practice medicine and
surgery upon a third offense;
C A physician who intentionally, knowingly, recklessly or negligently
fails to report any evidence of a live birth or viability to the
department, in the manner and within the time prescribed under this
bill, would be subject to a fine of not more than $10,000 for each
offense and would forfeit his license to practice medicine and
surgery upon a third offense;
Failure by a physician to comply with the requirements of this bill would provide a basis for disciplinary action by the State Board of Medical Examiners.

Penalties would be collected by a summary proceeding instituted by the Attorney General, at the request of the Department of Health and Senior Services or the State Board of Medical Examiners, as appropriate, pursuant to the "Penalty Enforcement Law of 1999."

Lastly, the bill requires the Department of Health and Senior Services, in conjunction with the Board of Medical Examiners, to adopt rules and regulations within 180 days following the date of enactment.