

Stricken language would be deleted from and underlined language would be added to present law.  
Act 90 of the Regular Session

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# A Bill

HOUSE BILL 1195

By: Representatives Dotson, *Vaught, Breaux, Rye, Haak, M. Berry, Ladyman, Milligan, Cloud, Coleman, Lundstrum, McCollum, Hawks, Bentley, Payton, Miller, Richmond*

By: Senator B. Ballinger

## For An Act To Be Entitled

AN ACT TO CREATE THE EVERY MOM MATTERS ACT; TO PROVIDE HEALTHCARE SUPPORT TO PREGNANT WOMEN IN ARKANSAS; TO STABILIZE FAMILIES AND REDUCE THE NUMBER OF ABORTIONS PERFORMED IN THE STATE; AND FOR OTHER PURPOSES.

## Subtitle

TO CREATE THE EVERY MOM MATTERS ACT; TO PROVIDE HEALTHCARE SUPPORT TO PREGNANT WOMEN IN ARKANSAS; AND TO STABILIZE FAMILIES AND REDUCE THE NUMBER OF ABORTIONS PERFORMED IN THE STATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 20-8-1001(a), concerning the Life Choices Lifeline Program, is amended to read as follows:

(a) The Department of Health may implement the Life Choices Lifeline Program as a statewide care program to provide direct services, support, social services case management, and referrals to ~~biological parents of unborn children and biological or adoptive parents of children under two (2) years of age~~ individuals listed in subsection (f) of this section.

SECTION 2. Arkansas Code § 20-8-1001(d)-(f), concerning the Life Choices Lifeline Program, are amended to read as follows:



(d) The Life Choices Lifeline Program shall consist of at least the following components:

(1) Direct-to-participant marketing within the state;

(2) The use of licensed nurses, community health workers, or other individuals of equivalent experience to ~~provide~~ offer healthy pregnancy program services to participants in the Life Choices Lifeline Program, including:

(A) An assessment and evaluation of needs related to pregnancy or parenting; ~~and~~

(B) Medically accurate pregnancy-related medical information; and

(C) Assistance obtaining obstetric care, primary care, mental health or behavioral health counseling, or postpartum care;

(3) The use of licensed social workers, nurses, community health workers, licensed professional counselors, or other individuals of equivalent experience, to ~~provide~~ offer care plan coordination services to participants in the Life Choices Lifeline Program, including:

(A) Development of a care plan of resources and support to address the needs identified;

(B) Referrals to appropriate local resources, including state and federal benefits programs and local charitable organizations;

(C) Assistance in applying for state and federal benefits programs; ~~and~~

(D) Assistance in accomplishing elements of the care plan; ~~and~~

(E) Services related to postpartum depression and related referrals;

(F) Assistance obtaining pediatric care and postpartum care; and

(G) Assistance obtaining substance abuse treatment and alcohol abuse treatment; and

(4) Administrative support and expenses directly attributable to the development of or ongoing support of healthy pregnancy program services and care plan coordination services of the Life Choices Lifeline Program.

(e)(1) The Life Choices Lifeline Program shall be available to residents of all counties of the state, including residents in rural areas

that may currently lack access to healthy pregnancy program services and care plan coordination services.

(2) ~~Services~~ Healthy pregnancy program services and care plan coordination services of the Life Choices Lifeline Program may be provided, as appropriate, in person through existing facilities or remotely through a telephonic system or other comparable technological system.

(3) An individual who offers Life Choices Lifeline Program services shall not refer a woman to an abortion provider, recommend abortion, or take any other action that directly or indirectly advises a woman to obtain or assists a woman in obtaining an abortion.

(f) To be eligible to receive services under the Life Choices Lifeline Program, an individual shall at the time of initial contact with the Life Choices Lifeline Program be:

~~(1) A resident of the state; and~~

~~(2)~~(1) A resident of this state who is the biological parent of an unborn child or a biological or adoptive parent of a child under two (2) years of age;

(2) A pregnant woman seeking to obtain an abortion in this state; or

(3) A parent or legal guardian of a pregnant minor residing in this state.

SECTION 3. Arkansas Code Title 20, Chapter 16, is amended to add an additional subchapter to read as follows:

Subchapter 24 – Every Mom Matters Act

20-16-2401. Title.

This subchapter shall be known and may be cited as the “Every Mom Matters Act”.

20-16-2402. Definitions.

As used in this subchapter:

(1)(A) “Abortion” means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman, with

knowledge that the termination by any of those means will with reasonable likelihood cause the death of the unborn child.

(B) An act under subdivision (1)(A) of this section is not an abortion if the act is performed with the intent to:

(i) Save the life or preserve the health of the unborn child;

(ii) Remove a dead unborn child caused by spontaneous abortion; or

(iii) Remove an ectopic pregnancy;

(2) "Abuse" means the same as defined in § 12-18-103;

(3) "Agency" means an entity that contracts with the Department of Health to provide the services required under § 20-8-1001 or the resource access assistance offer;

(4) "Assault" means the act or offense described in §§ 5-13-204 – 5-13-207;

(5) "Care agent" means a person employed by an agency to perform the services required by this subchapter;

(6) "Human trafficking" means the act or offense described in the Human Trafficking Act of 2013, § 5-18-101 et seq.;

(7) "Medical emergency" means a condition that, based on the good faith clinical judgment of the physician, has complicated the medical condition of the pregnant woman so as to necessitate the immediate termination of the pregnancy to avert the woman's death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function;

(8) "Neglect" means the same as defined in § 12-18-103; and

(9) "Sexual assault" means an act or offense described in § 5-14-101 et seq.

20-16-2403. Resource access assistance offer.

(a) A person shall not perform an abortion unless the person verifies that the woman on whom the abortion is to be performed has received a resource access assistance offer.

(b) A resource access assistance offer under subsection (a) of this section shall consist of a care agent:

(1) Informing the pregnant woman of the availability of free:

(A) Healthy pregnancy program services offered under § 20-8-1001(d)(2); and

(B) Care plan coordination services offered under § 20-8-1001(d)(3);

(2) Providing education on other public and private resources available to address the socioeconomic needs of the pregnant woman or the biological father of the unborn child;

(3) Offering screening and assistance for abuse, assault, sexual assault, neglect, coercion, and human trafficking; and

(4) Offering medically accurate information using the informational materials described in the Woman's Right-to-Know Act, § 20-16-1701 et seq.

(c) The pregnant woman is not required to:

(1) Initiate any offered services in order to obtain an abortion; or

(2) Provide any information to the care agent except her unique identifying number as described in § 20-16-2407.

(d) The resource access assistance offer shall be provided by the state at no cost to the woman.

(e) A care agent who provides a resource access assistance offer under this section shall not refer a woman to an abortion provider, recommend abortion, or take any other action that directly or indirectly advises a woman to obtain or assists a woman in obtaining an abortion.

20-16-2404. Applicability.

(a) For healthy pregnancy program services and care plan coordination services offered under § 20-8-1001(d)(2) and (3):

(1) A pregnant women is not required to initiate or complete healthy pregnancy program services or care plan coordination services in order to obtain an abortion;

(2) A pregnant women who initiates healthy pregnancy program services or care plan coordination services may decline or discontinue the healthy pregnancy program services or care plan coordination services at any time; and

(3) An agency shall prioritize care plan coordination services and healthy pregnancy program services for women who have received a resource

access assistance offer.

(b)(1) This subchapter does not apply in the case of a medical emergency.

(2) A person who performs an abortion in a medical emergency shall:

(A) Include in the pregnant woman's medical records a statement signed by the physician of the pregnant woman certifying the nature of the medical emergency; and

(B) Not later than thirty (30) days after the date that the abortion is performed, certify to the Department of Health the specific medical condition that constituted the medical emergency.

20-16-2405. Agencies.

(a) The Department of Health shall:

(1) Contract with a number of agencies sufficient to ensure that each pregnant woman seeking an abortion in Arkansas receives a resource access assistance offer and has the opportunity to receive care plan coordination services and healthy pregnancy program services;

(2) Annually, designate the proportion of resource access assistance offers to be provided by each agency's share of participants in care plan coordination services or healthy pregnancy program services; and

(3) Contract only with agencies that are capable of offering all of the services required under § 20-8-1001 or the resource access assistance offer.

(b) An agency shall be able, at a minimum, to provide resource access assistance offers, care plan coordination services, and healthy pregnancy program services by telephonic means using a toll-free number established by the department.

(c) Each agency and any subcontractor or care agent of the agency providing services related to § 20-8-1001 or resource access assistance offers shall not:

(1) Be an abortion provider or entity that directly or indirectly assists women in obtaining an abortion;

(2) Own, operate, or be affiliated with an abortion provider or an entity that directly or indirectly promotes abortions or assists women in obtaining an abortion;

(3) Employ a person who has performed an abortion in the last two (2) years;

(4) Have as a director, board member, officer, volunteer, or employee a person who serves in any of these roles for an entity described in subdivisions (c)(1)-(3) of this section; or

(5) Refer women to an abortion provider, recommend abortion, or take any other action that directly or indirectly advises or assists a woman in obtaining an abortion.

20-16-2406. Care agents.

A care agent or other person providing healthy pregnancy program services or care plan coordination services through a subcontract with an agency or as a volunteer with an agency shall:

(1) Meet the qualifications established by rule of the Department of Health;

(2) Have not performed an abortion in the last two (2) years;

(3) Have not served as a director, board member, officer, volunteer, or employee for an entity described in § 20-16-2405(c)(1)-(3) in the last two (2) years;

(4) Agree to maintain the confidentiality of information the care agent or other person obtains while performing services under § 20-8-1001 or the resource access assistance offer;

(5) Complete a training program using a standardized curriculum regarding recognizing signs that a person may have been a victim of human trafficking and providing appropriate assistance to a person who may have been a victim of human trafficking; and

(6) Not refer women to an abortion provider, recommend abortion, or take any other action that directly or indirectly advises a woman to obtain or assists a woman in obtaining an abortion.

20-16-2407. Administration.

(a) The Department of Health shall:

(1)(A) Before implementation of the services under § 20-8-1001 or the resource access assistance offer, create a program-specific website that describes the services offered by § 20-8-1001 and the resource access assistance offer.

(B) The department may also create materials using other media, including print and electronic media, to convey information about the services under § 20-8-1001 and the resource access assistance offer to the public;

(2)(A) Establish a single toll-free number for pregnant women seeking an abortion in Arkansas to call in order to receive a resource access assistance offer.

(B) The toll-free number shall automatically connect the pregnant woman to an agency based on the proportion determined under § 20-16-2405(a)(2);

(3)(A) Develop and maintain a secure database.

(B) The secure database shall:

(i) Generate a unique identifying number;

(ii) Be accessible only to a person who is to perform an abortion or an agent of the person performing an abortion, agencies, and the department; and

(iii) Not transmit any information to:

(a) The agency or care agent concerning the identity or location of the person who performs the abortion or the facility at which the abortion is performed; or

(b) The person providing the abortion or the agent of the person performing the abortion concerning the identity of the agency or care agent providing the resource access assistance offer.

(C) The unique identifying number shall not contain personally identifiable information; and

(4) For each agency, report on the department's website the percentage of pregnant women who received a resource access assistance offer from the agency and subsequently obtained an abortion in the state.

(b)(1) Before receiving payment for abortion-related services, administering any sedative or anesthesia, or performing an abortion, a person who is performing an abortion or an agent of the person performing the abortion shall:

(A) Register each prospective abortion in the secure database and obtain a unique identifying number for the pregnant woman's prospective abortion;

(B) Provide the pregnant woman seeking an abortion with

the unique identifying number for her prospective abortion;

(C) Record the unique identifying number for the pregnant woman's prospective abortion in the pregnant womans's medical file;

(D) Verify through the secure database that the pregnant woman received a resource access assistance offer;

(E) Document the verification in the secure database; and

(F) Record the verification in the pregnant woman's medical record.

(2) Within two (2) business days after performing an abortion, the person who performs the abortion or the person's agent shall report to the department the unique identifying number for each abortion performed and the date and time that the abortion was performed.

(c) A care agent shall:

(1) Provide the resource access assistance offer, care plan coordination services, and healthy pregnancy program services; and

(2) Record the information required under this section.

(d) An agency shall:

(1) Record and report monthly to the department information pertaining to resource access assistance offers provided by the agency or the care agents employed by the agency, including without limitation:

(A) The number of pregnant women who indicated a need for assistance as victims of:

(i) Assault, sexual assault, abuse, or neglect;

(ii) Coercion; or

(iii) Human trafficking;

(B) The number of individuals receiving resource access assistance offers who requested care plan coordination services; and

(C) The number of individuals receiving resource access assistance offers who requested healthy pregnancy program services;

(2) Record and report monthly to the department information pertaining to care plan coordination services and healthy pregnancy program services provided by the agency or the care agents employed by the agency, including without limitation:

(A) The number of individuals receiving resource access assistance offers who identified a need for support in one (1) or more of the following areas:

(i) Abuse, assault, sexual assault, coercion, or neglect;

(ii) Education or training for a professional certification;

(iii) Housing assistance;

(iv) Employment assistance;

(v) Resume development;

(vi) Childcare;

(vii) Adoption services;

(viii) Financial assistance;

(ix) Substance abuse treatment and alcohol abuse treatment;

(x) Mental health care;

(xi) Medical care;

(xii) Human trafficking; or

(xiii) Health benefit plan coverage; and

(B) The resources, services, and referrals provided by the agency or a care agent; and

(3)(A) Confirm in the secure database using the unique identifying number that a resource access assistance offer was made.

(B) The confirmation required under subdivision (d)(3)(A) of this section shall be completed before 11:59 p.m. on the day that the resource access assistance offer was made.

20-16-2408. Medical record audit procedure.

(a) The Department of Health shall audit abortion facilities and persons performing abortions to ensure compliance with this subchapter.

(b) An audit under subsection (a) of this section shall:

(1) Be at a random, unannounced, and reasonable time;

(2) Occur at least one (1) time each year for each abortion facility and person who performs abortions; and

(3) Consist of:

(A) A review of the medical records of no less than ten percent (10%) of the women who obtained an abortion since the last audit was performed; and

(B) A verification and confirmation that the person

performing the abortion fully complied with the requirements of § 20-16-2407(b).

(c) If the department finds that more than five percent (5%) of the audited medical records indicate noncompliance with the requirements of § 20-16-2407(b), the department shall audit the remainder of the medical records of the women who received abortions since the last audit was performed.

20-16-2409. Penalties.

(a)(1) A person who performs an abortion shall be subject to a fine of five thousand dollars (\$5,000) for each abortion performed without complying with the requirements of § 20-16-2407.

(2) The abortion facility at which the abortion was performed shall be jointly and severally liable for each fine assessed under subdivision (a)(1) of this section.

(b) The fine imposed by this section is in addition to the criminal liability under the Woman's Right-to-Know Act, § 20-16-1701 et seq.

(c) The Attorney General or the prosecuting attorney of the judicial district in which the abortion was performed may file an action to recover the fine assessed under subdivision (a)(1) of this section as well as reasonable and necessary attorney's fees and costs incurred in bringing the action.

(d)(1) Any person may bring a civil action to recover the civil penalty assessed under this section if:

(A) An action has not already been initiated by the Attorney General or the prosecuting attorney of the judicial district in which the abortion was performed; and

(B) Another person has not already recovered a fine for that specific violation of this subchapter.

(2) If the person recovers the fine assessed under this section, the person may also recover attorney's fees and costs incurred in bringing the action.

(e) The Department of Health shall revoke the license of an abortion facility if more than five percent (5%) of audited medical records at the abortion facility indicate noncompliance with the requirements of § 20-16-2407(b).

20-16-2410. Confidentiality and disclosure.

(a) All personally identifiable information held by the Department of Health under this subchapter are confidential and are not subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) Disclosure of information and records may be made:

(1) For statistical purposes if a care agent, pregnant woman, biological father of the unborn child, physician, or abortion facility is not identified;

(2) With the consent of each person, patient, and abortion facility identified in the information released; or

(3) To:

(A) Appropriate state agencies or courts to enforce this subchapter;

(B) Appropriate state licensing boards to enforce licensing laws;

(C) Licensed medical or healthcare personnel currently treating the patient; or

(D) Physicians providing abortions or agencies, to the extent necessary to fulfill the agencies' obligations under this subchapter.

(c) Disclosure of protected health information that is allowed for public health, safety, and law enforcement purposes is not a violation of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

20-16-2411. Conscience protections.

The Department of Health shall not require any care agent or agency to refer a woman for any social or medical service to which the care agent or agency has a conscience objection.

20-16-2412. Construction.

This subchapter does not:

(1) Create or recognize a right to abortion;

(2) Create or recognize a right to a particular method of abortion; or

(3) Make lawful an abortion that is currently unlawful under any law of this state.

SECTION 4. DO NOT CODIFY. Delayed effective date.

The requirements in § 20-16-2403(a) and § 20-16-2407(a) do not apply to a person performing an abortion until January 1, 2023.

SECTION 5. DO NOT CODIFY. SEVERABILITY CLAUSE. If any provision of this act or the application of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end, the provisions of this act are declared severable.

*/s/Dotson*

**APPROVED: 2/9/21**