

2020 Kansas Statutes

65-6709. Same; abortion, informed consent required; information required to be given to women, certification of receipt; offer to view ultrasound image and hear heartbeat, certification of offer; required signage. No abortion shall be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if:

(a) At least 24 hours before the abortion the physician who is to perform the abortion or the referring physician has informed the woman in writing, which shall be provided on white paper in a printed format in black ink with 12-point times new roman font, of:

(1) The following information concerning the physician who will perform the abortion;

(A) The name of such physician;

(B) the year in which such physician received a medical doctor's degree;

(C) the date on which such physician's employment commenced at the facility where the abortion is to be performed;

(D) whether any disciplinary action has been taken against such physician by the state board of healing arts by marking either a box indicating "yes" or a box indicating "no" and if the box indicating "yes" is marked, then provide the website addresses to the board documentation for each disciplinary action;

(E) whether such physician has malpractice insurance by marking either a box indicating "yes" or a box indicating "no";

(F) whether such physician has clinical privileges at any hospital located within 30 miles of the facility where the abortion is to be performed by marking either a box indicating "yes" or a box indicating "no" and if the box indicating "yes" is marked, then provide the name of each such hospital and the date such privileges were issued;

(G) the name of any hospital where such physician has lost clinical privileges; and

(H) whether such physician is a resident of this state by marking either a box indicating "yes" or a box indicating "no";

(2) a description of the proposed abortion method;

(3) a description of risks related to the proposed abortion method, including risk of premature birth in future pregnancies, risk of breast cancer and risks to the woman's reproductive health and alternatives to the abortion that a reasonable patient would consider material to the decision of whether or not to undergo the abortion;

(4) the probable gestational age of the unborn child at the time the abortion is to be performed and that Kansas law requires the following: "No person shall perform or induce an abortion when the unborn child is viable unless such person is a physician and has a documented referral from another physician not financially associated with the physician performing or inducing the abortion and both physicians determine that: (1) The abortion is necessary to preserve the life of the pregnant woman; or (2) a continuation of the pregnancy will cause a substantial and irreversible physical impairment of a major bodily function of the pregnant woman." If the child is born alive, the attending physician has the legal obligation to take all reasonable steps necessary to maintain the life and health of the child;

(5) the probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed;

(6) the contact information for counseling assistance for medically challenging pregnancies, the contact information for perinatal hospice services and a listing of websites for national perinatal assistance, including information regarding which entities provide such services free of charge;

(7) the medical risks associated with carrying an unborn child to term; and

(8) any need for anti-Rh immune globulin therapy, if she is Rh negative, the likely consequences of refusing such therapy and the cost of the therapy.

(b) At least 24 hours before the abortion, the physician who is to perform the abortion, the referring physician or a qualified person has informed the woman in writing that:

(1) Medical assistance benefits may be available for prenatal care, childbirth and

neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials given to her and described in K.S.A. 65-6710, and amendments thereto;

(2) the informational materials in K.S.A. 65-6710, and amendments thereto, are available in printed form and online, and describe the unborn child, list agencies which offer alternatives to abortion with a special section listing adoption services and list providers of free ultrasound services;

(3) the father of the unborn child is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion except that in the case of rape this information may be omitted;

(4) the woman is free to withhold or withdraw her consent to the abortion at any time prior to invasion of the uterus without affecting her right to future care or treatment and without the loss of any state or federally-funded benefits to which she might otherwise be entitled;

(5) the abortion will terminate the life of a whole, separate, unique, living human being; and

(6) by no later than 20 weeks from fertilization, the unborn child has the physical structures necessary to experience pain. There is evidence that by 20 weeks from fertilization unborn children seek to evade certain stimuli in a manner that in an infant or an adult would be interpreted to be a response to pain. Anesthesia is routinely administered to unborn children who are 20 weeks from fertilization or older who undergo prenatal surgery.

(c) At least 30 minutes prior to the abortion procedure, prior to physical preparation for the abortion and prior to the administration of medication for the abortion, the woman shall meet privately with the physician who is to perform the abortion and such person's staff to ensure that she has an adequate opportunity to ask questions of and obtain information from the physician concerning the abortion.

(d) At least 24 hours before the abortion, the woman is given a copy of the informational materials described in K.S.A. 65-6710, and amendments thereto. If the woman asks questions concerning any of the information or materials, answers shall be provided to her in her own language.

(e) The woman certifies in writing on a form provided by the department, prior to the abortion, that the information required to be provided under subsections (a), (b) and (d) has been provided and that she has met with the physician who is to perform the abortion on an individual basis as provided under subsection (c). All physicians who perform abortions shall report the total number of certifications received monthly to the department. The total number of certifications shall be reported by the physician as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto. The department shall make the number of certifications received available on an annual basis.

(f) Prior to the performance of the abortion, the physician who is to perform the abortion or the physician's agent receives a copy of the written certification prescribed by subsection (e) of this section.

(g) The woman is not required to pay any amount for the abortion procedure until the 24-hour waiting period has expired.

(h) A physician who will use ultrasound equipment preparatory to or in the performance of the abortion, at least 30 minutes prior to the performance of the abortion:

(1) Informs the woman that she has the right to view the ultrasound image of her unborn child, at no additional expense to her;

(2) informs the woman that she has the right to receive a physical picture of the ultrasound image, at no additional expense to her;

(3) offers the woman the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image;

(4) certifies in writing that the woman was offered the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image at least 30 minutes prior to the performance of the abortion; and

(5) obtains the woman's signed acceptance or rejection of the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image.

If the woman accepts the offer and requests to view the ultrasound image, receive a physical picture of the ultrasound image or both, her request shall be granted by the physician at no additional expense to the woman. The physician's certification shall be time-stamped at the time the opportunity to view the ultrasound image and receive a physical picture of the ultrasound image was offered.

(i) A physician who will use heart monitor equipment preparatory to or in the performance of the abortion, at least 30 minutes prior to the performance of the abortion:

(1) Informs the woman that she has the right to listen to the heartbeat of her unborn child, at no additional expense to her;

(2) offers the woman the opportunity to listen to the heartbeat of her unborn child;

(3) certifies in writing that the woman was offered the opportunity to listen to the heartbeat of her unborn child at least 30 minutes prior to the performance of the abortion; and

(4) obtains the woman's signed acceptance or rejection of the opportunity to listen to the heartbeat of her unborn child.

If the woman accepts the offer and requests to listen to the heartbeat of her unborn child, her request shall be granted by the physician at no additional expense to the woman. The physician's certification shall be time-stamped at the time the opportunity to listen to the heartbeat of her unborn child was offered.

(j) The physician's certification required by subsections (h) and (i) together with the pregnant woman's signed acceptance or rejection of such offer shall be placed in the woman's medical file in the physician's office and kept for 10 years. However, in the case of a minor, the physician shall keep a copy of the certification and the signed acceptance or rejection in the minor's medical file for five years past the minor's majority, but in no event less than 10 years.

(k) Any private office, freestanding surgical outpatient clinic or other facility or clinic in which abortions are performed shall conspicuously post a sign in a location so as to be clearly visible to patients. The sign required pursuant to this subsection shall be printed with lettering that is legible and shall be at least three quarters of an inch boldfaced type. The sign shall include the address for the pregnancy resources website published and maintained by the department of health and environment, and the following text:

Notice: It is against the law for anyone, regardless of their relationship to you, to force you to have an abortion. By law, we cannot perform an abortion on you unless we have your freely given and voluntary consent. It is against the law to perform an abortion on you against your will. You have the right to contact any local or state law enforcement agency to receive protection from any actual or threatened physical abuse or violence. You have the right to change your mind at any time prior to the actual abortion and request that the abortion procedure cease. It is unlawful for anyone to make you have an abortion against your will, even if you are a minor. The father of your child must provide support for the child, even if he has offered to pay for an abortion. If you decide not to have an abortion, you may qualify for financial help for pregnancy, childbirth and newborn care. If you qualify, medicaid will pay or help pay the cost of doctor, clinic, hospital and other related medical expenses, including childbirth delivery services and care for your newborn baby. Many agencies are willing to provide assistance so that you may carry your child to term, and to assist you after your child's birth.

The provisions of this subsection shall not apply to any private office, freestanding surgical outpatient clinic or other facility or clinic which performs abortions only when necessary to prevent the death of the pregnant woman.

(l) Any private office, freestanding surgical outpatient clinic or other facility or clinic in which abortions are performed that has a website shall publish an easily identifiable link on the homepage of such website that directly links to the department of health and environment's website that provides informed consent materials under the woman's-right-to-know act. Such link shall read: "The Kansas Department of Health and Environment maintains a website containing information about the development of the unborn child, as well as video of sonogram images of the unborn child at various stages of development. The Kansas Department of Health and Environment's website can be reached by clicking here."

(m) For purposes of this section:

(1) The term "human being" means an individual living member of the species of homo sapiens, including the unborn human being during the entire embryonic and fetal ages from fertilization to full gestation.

(2) The term "medically challenging pregnancy" means a pregnancy where the unborn child is diagnosed as having: (A) A severe anomaly; or (B) an illness, disease or defect which is invariably fatal.

History: L. 1997, ch. 190, § 27; L. 2009, ch. 28, § 1; L. 2011, ch. 44, § 6; L. 2013, ch. 119, § 14; L. 2014, ch. 87, § 6; L. 2017, ch. 88, § 1; July 1.