

Unborn Child Pain Awareness/Prevention Act  
Physician Reporting Form

*Mailing address*

**Please return to:**  
Health Care Information Division  
Oklahoma State Department of Health  
1000 NE Tenth Street, Room 807  
Oklahoma City, OK 73117

**A. Personal Information**

Last Name: \_\_\_\_\_ Mailing Address: \_\_\_\_\_  
First Name: \_\_\_\_\_ Street / PO Box: \_\_\_\_\_  
Middle Name: \_\_\_\_\_ City: \_\_\_\_\_  
Suffix: \_\_\_\_\_ SSN: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Credential (e.g. M.D., D.O.): \_\_\_\_\_ National Provider Identifier: \_\_\_\_\_

**B. Practice Information**

Practice Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

**C. Specialty Information**

Primary Specialty: \_\_\_\_\_  
Secondary Specialty: \_\_\_\_\_

**D. Contact Person**  Check here if you are the same person

Last Name: \_\_\_\_\_ Mailing Address: \_\_\_\_\_  
First Name: \_\_\_\_\_ Street / PO Box: \_\_\_\_\_  
Middle Name: \_\_\_\_\_ City: \_\_\_\_\_  
Title/Position: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

**E. Information Distribution** (please refer to Unborn Child Pain Awareness/Prevention Act, as printed on the back of this survey)

1. Indicate the total number of females your or your agent provided the information as required in §63- 1-738. \_\_\_\_\_  
(total number)
  - i. Number by telephone \_\_\_\_\_ by referring physician  
\_\_\_\_\_ by physician or agent of the physician with the capacity to perform the abortion
  - ii. Number in person \_\_\_\_\_ by referring physician  
\_\_\_\_\_ by physician or agent of the physician with the capacity to perform the abortion
2. Indicate the number of females who availed themselves of the opportunity to obtain a copy of the printed information, as described in §63- 1-738.10, from a source other than the website. \_\_\_\_\_  
(number)
  - i. Of these, how many (to the best of your best information and belief) went on to obtain an abortion? \_\_\_\_\_  
(number)
3. Indicate the number of females who did *not* avail themselves of the opportunity to obtain a copy of the printed information, as described in §63- 1-738.10. \_\_\_\_\_  
(number)
  - i. Of these, how many (to the best of your best information and belief) went on to obtain an abortion? \_\_\_\_\_  
(number)
4. Indicate the number of abortions you performed, in which the information otherwise required to be provided at least twenty-four (24) hours before the abortion, was not provided because an immediate abortion was necessary to avert the death of the female. \_\_\_\_\_  
(number)
5. Indicate number of abortions in which such information was not provided because a delay would create serious risk of substantial and irreversible impairment of a major bodily function. \_\_\_\_\_  
(number)

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE HEALTH INFORMATION DIVISION AT 1-405-271-6225.

NOTE: PLEASE PHOTOCOPY THE INFORMATION FOR YOUR FACILITY FILE BEFORE RETURNING THE ORIGINAL FORM TO THE OSDH.

**Thank you**

# Unborn Child Pain Awareness/Prevention Act

## **§63-1-738.6 - Short Title**

This act shall be known and may be cited as the "Unborn Child Pain Awareness/Prevention Act".

## **§63-1-738.7 - Definitions**

As used in the Unborn Child Pain Awareness/Prevention Act:

1. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth to preserve the life or health of the child after live birth, or to remove a dead fetus who dies as the result of a spontaneous miscarriage;
2. "Attempt to perform an abortion" means an act, or an omission of a statutorily required act that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion in Oklahoma in violation of the Unborn Child Pain Awareness/Prevention Act;
3. "Unborn child" means a member of the species homo sapiens from fertilization until birth;
4. "Medical emergency" means any condition which, on the basis of the good faith clinical judgment of a physician, so complicates the medical condition of a pregnant female as to necessitate the immediate abortion of the pregnancy to avert the death of the pregnant female or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function;
5. "Physician" means a person licensed to practice medicine in this state pursuant to Chapters 11 and 14 of Title 59 of the Oklahoma Statutes; and
6. "Probable gestational age" means the gestational age of the unborn child at the time the abortion is planned to be performed, as determined by the physician using reasonable probability.

## **§63-1-738.8 - Provision of Information Prior to Abortion-Written Certification of Receipt**

A. Except in the case of a medical emergency, at least twenty-four (24) hours prior to an abortion being performed on an unborn child whose probable gestational age is twenty (20) weeks or more, the physician performing the abortion or the agent of the physician shall inform the pregnant female, by telephone or in person, of the right to review the printed materials described in Section 10 of this act, that these materials are available on a state-sponsored web site, and the web address of that web site. The physician or the agent of the physician shall orally inform the female that the materials have been provided by the State of Oklahoma and that the materials contain information on pain and the unborn child. If the female chooses to view the materials other than on the web site, the materials shall either be given to the female at least twenty-four (24) hours before the abortion, or mailed to the female at least seventy-two (72) hours before the abortion by certified mail, restricted delivery to the addressee. The information required by this subsection may be provided by a tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to receive the printed materials given or mailed.

B. The female shall certify in writing, prior to the abortion, that the information described in subsection A of this section has been furnished to the female and that the female has been informed of the opportunity to review the printed materials described in Section 10 of this act. Prior to the performance of the abortion, the physician who is to perform the abortion or the agent of the physician shall obtain a copy of the written certification and return the copy on file with the medical record of the female for at least three (3) years following the date of receipt.

## **§63-1-738.9 - Information About and Administration of Anesthetic or Analgesic**

Except in the case of a medical emergency, before an abortion is performed on an unborn child who is twenty (20) weeks gestational age or more, the physician performing the abortion or the agent of the physician shall inform the female if an anesthetic or analgesic would eliminate or alleviate organic pain to the unborn child caused by the particular method of abortion to be employed and inform the female of the particular medical risks associated with the particular anesthetic or analgesic. With the consent of the female, the physician shall administer the anesthetic or analgesic.

## **§63-1-738.10 - Materials Conveying Accurate, Scientific Information about Fetus at Various Gestational Stages**

A. Within ninety (90) days after the Unborn Child Pain Awareness/Prevention Act becomes law, the State Board of Medical Licensure and Supervision shall cause to be published, in English and in each language which is the primary language of two percent (2%) or more of the population of the state, and shall cause to be available on the state web site provided for in Section 11 of this act, printed materials with the following statement concerning unborn children of twenty (20) weeks gestational age: "By twenty (20) weeks gestation, the unborn child has the physical structures necessary to experience pain. There is evidence that by twenty (20) weeks gestation unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted to be a response to pain. Anesthesia is routinely administered to unborn children who are twenty (20) weeks gestational age or older who undergo prenatal surgery." The materials shall be objective, nonjudgmental and designed to convey only accurate scientific information about the human fetus at the various gestational ages.

B. The materials referred to in subsection A of this section shall be printed in a typeface large enough to be clearly legible. The web site provided for in Section 11 of this act shall be maintained at a minimum resolution of 70 DPI (dots per inch). All pictures appearing on this web site shall be a minimum of 200x300 pixels. All letters on the web site shall be a minimum of 11 point font. All information and pictures shall be accessible with an industry standard browser requiring no additional plug-ins.

C. The materials required under this section shall be available at no cost from the State Board of Medical Licensure and Supervision upon request and in appropriate number to any person, facility, or hospital.

## **§63-1-738.11 - Internet Web Site**

The State Board of Medical Licensure and Supervision shall develop and maintain a stable Internet web site to provide the information described under Section 10 of this act. No information regarding who uses the web site shall be collected or maintained. The State Board of Medical Licensure and Supervision shall monitor the web site on a daily basis to prevent and correct tampering.

## **§63-1-738.12 - Information to be Provided When Medical Emergency Compels Performance of Abortion**

When a medical emergency compels the performance of an abortion, the physician shall inform the female, prior to the abortion if possible, of the medical indications supporting the judgment of the physician that an abortion is necessary to avert the death of the female or that a twenty-four-hour delay will create serious risk of substantial and irreversible impairment of a major bodily function.

## **§63-1-738.13 - Physicians' Reporting Form**

A. Within ninety (90) days after the Unborn Child Pain Awareness/Prevention Act becomes law, the State Department of Health shall prepare a reporting form for physicians containing a reprint of the Unborn Child Pain Awareness/Prevention Act and listing:

1. The number of females to whom the physician or an agent of the physician provided the information described in subsection A of Section 8 of this act, of that number, the number provided by telephone and the number provided in person; and of each of those numbers, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion or agent of such a physician;
2. The number of females who availed themselves of the opportunity to obtain a copy of the printed information described in Section 10 of this act other than on the web site, and the number who did not; and of each of those numbers, the number who, to the best of the information and belief of the reporting physician, went on to obtain the abortion; and
3. The number of abortions performed by the physician in which information otherwise required to be provided at least twenty-four (24) hours before the abortion was not so provided because an immediate abortion was necessary to avert the death of the female, and the number of abortions in which such information was not so provided because a delay would create serious risk of substantial and irreversible impairment of a major bodily function.

B. The Department shall ensure that copies of the reporting forms described in subsection A of this section are provided:

1. Within one hundred twenty days (120) days after the Unborn Child Pain Awareness/Prevention Act becomes law, to all physicians licensed to practice in this state;
  2. To each physician who subsequently becomes newly licensed to practice in this state, at the same time as official notification to that physician that the physician is so licensed; and
  3. By December 1 of each year, other than the calendar year in which forms are distributed in accordance with paragraph 1 of this subsection, to all physicians licensed to practice in this state.
- C. By February 28 of each year following a calendar year in any part of which the Unborn Child Pain Awareness/Prevention Act was in effect, each physician who provided, or whose agent

provided, information to one or more females in accordance with Section 8 of this act during the previous calendar year shall submit to the Department a copy of the form described in subsection A of this section, with the requested data entered accurately and completely.

D. Reports that are not submitted by the end of a grace period of thirty (30) days following the due date shall be subject to a late fee of Five Hundred Dollars (\$500.00) for each additional thirty-day period or portion of a thirty-day period the reports are overdue. Any physician required to report in accordance with this section who has not submitted a report, or has submitted only an incomplete report, more than one (1) year following the due date may, in an action brought by the State Board of Medical Licensure and Supervision, be directed by a court of competent jurisdiction to submit a complete report within a period set by court order or be subject to sanctions for civil contempt.

E. By June 30 of each year, the Department shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection A of this section. Each such report shall also provide the statistics for all previous calendar years, adjusted to reflect any additional information from late or corrected reports. The Department shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any individual providing or provided information in accordance with subsection A or B of Section 8 of this act.

F. The Department, by rule promulgated in accordance with the Administrative Procedures Act, may alter the dates established by paragraph 3 of subsection B, subsection C, or subsection E of this section or consolidate the forms or reports described in this section with other forms or reports to achieve administrative convenience or fiscal savings or to reduce the burden of reporting requirements, so long as reporting forms are sent to all licensed physicians in the state at least once every year and the report described in subsection E of this section is issued at least once every year.

## **§63-1-738.14 - Violations - Penalties**

Any person who knowingly or recklessly performs or attempts to perform an abortion in violation of the Unborn Child Pain Awareness/Prevention Act shall be guilty of a felony. Any physician who knowingly or recklessly submits a false report under subsection C of Section 13 of this act shall be guilty of a misdemeanor. No penalty may be assessed against the female upon whom the abortion is performed or attempted to be performed. No penalty or civil liability may be assessed for failure to comply with Section 8 of this act requiring a written certification that the female has been informed of the opportunity to review the information referred to in Section 8 of this act unless the State Department of Health has made the printed materials available at the time the physician or the agent of the physician is required to inform the female of the right to review the materials.

## **§63-1-738.15 - Civil Actions**

A. Any person upon whom an abortion has been performed without the Unborn Child Pain Awareness/Prevention Act having been complied with, the father of the unborn child who was the subject of such an abortion, or the grandparent of such an unborn child may maintain an action against the person who performed the abortion in knowing or reckless violation of the Unborn Child Pain Awareness/Prevention Act for actual and punitive damages. Any person upon whom an abortion has been attempted without the Unborn Child Pain Awareness/Prevention Act having been complied with may maintain an action against the person who attempted to perform the abortion in knowing or reckless violation of the Unborn Child Pain Awareness/Prevention Act for actual and punitive damages.

B. If the Department fails to issue the public report required by the Statistical Reporting of Abortion Act of Oklahoma, an action pursuant to Title 12 of the Oklahoma Statutes may be initiated.

## **§63-1-738.16 - Ruling concerning Public Disclosure of Identity of Female - Order**

In every civil or criminal proceeding or action brought under the Unborn Child Pain Awareness/Prevention Act, the court shall rule whether the anonymity of any female upon whom an abortion has been performed or attempted shall be preserved from public disclosure if the female does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that the anonymity of the female should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the identity of the female from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the female should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the female upon whom an abortion has been performed or attempted, anyone, other than a public official, who brings an action under subsection A of Section 15 of this act shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

## **§63-1-738.17 - Severability**

If any one or more provision, section, subsection, sentence, clause, phrase or word of the Unborn Child Pain Awareness/Prevention Act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of the Unborn Child Pain Awareness/Prevention Act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed the Unborn Child Pain Awareness/Prevention Act, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.

## **§63-1-739 - Title 63. Records**

All hospitals shall keep records, including admission and discharge notes, histories, results of tests and examinations, nurses worksheets, social service records and progress notes of patients. All abortion facilities and hospitals in which abortions are performed shall also keep certifications of medical necessity, certifications of nonviability, certifications of nonavailability, abortion reports and complication reports as required in this act. Such records shall be maintained in the permanent files of the hospital for a period of not less than seven (7) years.

## **§63-1-740 - Title 63. Abortion on Minor Without Parental Consent**

Any person who performs an abortion on a minor without parental consent or knowledge shall be liable for the cost of any subsequent medical treatment such minor might require because of the abortion.

## **§63-1-740.1 - Title 63. Definitions**

As used in Sections 11 through 15 of this act:

1. "Abortion" means the term as is defined in Section 1-730 of Title 63 of the Oklahoma Statutes;
2. "Parent" means one parent of the pregnant unemancipated minor or guardian if the pregnant unemancipated minor has one; and
3. "Unemancipated minor" means any person under eighteen (18) years of age who is not or has not been married or who is under the care, custody and control of the person's parent or parents, guardian or juvenile court of competent jurisdiction.

## **§63-1-740.2 - Title 63. Parental Notification**

A. No abortion shall be performed upon an unemancipated minor or upon a female for whom a guardian has been appointed pursuant to Section 1-113 of Title 30 of the Oklahoma Statutes because of a finding of incompetency, until at least forty-eight (48) hours after written notice of the pending abortion has been delivered in the manner specified in this subsection and the attending physician has secured the written informed consent of one parent.

1. The notice and request for written informed consent of one parent shall be addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent;
2. In lieu of the delivery required by paragraph 1 of this subsection, the notice and request for written informed consent of one parent shall be made by certified mail addressed to the parent at the usual place of abode of the parent with return-receipt requested and restricted delivery to the addressee, which means a postal employee can only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 noon on the next day on which regular mail delivery takes place, subsequent to mailing; or
3. The parent entitled to notice and consent certifies in a notarized statement that he or she has been notified and consents to the abortion.

B. No notice or request for written informed consent of one parent shall be required under this section if one of the following conditions is met:

1. The attending physician certifies in the medical records of the pregnant unemancipated minor that the abortion is necessary to prevent the death of the minor and there is insufficient time to

provide the required notice and obtain the written informed consent of one parent; or

2. The attending physician certifies that a medical emergency exists and that a delay will create serious risk of substantial and irreversible impairment of a major bodily function; or
3. The unemancipated minor declares that she is the victim of sexual abuse, as defined in Section 7102 of Title 10 of the Oklahoma Statutes and the attending physician has notified local law enforcement or the Department of Human Services about the alleged sexual abuse.

C. The State Board of Health shall adopt the forms necessary for physicians to obtain the consent of one parent required for an abortion to be performed on an unemancipated minor pursuant to subsection A of this section. The form executed to obtain consent must be retained by the physician for a period of not less than five (5) years.

## **§63-1-740.3 - Title 63. Judicial Authorization of Abortion Without Parental Notification - Participation by Minor in Court Proceedings - Confidentiality - Appeal**

A. If a pregnant unemancipated minor elects not to allow the notification and request for written informed consent of her parent, any judge of a court of competent jurisdiction shall, upon petition or motion, and after an appropriate hearing, authorize a physician to perform the abortion if the judge determines that the pregnant unemancipated minor is mature and capable of giving informed consent to the proposed abortion. If the judge determines that the pregnant unemancipated minor is not mature, or if the pregnant unemancipated minor does not claim to be mature, the judge shall determine whether the performance of an abortion upon her without notification and written informed consent of her parent would be in her best interest and shall authorize a physician to perform the abortion without notification and written informed consent if the judge concludes that the best interests of the pregnant unemancipated minor would be served thereby.

B. A pregnant unemancipated minor may participate in proceedings in the court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall advise the pregnant unemancipated minor that she has a right to court-appointed counsel and, upon her request, shall provide her with counsel.

C. Proceedings in the court under this section shall be confidential and shall be given precedence over other pending matters so that the court may reach a decision promptly and without delay so as to serve the best interests of the pregnant unemancipated minor. A judge of the court who conducts proceedings under this section shall make, in writing, specific factual findings and legal conclusions supporting the decision and shall order a record of the evidence to be maintained, including the findings and conclusions of the court.

D. An expedited confidential appeal shall be available to any pregnant unemancipated minor for whom the court denies an order authorizing an abortion without notification and written informed consent of one parent. An order authorizing an abortion without notification and written informed consent of one parent shall not be subject to appeal. No filing fees shall be required of any pregnant unemancipated minor at either the trial or the appellate level. Access to the trial court for the purpose of a petition or motion, and access to the appellate courts for the purpose of making an appeal from the denial of same, shall be afforded a pregnant unemancipated minor twenty-four (24) hours a day, seven (7) days a week.

## **§63-1-740.4 - Title 63. Violations - Misdemeanor - Civil Actions**

Performance of an abortion in knowing or reckless violation of Sections 1-740.1 through 1-740.5 of this title shall be a misdemeanor and shall be grounds for actual and punitive damages in a civil action by a person wrongfully denied notification and request for written informed consent. A person shall not be held liable under this act if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the pregnant unemancipated minor regarding information necessary to comply with this section are bona fide and true, or if the person has attempted with reasonable diligence to deliver the notice and request for written informed consent, but has been unable to do so.

## **§63-1-740.5 - Title 63. Severability - Savings Clause**

If any one or more provision, section, subsection, sentence, clause, phrase or word of this act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase or word be declared unconstitutional.

## **§63-1-740.11 - Title 63. Funding to Nongovernmental Entities That Provide Alternative-to-Abortion Services**

A. Before July 1, 2007, the State Department of Health shall establish and implement a program to facilitate funding to nongovernmental entities that provide alternatives-to-abortion services. The services must be outcome-based with positive outcome-based results.

B. During the 2006 interim, the State Department of Health shall make annual reports to the Speaker of the House of Representatives and the President Pro Tempore of the Senate regarding the status of the alternatives-to-abortion services funding, the first of which must be made by December 1, 2006.

C. The Department may contract with nongovernmental health care and special service organizations to provide services offered under the program. The services must be outcome-based with positive outcome-based results. The Department may not contract with a provider of adoption services not licensed by the state.

D. The State Department of Health shall promulgate rules necessary to implement the provisions of this act.

E. As used in this section, "alternatives-to-abortion services" means those services that promote childbirth instead of abortion by providing information, counseling, and support services that assist pregnant women or women who believe they may be pregnant to choose childbirth and to make informed decisions regarding the choice of adoption or parenting with respect to their children. The information, counseling and services provided under this program may include, but are not limited to:

1. Medical care;
2. Nutritional services;
3. Housing assistance;
4. Adoption services;
5. Educational and employment assistance, including services that support the continuation and completion of high school;
6. Child care assistance; and
7. Parenting education and support services.

## **§63-1-740.12 - Title 63 Alternatives-to-Abortions Services Revolving Fund**

There is hereby created in the State Treasury a revolving fund for the State Department of Health to be designated the "Alternatives-to-Abortion Services Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies deposited to the credit of the fund by law. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the State Department of Health as provided in subsection A of Section 21 of this act. The fund shall not be available to any organization or affiliate of an organization which provides or promotes abortions or directly refers for abortion; provided, however, any nondirective counseling relating to the pregnancy shall not disqualify an organization from receiving these funds. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

## **§63-1-741 - Title 63. Abortions - Refusal to Perform or Participate - Exemptions**

A. No private hospital, hospital director or governing board of a private hospital in Oklahoma, is required to permit abortions to be performed or induced in such hospital. Refusal to permit an abortion, in accordance with a standard policy, is not grounds for civil liability nor a basis for disciplinary or other retaliatory action.

B. No person may be required to perform, induce or participate in medical procedures which result in an abortion which are in preparation for an abortion or which involve aftercare of an abortion patient, except when the aftercare involves emergency medical procedures which are necessary to protect the life of the patient, and refusal to perform or participate in such medical procedures is not grounds for civil liability nor a basis for disciplinary or other retaliatory action.

C. The rights and immunities granted by this section shall not include medical procedures in which a woman is in the process of the spontaneous, inevitable abortion of an unborn child, the death of the child is imminent, and the procedures are necessary to prevent the death of the mother.