



Women's Right to Know (Informed Consent for Abortion)

Overview

The Arizona Department of Health Services statistics show that 10,506 abortions were reported in Arizona in 2006.¹ This number has remained relatively steady over the past ten years, with a high of 14,606 reported in 1998 and a low of 8,226 in 2001. As with any other surgical procedure, abortion entails certain risks to the patient. Some of these risks are minor, but abortion can pose serious health risks including severe bleeding, infertility, and even death.

Existing informed consent provisions of Arizona law do not guarantee that a woman will receive the medical information she needs to make an informed decision about abortion. Although Arizona law requires informed consent protections for a number of specific procedures such as HIV testing, foot surgery, and pediatric immunizations, no such protections are offered to a woman considering abortion.

Background

Arizona women have a right to receive medically accurate information about the abortion procedure and its related risks.

Informed consent provides necessary and constitutional protections by requiring that a woman considering abortion receive basic, essential medical information about the procedure. The proposal requires that, at least 24 hours before the procedure, the attending physician, the referring physician, or another qualified individual orally inform the woman of the following:

- the nature of the procedure, the risks, and alternatives to the procedure;
- the probable gestational age of the preborn child;
- the medical risks associated with childbirth;
- that she has the right to review printed materials published by the Department of Health Services that describe the preborn child and list agencies offering alternatives to abortion.

In the case of a medical emergency compelling the performance of an abortion, when the physician's judgment indicates the procedure is necessary to avert the woman's death or irreversible damage to major bodily functions, the 24-hour waiting period may be waived.

Prepared by The Center for Arizona Policy, a non-profit, non-partisan research and education organization.
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Other State Laws

Since 1992, when the U.S. Supreme Court decided in *Planned Parenthood v. Casey*, 112 S.Ct. 2791 (1992) that states have a legitimate interest in how abortions are conducted and allowed the state of Pennsylvania to require abortion clinics inform women of the potential harms of abortion, 32 states have enacted informed consent legislation. Twenty-four states require a one-day reflection period, four states require mention of the abortion-breast cancer link. Six states have passed laws which are either in litigation or have had enforcement enjoined.² None of state laws have been overturned on federal constitutional grounds.

Arizona

The Center for Arizona Policy has frequently advocated for Arizona to adopt specific informed consent legislation. In 2004 the legislation passed both the Arizona House and the Arizona Senate. After an unprecedented television ad campaign to encourage the governor to sign the legislation, Gov. Napolitano vetoed the bill less than an hour after she received it from the legislature. In her veto message, which apparently had been prepared in advance, the Governor reasoned that the state already had informed consent regulations in place, but she failed to say that these were regulations which she, while serving as Attorney General, agreed as part of a court case would no longer be enforced.

Additional Information

Informed consent is constitutional under the U.S. Supreme Court ruling in *Casey*. In that case, the Court recognized the need for a woman to “apprehend the full consequences of her decision” and that the State has a “legitimate purpose of reducing the risk that a woman may elect an abortion, only to discover later ... that her decision was not fully informed.”

Contrary to claims from opponents, informed consent does not intrude on the normal patient-physician relationship. According to testimony by abortion providers in a case upholding Wisconsin’s right-to-know law, most women never receive any consultation with the physician prior to the abortion. Also, under *Casey*, it is constitutional for a state to regulate physician speech as part of its regulation of medicine. One study found that 85 percent of women who had abortions were misled about the procedure or denied relevant information during their pre-abortion counseling.

A 24-hour reflection period provides time for reasoned decision-making, without interfering with the woman’s right to choose. The Supreme Court in *Casey* found that the 24-hour reflection period is a reasonable measure, allowing women to make an informed, deliberate decision and that it does not amount to an undue burden. Since the information may be provided by the attending or referring physician, the 24-hour period would not require the woman to incur any extra travel or expense.

Informed consent is pro-woman. It guarantees that a woman’s choice is fully informed. Just as a woman considering any surgery receives complete information, so should a woman contemplating abortion.

Informed consent is constitutional under the Arizona Constitution’s right to privacy clause (Article 2, Section 8). Arizona’s right to privacy clause is an original part of the Arizona

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Constitution. It was intended to address search and seizure issues. At least three states, California, Alaska, and Florida, have state right-to-privacy clauses in their constitutions, and these clauses were added specifically to address the abortion issue. That is not the case with the Arizona clause, which was part of the original Constitution enacted in 1912.

Conclusion

Informed consent provides reasonable, constitutional, and compassionate protections by requiring that a woman have important medical information when considering an abortion.

¹ *Arizona Department of Health Services*. Retrieved January 19, 2008, from <http://www.azdhs.gov/plan/report/ahs/ahs2006/pdf/text1d.pdf>

² Smith, M. (2007). *Americans United for Life*. Retrieved January 19, 2008, from http://www.aul.org/xm_client/client_documents/DL07/abortion/DL07-InformedConsentLawsMapSummaryTable.pdf