

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 7 Pregnancy and Parenting Support

SPONSOR(S): Health & Human Services Committee, Persons-Mulicka and others

TIED BILLS: IDEN./SIM. **BILLS:** SB 300

FINAL HOUSE FLOOR ACTION: 70 Y's 40 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 7 passed the House on April 13, 2023, as SB 300.

The Florida Pregnancy Support Services Program (FPSSP) provides pregnancy support services and wellness services to eligible clients. Pregnancy support services are services that promote and encourage childbirth, including direct client services, program awareness activities, and communication activities. Wellness services are services or activities intended to maintain and improve health or prevent illness and injury. Eligible clients include pregnant women and their families.

CS/HB 7 expands the types of services that may be provided through the FPSSP to include parenting services, nonmedical material assistance, counseling, mentoring, education materials, and classes on pregnancy, parenting, adoption, life skills and employment readiness. The bill also expands eligibility for services to include adoptive parents of children under age three and their families. These provisions become effective upon becoming law.

Current law prohibits abortions if the gestational age of the fetus is more than 15 weeks, with a medical exception and an exception for fatal fetal anomalies. The bill prohibits abortions if the gestational age of the fetus is more than 6 weeks, and retains the medical and fatal fetal anomaly exceptions. The bill adds exceptions for rape, incest and human trafficking if the fetus is less than 15 weeks of age under certain circumstances. The bill also deletes all provisions in current law related to the viability standard, including the prohibition against abortions after viability, as these provisions are no longer necessary.

Medication abortion is a two-step, two-drug, process that does not require surgical intervention. Current law does not regulate how physicians dispense these abortion-inducing drugs, or the use of telehealth to provide abortions. The bill requires abortion-inducing drugs to be dispensed in person by a physician, and expressly prohibits the use of telehealth for abortions.

Currently, Florida law does not prohibit the use of state funds for reimbursement of travel expenses for abortion. The bill prohibits the use of state funds to pay for the travel out-of-state to obtain an abortion except for cases of medical emergencies and when federal law requires states to pay for such travel.

The abortion provisions of the bill will only take effect if specified events occur that change Florida's jurisprudence on the privacy clause in the state constitution.

The bill appropriates \$30 million in recurring General Revenue to the Department of Health. The bill has no fiscal impact on local government.

The bill was approved by the Governor on April 13, 2023, ch. 2023-21, L.O.F., and became effective upon becoming law, except as otherwise provided within the bill.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Florida Pregnancy Support Services Program

The Florida Pregnancy Support Services Program (FPSSP) was created in 2005, in proviso in the General Appropriations Act, to encourage women to carry their pregnancies to term, and increase awareness of non-abortion counseling options, such as parenting or adoption.¹ In 2018, the Legislature created s. 381.96, F.S. to codify the FPSSP in Florida Statutes.

Current law requires the Department of Health (DOH) to contract with the Florida Pregnancy Care Network, Inc. (FPCN), to manage subcontracts with the direct service providers throughout the state to provide services under the FPSSP.² The contract with FPCN must:³

- Require that FPCN establish and manage subcontracts with a sufficient number of providers to ensure the availability pregnancy support and wellness services for eligible clients;
- Require that 90 percent of contract funds be used on pregnancy support and wellness services for eligible clients;
- Require that FPCN ensures that all paid staff and volunteers of the providers undergo background screenings if they provide direct client services to eligible clients who are minors, elderly, or have a disability;
- Require FPCN to annually monitor the providers for compliance with subcontract provisions and define the actions to be taken for noncompliance;
- Limit the providers with which FPCN may contract to those that solely promote and support childbirth;
- Provide that any informational materials provided to an eligible client by a provider must be current and accurate, with the reference source of any medical statement made available; and
- Define the contract deliverables, including financial reports and other reports due to DOH, timeframes for achieving contractual obligations, and any other requirements that DOH determines necessary, such as staffing and location requirements.

The FPSSP provides pregnancy support services and wellness services to eligible clients. Pregnancy support services are services that promote and encourage childbirth, including direct client services, program awareness activities, and communication activities⁴. Direct client services include, but are not limited to:

- Pregnancy testing;
- Counseling;
- Training; and
- Education.

Wellness services are services or activities intended to maintain and improve health or prevent illness and injury, including but not limited to:

¹ Florida Pregnancy Care Network, Inc., *Florida Pregnancy Support Services Program (FPSSP), 2016-2017 Compliance Manual*, on file with the Health Quality Subcommittee.

² S. 381.96, F.S.

³ *Id.*

⁴ Communication activities, include the operation and maintenance of a hotline or call center with a single statewide toll-free number that is available 24 hours a day for an eligible client to obtain the location and contact information for a pregnancy center located in the client's area.

- Anemia testing;
- Assistance with smoking cessation; and
- Screenings for high blood pressure, thyroid functioning, cholesterol, and diabetes.

State-funded pregnancy support services and wellness services must be provided in a noncoercive manner and may not include any religious content.

Current law requires the FPSSP to operate a 24-hour toll-free hotline. The hotline must provide an eligible client with the location and contact information for a pregnancy center located in the client's area.⁵

Eligible clients include a pregnant woman or a woman who suspects she is pregnant, and her family, who voluntarily seeks pregnancy support services, and any woman who voluntarily seeks wellness services. A woman and her family are eligible for direct client services for up to 12 months after the birth of the child. Adoptive parents and their families are not expressly eligible for FPSSP services.

Currently, 53 subcontractors, in 102 center locations, provide services in the FPSSP. In Fiscal Year 2021-2022 the FPSSP fielded 9,463 hotline calls and provided 143,000 services to over 42,000 women and their families.⁶ The FPSSP is currently funded with \$4.5 million recurring General Revenue.⁷

Federal Law on Abortion

In 1973, the foundation of modern abortion jurisprudence, *Roe v. Wade*⁸, was decided by the U.S. Supreme Court (Supreme Court). The Supreme Court determined that a woman's right to an abortion is part of a fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. Further, the Court reasoned that state regulation limiting the exercise of this right is subject to strict scrutiny: it must be justified by a compelling state interest, and must be narrowly drawn.⁹ In 1992, the fundamental holding of *Roe* was upheld by the U.S. Supreme Court in *Planned Parenthood v. Casey*.¹⁰

The Viability Standard

In *Roe v. Wade*, the Supreme Court established a rigid trimester framework dictating when, if ever, states can regulate abortion.¹¹ The Court held that states could not regulate abortions during the first trimester of pregnancy.¹² With respect to the second trimester, the Court held that states could only enact regulations aimed at protecting the mother's health, not the fetus's life. Therefore, no ban on abortions is permitted during the second trimester. The state's interest in the life of the fetus becomes sufficiently compelling only at the beginning of the third trimester, allowing it to prohibit abortions. Even then, the Court requires states to permit an abortion in circumstances necessary to preserve the health or life of the mother.¹³

The current viability standard is set forth in *Planned Parenthood v. Casey*.¹⁴ Recognizing that medical advancements in neonatal care can advance viability to a point somewhat earlier than the third trimester, the Supreme Court rejected the trimester framework and, instead, limited the states' ability to regulate abortion pre-viability. Thus, while upholding the underlying holding in *Roe*, which authorizes

⁵ S. 381.96, F.S.

⁶ Florida Pregnancy Care Network, Inc., *Florida Pregnancy Care Network Annual Report 2021-2022*, on file with the Healthcare Regulation Subcommittee.

⁷ *Id.*

⁸ *Roe v. Wade*, 410 U.S. 113 (1973).

⁹ *Id.*

¹⁰ *Casey*, 505 U.S. 833 (1992).

¹¹ *Roe*, 410 U.S. 113 (1973).

¹² *Id.* at 163-64.

¹³ *Id.* at 164-165.

¹⁴ *Planned Parenthood of SE Pa. v. Casey*, 505 U.S. 833 (1992).

states to “regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother[.]”¹⁵ the Court determined that the line for this authority should be drawn at “viability,” because “there may be some medical developments that affect the precise point of viability . . . but this is an imprecision within tolerable limits given that the medical community and all those who must apply its discoveries will continue to explore the matter.”¹⁶ Furthermore, the Court recognized that “[i]n some broad sense it might be said that a woman who fails to act before viability has consented to the State’s intervention on behalf of the developing child.”¹⁷

The Undue Burden Standard

In *Planned Parenthood v. Casey*, the Supreme Court established the undue burden standard for determining whether a law places an impermissible obstacle to a woman’s right to an abortion. The Court held that health regulations which impose undue burdens on the right to abortion are invalid.¹⁸ State regulation imposes an “undue burden” on a woman’s decision to have an abortion if it has the purpose or effect of placing a substantial obstacle in the path of the woman who seeks the abortion of a nonviable fetus.¹⁹ However, the court opined, not every law which makes the right to an abortion more difficult to exercise is an infringement of that right.²⁰

The Medical Emergency Exception

In *Doe v. Bolton*, the Supreme Court was faced with determining, among other things, whether a Georgia statute criminalizing abortions (pre- and post-viability), except when determined to be necessary based upon a physician’s “best clinical judgment,” was unconstitutionally void for vagueness for inadequately warning a physician under what circumstances an abortion could be performed.²¹ In its reasoning, the Court agreed with the district court decision that the exception was not unconstitutionally vague, by recognizing that:

[T]he medical judgment may be exercised in the light of all factors—physical, emotional, psychological, familial, and the woman’s age-relevant to the well-being of the patient. All these factors may relate to health. This allows the attending physician the room he needs to make his best medical judgment.²²

This broad interpretation of what constitutes a medical emergency was later tested in *Casey*²³, albeit in a different context. One question before the Supreme Court in *Casey* was whether the medical emergency exception to a 24-hour waiting period for an abortion was too narrow in that there were some potentially significant health risks that would not be considered “immediate.”²⁴ The exception in question provided that a medical emergency is:

[T]hat condition which, on the basis of the physician’s good faith clinical judgment, so complicates the medical condition 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 a major bodily function.²⁵

¹⁵ See *Roe*, 410 U.S. at 164-65.

¹⁶ See *Casey*, 505 U.S. at 870.

¹⁷ *Id.*

¹⁸ *Id.* at 878.

¹⁹ *Id.* at 877.

²⁰ *Id.* at 873.

²¹ *Doe*, 410 U.S. at 179 (1973). Other exceptions, such as in cases of rape and when, “[t]he fetus would very likely be born with a grave, permanent, and irremediable mental or physical defect.” *Id.* at 183. See also, *U.S. v. Vuitich*, 402 U.S. 62, 71-72 (1971) (determining that a medical emergency exception to a criminal statute banning abortions would include consideration of the mental health of the pregnant woman).

²² *Doe*, 410 U.S. at 192.

²³ *Casey*, 505 U.S. 833 (1992).

²⁴ *Id.* at 880.

²⁵ *Id.* at 879 (quoting 18 Pa. Cons. Stat. § 3203 (1990)).

In evaluating the more objective standard under which a physician is to determine the existence of a medical emergency, the Court in *Casey* determined that the exception would not significantly threaten the life and health of a woman and imposed no undue burden on the woman's right to have an abortion.²⁶

Jackson Women's Health Organization v. Dobbs

In 2018, Mississippi enacted the Gestational Age Act (Act) which prohibited a person from performing an abortion if the probable gestational age of the fetus is greater than 15 weeks. Jackson Women's Health Organization filed a lawsuit challenging the Act alleging that it was an unconstitutional pre-viability ban on abortion. The state argued the Act was a constitutional restriction on abortion. The federal trial court ruled in favor of Jackson Women's Health Organization, which was upheld by the Fifth Circuit of Appeals.²⁷ The state appealed the ruling to the Supreme Court. In June 2021, the Supreme Court ruled in favor of the state and overruled *Roe and Casey*. The Court held that the Constitution does not provide a right to abortion and the authority to regulate abortion is returned to the people and their elected representatives.²⁸ Thus, whether an abortion regulation is unconstitutional must be determined on the respective constitution of each state rather than the Constitution.

Florida Abortion Law

Privacy Clause

The Florida Constitution, as interpreted by Florida courts, affords greater privacy rights than those provided by the U.S. Constitution. While the federal Constitution traditionally shields enumerated and implied individual liberties from state or federal intrusion, the Supreme Court has noted that state constitutions may provide greater protections.²⁹ Unlike the U.S. Constitution, Article I, s. 23 of the Florida Constitution contains an express right to privacy:

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

The Florida Supreme Court opined in *In re T.W.* that this section provides greater privacy rights than those implied by the U.S. Constitution.³⁰

The Florida Supreme Court has recognized Florida's constitutional right to privacy "is clearly implicated in a woman's decision whether or not to continue her pregnancy."³¹ In *In re T.W.*, the Florida Supreme Court ruled that:³²

[P]rior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must substantially further important state interests....Under our Florida Constitution, the state's interest becomes compelling upon viability....Viability under Florida law

²⁶ *Id.* at 880.

²⁷ See *Jackson Women's Health Organization v. Dobbs*, 945 F.3d 265 (5th Cir. 2019).

²⁸ See *Dobbs v. Jackson Women's Health Organization*, 142 S.Ct. 2228 (2021).

²⁹ *Pruneyard Shopping Center v. Robins*, 100 S.Ct. 2035, 2040 (1980), cited in *In re T.W.*, 551 So.2d 1186, 1191 (Fla. 1989).

³⁰ *Id.* at 1191-1192.

³¹ *Id.* at 1192.

³² *Id.* at 1193.

occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical procedures.

The court recognized that after viability, the state can regulate abortion in the interest of the unborn child if the mother's health is not in jeopardy.³³

The state may regulate abortion pre-viability based upon its interest in maternal health beginning in the second trimester. In *Fla. Women's Medical Clinic, Inc. v. Smith*, the court held that the state has an interest in maternal health only after the first trimester, not before, and may not impose substantive clinical standards in the first trimester.³⁴

Abortion Regulation

Abortion clinics are regulated by the Agency for Health Care Administration (AHCA) under ch. 390, F.S. Physicians performing abortions (which may take place in abortion clinics, hospitals, physician offices or other physician settings) are regulated by the Department of Health (DOH) under chs. 458 and 459 F.S.

In Florida, abortion is defined as the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.³⁵ An abortion must be performed by a physician³⁶ licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.³⁷

Florida law prohibits abortions if the physician performing abortion determines the gestational age of the fetus is more than 15 weeks, based on the first day of the woman's last menstrual period.³⁸ Section 390.01112, F.S., prohibits an abortion from being performed if a physician determines that, in reasonable medical judgment, the fetus has achieved viability.³⁹ Exceptions to both of these prohibitions exist if:

- Two physicians certify in writing that, in reasonable medical judgment, the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition; or
- One physician certifies in writing that, in reasonable medical judgment, there is a medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman's life or avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition, and another physician is not available for consultation.⁴⁰

³³ *Id.* at 1194.

³⁴ *Fla. Women's Medical Clinic, Inc. v. Smith*, 478 F.Supp. 233 (S.D. Fla. 1979); *Fla. Women's Medical Clinic, Inc. v. Smith*, 536 F.Supp. 1048 (S.D. Fla. 1982).

³⁵ Section 390.011(1), F.S. Removal of a deceased fetus due to miscarriage or other causes is not abortion under Florida law.

³⁶ Section 390.0111(2), F.S.

³⁷ Section 390.011(8), F.S.

³⁸ Section 390.0111(1), F.S.

³⁹ Viability is defined as the stage of fetal development when the life of a fetus is sustainable outside the womb through standard medical measures. Section 390.011(13), F.S.

⁴⁰ Sections 390.0111(1)(a) and (b) and 390.01112(1)(a) and (b), F.S.

Florida law also provides an exception to the 15-week prohibition if the fetus has not achieved viability and two physicians certify in writing that, in reasonable medical judgment, the fetus has a fatal fetal abnormality.⁴¹

In June 2022, shortly before the law was to take effect, various abortion providers filed a legal challenge to the prohibition against abortions after 15 weeks. The case is currently pending before the Florida Supreme Court in *Planned Parenthood of Southwest and Central Florida v. State of Florida*. The law remains in effect throughout the duration of the pending litigation.

Abortion Data

In 2022, there were 224,582 live births in Florida.⁴² In the same year, there were 82,192 abortion procedures⁴³ performed in the state. Of those:

- 75,118 were performed in the first trimester (12 weeks and under);
- 7,074 were performed in the second trimester (13 to 24 weeks); and
- None were performed in the third trimester (25 weeks and over).

The majority of the procedures (59,794) were elective.⁴⁴ The remainder of the abortions were performed due to:

- Emotional or psychological health of the mother (1,899);
- Physical health of the mother that was not life endangering (1,207);
- Life endangering physical condition (175);
- Rape (115);
- Incest (7);
- Serious fetal genetic defect, deformity, or abnormality (578); and
- Fatal fetal abnormality (66)
- Social or economic reasons (18,351).

No abortions were reported to have been performed due to human trafficking.

Medication Abortion

Medication abortion is a two-step process that does not require surgical intervention. Medication abortions consist of a health care practitioner, usually a physician, providing a patient with mifepristone and misoprostol. The FDA has approved the use of these drugs during the first 70 days of a pregnancy under the following dosing regimen:⁴⁵

- 200 mg of mifepristone taken by mouth. This blocks progesterone, which is a hormone that is necessary for a pregnancy to continue. Without progesterone, the embryo or fetus detaches from the uterine wall.
- 24 to 48 hours after taking mifepristone: 800 mcg of misoprostol taken buccally (in the cheek pouch), at a location appropriate for the patient. This softens and dilates the cervix and causes uterine contractions that expel the embryo or fetus.

⁴¹ Section 390.0111(1), F.S. A “fatal fetal abnormality” is a terminal condition that, in reasonable medical judgment, regardless of the provision of life-saving medical treatment, is incompatible with life outside the womb and will result in death upon birth or imminently thereafter.

⁴² Correspondence from the Department of Health dated March 11, 2023, on file with the Healthcare Regulation Subcommittee.

⁴³ Reported Induced Terminations of Pregnancy by Reason, by Trimester, Agency for Health Care Administration, available at https://ahca.myflorida.com/mchq/central_services/training_support/docs/TrimesterByReason_2022.pdf (last viewed May 9, 2023).

⁴⁴ Id.

⁴⁵ *Questions and Answers on Mifepristone for Medical Termination of Pregnancy Through Ten Weeks Gestation*, U.S. Food & Drug Administration, available at <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/questions-and-answers-mifepristone-medical-termination-pregnancy-through-ten-weeks-gestation> (last visited May 9, 2023).

- Seven to fourteen days after taking mifepristone: follow-up visit with the healthcare provider to confirm that the abortion is complete.

Originally, the FDA required practitioners to dispense mifepristone only in clinics, medical offices and hospitals.⁴⁶ This necessitates an in-person visit to obtain the drugs. This requirement discourages the use of telemedicine, although there is no express federal prohibition against using telemedicine for a medication abortion.

In April 2021, the FDA waived this in-person dispensing requirement for the duration of the COVID-19 federal public health emergency.⁴⁷ This allowed patients to receive abortion-inducing drugs through the mail or other home delivery services. This increased the probability of prescribers using telemedicine to perform medication abortion in states where not prohibited by state law.

On December 16, 2021, the FDA permanently removed the in-person dispensing requirement.⁴⁸

The table below illustrates the current and prior FDA rules.

Protocol	Original FDA Regimen	New FDA Regimen (12/16/21)
Maximum gestational age	70 days from LMP	Same
Mifepristone dose	200 mg. orally	Same
Misoprostol dose	800 mg. buccally (in cheek pouch)	Same
Misoprostol timing	24-48 hours after mifepristone	Same
Misoprostol location	Home	Same
Follow-up visit	7-14 days after mifepristone	Same
Dispensing Method	Both drugs may only be dispensed in-person to a patient, in clinics, medical offices and hospitals	In-person requirement eliminated. Both drugs may be dispensed by a pharmacy or mailed directly to a patient

Because this drug regimen for abortion, and Florida law allows only physicians to perform abortions, only physicians can perform medication abortions. However, Florida law does not expressly regulate the manner in which a physician dispenses the abortion-inducing drug regimen.

Telehealth

Telehealth is not a type of health care service; rather, it is a mechanism for delivery of health care services. Health care professionals use telehealth as a platform to provide traditional health care services in a non-traditional manner. These services include, among others, preventative medicine and the treatment of chronic conditions.⁴⁹ Section 456.74, F.S., enacted in 2019, regulates the use of telehealth by Florida and out-of-state healthcare providers.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ U.S. Department of Health and Human Services, *Report to Congress: E-Health and Telemedicine* (August 12, 2016), available at <https://aspe.hhs.gov/system/files/pdf/206751/TelemedicineE-HealthReport.pdf> (last visited January 23, 2023).

Current law broadly defines telehealth as the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to:⁵⁰

- Assessment, diagnosis, consultation, treatment, and monitoring of a patient;
- Transfer of medical data;
- Patient and professional health-related education;
- Public health services; and
- Health administration.

A patient receiving telehealth services may be in any location at the time services are rendered and a telehealth provider may be in any location when providing telehealth services to a patient.

Health care services may be provided via telehealth by a Florida-licensed health care practitioner, a practitioner licensed under a multistate health care licensure compact of which Florida is a member,⁵¹ or an out-of-state-health care provider who registers with the Department of Health.⁵²

Current law requires telehealth providers to meet the same standard of care required for in-person health care services to patients in this state. This ensures that a patient receives the same standard of care irrespective of the modality used by the health care professional to deliver the services.⁵³

Telehealth Abortion

Sixteen states currently have laws prohibiting the use of telemedicine to perform medication abortions.⁵⁴ In general, these laws expressly prohibit the use of telemedicine to perform abortions or require the physician to be physically present in the same room as the patient when performing the abortion.

Florida law does not expressly prohibit the use of telehealth to perform medication abortions; however, two requirements in current law prevent the use of telehealth for this purpose. First, current law requires the physician performing the abortion to verify the probable gestational age of the fetus, by ultrasound, at the time the abortion is performed.⁵⁵ This nature of the ultrasound procedure, and the requirement that it be contemporaneous with the abortion procedure, likely prevents telehealth use.

Second, current law also requires the physician performing the abortion or the referring physician to engage in an informed consent colloquy with the patient, in the same room as the patient, at least 24 hours before the abortion procedure.⁵⁶ While the abortion-inducing drug regimen could be provided by telehealth or mail after this, the need for an in-person appointment would negate the usefulness of telehealth.

Travel Reimbursement for Abortions

Following the Supreme Court's decision in *Dobbs*, several major corporations announced that they would be offering travel reimbursement for abortions to their employees.⁵⁷ The type of reimbursement

⁵⁰ S. 456.47(1)(a), F.S.

⁵¹ Florida is a member of the Nurse Licensure Compact. See s. 464.0095, F.S.

⁵² S. 456.47(4), F.S.

⁵³ S. 456.47(2), F.S.

⁵⁴ AZ, AL, IN, KY, LA, MI, MS, MO, NE, NC, ND, SC, SD, TN, WV, WI.

⁵⁵ Section 390.0111(3)(b), F.S. The physician performing the abortion, or person qualified to operate an ultrasound who is working in conjunction with the physician, must perform the ultrasound.

⁵⁶ Section 390.0111(3)(a), F.S.

⁵⁷ *These Companies Will Cover Travel Expenses for Employee Abortions*, The New York Times, Emma Goldberg, August 19, 2022, available at <https://www.nytimes.com/article/abortion-companies-travel-expenses.html> (last viewed May 9, 2023); *Employer Coverage of Travel Costs for Out-of-State Abortion*, Kaiser Family Foundation, Michelle Long, Laurie Sobel, Alina Salganicoff, and Kaye Pestaina, May 16, 2022, available at <https://www.kff.org/policy-watch/employer-coverage-travel-costs-out-of-state-abortion/> (last viewed May 9, 2023); *Companies Are Announcing Abortion-Travel Benefits Following Dobbs Decision*, Society for Human Resource

available varies but often includes expenses for travel and lodging, with one company allowing up to \$4,000 for these expenses.⁵⁸ Reimbursement is commonly provided through the employers' health insurance plan or through employer-sponsored self-funded plans.⁵⁹

Currently, Florida law does not prohibit the use of state funds for reimbursement of travel expenses for abortion.

Family Planning

DOH administers Florida's comprehensive family planning program through local county health departments or contracted agencies. The program must include, at a minimum:⁶⁰

- Comprehensive family planning education and counseling programs;
- Prescription for and provision of all medically recognized methods of contraception;
- Medical evaluation, including cytological examination and other appropriate laboratory tests; and
- Treatment of physical complications other than pregnancy resulting from the use of contraceptive methods.

DOH must provide these services at locations and times readily available to the population served. Fees for these services are based upon the cost of the service and the individual's ability to pay.⁶¹

The program may provide maternal health and contraceptive information and services of a nonsurgical nature⁶² to a minor if the minor:⁶³

- Is married;
- Is a parent;
- Is pregnant;
- Has the consent of a parent or legal guardian; or
- May, in the opinion of the physician, suffer probable health hazards if such services are not provided.

In Fiscal Year 2021-2022 DOH expended approximately \$20 million in state and federal funds to provide services in the family planning program.⁶⁴

Effect of the Bill

Pregnancy Support Services

CS/HB 7 expands the types of services that may be provided through the FPSSP. These services include:

- Parenting services.
- Nonmedical material assistance including, but not limited to, cribs, car seats, clothing, diapers and formula.
- Counseling or mentoring.
- Education materials.

Management, Stephen Miller, June 27, 2022, available at <https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/companies-announce-abortion-travel-benefits-following-dobbs-decision.aspx> (last viewed May 9, 2023).

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ S. 381.0051(3), F.S.

⁶¹ Id.

⁶² Application of nonpermanent internal contraceptive devices are not considered to be a surgical procedure.

⁶³ S. 381.0051(4), F.S.

⁶⁴ Correspondence from DOH to the staff of the Health and Human Services Committee dated 3/13/23 on file with the committee.

- Classes on pregnancy, parenting, adoption, life skills and employment readiness.

The bill also expands eligibility for services to include adoptive parents of children under age three and their families.

The bill requires the FPSSP to spend at least 85 percent of the contract funds on pregnancy and parenting support services and wellness services.

The bill requires the FPSSP to submit an annual report to the Governor and the Legislature beginning July 1, 2024.

These bill provisions will be effective upon the bill becoming law.

Abortion Regulations

Six-Week Limit

CS/HB 7 names the act the “Heartbeat Protection Act” and prohibits abortions after 6 weeks’ gestational age, as determined by the physician using an ultrasound. Gestational age is counted from the first day of the woman’s last menstrual period (LMP), consistent with current law. This replaces the current 15-week limit.

The bill retains the same medical exception to prohibited abortions in existing law:⁶⁵

- Two physicians certify in writing that, in reasonable medical judgment, the termination of the pregnancy is necessary to save the pregnant woman’s life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition; or
- One physician certifies in writing that, in reasonable medical judgment, there is a medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman’s life or avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition, and another physician is not available for consultation.

The bill also retains the exception for fatal fetal anomalies in current law, but modifies its applicability. Currently, the exception applies until the fetus achieves viability. Under the bill the exception is applicable if the pregnancy has not progressed to the third trimester.

The bill establishes an exception to prohibited abortions for women seeking an abortion because they are victims of rape, incest, or human trafficking. The fetus must be less than 15 weeks, as determined by the physician, and the woman must provide certain documentation when she schedules or arrives for the abortion. The woman must provide a copy of a restraining order, police report, medical record, or other court order or documentation providing evidence that she is obtaining the termination of pregnancy because she is a victim of rape or incest. This is the same documentation currently required for the rape and incest exceptions related to offers to view the ultrasound and the 24-hour waiting period.⁶⁶ The bill requires physicians to report incidents of rape, incest, and human trafficking to the central abuse hotline⁶⁷ if the woman is a minor and incidents of human trafficking to law enforcement if the woman is an adult.

⁶⁵ Sections 390.0111(1)(a) and (b) and 390.01112(1)(a) and (b), F.S.

⁶⁶ Sections 390.0111(3)(a), F.S.

⁶⁷ Section 39.101, F.S., establishes the central abuse hotline and s. 39.201, F.S., sets forth mandatory reporting requirements.

The bill deletes all provisions in current law related to the viability standard including the prohibition against abortions after viability. These provisions are no longer necessary because the bill bans abortions after six weeks. The bill also deletes certain AHCA rule-making provisions for abortions clinics, related to federal jurisprudence prior to *Dobbs*.

Medication Abortion and Telehealth

Current law does not regulate how physicians dispense abortion-inducing drugs or the use of telehealth to provide abortions. The bill requires abortion-inducing drugs to be dispensed in-person by a physician and expressly prohibits the use of telehealth for abortions.

Travel Reimbursement for Abortions

Currently, Florida law does not prohibit the use of state funds for reimbursement of travel expenses for abortion. The bill prohibits the use of state funds to pay for the travel out-of-state to obtain an abortion except for cases of medical emergencies and when federal law requires states to pay for such travel.

Effective Date

These provisions only take effect if specified events occur that change Florida's jurisprudence on the privacy clause in the state constitution which include:

- The Florida Supreme Court:
 - Recedes from its decision in *In Re T.W.* or its progeny.
 - Determines that the Florida constitution right to privacy provision does not include abortion.
 - Rules in favor of the state in case challenging the 15-week abortion ban (*Planned Parenthood of Southwest and Central Florida v. State of Florida*).
- Florida voters adopt a state constitutional amendment clarifying that the right to privacy does not include abortion.

The bill becomes effective upon becoming law, except the provisions related to abortion regulation which are effective upon the jurisprudential change specified in the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill appropriates an additional \$25 million in recurring General Revenue to the DOH for the purpose of expanding the functions of the FPSSP. The bill also appropriates an additional \$5 million in recurring General Revenue for family planning services provided by the DOH pursuant to s. 381.0051, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.