

**311.725 Requirement of voluntary and informed written consent for abortion -- Cabinet's duty to produce and make available informational materials -- Abortions in medical emergencies.**

- (1) No abortion shall be performed or induced except with the voluntary and informed written 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 if and only if:
  - (a) At least twenty-four (24) hours prior to the abortion, a physician, licensed nurse, physician assistant, or social worker to whom the responsibility has been delegated by the physician has verbally informed the woman of all of the following:
    1. The nature and purpose of the particular abortion procedure or treatment to be performed and of those medical risks and alternatives to the procedure or treatment that a reasonable patient would consider material to the decision of whether or not to undergo the abortion;
    2. The probable gestational age of the embryo or fetus at the time the abortion is to be performed; and
    3. The medical risks associated with the pregnant woman carrying her pregnancy to term;
  - (b) At least twenty-four (24) hours prior to the abortion, in an individual, private setting, a physician, licensed nurse, physician assistant, or social worker to whom the responsibility has been delegated by the physician has informed the pregnant woman that:
    1. The cabinet publishes the printed materials described in paragraphs (a) and (b) of subsection (2) of this section and that she has a right to review the printed materials and that copies will be provided to her by the physician, licensed nurse, physician assistant, or social worker free of charge if she chooses to review the printed materials;
    2. 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 published by the cabinet; and
    3. The father of the fetus is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion;
  - (c) At least twenty-four (24) hours prior to the abortion, a copy of the printed materials has been provided to the pregnant woman if she chooses to view these materials;
  - (d) The pregnant woman certifies in writing, prior to the performance or inducement of the abortion:
    1. That she has received the information required to be provided under paragraphs (a), (b), and (c) of this subsection; and
    2. That she consents to the particular abortion voluntarily and knowingly, and she is not under the influence of any drug of abuse or alcohol; and

- (e) Prior to the performance or inducement of the abortion, the physician who is scheduled to perform or induce the abortion or the physician's agent receives a copy of the pregnant woman's signed statement, on a form which may be provided by the physician, on which she consents to the abortion and that includes the certification required by paragraph (d) of this subsection.
- (2) By January 1, 1999, the cabinet shall cause to be published in English in a typeface not less than 12 point type the following materials:
- (a) Materials that inform the pregnant woman about public and private agencies and services that are available to assist her through her pregnancy, upon childbirth, and while her child is dependent, including, but not limited to, adoption agencies. The materials shall include a comprehensive list of the available agencies and a description of the services offered by the agencies and the telephone numbers and addresses of the agencies, and inform the pregnant woman about available medical assistance benefits for prenatal care, childbirth, and neonatal care and about the support obligations of the father of a child who is born alive. The cabinet shall ensure that the materials are comprehensive and do not directly or indirectly promote, exclude, or discourage the use of any agency or service described in this section; and
  - (b) Materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the zygote, blastocyte, embryo, or fetus at two (2) week gestational increments for the first sixteen (16) weeks of her pregnancy and at four (4) week gestational increments from the seventeenth week of her pregnancy to full term, including any relevant information regarding the time at which the fetus possibly would be viable. The materials shall use language that is understandable by the average person who is not medically trained, shall be objective and nonjudgmental, and shall include only accurate scientific information about the zygote, blastocyte, embryo, or fetus at the various gestational increments. The materials shall include, for each of the two (2) of four (4) week increments specified in this paragraph, a pictorial or photographic depiction of the zygote, blastocyte, embryo, or fetus. The materials shall also include, in a conspicuous manner, a scale or other explanation that is understandable by the average person and that can be used to determine the actual size of the zygote, blastocyte, embryo, or fetus at a particular gestational increment as contrasted with the depicted size of the zygote, blastocyte, embryo, or fetus at that gestational increment.
- (3) Upon submission of a request to the cabinet by any person, hospital, physician, or medical facility for one (1) or more copies of the materials published in accordance with subsection (2) of this section, the cabinet shall make the requested number of copies of the materials available to the person, hospital, physician, or medical facility that requested the copies.
- (4) If a medical emergency or medical necessity compels the performance or inducement of an abortion, the physician who will perform or induce the abortion, prior to its performance or inducement if possible, shall inform the pregnant woman of the medical indications supporting the physician's judgment

that an immediate abortion is necessary. Any physician who performs or induces an abortion without the prior satisfaction of the conditions specified in subsection (1) of this section because of a medical emergency or medical necessity shall enter the reasons for the conclusion that a medical emergency exists in the medical record of the pregnant woman.

- (5) If the conditions specified in subsection (1) of this section are satisfied, consent to an abortion shall be presumed to be valid and effective.
- (6) The failure of a physician to satisfy the conditions of subsection (1) of this section prior to performing or inducing an abortion upon a pregnant woman may be the basis of disciplinary action pursuant to KRS 311.595.
- (7) The cabinet shall charge a fee for each copy of the materials distributed in accordance with subsections (1) and (3) of this section. The fee shall be sufficient to cover the cost of the administration of the materials published in accordance with subsection (2) of this section, including the cost of preparation and distribution of materials.

**Effective:** July 15, 1998

**History:** Created 1998 Ky. Acts ch. 614, sec. 2, effective July 15, 1998.