

**ABORTION CLINIC LICENSING**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Carl Wimmer**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends provisions of the Health Care Facility Licensing and Inspection Act in relation to abortion clinics.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires annual licensing for abortion clinics that provide abortions during the first and second trimesters of pregnancy;
- ▶ grants rulemaking authority to the Department of Health in relation to licensing of abortion clinics;
- ▶ requires, in order for an abortion clinic to obtain and maintain a license, that the abortion clinic comply with statutory requirements, rules, health and safety standards, and recordkeeping requirements;
- ▶ requires inspection of abortion clinics;
- ▶ requires the department to establish a fee on abortion clinics to pay for the costs relating to this bill;
- ▶ modifies exemptions from the Health Care Facility Licensing and Inspection Act;
- ▶ provides intent language; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **26-21-2**, as last amended by Laws of Utah 2005, Chapter 31

34 **26-21-7**, as last amended by Laws of Utah 2004, Chapter 141

35 **26-21-8**, as last amended by Laws of Utah 2003, Chapter 155

36 ENACTS:

37 **26-21-6.5**, Utah Code Annotated 1953

38 **Uncodified Material Affected:**

39 ENACTS UNCODIFIED MATERIAL



41 *Be it enacted by the Legislature of the state of Utah:*

42 Section 1. Section **26-21-2** is amended to read:

43 **26-21-2. Definitions.**

44 As used in this chapter:

45 ~~[(1) "Abortion clinic" means a facility, other than a general acute or specialty hospital,~~  
46 ~~that performs abortions and provides abortion services during the second trimester of~~  
47 ~~pregnancy.]~~

48 (1) "Abortion clinic" means a type I abortion clinic or a type II abortion clinic.

49 (2) "Activities of daily living" means essential activities including:

50 (a) dressing;

51 (b) eating;

52 (c) grooming;

53 (d) bathing;

54 (e) toileting;

55 (f) ambulation;

56 (g) transferring; and

57 (h) self-administration of medication.

58 (3) "Ambulatory surgical facility" means a freestanding facility, which provides

59 surgical services to patients not requiring hospitalization.

60 (4) "Assistance with activities of daily living" means providing of or arranging for the  
61 provision of assistance with activities of daily living.

62 (5) (a) "Assisted living facility" means:

63 (i) a type I assisted living facility, which is a residential facility that provides assistance  
64 with activities of daily living and social care to two or more residents who:

65 (A) require protected living arrangements; and

66 (B) are capable of achieving mobility sufficient to exit the facility without the  
67 assistance of another person; and

68 (ii) a type II assisted living facility, which is a residential facility with a home-like  
69 setting that provides an array of coordinated supportive personal and health care services  
70 available 24 hours per day to residents who have been assessed under department rule to need  
71 any of these services.

72 (b) Each resident in a type I or type II assisted living facility shall have a service plan  
73 based on the assessment, which may include:

74 (i) specified services of intermittent nursing care;

75 (ii) administration of medication; and

76 (iii) support services promoting residents' independence and self sufficiency.

77 (6) "Birthing center" means a freestanding facility, receiving maternal clients and  
78 providing care during pregnancy, delivery, and immediately after delivery.

79 (7) "Committee" means the Health Facility Committee created in Section 26-1-7.

80 (8) "Consumer" means any person not primarily engaged in the provision of health care  
81 to individuals or in the administration of facilities or institutions in which such care is provided  
82 and who does not hold a fiduciary position, or have a fiduciary interest in any entity involved in  
83 the provision of health care, and does not receive, either directly or through his spouse, more  
84 than 1/10 of his gross income from any entity or activity relating to health care.

85 (9) "End stage renal disease facility" means a facility which furnishes staff-assisted  
86 kidney dialysis services, self-dialysis services, or home-dialysis services on an outpatient basis.

87 (10) "Freestanding" means existing independently or physically separated from another  
88 health care facility by fire walls and doors and administrated by separate staff with separate  
89 records.

90 (11) "General acute hospital" means a facility which provides diagnostic, therapeutic,  
91 and rehabilitative services to both inpatients and outpatients by or under the supervision of  
92 physicians.

93 (12) "Governmental unit" means the state, or any county, municipality, or other  
94 political subdivision or any department, division, board, or agency of the state, a county,  
95 municipality, or other political subdivision.

96 (13) (a) "Health care facility" means general acute hospitals, specialty hospitals, home  
97 health agencies, hospices, nursing care facilities, residential-assisted living facilities, birthing  
98 centers, ambulatory surgical facilities, small health care facilities, abortion clinics, facilities  
99 owned or operated by health maintenance organizations, end stage renal disease facilities, and  
100 any other health care facility which the committee designates by rule.

101 (b) "Health care facility" does not include the offices of private physicians or dentists,  
102 whether for individual or group practice, except that it does include an abortion clinic.

103 (14) "Health maintenance organization" means an organization, organized under the  
104 laws of any state which:

105 (a) is a qualified health maintenance organization under 42 U.S.C. Sec. 300e-9; or

106 (b) (i) provides or otherwise makes available to enrolled participants at least the  
107 following basic health care services: usual physician services, hospitalization, laboratory, x-ray,  
108 emergency, and preventive services and out-of-area coverage;

109 (ii) is compensated, except for copayments, for the provision of the basic health  
110 services listed in Subsection (14)(b)(i) to enrolled participants by a payment which is paid on a  
111 periodic basis without regard to the date the health services are provided and which is fixed  
112 without regard to the frequency, extent, or kind of health services actually provided; and

113 (iii) provides physicians' services primarily directly through physicians who are either  
114 employees or partners of such organizations, or through arrangements with individual  
115 physicians or one or more groups of physicians organized on a group practice or individual  
116 practice basis.

117 (15) (a) "Home health agency" means an agency, organization, or facility or a  
118 subdivision of an agency, organization, or facility which employs two or more direct care staff  
119 persons who provide licensed nursing services, therapeutic services of physical therapy, speech  
120 therapy, occupational therapy, medical social services, or home health aide services on a

121 visiting basis.

122 (b) "Home health agency" does not mean an individual who provides services under  
123 the authority of a private license.

124 (16) "Hospice" means a program of care for the terminally ill and their families which  
125 occurs in a home or in a health care facility and which provides medical, palliative,  
126 psychological, spiritual, and supportive care and treatment.

127 (17) "Nursing care facility" means a health care facility, other than a general acute or  
128 specialty hospital, constructed, licensed, and operated to provide patient living  
129 accommodations, 24-hour staff availability, and at least two of the following patient services:

130 (a) a selection of patient care services, under the direction and supervision of a  
131 registered nurse, ranging from continuous medical, skilled nursing, psychological, or other  
132 professional therapies to intermittent health-related or paraprofessional personal care services;

133 (b) a structured, supportive social living environment based on a professionally  
134 designed and supervised treatment plan, oriented to the individual's habilitation or  
135 rehabilitation needs; or

136 (c) a supervised living environment that provides support, training, or assistance with  
137 individual activities of daily living.

138 (18) "Person" means any individual, firm, partnership, corporation, company,  
139 association, or joint stock association, and the legal successor thereof.

140 (19) "Resident" means a person 21 years of age or older who:

141 (a) as a result of physical or mental limitations or age requires or requests services  
142 provided in an assisted living facility; and

143 (b) does not require intensive medical or nursing services as provided in a hospital or  
144 nursing care facility.

145 (20) "Small health care facility" means a four to 16 bed facility that provides licensed  
146 health care programs and services to residents.

147 (21) "Specialty hospital" means a facility which provides specialized diagnostic,  
148 therapeutic, or rehabilitative services in the recognized specialty or specialties for which the  
149 hospital is licensed.

150 (22) "Substantial compliance" means in a department survey of a licensee, the  
151 department determines there is an absence of deficiencies which would harm the physical

152 health, mental health, safety, or welfare of patients or residents of a licensee.

153 (23) "Type I abortion clinic" means a facility, including a physician's office, but not  
154 including a general acute or specialty hospital, that:

- 155 (a) performs abortions during the first trimester of pregnancy; and
- 156 (b) does not perform abortions during the second trimester of pregnancy.

157 (24) "Type II abortion clinic" means a facility, other than a general acute or specialty  
158 hospital, that:

- 159 (a) performs abortions during the second trimester of pregnancy; or
- 160 (b) performs abortions during the first and second trimester of pregnancy.

161 Section 2. Section **26-21-6.5** is enacted to read:

162 **26-21-6.5. Licensing of an abortion clinic -- Rulemaking authority -- Fee.**

163 (1) Beginning on September 1, 2011, a type I abortion clinic may not operate in the  
164 state without a license issued by the department to operate a type I abortion clinic.

165 (2) A type II abortion clinic may not operate in the state without a license issued by the  
166 department to operate a type II abortion clinic.

167 (3) The department shall make rules establishing minimum health, safety, sanitary, and  
168 recordkeeping requirements for:

- 169 (a) a type I abortion clinic; and
- 170 (b) a type II abortion clinic.

171 (4) In order to receive and maintain a license described in this section, an abortion  
172 clinic shall:

- 173 (a) apply for a license on a form prescribed by the department;
- 174 (b) satisfy and maintain the minimum health, safety, sanitary, and recordkeeping  
175 requirements described in Subsection (3) that relate to the type of abortion clinic licensed;
- 176 (c) comply with the recordkeeping and reporting requirements of Subsection  
177 76-7-305.6(4) and Section 76-7-313;

178 (d) comply with the requirements of Title 76, Chapter 7, Part 3, Abortion;

179 (e) pay the annual licensing fee; and

180 (f) cooperate with inspections conducted by the department.

181 (5) The department shall, at least twice per year, inspect each abortion clinic in the  
182 state to ensure that the abortion clinic is complying with all statutory and licensing

183 requirements relating to the abortion clinic. At least one of the inspections shall be made  
184 without providing notice to the abortion clinic.

185 (6) The department shall charge an annual license fee, set in accordance with Section  
186 63J-1-504, to an abortion clinic in an amount that will pay for the cost of the licensing and  
187 inspection requirements described in this section.

188 Section 3. Section **26-21-7** is amended to read:

189 **26-21-7. Exempt facilities.**

190 This chapter does not apply to:

191 (1) a dispensary or first aid facility maintained by any commercial or industrial plant,  
192 educational institution, or convent;

193 (2) a health care facility owned or operated by an agency of the United States;

194 (3) the office of a physician or dentist whether it is an individual or group practice,  
195 except that it does apply to an abortion clinic;

196 (4) a health care facility established or operated by any recognized church or  
197 denomination for the practice of religious tenets administered by mental or spiritual means  
198 without the use of drugs, whether gratuitously or for compensation, if it complies with statutes  
199 and rules on environmental protection and life safety;

200 (5) any health care facility owned or operated by the Department of Corrections,  
201 created in Section 64-13-2; and

202 (6) a residential facility providing 24-hour care:

203 (a) that does not employ direct care staff;

204 (b) in which the residents of the facility contract with a licensed hospice agency to  
205 receive end-of-life medical care; and

206 (c) that meets other requirements for an exemption as designated by administrative  
207 rule.

208 Section 4. Section **26-21-8** is amended to read:

209 **26-21-8. License required -- Not assignable or transferable -- Posting --**  
210 **Expiration and renewal -- Time for compliance by operating facilities.**

211 (1) (a) A person or governmental unit acting severally or jointly with any other person  
212 or governmental unit, may not establish, conduct, or maintain a health care facility in this state  
213 without receiving a license from the department as provided by this chapter and the rules of the

214 committee.

215 (b) This Subsection (1) does not apply to facilities that are exempt under Section  
216 26-21-7.

217 (2) A license issued under this chapter is not assignable or transferable.

218 (3) The current license shall at all times be posted in each health care facility in a place  
219 readily visible and accessible to the public.

220 (4) (a) The department may issue a license for a period of time not to exceed 12  
221 months from the date of issuance for an abortion clinic, and not to exceed 24 months from the  
222 date of issuance [to] for other health care facilities, that meet the provisions of this chapter and  
223 department rules adopted pursuant to this chapter.

224 (b) Each license expires at midnight on the day designated on the license as the  
225 expiration date, unless previously revoked by the department.

226 (c) The license shall be renewed upon completion of the application requirements,  
227 unless the department finds the health care facility has not complied with the provisions of this  
228 chapter or the rules adopted pursuant to this chapter.

229 (5) A license may be issued under this section only for the operation of a specific  
230 facility at a specific site by a specific person.

231 (6) Any health care facility in operation at the time of adoption of any applicable rules  
232 as provided under this chapter shall be given a reasonable time for compliance as determined  
233 by the committee.

234 Section 5. **Legislative intent.**

235 The Legislature is aware of the discovery, nationwide, of abortion clinics that operate in  
236 unsafe and unsanitary conditions, risking the health and safety of women. The Legislature is  
237 very concerned of the risks posed to women in these circumstances and intends to take action  
238 to help ensure that these conditions do not exist in Utah. The purpose of this bill is to protect  
239 women in Utah from these risks in a manner that does conflict with the rights, held by state and  
240 federal courts to be protected by the United States Constitution, in relation to abortion. The  
241 Legislature intends that the department enact rules, and enforce those rules and the provisions  
242 of this bill, in a manner that does not place an undue burden on these rights.



**Legislative Review Note**  
**as of 2-3-11 12:31 PM**

**Office of Legislative Research and General Counsel**