DOWN SYNDROME NONDISCRIMINATION ABORTION ACT

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill concerns an unborn child with Down syndrome.

Highlighted Provisions:

This bill:

- defines "Down syndrome";
- requires the Department of Health to create a Down syndrome informational support sheet and publish the same information on the department's website;
- requires that a pregnant woman be provided certain information before receiving an abortion when a prenatal screening or diagnostic test indicates that the pregnant woman's unborn child has or may have Down syndrome;
- after expressly permitted by a court of binding authority, prohibits a person from performing, inducing, or attempting to perform or induce an abortion on a pregnant woman who is seeking the abortion solely because an unborn child has or may have Down syndrome;
- requires an abortion pathology report to provide information about whether an aborted child had or may have had Down syndrome;
- requires a physician who performed an abortion to state whether the physician had any knowledge that the pregnant woman sought the abortion solely because the unborn child had or may have had Down syndrome; and
- makes technical changes.
Money Appropriated in this Bill:
None

Other Special Clauses:
This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

26-10-1, as last amended by Laws of Utah 2011, Chapters 147, 366 and last amended by Coordination Clause, Laws of Utah 2011, Chapter 366
631-2-276, as last amended by Laws of Utah 2018, Chapter 38
76-7-301, as last amended by Laws of Utah 2018, Chapter 282
76-7-305, as last amended by Laws of Utah 2018, Chapter 282
76-7-309, as enacted by Laws of Utah 1974, Chapter 33
76-7-313, as last amended by Laws of Utah 2018, Chapter 282

ENACTS:

26-10-14, Utah Code Annotated 1953
76-7-302.4, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:
Section 1. Section 26-10-1 is amended to read:

26-10-1. Definitions.
As used in this chapter:
(1) "Down syndrome" means a genetic condition associated with an extra chromosome 21, in whole or in part, or an effective trisomy for chromosome 21.
[(1) (2) "Maternal and child health services" means:
(a) the provision of educational, preventative, diagnostic, and treatment services, including medical care, hospitalization, and other institutional care and aftercare, appliances, and facilitating services directed toward reducing infant mortality and improving the health of mothers and children provided, however, that nothing in this Subsection [(1) (2) shall be construed to allow any agency of the state to interfere with the rights of the parent of an unmarried minor in decisions about the providing of health information or services;
(b) the development, strengthening, and improvement of standards and techniques
relating to the services and care;
   (c) the training of personnel engaged in the provision, development, strengthening, or
   improvement of the services and care; and
   (d) necessary administrative services connected with Subsections [(1) (2)(a), (b), and
   (c).

[(2) (3) "Minor" means a person under the age of 18.

[(3) (4) "Services to children with disabilities" means:
   (a) the early location of children with a disability, provided that any program of
   prenatal diagnosis for the purpose of detecting the possible disease or disabilities of an unborn
   child will not be used for screening, but rather will be utilized only when there are medical or
   genetic indications that warrant diagnosis;
   (b) the provision for children described in Subsection [(3) (4)(a), of preventive,
   diagnosis, and treatment services, including medical care, hospitalization, and other
   institutional care and aftercare, appliances, and facilitating services directed toward the
   diagnosis of the condition of those children or toward the restoration of the children to
   maximum physical and mental health;
   (c) the development, strengthening, and improvement of standards and techniques
   relating to services and care described in this Subsection [(3) (4);
   (d) the training of personnel engaged in the provision, development, strengthening, or
   improvement of services and care described in this Subsection [(3) (4); and
   (e) necessary administrative services connected with Subsections [(3) (4)(a), (b), and
   (c).

Section 2. Section 26-10-14 is enacted to read:

26-10-14. Down syndrome diagnosis -- Information and support.

(1) The department shall provide contact information for state and national Down
syndrome organizations that are nonprofit and that provide information and support services
for parents, including first-call programs and information hotlines specific to Down syndrome,
resource centers or clearinghouses, and other education and support programs for Down
syndrome.

(2) The department shall:

   (a) post the information described in Subsection (1) on the department's website; and
(b) create an informational support sheet with the information described in Subsection (1) and the web address described in Subsection (2)(a).

(3) A Down syndrome organization may request that the department include the organization's informational material and contact information on the website. The department may add the information to the website, if the information meets the description under Subsection (1).

(4) Upon request, the department shall provide a health care facility or health care provider a copy of the informational support sheet described in Subsection (2)(b) to give to a pregnant woman after the result of a prenatal screening or diagnostic test indicates the unborn child has or may have Down syndrome.

Section 3. Section 63I-2-276 is amended to read:

63I-2-276. Repeal dates -- Title 76.

(1) If Section 76-7-302.4 is not in effect before January 1, 2029, Section 76-7-302.4 is repealed January 1, 2029.

(2) Section 76-7-305.7 is repealed January 1, 2023.

Section 4. Section 76-7-301 is amended to read:

76-7-301. Definitions.

As used in this part:

(1) (a) "Abortion" means:

(i) the intentional termination or attempted termination of human pregnancy after implantation of a fertilized ovum through a medical procedure carried out by a physician or through a substance used under the direction of a physician;

(ii) the intentional killing or attempted killing of a live unborn child through a medical procedure carried out by a physician or through a substance used under the direction of a physician; or

(iii) the intentional causing or attempted causing of a miscarriage through a medical procedure carried out by a physician or through a substance used under the direction of a physician.

(b) "Abortion" does not include:

(i) removal of a dead unborn child;

(ii) removal of an ectopic pregnancy; or

(iii) the killing or attempted killing of an unborn child without the consent of the pregnant woman, unless:

(A) the killing or attempted killing is done through a medical procedure carried out by a physician or through a substance used under the direction of a physician; and
the physician is unable to obtain the consent due to a medical emergency.

(2) "Abortion clinic" means the same as that term is defined in Section 26-21-2.

(3) "Abuse" means the same as that term is defined in Section 78A-6-105.

(4) "Department" means the Department of Health.

(5) "Down syndrome" means a genetic condition associated with an extra chromosome 21, in whole or in part, or an effective trisomy for chromosome 21.

(6) "Hospital" means:

(a) a general hospital licensed by the department according to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; and

(b) a clinic or other medical facility to the extent that such clinic or other medical facility is certified by the department as providing equipment and personnel sufficient in quantity and quality to provide the same degree of safety to the pregnant woman and the unborn child as would be provided for the particular medical procedures undertaken by a general hospital licensed by the department.

(7) "Information module" means the pregnancy termination information module prepared by the department.

(8) "Medical emergency" means that condition which, on the basis of the physician's good faith clinical judgment, so threatens the life of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death, or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function.

(9) "Minor" means an individual who is:

(a) under 18 years of age;

(b) unmarried; and

(c) not emancipated.

(10) (a) "Partial birth abortion" means an abortion in which the person performing the abortion:

(i) deliberately and intentionally vaginally delivers a living fetus until, in the case of a head first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and
(ii) performs the overt act, other than completion of delivery, that kills the partially living fetus.

(b) "Partial birth abortion" does not include the dilation and evacuation procedure involving dismemberment prior to removal, the suction curettage procedure, or the suction aspiration procedure for abortion.

[(+θ)] (11) "Physician" means:

(a) a medical doctor licensed to practice medicine and surgery under Title 58, Chapter 67, Utah Medical Practice Act;

(b) an osteopathic physician licensed to practice osteopathic medicine under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or

(c) a physician employed by the federal government who has qualifications similar to a person described in Subsection [+θ] (11)(a) or (b).

Section 5. Section 76-7-302.4 is enacted to read:

**76-7-302.4. Abortion restriction of an unborn child with Down syndrome.**

Notwithstanding any other provision of this part, an abortion may not be performed if the pregnant mother's sole reason for the abortion is that the unborn child has or may have Down syndrome, unless the abortion is permissible for a reason described in Subsection 76-7-302(3)(b).

Section 6. Section 76-7-305 is amended to read:

**76-7-305. Informed consent requirements for abortion -- 72-hour wait mandatory -- Exceptions.**

(1) A person may not perform an abortion, unless, before performing the abortion, the physician who will perform the abortion obtains from the woman on whom the abortion is to be performed a voluntary and informed written consent [from the woman on whom the abortion is performed] that is consistent with:

(a) Section 8.08 of the American Medical Association's Code of Medical Ethics, Current Opinions; and

(b) the provisions of this section.

(2) Except as provided in Subsection (8), consent to an abortion is voluntary and informed only if, at least 72 hours before the abortion:

(a) a staff member of an abortion clinic or hospital, physician, registered nurse, nurse
practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or
physician's assistant presents the information module to the pregnant woman;

(b) the pregnant woman views the entire information module and presents evidence to
the individual described in Subsection (2)(a) that the pregnant woman viewed the entire
information module;

(c) after receiving the evidence described in Subsection (2)(b), the individual described
in Subsection (2)(a):

(i) documents that the pregnant woman viewed the entire information module;

(ii) gives the pregnant woman, upon her request, a copy of the documentation
described in Subsection (2)(c)(i); and

(iii) provides a copy of the statement described in Subsection (2)(c)(i) to the physician
who is to perform the abortion, upon request of that physician or the pregnant woman;

(d) after the pregnant woman views the entire information module, the physician who
is to perform the abortion, the referring physician, a physician, a registered nurse, nurse
practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or
physician's assistant, in a face-to-face consultation in any location in the state, orally informs
the woman of:

(i) the nature of the proposed abortion procedure;

(ii) specifically how the procedure described in Subsection (2)(d)(i) will affect the
fetus;

(iii) the risks and alternatives to the abortion procedure or treatment;

(iv) the options and consequences of aborting a medication-induced abortion, if the
proposed abortion procedure is a medication-induced abortion;

(v) the probable gestational age and a description of the development of the unborn
child at the time the abortion would be performed;

(vi) the medical risks associated with carrying her child to term; [and]

(vii) the right to view an ultrasound of the unborn child, at no expense to the pregnant
woman, upon her request; and

(viii) when the result of a prenatal screening or diagnostic test indicates that the unborn
child has or may have Down syndrome, the Department of Health website containing
the information described in Section 26-10-14,
including the information on the informational support sheet.[and the address to the
website]
and

(e) after the pregnant woman views the entire information module, a staff member of the abortion clinic or hospital provides to the pregnant woman:

(i) on a document that the pregnant woman may take home:

(A) the address for the department's website described in Section 76-7-305.5; and

(B) a statement that the woman may request, from a staff member of the abortion clinic or hospital where the woman viewed the information module, a printed copy of the material on the department's website; and

(ii) a printed copy of the material on the department's website described in Section 76-7-305.5, if requested by the pregnant woman.

(3) Before performing an abortion, the physician who is to perform the abortion shall:

(a) in a face-to-face consultation, provide the information described in Subsection (2)(d), unless the attending physician or referring physician is the individual who provided the information required under Subsection (2)(d); and

(b) (i) obtain from the pregnant woman a written certification that the information required to be provided under Subsection (2) and this Subsection (3) was provided in accordance with the requirements of Subsection (2) and this Subsection (3); and

(ii) obtain a copy of the statement described in Subsection (2)(c)(i).

(4) When a serious medical emergency compels the performance of an abortion, the physician shall inform the woman prior to the abortion, if possible, of the medical indications supporting the physician's judgment that an abortion is necessary.

(5) If an ultrasound is performed on a woman before an abortion is performed, the individual who performs the ultrasound, or another qualified individual, shall:

(a) inform the woman that the ultrasound images will be simultaneously displayed in a manner to permit her to:

(i) view the images, if she chooses to view the images; or

(ii) not view the images, if she chooses not to view the images;

(b) simultaneously display the ultrasound images in order to permit the woman to:

(i) view the images, if she chooses to view the images; or

(ii) not view the images, if she chooses not to view the images;

(c) inform the woman that, if she desires, the person performing the ultrasound, or
another qualified person shall provide a detailed description of the ultrasound images, including:

(i) the dimensions of the unborn child;
(ii) the presence of cardiac activity in the unborn child, if present and viewable; and
(iii) the presence of external body parts or internal organs, if present and viewable; and
(d) provide the detailed description described in Subsection [(6)][(5)(c), if the woman requests it.

(6) The information described in Subsections (2), (3), and (5) is not required to be provided to a pregnant woman under this section if the abortion is performed for a reason described in:

(a) Subsection 76-7-302(3)(b)(i), if the treating physician and one other physician concur, in writing, that the abortion is necessary to avert:

(i) the death of the woman on whom the abortion is performed; or
(ii) a serious risk of substantial and irreversible impairment of a major bodily function of the woman on whom the abortion is performed; or
(b) Subsection 76-7-302(3)(b)(ii).

(7) In addition to the criminal penalties described in this part, a physician who violates the provisions of this section:

(a) is guilty of unprofessional conduct as defined in Section 58-67-102 or 58-68-102; and
(b) shall be subject to:

(i) suspension or revocation of the physician's license for the practice of medicine and surgery in accordance with Section 58-67-401 or 58-68-401; and
(ii) administrative penalties in accordance with Section 58-67-402 or 58-68-402.

(8) A physician is not guilty of violating this section for failure to furnish any of the information described in Subsection (2) or (3), or for failing to comply with Subsection (5), if:

(a) the physician can demonstrate by a preponderance of the evidence that the physician reasonably believed that furnishing the information would have resulted in a severely adverse effect on the physical or mental health of the pregnant woman;
(b) in the physician's professional judgment, the abortion was necessary to avert:
(i) the death of the woman on whom the abortion is performed; or
(ii) a serious risk of substantial and irreversible impairment of a major bodily function of the woman on whom the abortion is performed;

(c) the pregnancy was the result of rape or rape of a child, as defined in Sections 76-5-402 and 76-5-402.1;

(d) the pregnancy was the result of incest, as defined in Subsection 76-5-406(10) and Section 76-7-102; or

(e) at the time of the abortion, the pregnant woman was 14 years of age or younger.

(9) A physician who complies with the provisions of this section and Section 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain informed consent under Section 78B-3-406.

(10) (a) The department shall provide an ultrasound, in accordance with the provisions of Subsection (5)(b), at no expense to the pregnant woman.

(b) A local health department shall refer a pregnant woman who requests an ultrasound described in Subsection (10)(a) to the department.

(11) A physician is not guilty of violating this section if:

(a) the information described in Subsection (2) is provided less than 72 hours before the physician performs the abortion; and

(b) in the physician's professional judgment, the abortion was necessary in a case where:

(i) a ruptured membrane, documented by the attending or referring physician, will cause a serious infection; or

(ii) a serious infection, documented by the attending or referring physician, will cause a ruptured membrane.

Section 7. Section 76-7-309 is amended to read:

76-7-309. Pathologist's report.

Any human tissue removed during an abortion shall be submitted to a pathologist who shall make a report, including[, but not limited to whether there was a pregnancy, and if possible,] whether:

(1) the pregnancy was aborted by evacuating the uterus[;]; and

(2) a medical record indicates that, through a prenatal screening or other diagnostic test, the aborted fetus had or may have had Down syndrome.
Section 8. Section 76-7-313 is amended to read:

76-7-313. Department's enforcement responsibility -- Physician's report to department.

(1) In order for the department to maintain necessary statistical information and ensure enforcement of the provisions of this part:

(a) any physician performing an abortion must obtain and record in writing:

(i) the age, marital status, and county of residence of the woman on whom the abortion was performed;

(ii) the number of previous abortions performed on the woman described in Subsection (1)(a);

(iii) the hospital or other facility where the abortion was performed;

(iv) the weight in grams of the unborn child aborted, if it is possible to ascertain;

(v) the pathological description of the unborn child;

(vi) the given menstrual age of the unborn child;

(vii) the measurements of the unborn child, if possible to ascertain; and

(viii) the medical procedure used to abort the unborn child; and

(b) the department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) Each physician who performs an abortion shall provide the following to the department within 30 days after the day on which the abortion is performed:

(a) the information described in Subsection (1);

(b) a copy of the pathologist's report described in Section 76-7-309;

(c) an affidavit:

(i) indicating whether the required consent was obtained pursuant to Sections 76-7-305 and 76-7-305.5; and

(ii) described in Subsection (3), if applicable; and

(iii) indicating whether at the time the physician performed the abortion, the physician had any knowledge that the pregnant woman sought the abortion solely because the unborn child had or may have had Down syndrome; and

(d) a certificate indicating:

(i) whether the unborn child was or was not viable, as defined in Subsection
(ii) if the unborn child was viable, as defined in Subsection 76-7-302(1), at the time of the abortion, the reason for the abortion.

(3) If the information module or the address to the website is not provided to a pregnant woman, the physician who performs the abortion on the woman shall, within 10 days after the day on which the abortion is performed, provide to the department an affidavit that:

(a) specifies the information that was not provided to the woman; and

(b) states the reason that the information was not provided to the woman.

(4) All information supplied to the department shall be confidential and privileged pursuant to Title 26, Chapter 25, Confidential Information Release.

(5) The department shall pursue all administrative and legal remedies when the department determines that a physician or a facility has not complied with the provisions of this part.

Section 9. Contingent effective date.

(1) As used in this section, "a court of binding authority" means:

(a) the United States Supreme Court; or

(b) after the right to appeal has been exhausted:

(i) the United States Court of Appeals for the Tenth Circuit;

(ii) the Utah Supreme Court; or

(iii) the Utah Court of Appeals.

(2) Except as provided in Subsection (3), this bill takes effect on May 14, 2019.

(3) Section 76-7-302.4 takes effect on the date that the legislative general counsel certifies to the Legislative Management Committee that a court of binding authority holds that a state may prohibit the abortion of an unborn child before the unborn child is viable outside of the mother if the sole reason for the abortion is that the unborn child has or may have Down syndrome.