

AN ACT

To amend sections 3702.30 and 3702.31 and to enact sections 2305.116 and 3702.301 of the Revised Code to exempt certain freestanding birthing centers from the requirement that a center obtain a health care facility license from the Director of Health and to provide that there is no cause of action on a medical claim that because of an act or omission an abortion was not performed.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 3702.30 and 3702.31 be amended and sections 2305.116 and 3702.301 of the Revised Code be enacted to read as follows:

Sec. 2305.116. (A) No person has a civil action or may receive an award of damages in a civil action, and no other person shall be liable in a civil action, upon a medical claim that because of an act or omission by the other person the person was not aborted.

(B) No person has a civil action or may receive an award of damages in a civil action, and no other person shall be liable in a civil action, upon a medical claim that because of an act or omission by the other person a child was not aborted.

(C) Nothing in this section shall preclude a person from bringing a civil action or from receiving an award of damages in a medical claim based upon an intentional or willful misrepresentation or omission of information related to medical diagnosis, care, or treatment.

(D) As used in this section, "medical claim" has the same meaning as in section 2305.113 of the Revised Code.

Sec. 3702.30. (A) As used in this section:

(1) "Ambulatory surgical facility" means a facility, whether or not part of the same organization as a hospital, that is located in a building distinct from another in which inpatient care is provided, and to which any of the following apply:

(a) Outpatient surgery is routinely performed in the facility, and the facility functions separately from a hospital's inpatient surgical service and

from the offices of private physicians, podiatrists, and dentists.

(b) Anesthesia is administered in the facility by an anesthesiologist or certified registered nurse anesthetist, and the facility functions separately from a hospital's inpatient surgical service and from the offices of private physicians, podiatrists, and dentists.

(c) The facility applies to be certified by the United States ~~health care financing administration~~ centers for medicare and medicaid services as an ambulatory surgical center for purposes of reimbursement under Part B of the medicare program, Part B of Title XVIII of the "Social Security Act," ~~49 79 Stat. 620 286 (1935 1965)~~, 42 U.S.C.A. ~~304 1395~~, as amended.

(d) The facility applies to be certified by a national accrediting body approved by the ~~health care financing administration~~ centers for medicare and medicaid services for purposes of deemed compliance with the conditions for participating in the medicare program as an ambulatory surgical center.

(e) The facility bills or receives from any third-party payer, governmental health care program, or other person or government entity any ambulatory surgical facility fee that is billed or paid in addition to any fee for professional services.

(f) The facility is held out to any person or government entity as an ambulatory surgical facility or similar facility by means of signage, advertising, or other promotional efforts.

"Ambulatory surgical facility" does not include a hospital emergency department.

(2) "Ambulatory surgical facility fee" means a fee for certain overhead costs associated with providing surgical services in an outpatient setting. A fee is an ambulatory surgical facility fee only if it directly or indirectly pays for costs associated with any of the following:

(a) Use of operating and recovery rooms, preparation areas, and waiting rooms and lounges for patients and relatives;

(b) Administrative functions, record keeping, housekeeping, utilities, and rent;

(c) Services provided by nurses, orderlies, technical personnel, and others involved in patient care related to providing surgery.

"Ambulatory surgical facility fee" does not include any additional payment in excess of a professional fee that is provided to encourage physicians, podiatrists, and dentists to perform certain surgical procedures in their office or their group practice's office rather than a health care facility, if the purpose of the additional fee is to compensate for additional cost incurred in performing office-based surgery.

(3) "Governmental health care program" has the same meaning as in section 4731.65 of the Revised Code.

(4) "Health care facility" means any of the following:

- (a) An ambulatory surgical facility;
- (b) A freestanding dialysis center;
- (c) A freestanding inpatient rehabilitation facility;
- (d) A freestanding birthing center;
- (e) A freestanding radiation therapy center;
- (f) A freestanding or mobile diagnostic imaging center.

(5) "Third-party payer" has the same meaning as in section 3901.38 of the Revised Code.

(B) By rule adopted in accordance with sections 3702.12 and 3702.13 of the Revised Code, the director of health shall establish quality standards for health care facilities. The standards may incorporate accreditation standards or other quality standards established by any entity recognized by the director.

(C) Every ambulatory surgical facility shall require that each physician who practices at the facility comply with all relevant provisions in the Revised Code that relate to the obtaining of informed consent from a patient.

(D) The director shall issue a license to each health care facility that makes application for a license and demonstrates to the director that it meets the quality standards established by the rules adopted under division (B) of this section and satisfies the informed consent compliance requirements specified in division (C) of this section.

(E)(1) ~~Not~~ Except as provided in section 3702.301 of the Revised Code, no health care facility shall operate without a license issued under this section.

(2) If the department of health finds that a physician who practices at a health care facility is not complying with any provision of the Revised Code related to the obtaining of informed consent from a patient, the department shall report its finding to the state medical board, the physician, and the health care facility.

(3) This division does not create, and shall not be construed as creating, a new cause of action or substantive legal right against a health care facility and in favor of a patient who allegedly sustains harm as a result of the failure of the patient's physician to obtain informed consent from the patient prior to performing a procedure on or otherwise caring for the patient in the health care facility.

(F) The rules adopted under division (B) of this section shall include all of the following:

(1) Provisions governing application for, renewal, suspension, and revocation of a license under this section;

(2) Provisions governing orders issued pursuant to section 3702.32 of the Revised Code for a health care facility to cease its operations or to prohibit certain types of services provided by a health care facility;

(3) Provisions governing the imposition under section 3702.32 of the Revised Code of civil penalties for violations of this section or the rules adopted under this section, including a scale for determining the amount of the penalties.

Sec. 3702.301. (A) Except as provided in division (C) of this section, a freestanding birthing center is not required to obtain a license under section 3702.30 of the Revised Code if all of the following are the case:

(1) A religious denomination, sect, or group owns and operates the center.

(2) Requiring that the center be licensed significantly abridges or infringes on the religious practices or beliefs of that religious denomination, sect, or group.

(3) The center provides care only during low-risk pregnancy, delivery, and the immediate postpartum period exclusively to women who are members of that religious denomination, sect, or group.

(4) The center monitors and evaluates the care provided to its patients in accordance with at least the minimum patient safety monitoring and evaluation requirements established in rules adopted under division (D) of this section.

(5) The center meets the quality assessment and improvement standards established in rules adopted under division (D) of this section.

(B) If the director determines that a freestanding birthing center is no longer exempt from the requirement to obtain a license under section 3702.30 of the Revised Code because the center ceases to comply with division (A)(4) or (5) of this section, the director may order the center to come into compliance. In the order, the director may do all of the following:

(1) Identify what the center is not in compliance with and what the center needs to do to come into compliance;

(2) Require that the center come into compliance within a period of time specified in the order;

(3) Require that the center provide the director a written notice within a period of time specified in the order that contains all of the following:

(a) Certification that the center has come into compliance;

(b) The signature of the center's administrator or medical director and certification that the administrator or medical director, whichever signs the

notice, is the center's authorized representative:

(c) Certification that the information contained in the notice and in any accompanying documentation is true and accurate;

(d) Any other information or documentation that the director may require to verify that the center has come into compliance.

(C) If the director issues an order to a freestanding birthing center under division (B) of this section and the center fails to comply with the order within the time specified in the order, the director may issue a second order that requires the center to cease operations until the center obtains a license under section 3702.30 of the Revised Code.

(D) The director of health shall adopt rules in accordance with Chapter 119. of the Revised Code as necessary to implement this section. The rules shall establish all of the following:

(1) Minimum patient safety monitoring and evaluation requirements;

(2) Quality assessment and improvement standards;

(3) Procedures for determining whether freestanding birthing centers are in compliance with the rules.

Sec. 3702.31. (A) The quality monitoring and inspection fund is hereby created in the state treasury. The director of health shall use the fund to administer and enforce this section and sections 3702.11 to 3702.20, 3702.30, 3702.301, and 3702.32 of the Revised Code and rules adopted pursuant to those sections. The director shall deposit in the fund any moneys collected pursuant to this section or section 3702.32 of the Revised Code. All investment earnings of the fund shall be credited to the fund.

(B) The director of health shall adopt rules pursuant to Chapter 119. of the Revised Code establishing fees for both of the following:

(1) Initial and renewal license applications submitted under section 3702.30 of the Revised Code. The fees established under division (B)(1) of this section shall not exceed the actual and necessary costs of performing the activities described in division (A) of this section.

(2) Inspections conducted under section 3702.15 or 3702.30 of the Revised Code. The fees established under division (B)(2) of this section shall not exceed the actual and necessary costs incurred during an inspection, including any indirect costs incurred by the department for staff, salary, or other administrative costs. The director of health shall provide to each health care facility or provider inspected pursuant to section 3702.15 or 3702.30 of the Revised Code a written statement of the fee. The statement shall itemize and total the costs incurred. Within fifteen days after receiving a statement from the director, the facility or provider shall forward the total amount of the fee to the director.

(3) The fees described in divisions (B)(1) and (2) of this section shall meet both of the following requirements:

(a) For each service described in section 3702.11 of the Revised Code, the fee shall not exceed one thousand seven hundred fifty dollars annually, except that the total fees charged to a health care provider under this section shall not exceed five thousand dollars annually.

(b) The fee shall exclude any costs reimbursable by the United States ~~health care financing administration~~ centers for medicare and medicaid services as part of the certification process for the medicare program established under Title XVIII of the "Social Security Act," ~~49~~ 79 Stat. ~~620~~ 286 (1935), 42 U.S.C.A. ~~304~~ 1395, as amended, and the medicaid program established under Title XIX of ~~that act~~ the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C. 1396.

(4) The director shall not establish a fee for any service for which a licensure or inspection fee is paid by the health care provider to a state agency for the same or similar licensure or inspection.

SECTION 2. That existing sections 3702.30 and 3702.31 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 287

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____