

REFERENCE TITLE: medication abortion; telehealth; ultrasound

State of Arizona  
House of Representatives  
Fifty-fifth Legislature  
Second Regular Session  
2022

## **HB 2093**

Introduced by  
Representatives Salman: Butler, Cano, Hernandez D, Liguori, Senator Terán

AN ACT

AMENDING SECTIONS 36-449.03, 36-2156 AND 36-2301.02, ARIZONA REVISED STATUTES; REPEALING SECTION 36-3604, ARIZONA REVISED STATUTES; RELATING TO ABORTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-449.03, Arizona Revised Statutes, is amended  
3 to read:

4 36-449.03. Abortion clinics; rules; civil penalties

5 A. The director shall adopt rules for an abortion clinic's physical  
6 facilities. At a minimum these rules shall prescribe standards for:

7 1. Adequate private space that is specifically designated for  
8 interviewing, counseling and medical evaluations.

9 2. Dressing rooms for staff and patients.

10 3. Appropriate lavatory areas.

11 4. Areas for preprocedure hand washing.

12 5. Private procedure rooms.

13 6. Adequate lighting and ventilation for abortion procedures.

14 7. Surgical or gynecologic examination tables and other fixed  
15 equipment.

16 8. Postprocedure recovery rooms that are supervised, staffed and  
17 equipped to meet the patients' needs.

18 9. Emergency exits to accommodate a stretcher or gurney.

19 10. Areas for cleaning and sterilizing instruments.

20 11. Adequate areas to securely store medical records and necessary  
21 equipment and supplies.

22 12. The display in the abortion clinic, in a place that is  
23 conspicuous to all patients, of the clinic's current license issued by the  
24 department.

25 B. The director shall adopt rules to prescribe abortion clinic  
26 supplies and equipment standards, including supplies and equipment that  
27 are required to be immediately available for use or in an emergency. At a  
28 minimum these rules shall:

29 1. Prescribe required equipment and supplies, including  
30 medications, required to conduct, in an appropriate fashion, any abortion  
31 procedure that the medical staff of the clinic anticipates performing and  
32 to monitor the progress of each patient throughout the procedure and  
33 recovery period.

34 2. Require that the number or amount of equipment and supplies at  
35 the clinic ~~is~~ **BE** adequate at all times to ensure sufficient quantities of  
36 clean and sterilized durable equipment and supplies to meet the needs of  
37 each patient.

38 3. Prescribe required equipment, supplies and medications that  
39 ~~staff~~ **MUST** be available and ready for immediate use in an emergency and  
40 requirements for written protocols and procedures to be followed by staff  
41 in an emergency, such as the loss of electrical power.

42 4. Prescribe required equipment and supplies for required  
43 laboratory tests and requirements for protocols to calibrate and maintain  
44 laboratory equipment at the abortion clinic or operated by clinic staff.

45 5. Require ultrasound equipment.

1           6. Require that all equipment ~~is~~ BE safe for the patient and the  
2 staff, ~~meets~~ MEET applicable federal standards and ~~is~~ BE checked annually  
3 to ensure safety and appropriate calibration.

4           C. The director shall adopt rules relating to abortion clinic  
5 personnel. At a minimum these rules shall require that:

6           1. The abortion clinic designate a medical director of the abortion  
7 clinic who is licensed pursuant to title 32, chapter 13, 17 or 29.

8           2. Physicians performing abortions ~~are~~ BE licensed pursuant to  
9 title 32, chapter 13 or 17, demonstrate competence in the procedure  
10 involved and ~~are~~ BE acceptable to the medical director of the abortion  
11 clinic.

12           3. A physician ~~is~~ BE available:

13           (a) For a surgical abortion who has admitting privileges at a  
14 health care institution that is classified by the director as a hospital  
15 pursuant to section 36-405, subsection B and that is within thirty miles  
16 of the abortion clinic.

17           (b) For a medication abortion who has admitting privileges at a  
18 health care institution that is classified by the director as a hospital  
19 pursuant to section 36-405, subsection B.

20           4. If a physician is not present, a registered nurse, nurse  
21 practitioner, licensed practical nurse or physician assistant ~~is~~ BE  
22 present and ~~remains~~ REMAIN at the clinic when abortions are performed to  
23 provide postoperative monitoring and care, or monitoring and care after  
24 inducing a medication abortion, until each patient who had an abortion  
25 that day is discharged.

26           5. Surgical assistants receive training in counseling, patient  
27 advocacy and the specific responsibilities of the services the surgical  
28 assistants provide.

29           6. Volunteers receive training in the specific responsibilities of  
30 the services the volunteers provide, including counseling and patient  
31 advocacy as provided in the rules adopted by the director for different  
32 types of volunteers based on their responsibilities.

33           D. The director shall adopt rules relating to the medical screening  
34 and evaluation of each abortion clinic patient. At a minimum these rules  
35 shall require:

36           1. A medical history, including the following:

37           (a) Reported allergies to medications, antiseptic solutions or  
38 latex.

39           (b) Obstetric and gynecologic history.

40           (c) Past surgeries.

41           2. A ~~physical examination~~ CLINICAL ASSESSMENT, including:

42           (a) A bimanual examination ~~estimating uterine size and palpation of~~  
43 ~~the adnexa.~~

44           (b) A DETERMINATION OF LAST MENSTRUAL PERIOD.

45           ~~3. The appropriate laboratory tests, including:~~

1           ~~(a)~~ (c) Urine or blood tests for pregnancy ~~performed before the~~  
2 ~~abortion procedure.~~

3           ~~(b)~~ (d) A test for anemia.

4           ~~(c)~~ (e) Rh typing, ~~unless reliable written documentation of blood~~  
5 ~~type is available.~~

6           (f) AN ULTRASOUND, IF INDICATED FROM THE CLINICAL ASSESSMENT.

7           ~~(d)~~ (g) Other tests as indicated from the ~~physical examination~~  
8 CLINICAL ASSESSMENT FOR INTERNAL CONSISTENCY.

9           ~~4.~~ 3. An ultrasound evaluation for all patients WHO ARE EXPECTED  
10 TO BE AT LEAST ELEVEN WEEKS' GESTATION BY MEDICAL HISTORY AND LAST  
11 MENSTRUAL PERIOD, EXCEPT IN THE CASE OF A PATIENT USING A TELEHEALTH  
12 ENCOUNTER FOR A MEDICATION ABORTION OR A DETERMINATION OF LAST MENSTRUAL  
13 PERIOD. The rules shall require that if a person who is not a physician  
14 performs an ultrasound examination, that person shall have documented  
15 evidence that the person completed a course in operating ultrasound  
16 equipment as prescribed in rule. The physician or other health care  
17 professional shall review, at the request of the patient, the ultrasound  
18 evaluation results with the patient before the abortion procedure is  
19 performed, including the probable gestational age of the fetus.

20           ~~5.~~ 4. That the physician ~~is~~ BE responsible for estimating the  
21 gestational age of the fetus based on the ultrasound examination, IF  
22 INDICATED, OR THE DETERMINATION OF LAST MENSTRUAL PERIOD and BASED ON  
23 obstetric standards in keeping with established standards of care  
24 regarding the estimation of fetal age as defined in rule. ~~and~~ THE  
25 PHYSICIAN shall write the estimate in the patient's medical history. ~~The~~  
26 ~~physician~~ AND shall keep original prints of each ultrasound examination of  
27 a patient in the patient's medical history file.

28           E. The director shall adopt rules relating to the abortion  
29 procedure. At a minimum these rules shall require:

30           1. That medical personnel ~~is~~ BE available to all patients  
31 throughout the abortion procedure.

32           2. Standards for the safe conduct of abortion procedures that  
33 conform to obstetric standards in keeping with established standards of  
34 care regarding the estimation of fetal age as defined in rule.

35           3. Appropriate use of local anesthesia, analgesia and sedation if  
36 ordered by the physician.

37           4. The use of appropriate precautions, such as establishing  
38 intravenous access at least for patients undergoing second or third  
39 trimester abortions.

40           5. The use of appropriate monitoring of the vital signs and other  
41 defined signs and markers of the patient's status throughout the abortion  
42 procedure and during the recovery period until the patient's condition is  
43 deemed to be stable in the recovery room.

44           6. For abortion clinics performing or inducing an abortion for a  
45 woman whose unborn child is the gestational age of twenty weeks or more,

1 minimum equipment standards to assist the physician in complying with  
2 section 36-2301. For the purposes of this paragraph, "abortion" and  
3 "gestational age" have the same meanings prescribed in section 36-2151.

4 F. The director shall adopt rules relating to the final disposition  
5 of bodily remains. At a minimum these rules shall require that:

6 1. The final disposition of bodily remains from a surgical abortion  
7 be by cremation or interment.

8 2. For a surgical abortion, the woman on whom the abortion is  
9 performed ~~has~~ HAVE the right to determine the method and location for  
10 final disposition of bodily remains.

11 G. The director shall adopt rules that prescribe minimum recovery  
12 room standards. At a minimum these rules shall require that:

13 1. For a surgical abortion, immediate postprocedure care, or care  
14 provided after inducing a medication abortion, ~~consists~~ CONSIST of  
15 observation in a supervised recovery room for as long as the patient's  
16 condition warrants.

17 2. The clinic arrange hospitalization if any complication beyond  
18 the management capability of the staff occurs or is suspected.

19 3. A licensed health professional who is trained in managing the  
20 recovery area and who is capable of providing basic cardiopulmonary  
21 resuscitation and related emergency procedures ~~remains~~ REMAIN on the  
22 premises of the abortion clinic until all patients are discharged.

23 4. For a surgical abortion, a physician with admitting privileges  
24 at a health care institution that is classified by the director as a  
25 hospital pursuant to section 36-405, subsection B and that is within  
26 thirty miles of the abortion clinic ~~remains~~ REMAIN on the premises of the  
27 abortion clinic until all patients are stable and are ready to leave the  
28 recovery room and to facilitate the transfer of emergency cases if  
29 hospitalization of the patient or viable fetus is necessary. A physician  
30 shall sign the discharge order and be readily accessible and available  
31 until the last patient is discharged.

32 5. A physician ~~discusses~~ DISCUSS Rh0(d) immune globulin with each  
33 patient for whom it is indicated and ~~ensures~~ ENSURE that it is offered to  
34 the patient in the immediate postoperative period or that it will be  
35 available to her within seventy-two hours after completion of the abortion  
36 procedure. If the patient refuses, a refusal form approved by the  
37 department shall be signed by the patient and a witness and included in  
38 the medical record.

39 6. Written instructions with regard to postabortion coitus, signs  
40 of possible problems and general aftercare ~~are~~ BE given to each patient.  
41 Each patient shall have specific instructions regarding access to medical  
42 care for complications, including a telephone number to call for medical  
43 emergencies.

1           7. There ~~is~~ BE a specified minimum length of time that a patient  
2 remains in the recovery room by type of abortion procedure and duration of  
3 gestation.

4           8. The physician ~~ensures~~ ENSURE that a licensed health professional  
5 from the abortion clinic makes a good faith effort to contact the patient  
6 by telephone, with the patient's consent, within twenty-four hours after a  
7 surgical abortion to assess the patient's recovery.

8           9. Equipment and services ~~are~~ BE located in the recovery room to  
9 provide appropriate emergency resuscitative and life support procedures  
10 pending the transfer of the patient or viable fetus to the hospital.

11          H. The director shall adopt rules that prescribe standards for  
12 follow-up visits. At a minimum these rules shall require that:

13           1. For a surgical abortion, a postabortion medical visit ~~is~~ BE  
14 offered and, if requested, scheduled for three weeks after the abortion,  
15 including a medical examination and a review of the results of all  
16 laboratory tests. For a medication abortion, the rules shall require that  
17 a postabortion medical visit is scheduled between one week and three weeks  
18 after the initial dose for a medication abortion to confirm the pregnancy  
19 is completely terminated and to assess the degree of bleeding.

20           2. A urine pregnancy test ~~is~~ BE obtained at the time of the  
21 follow-up visit to rule out continuing pregnancy. If a continuing  
22 pregnancy is suspected, the patient shall be evaluated and a physician who  
23 performs abortions shall be consulted.

24          I. The director shall adopt rules to prescribe minimum abortion  
25 clinic incident reporting. At a minimum these rules shall require that:

26           1. The abortion clinic ~~records~~ RECORD each incident resulting in a  
27 patient's or viable fetus' serious injury occurring at an abortion clinic  
28 and ~~shall~~ report ~~them~~ THE INCIDENT in writing to the department within ten  
29 days after the incident OCCURS. For the purposes of this paragraph,  
30 "serious injury" means an injury that occurs at an abortion clinic and  
31 that creates a serious risk of substantial impairment of a major body  
32 organ and includes any injury or condition that requires ambulance  
33 transportation of the patient.

34           2. If a patient's death occurs, other than a fetal death properly  
35 reported pursuant to law, the abortion clinic ~~reports it~~ REPORT THE DEATH  
36 to the department not later than the next department work day.

37           3. Incident reports ~~are~~ BE filed with the department and  
38 appropriate professional regulatory boards.

39          J. The director shall adopt rules relating to enforcement of this  
40 article. At a minimum, these rules shall require that:

41           1. For an abortion clinic that is not in substantial compliance  
42 with this article and the rules adopted pursuant to this article and  
43 section 36-2301 or that is in substantial compliance but refuses to carry  
44 out a plan of correction acceptable to the department of any deficiencies

1 that are listed on the department's statement of deficiency, the  
2 department may do any of the following:

- 3 (a) Assess a civil penalty pursuant to section 36-431.01.
- 4 (b) Impose an intermediate sanction pursuant to section 36-427.
- 5 (c) Suspend or revoke a license pursuant to section 36-427.
- 6 (d) Deny a license.
- 7 (e) Bring an action for an injunction pursuant to section 36-430.

8 2. In determining the appropriate enforcement action, the  
9 department consider the threat to the health, safety and welfare of the  
10 abortion clinic's patients or the general public, including:

- 11 (a) Whether the abortion clinic has repeated violations of statutes  
12 or rules.
- 13 (b) Whether the abortion clinic has engaged in a pattern of  
14 noncompliance.
- 15 (c) The type, severity and number of violations.

16 K. The department shall not release personally identifiable patient  
17 or physician information.

18 L. The rules adopted by the director pursuant to this section do  
19 not limit the ability of a physician or other health professional to  
20 advise a patient on any health issue.

21 Sec. 2. Section 36-2156, Arizona Revised Statutes, is amended to  
22 read:

23 36-2156. Informed consent; ultrasound required; violation;  
24 civil relief; statute of limitations

25 A. An abortion shall not be performed or induced without the  
26 voluntary and informed consent of the woman on whom the abortion is to be  
27 performed or induced. Except in the case of a medical emergency **OR A**  
28 **TELEHEALTH ENCOUNTER FOR A MEDICATION ABORTION** and in addition to the  
29 other requirements of this chapter, consent to an abortion is voluntary  
30 and informed only if both of the following are true:

31 1. At least twenty-four hours before the woman having any part of  
32 an abortion performed or induced, and before the administration of any  
33 anesthesia or medication in preparation for the abortion on the woman, the  
34 physician who is to perform the abortion, the referring physician or a  
35 qualified person working in conjunction with either physician shall:

36 (a) Perform fetal ultrasound imaging and auscultation of fetal  
37 heart tone services on the woman undergoing the abortion.

38 (b) Offer to provide the woman with an opportunity to view the  
39 active ultrasound image of the unborn child and hear the heartbeat of the  
40 unborn child if the heartbeat is audible. The active ultrasound image  
41 must be of a quality consistent with standard medical practice in the  
42 community, contain the dimensions of the unborn child and accurately  
43 portray the presence of external members and internal organs, if present  
44 or viewable, of the unborn child. The auscultation of fetal heart tone

1 must be of a quality consistent with standard medical practice in the  
2 community.

3 (c) Offer to provide the woman with a simultaneous explanation of  
4 what the ultrasound is depicting, including the presence and location of  
5 the unborn child within the uterus, the number of unborn children  
6 depicted, the dimensions of the unborn child and the presence of any  
7 external members and internal organs, if present or viewable.

8 (d) Offer to provide the patient with a physical picture of the  
9 ultrasound image of the unborn child.

10 2. The woman certifies in writing before the abortion that she has  
11 been given the opportunity to view the active ultrasound image and hear  
12 the heartbeat of the unborn child if the heartbeat is audible and that she  
13 opted to view or not view the active ultrasound image and hear or not hear  
14 the heartbeat of the unborn child.

15 B. A physician who knowingly violates this section commits an act  
16 of unprofessional conduct and is subject to license suspension or  
17 revocation pursuant to title 32, chapter 13 or 17.

18 C. In addition to other remedies available under the common or  
19 statutory law of this state, any of the following may file a civil action  
20 to obtain appropriate relief for a violation of this section:

21 1. A woman on whom an abortion has been performed without her  
22 informed consent as required by this section.

23 2. The father of the unborn child if ~~THE FATHER WAS~~ married to the  
24 mother at the time she received the abortion, unless the pregnancy  
25 resulted from the plaintiff's criminal conduct.

26 3. ~~The A~~ maternal ~~grandparents~~ GRANDPARENT of the unborn child if  
27 the mother was not at least eighteen years of age at the time of the  
28 abortion, unless the pregnancy resulted from the plaintiff's criminal  
29 conduct.

30 D. A civil action filed pursuant to subsection C of this section  
31 shall be brought in the superior court in the county in which the woman on  
32 whom the abortion was performed resides and may be based on a claim that  
33 failure to obtain informed consent was a result of simple negligence,  
34 gross negligence, wantonness, wilfulness, intention or any other legal  
35 standard of care. Relief pursuant to subsection C of this section  
36 includes any of the following:

37 1. Money damages for all psychological, emotional and physical  
38 injuries resulting from the violation of this section.

39 2. Statutory damages in an amount equal to ~~five thousand dollars~~  
40 \$5,000 or three times the cost of the abortion, whichever is greater.

41 3. Reasonable attorney fees and costs.

42 E. A civil action brought pursuant to this section must be  
43 initiated within six years after the violation occurred.



1           Sec. 3. Section 36-2301.02, Arizona Revised Statutes, is amended to  
2 read:

3           36-2301.02. Review of ultrasound results

4           A. ~~Beginning on January 1, 2001,~~ EXCEPT IN THE CASE OF A TELEHEALTH  
5 ENCOUNTER FOR A MEDICATION ABORTION, a person shall not knowingly perform  
6 an abortion after ~~twelve~~ ELEVEN weeks' gestation unless the person  
7 estimates the gestational age of the fetus based on biparietal diameter  
8 and femur length according to the hadlok measurement system or other  
9 equivalent measurement systems using ultrasound examination as provided in  
10 rule.

11           B. ~~Beginning on January 1, 2001,~~ EXCEPT IN THE CASE OF A TELEHEALTH  
12 ENCOUNTER FOR A MEDICATION ABORTION, a person shall not knowingly perform  
13 an abortion after ~~twelve~~ ELEVEN weeks' gestation unless the person ensures  
14 that a copy of each ultrasound result taken of a fetus of a woman as a  
15 result of a second or third trimester abortion is sent to persons or  
16 corporations contracted pursuant to this section. The person performing  
17 the abortion shall ensure that the ultrasound result or results from the  
18 woman ~~is~~ ARE sent in a manner that is distinguishable from, and not mixed  
19 with, any other set of ultrasound results and ~~is~~ ARE accompanied with a  
20 copy of any report that notes the estimate of the fetus' gestational age  
21 that was made before the abortion.

22           C. The department of health services shall contract with qualified  
23 public or private persons or corporations for review of ultrasound results  
24 to determine compliance with this section. The department shall issue  
25 requests for proposals for the purpose of establishing contracts pursuant  
26 to this section. At a minimum, the contracts shall require the contractor  
27 to review ultrasound results to verify the accuracy of the fetus'  
28 estimated gestational age made before the abortion and to verify that the  
29 estimate was made in reasonable compliance with the hadlok measurement  
30 system or another equivalent measurement system as provided in rule.

31           D. The contractor shall use a statistically valid method of  
32 sampling to conduct the review of ultrasound results from a woman as a  
33 result of a second trimester abortion of a fetus of up to eighteen weeks'  
34 gestation. The contractor shall conduct a review of all ultrasound  
35 results from a woman as a result of an abortion of a fetus of eighteen or  
36 more weeks' gestation.

37           E. ~~Beginning on January 1, 2001,~~ On a monthly basis, persons or  
38 corporations providing ultrasound review services to the department  
39 pursuant to this section shall file a report with the director regarding  
40 ultrasound results, noting:

41           1. Any instances in which the contractor believes there was a  
42 significant inaccuracy in the estimated gestational age of the fetus made  
43 before the abortion.

1           2. Any circumstances that, based on the contractor's professional  
2 judgment, might explain a significant inaccuracy reported pursuant to  
3 paragraph 1 of this subsection.

4           3. Whether there was reasonable compliance pursuant to subsection C  
5 of this section.

6           4. Whether, based on the results of the review of each ultrasound,  
7 the physician should have filed a fetal death certificate with the  
8 department of health services as required by section 36-329, ~~subsection C~~.

9           F. The department of health services shall forward the report or  
10 portions of the report within thirty working days to the appropriate  
11 professional regulatory boards for their review and appropriate action.

12           G. Except as provided by subsection F of this section, the reports  
13 required by this section are confidential and disclosable by the  
14 department or its contractor only in aggregate form for statistical or  
15 research purposes. Except as provided by subsection F of this section,  
16 information relating to any physician, hospital, clinic or other  
17 institution shall not be released. Personally identifiable patient  
18 information shall not be released by the department or its contractor.

19           Sec. 4. Repeal

20           Section 36-3604, Arizona Revised Statutes, is repealed.