

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
Tallahassee Division**

PLANNED PARENTHOOD OF
SOUTHWEST AND
CENTRAL FLORIDA, and
PLANNED PARENTHOOD OF
SOUTH FLORIDA AND THE
TREASURE COAST D/B/A
PLANNED PARENTHOOD OF
SOUTH, EAST, AND NORTH
FLORIDA,

Plaintiffs,

v.

CELESTE PHILIP, in her
official capacity as State
Surgeon General and Secretary
of Health, Florida Department of
Health, and ELIZABETH
DUDEK, in her official capacity
as Secretary, Florida Agency for
Health Care Administration,

Defendants.

No. _____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiffs, by and through their attorneys, bring this Complaint against the above-named Defendants, their employees, agents, delegates, and successors in office, and in support thereof state the following:

INTRODUCTORY STATEMENT

1. This civil action is brought pursuant to 42 U.S.C. § 1983 to vindicate rights secured by the Due Process and Equal Protection Clauses of the U.S. Constitution, the Fourth Amendment to the U.S. Constitution, and the right to privacy and equal protection under the Florida Constitution.

2. Seeking to punish, harass, and stigmatize the state's abortion providers for their and their patients' exercise of constitutional rights, the Florida legislature has enacted HB 1411 ("HB 1411" or the "Act"), an omnibus abortion restrictions bill which, if permitted to take effect in its entirety, threatens to reduce access to basic reproductive health care for thousands of Florida residents. Act of Mar. 25, 2016, ch. 2016-150, 2016 Fla. Laws (amending Fla. Stat. § 390.011 *et seq.*). The Act is attached as Exhibit A.

3. Plaintiffs Planned Parenthood of Southwest and Central Florida ("PPSWCF") and Planned Parenthood of South Florida and the Treasure Coast d/b/a Planned Parenthood of South, East and North Florida ("PPSENFL") challenge three provisions of the Act, which will take effect, absent an order of this Court, on July 1, 2016.

4. First, Section 2 of the Act (the "Defunding Provision") categorically disqualifies all abortion providers from continuing to receive certain government funds that they are otherwise eligible and qualified to receive. For decades,

Plaintiffs have used such funds to provide high-quality, non-abortion reproductive health care and education services to Florida residents, particularly low-income and uninsured men, women and teens who would otherwise be unable to access care. These services include pap smears and other cancer screenings, contraceptive counseling, vasectomies, pregnancy testing and related services, screenings for HIV/AIDS and other sexually transmitted infections (“STIs”), and sexual health education.

5. Because of the Defunding Provision, Plaintiffs will be kicked out of these funding programs, all of which rely not on state funds, but rather on federal funds that are merely administered by the Florida Department of Health (“FDOH”) or on local funds administered by local government agencies. This is so because Plaintiffs provide abortion services at some of their health centers using entirely separate, non-governmental funds. The principal effect of the Defunding Provision will be to deprive low-income men, women, and teens of the much-needed and vital health services that Plaintiffs currently provide. Plaintiffs fear that STI infections will spread, cancers will go undiagnosed, teen pregnancy rates will rise, and the health of low-income Floridians will suffer.

6. The Defunding Provision violates the Due Process Clause of the Fourteenth Amendment and the right to privacy under the Florida Constitution because it disqualifies Plaintiffs from receiving certain government funds because

they provide constitutionally protected abortions outside of any government program, and it violates equal protection by disqualifying abortion providers, and only abortion providers, from receiving government funds without any justification for doing so other than the State Legislature's animus towards abortion.

7. Second, Section 4 of the Act requires Florida's Agency for Health Care Administration ("AHCA") to inspect annually at least 50% of all patient records generated since the provider's last abortion license inspection (the "Inspection Requirement"). In 2015, there were more than 71,000 abortions performed in Florida. The Inspection Requirement is both unprecedented and unwarranted: no other health care facilities in Florida are subject to such invasive inspections, and there is no health or safety rationale for imposing the Inspection Requirement on abortion providers, and abortion providers alone. The Inspection Requirement thus violates equal protection because it targets abortion providers and abortion patients' medical records for dissimilar treatment without any valid justification for doing so. In addition, by subjecting Plaintiffs to unannounced, warrantless, and baseless searches of at least 50% of their patients' records, the Inspection Requirement violates Plaintiffs' and their patients' rights under the Fourth Amendment to be free from unreasonable search and seizures.

8. Moreover, because of the Inspection Requirement, state employees will have wide-ranging access to the most intimate and sensitive medical details of

over 35,500 Florida women, such as their HIV status, drug and alcohol use, mental health history, and sexual history, as well as the details of their abortion. As a result, the Inspection Requirement violates the Due Process Clause of the Fourteenth Amendment and the right to privacy under the Florida Constitution, as it invades the informational privacy rights of women seeking abortions, who can no longer trust that their private reproductive health-related medical records will remain confidential.

9. Third, Plaintiffs challenge Section 1 of the Act, which alters the definitions of the trimesters of pregnancy (“Trimester Definition”) as it relates to clinics that provide abortions using terms that have no medical meaning and that leave physicians unable to determine when each trimester begins and ends. This vague definition leaves Plaintiffs and their physicians vulnerable to enforcement actions and professional licensure consequences if they guess about the meaning of the provisions incorrectly, in violation of the Due Process Clause. Importantly, because of these risks to Plaintiffs and their physicians, Plaintiffs will be forced to limit, without any medical justification, the abortions that can be performed at their clinics that are only licensed to perform first trimester abortions, and subject some of their patients to invasive medical procedures, even if not medically indicated. Finally, by limiting the scope of Plaintiffs’ licenses to perform first trimester

abortions, the Trimester Definition also interferes with Plaintiffs' protected property interests in these licenses, in violation of due process.

10. Without relief from this Court, the Defunding Provision, the Inspection Requirement, and the Trimester Definition will cause significant and irreparable harm to Plaintiffs, their patients, and the communities they serve. If the Defunding Provision goes into effect, Plaintiffs will be forced to eliminate services, including life-saving health care services and teen pregnancy prevention initiatives, and will be forced to shut down one of their health centers. Many low-income Floridians will lose their trusted health care provider, and will have few, if any, options for accessing the vital health services and educational programs that Plaintiffs currently provide. The elimination of staff positions and the closure of a health center, among other things, will make it difficult to reconstitute these programs should Plaintiffs become eligible for the funding once again.

11. Furthermore, the Inspection Requirement will expose at least 50% of Plaintiffs' patients' medical records to AHCA investigators, making it impossible for these patients to trust that their personal medical information will remain confidential, and subjecting Plaintiffs to onerous and constitutionally impermissible inspections not imposed on any other health care licensees in the state. Finally, the vague Trimester Definition will expose Plaintiffs and their physicians to the threat of significant penalties (including professional licensure

consequences), will limit the patients who can receive abortions at Plaintiffs' health centers with first trimester licenses, and will require certain patients to undergo unnecessary medical procedures.

JURISDICTION AND VENUE

12. Subject-matter jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1343, and 1367.

13. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

14. Venue in this judicial district is proper under 28 U.S.C. § 1391.

THE PARTIES

A. Plaintiffs

15. Plaintiff PPSWCF is a not-for-profit corporation organized under the laws of Florida. PPSWCF and its predecessor entities have provided high quality reproductive health care for more than fifty years in Florida. PPSWCF operates eleven health centers across a service area of twenty-two counties in Southwest and Central Florida, providing health care and educational services to nearly 60,000 women, men and teens annually, many of whom are low-income. The family planning and other preventive health services provided by PPSWCF include well-women exams, contraception and contraceptive counseling, screening for

breast cancer, screening and treatment for cervical cancer, vasectomies, and testing and treatment for certain STIs. And at certain health centers, PPSWCF also provides abortions. PPSWCF sues on its own behalf, and on behalf of its patients and physicians.

16. PPSENFL and its predecessor entities have provided high quality reproductive health care for more than forty-five years in Florida. PPSENFL operates eleven health centers across a service area of at least twenty counties in South, East and North Florida, providing health care and educational services to over 44,700 women, men and teens annually, many of whom are low-income. The family planning and other preventive health services provided by PPSENFL at its health centers include well-women exams, contraception and contraceptive counseling, screening for breast cancer, screening and treatment for cervical cancer, and testing and treatment for certain STIs. And at certain health centers, PPSENFL also provides abortions. PPSENFL sues on its own behalf, and on behalf of its patients and physicians.

B. Defendants

17. Defendant Celeste Philip is the State Surgeon General and Secretary of Health for FDOH, which is the agency responsible for administering state and federal programs that disburse the funds at issue, and which would continue to

disburse funds to PPSWCF and PPSENFLL in the absence of the Defunding Provision. Defendant Philip is sued in her official capacity, as are her successors.

18. Defendant Elizabeth Dudek is the Secretary of AHCA, which is the agency responsible for licensing and inspecting abortion clinics, and therefore for enforcing the Trimester Definition and Inspection Requirement. Defendant Dudek is sued in her official capacity, as are her successors.

**THE LEGISLATIVE AND POLITICAL ENVIRONMENT SURROUNDING
THE PASSAGE OF THE ACT**

19. The Act is just the latest in a series of efforts to target and punish Florida's abortion providers and to reduce abortion access in the state.

20. In fact, just last year, Florida enacted a law, House Bill 633, that imposes a mandatory twenty-four-hour delay on women seeking abortion. This law requires a woman to make an additional, medically unnecessary trip to her health care provider at least twenty-four hours before obtaining an abortion, regardless of the distance she must travel; her own medical needs; her work, school, or childcare responsibilities; her judgment; her doctor's judgment; or her individual life circumstances.

21. In addition, over the past year, the state's abortion providers have been subjected to baseless and politically motivated investigations by AHCA. As discussed in ¶¶ 84–85, *infra*, after these investigations, AHCA attempted to impose penalties on multiple abortion providers, including PPSWCF, for allegedly

performing second trimester abortion procedures in clinics with first trimester licenses. These groundless charges were based on AHCA's new and absurd interpretation of the length of the first trimester, which had no legal or medical basis. Not a single one of these politically motivated charges was substantiated.

22. In the midst of this hostile political and regulatory environment, the Florida Legislature advanced a legislative agenda seeking to punish the state's abortion providers and reduce access to basic reproductive health care in Florida and ultimately passed the Act, which targets abortion providers for dissimilar treatment in an unprecedented number of ways.

23. The anti-abortion sentiment motivating the Act could not be clearer. Language in a draft bill affirmed Florida's commitment to the "unborn human's unalienable right to life" and stated that the "people of Florida seek to protect all human life by regulating the termination of pregnancies," Substitution Amend. 155937 for 060641 by Rep. Matt Gaetz, H.B. 1411, 2016 Leg. Reg. Sess. (Mar. 1, 2016), <https://www.flsenate.gov/Session/Bill/2016/1411/Amendment/155937/PDF>, but this language was edited out of the final version due to a concern that it would make the bill more susceptible to a legal challenge. Katy Bergen, *Lawmakers Approve Abortion Bill*, Herald-Tribune (Mar. 9, 2016), <http://politics.heraldtribune.com/2016/03/09/lawmakers-approve-abortion-bill/>. As State Senator Alan Hays said when explaining his support for the Act, "That is

what abortion really is. It's murder. We, as a state, need to do everything that we can to not sanction murder." *3/9/16 S. Sess. Part 1 – 10:00 AM*, 2016 Reg. Leg. Sess. at 53:49 (Mar. 9, 2016), <http://thefloridachannel.org/videos/3916-senate-session-part-1-1000/>.

24. The legislative debates on the Defunding Provision show that it was intended to punish the state's abortion providers by prohibiting them from accessing any form of government funds. Co-sponsor State Senator Kelli Stargel made clear during the debates that "when it comes to my state dollars, I think it's best that we not fund facilities that provide elective abortion," and fully admitted that the Defunding Provision imposes "a burden on clinics performing the procedures on women." *Id.* at 1:22:55. Other legislators seemed to think that the Defunding Provision would prohibit government funding of abortion, even though none of the funds pay for abortion. Representative Fred Costello spoke in favor of the bill because of his belief that it would "make it so that government money doesn't pay for killing babies." *3/3/16 H. Sess. Part 1 – 10:30 AM*, 2016 Reg. Leg. Sess. at 1:55:00 (Mar. 3, 2016), <http://thefloridachannel.org/videos/3316-house-session-part-1-1030/>.

THE DEFUNDING PROVISION

25. The Defunding Provision prohibits abortion providers from receiving certain government funds to provide health care services: "A state agency, a local

government entity, or a managed care plan providing services . . . may not expend funds for the benefit of, pay funds to, or initiate or renew a contract with an organization that owns, operates, or is affiliated with one or more clinics that are licensed under this chapter and performs abortions.” Fla. Stat. § 390.0111(15); Ex. A at 2.

26. This provision has very limited exceptions, permitting an abortion provider to continue receiving government funding only if all abortions performed by the provider are (1) necessary to preserve the woman’s life or to avert a “serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman, other than a psychological condition,” or (2) “[o]n fetuses that are conceived through rape or incest.” Fla. Stat. § 390.0111(15)(a); Ex. A at 2. The Defunding Provision also permits abortion providers to continue receiving funding if it must be expended to fulfill the terms of a contract entered into before July 1, 2016, or as reimbursement for Medicaid services that are provided on a fee-for-service basis. *Id.*

27. Both PPSWCF and PPSNFL have multiple grants and contracts administered by FDOH and local government entities that they can no longer receive as a result of the Defunding Provision.

28. The Defunding Provision, unless enjoined, will prevent PPSWCF and PPSNFL from participating in certain publicly funded programs that are intended

to promote public health, including and especially the health of lower-income Floridians. All of the programs at issue are designed and paid for by federal or county government funds, and none pay for abortions.

29. During the many years in which Plaintiffs have participated in these programs, Plaintiffs have used the program funds to provide high quality non-abortion health care services to eligible patients, and Plaintiffs have never used any of the program funds to provide abortion.

A. Programs Affected by Defunding Provision and Plaintiffs' Participation in Them

a. Title X

30. The Title X Family Planning Project ("Title X") is a federal program that subsidizes the provision of family planning services to low-income persons. It was enacted in 1970 as part of the Public Health Service Act to ensure that low-income and/or uninsured families and individuals, including those not eligible for Medicaid coverage, would have access to family planning services. Title X funds are granted by the United States Department of Health and Human Services ("HHS") to state agencies or private entities ("grantees").

31. FDOH is the only Title X grantee in Florida, and it provides services in part by entering into agreements with other entities ("subgrantees"), such as Plaintiffs, to provide them.

32. PPSWCF (and a predecessor entity) have been Title X subgrantees in Florida since 1995. PPSWCF is the **only** Title X family planning provider in Collier County. Under an annual grant of \$89,006 from FDOH along with an additional estimated \$80,000 of in-kind inventory from FDOH, PPSWCF provides more than 6000 family-planning and reproductive health exams to more than 5800 Title X clients annually at PPSWCF's health center in Naples and at its health center in Immokalee, which is operated out of the county office of the FDOH. In the last fiscal year, PPSWCF's Title X program provided 1322 breast exams, 1056 pap smears, 7392 packages of contraceptive pills, and 354 long acting reversible contraception ("LARC") devices.

33. In addition to its Collier County funding, PPSWCF also receives an annual grant of \$10,500 from FDOH to provide vasectomies at one of its health centers in Orlando, and an annual grant of \$2,730 from FDOH to provide vasectomies at its health centers in Sarasota, Lakeland, and Fort Myers.

34. PPSWCF (and a predecessor entity) have been a Title X subgrantee in Florida since 1999. PPSWCF receives \$44,600 annually from FDOH under the federal Title X program to provide free and reduced-cost health care services to low-income teens in Palm Beach County, including STI tests and treatments, pregnancy testing and options counseling, contraceptive counseling, and family planning and sexual health education.

35. PPSNFL is the only provider in Palm Beach County that is specifically contracted to provide such services to teens.

b. The CDC's STI Prevention Program

36. Both Plaintiffs also participate in the U.S. Centers for Disease Control and Prevention's ("CDC's") Sexually Transmitted Infections ("STI") prevention program ("STI Prevention Program"), a federal program that subsidizes the testing and treatment of STIs through project grants to state agencies, like FDOH. *See* 42 U.S.C. § 247c(c).

37. FDOH, in turn, disburses funds to other entities that provide STI treatment and testing, such as Plaintiffs. FDOH also uses some of the funds to provide access to the state laboratories at reduced rates to entities that provide STI testing.

38. PPSWCF has been the recipient of the STI Prevention Program funds since 2006. PPSWCF receives annual grants from FDOH to reimburse PPSWCF for the cost of chlamydia and gonorrhea testing and treatment in Collier County, and to provide STI diagnosis, treatment and education at its health centers in Sarasota, Bradenton, Tampa, Lakeland and Ft. Myers. The STI Prevention Program also allows PPSWCF to pay reduced rates for the use of FDOH laboratories for STI testing performed at PPSWCF's clinics in Orlando and Kissimmee.

39. Last fiscal year, PPSWCF used its grants funded by the STI Prevention Program to provide 17,909 low-cost STI tests for patients. In addition, PPSWCF used the FDOH laboratory to perform these tests at reduced rates.

40. PPSNFL has been the recipient of the STI Prevention Program funds since 2005. PPSNFL receives an annual grant from FDOH to reimburse PPSNFL for the cost of chlamydia and gonorrhea testing and treatment in Duval County. Last fiscal year, PPSNFL used that grant to provide 1053 free screenings for chlamydia and gonorrhea, and to provide free treatment to 134 individuals who tested positive for chlamydia and/or gonorrhea.

41. When affordable STI testing is not readily available, STI infections will spread. This concern is particularly apparent in Florida, the state with the fourth highest rate of HIV diagnoses, and the overall highest number of annual HIV diagnoses in the nation. HIV/AIDS Section, Surveillance Program, FDOH, *Fla. HIV/AIDS Annual Report 2014* (2014), <http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/epi-profiles/2014/hiv-aids-annual-morbidity-2014.pdf>. In addition, Florida is the state with the eighteenth highest rate of gonorrheal infections, and Florida women have a chlamydia rate that is 2.3 times greater than that of men. Nat'l Ctr. for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, CDC, Fla. – 2015 State Health Profile (2015), https://www.cdc.gov/nchhstp/stateprofiles/pdf/florida_profile.pdf.

c. Breast and Cervical Cancer Project

42. Both Plaintiffs also participate in providing critical services through the National Breast and Cervical Cancer Early Detection Program, a federal program that provides low-income and uninsured women with access to breast and cervical cancer screenings and diagnostic services, as well as referrals for follow-up services. 42 U.S.C. § 300k *et seq.*

43. Breast and Cervical Cancer Project (BCCP) funds are awarded by HHS to state agencies, and these state agencies, like FDOH, in turn enter into agreements with other entities that provide breast and cervical cancer services to patients.

44. PPSWCF has been the recipient of BCCP funds since 2008. PPSWCF receives annual reimbursements from FDOH for providing free breast and cervical cancer screenings and services to PPSWCF's patients in Hillsborough, Polk, Manatee, Sarasota, DeSoto, Charlotte, Glades, Henry, and Lee counties.

45. PPSENFL has been the recipient of BCCP funds since 2007. PPSENFL receives annual reimbursements from FDOH for providing free breast and cervical cancer screenings and services to PPSENFL's patients in Martin, Palm Beach, and Broward counties.

d. Children's Services Council Funding

46. Children's Services Council of Palm Beach County ("Children's Services Council") is a countywide special purpose government entity in Palm Beach County, funded primarily by Palm Beach County property taxes, that funds programs and services that improve the lives of children and their families. *How We're Funded*, Children's Services Council, <http://www.cscpb.org/howfunded> (last visited June 1, 2016).

47. The Urban League of Palm Beach County receives funding annually from the Children's Services Council to oversee and monitor a youth development program for low-income teens in Palm Beach County.

48. PPSNFL, in turn, since 2013 has received approximately \$204,231 annually from a subcontract with the Urban League of Palm Beach County to operate PPSNFL's Teen Outreach Program ("Teen Outreach Program"). This educational program allows 200 to 250 teens per year to participate in an evidence-based youth development program that is designed to reduce risk factors of dropping out from school, academic failure, and teen pregnancy, and to ultimately enable teens from disadvantaged backgrounds to develop healthy behaviors and life skills that will set them up for success.

e. Community Agency Partnership Program

49. The Community Agency Partnership Program in Alachua County funds programs that seek to reduce the impact of poverty on residents of Alachua County. The Alachua County Commission makes the ultimate decision as to which programs should be funded under the program and at what amount. *Community Agency Partnership Program*, Alachua County, <http://www.alachuacounty.us/Depts/CSS/CAPP/Pages/CappProgram.aspx> (last visited June 1, 2016).

50. PPSNFL receives \$31,317 annually from the Community Agency Partnership Program to operate the Teen Time Medical Clinic (“Teen Time”). Since 2004, PPSNFL has provided free or low cost reproductive health care, including STI testing and treatment, contraception services, cancer screenings, and medically accurate sexual health education for uninsured or underinsured adolescents in Alachua County through Teen Time. Approximately 200 uninsured or underinsured teens from Alachua County participate in this program on an annual basis. The ultimate goal of the Teen Time program is to provide medical services and education to teens in a way that promotes healthier lives, identifies choices, and offers an escape from poverty.

B. The Impact of the Defunding Provision on Plaintiffs and the Communities They Serve

51. The Defunding Provision, and the inability to participate in the programs outlined above, will have a devastating impact on PPSWCF, PPSNFL,

and the communities they serve. PPSWCF will lose approximately \$131,000 of funding and \$80,000 of in-kind inventory, and PPSNFL will lose approximately \$296,000 of funding. Without that funding, Plaintiffs will be unable to offer the same range of vital health care services and educational programs that they currently provide, impeding Plaintiffs' ability to serve their core mission: to provide comprehensive reproductive health care services and education that is affordable, accessible, and available to all Floridians.

52. If implemented, the Defunding Provision will result in the closing of PPSWCF's Immokalee health center and will likely require PPSWCF to eliminate two staff positions. The Defunding Provision will also result in termination of the Teen Time Program in Alachua County and the end of PPSNFL's participation in the Teen Outreach Program in Palm Beach County. As a result PPSNFL will need to eliminate four staff positions.

53. The closure of the Immokalee health center and the changes to Plaintiffs' staffing levels, among other things, will make it difficult for Plaintiffs to resume operating these programs should their eligibility for funding be restored.

54. Because of the loss of grants and funds, Plaintiffs will also no longer be able to offer the same level of free (or reduced cost) testing and treatment for cancers and STIs at their health centers. Many patients will be unable to afford to self-pay for these services and will decline testing and treatment during their visits.

Other patients will seek to find another provider, forcing them to disrupt their medical care with their established provider and attempt to find an adequate alternative provider.

55. The legislative debates on the Defunding Provision demonstrate that legislators had little concern about ensuring the availability of services once abortion providers were prohibited from accessing government funds. After Representative Lori Berman asked one of the bill's co-sponsors to provide her with a list of the alternative providers where patients would still be able to access care, she received a list that included numerous providers that plainly do not provide reproductive health care: the list included elementary schools and dental offices. *3/3/16 H. Sess. Part 1 – 10:30 AM* (Mar. 3, 2016), 2016 Reg. Leg. Sess. at 3:05:52, <http://thefloridachannel.org/videos/3316-house-session-part-1-1030/>.

56. On information and belief, the few affordable reproductive health care providers that do exist in Florida are not prepared or able to serve the thousands of patients that currently receive free or low-cost services at Plaintiffs' health centers. Moreover, even if these alternative providers were able to absorb some of Plaintiffs' patients, many of these providers will be unable to offer the same level of care and access that Plaintiffs currently provide: these other providers are not open in the evenings or weekends, do not offer walk-in appointments, have long wait times for appointments, cannot serve communities with limited English

proficiency, and are not viewed by patients as providing the same level of confidentiality as Plaintiffs.

57. Because of the expected barriers that many patients will face in obtaining services from other providers, some patients will forgo these critical health services once they can no longer obtain them at PPSWCF and PPSNFL, leaving cancers and infections undiagnosed and untreated, at a risk to their own health and the health of their partners. But even those patients who eventually do obtain services from other providers will be harmed: their medical care will be disrupted, they will be delayed in accessing care, and they will not obtain the same level of care.

58. As a result of the Defunding Provision, the only way that abortion providers can continue to receive government funding to provide these vital non-abortion health care services is by ceasing to provide abortions. When co-sponsor State Senator Stargel was asked during the legislative debates whether the Defunding Provision would prevent a clinic that performs abortions from receiving money for HIV screenings, she admitted that it would. She then provided her solution for how such a clinic could continue to receive funding: “[O]r they could choose not to provide abortions.” *2/17/16 S. Appropriations Subcomm. on Health and Human Servs.*, 2016 Reg. Leg. Sess. at 1:11:00, <http://thefloridachannel.org/videos/21716-senate-appropriations-subcommittee-health-human-services/>.

Senator Bean had a similar suggestion: “Get them out of the abortion business and then maybe they can be a provider, but if they’re going to do this type of procedure, I say let’s keep the taxpayers totally out of it.” *3/9/16 S. Sess. Part 1 – 10:00 AM*, 2016 Reg. Leg. Sess. at 1:47:25, <http://thefloridachannel.org/videos/3916-senate-session-part-1-1000/>.

59. If PPSWCF and PPSNFL were to accept the condition imposed by the Defunding Provision and cease providing abortion services so that they could continue to receive funding, the impact on their patients would also be devastating. PPSWCF provides 66% of the abortions in Sarasota County, 57% of the abortions in Lee County, and 46% of the abortions in Polk County. PPSNFL provides 32% of the abortions in Palm Beach County. Importantly, PPSWCF and PPSNFL are the **only** abortion providers in Collier and Martin Counties. If PPSWCF and PPSNFL were to stop providing abortions, their patients would be forced to travel elsewhere, and in some cases to another county, to access care. In addition, the wait time for appointments would increase as the remaining providers in Florida attempted to accommodate the influx of additional patients.

INSPECTION REQUIREMENT

60. The Inspection Requirement mandates that when performing the annual, unannounced license inspection of a clinic, “[AHCA] shall inspect at least

50 percent of patient records generated since the clinic's last license inspection.”

Fla. Stat. § 390.012(1)(c)(2); Ex. A at 3–4.

61. The Inspection Requirement is unprecedented, unwarranted, and extraordinarily burdensome. Approximately 71,000 women each year have abortions in Florida, and AHCA now will be reviewing tens of thousands of medical records from women who exercised their constitutional right to privacy.

62. Licensed abortion providers are the only type of health care facilities or providers in Florida regulated by AHCA that are subject to such invasive inspection requirements. No other facility or provider is subject to a statutory mandate that *half* of newly generated patient records be inspected on an annual basis. Other health care facilities and providers in Florida are periodically inspected to ensure compliance with governing statutes and rules, but they are not subject to any quota about the number of patient records that must be inspected on an annual basis, and they are certainly not subject to a requirement that 50% of patient records be inspected.

63. There is no legitimate health or safety rationale for imposing this requirement on abortion providers, and abortion providers only. In fact, abortion is an exceedingly safe procedure, with complication rates that are far lower than the complication rates of other medical procedures.

64. Currently, when conducting a licensure inspection of an abortion clinic, AHCA personnel reviews approximately fifteen to twenty patient records. On information and belief, this is similar to what AHCA does when inspecting other types of health care facilities. The Inspection Requirement will mean that inspectors must review an estimated 700 to nearly 1000 patient records during inspections of some of Plaintiffs' health centers. Reviewing this number of patient records will take days, if not more, and Plaintiffs will have to dedicate a staff member to accompany the AHCA inspector and answer her questions during this lengthy process. And this will have to be repeated at each of Plaintiffs' health centers that provide abortions, as they are each separately licensed and inspected.

65. The Inspection Requirement forces Plaintiffs and their patients to consent to AHCA's warrantless, baseless, and unreasonable searches of patient medical records, without any legitimate basis justifying such extensive searches, and without any reason for dispensing with the warrant requirement in this context.

66. In addition, by exposing *at least half* of patient records to AHCA investigation at each license inspection, the Inspection Requirement interferes with Plaintiffs' patients' right to maintain the confidentiality of their private medical records.

67. These private medical records will include not only the fact that a woman obtained an abortion, but also other sensitive medical information such as

the woman's HIV status, contraceptive methods used, any prior abortions or pregnancies, drug and alcohol use, sexual history, and other information from the women's medical and mental health history.

68. State and federal law do not provide adequate protections to ensure that Plaintiffs' patients' medical records will remain confidential once they are exposed to AHCA inspectors. No statute or regulation requires an AHCA inspector to keep the patient information confidential, penalizes disclosure of that information outside of AHCA, or even limits the number of AHCA officials who can review it.

69. Moreover, even if the AHCA inspectors themselves were to keep this information confidential, these inspectors, who are members of Florida communities, would still have widespread access to the private reproductive-health related medical records of tens of thousands of Florida women.

70. The Inspection Requirement will also result in an exorbitant increase in abortion providers' biennial licensing fees. The Act removes the current license fee cap (of \$500) and permits AHCA to charge providers for AHCA's costs in administering the licenses. Because of the onerous Inspection Requirement, AHCA's costs will drastically increase. The legislature estimated that license fees would increase from the current \$545 biennial fee to \$8,453.51 in the first year after implementation, and would be \$2,478.90 in subsequent years. H. of Reps.,

Final B. Analysis CS/CS/HB 1411 at 13, 2016 Reg. Leg. Sess. (2016), *available at* <https://www.flsenate.gov/Session/Bill/2016/1411/Analyses/h1411z1.HQS.PDF>.

This is far higher than the license fees paid by other licensed health care facilities, which means that the state's abortion providers will now be paying a licensing fee that is drastically out of proportion with the fees charged to other medical providers in the state.

71. If implemented, the Inspection Requirement will cause irreparable harm to Plaintiffs and their patients. The breadth of these inspections, the lack of confidentiality protections for patient information obtained by AHCA, and the fifty-fifty chance of a patient's medical record being reviewed by an AHCA inspector, will likely deter some patients from obtaining an abortion because of the feared lack of confidentiality. Discouraging patients from obtaining needed medical care causes significant harm to their health and well-being.

72. Complying with the Inspection Requirement will also harm Plaintiffs, as they will be subject to invasive, warrantless inspections that do not serve any legitimate state interest and that are drastically different from AHCA's inspections of the state's other medical providers. In addition, Plaintiffs will have to devote significant staff and other resources towards compliance with the Inspection Requirement, taking these resources away from the provision of needed medical care.

TRIMESTER DEFINITION

73. The Act's Trimester Definition defines "gestation" as "the development of a human embryo or fetus between fertilization and birth," and then goes on to define the "First Trimester" as "the period of time from fertilization through the end of the 11th week of gestation," the "Second Trimester" as "the period of time from the beginning of the 12th week of gestation through the end of the 23rd week of gestation," and the "Third Trimester" as "the period of time from the beginning of the 24th week of gestation through birth." Fl. Stat. § 390.011(6) & (12); Ex. A at 2.

74. The Trimester Definition uses vague, non-medical terms that leave physicians unable to determine when each trimester begins and ends.

75. The accepted medical practice is to date pregnancies based on weeks and days from the first day of the woman's last normal menstrual period ("LNMP" or "LMP"), because it is difficult, if not impossible, to accurately determine the date of "fertilization," except in cases of in vitro fertilization. Thus, by defining "gestation" as the development of an embryo or fetus between fertilization and birth, and in turn defining the trimesters based on weeks of "gestation," the Florida Legislature has used terms that are inconsistent with and contrary to the accepted medical practice.

76. Moreover, it is unclear what is meant by “the end of the . . . week of gestation” and “the beginning of the . . . week of gestation,” because the Trimester Definition does not provide any guidance as to how these weeks should be measured. Thus, even if the date of “fertilization” could be determined, a physician would still be left to guess whether certain pregnancies fall within the first or second trimesters under the Trimester Definition.

77. When the Act’s co-sponsor, Representative Stargel was asked who drafted the Trimester Definition, she admitted that “it was [m]e and staff working together on the bill I came up with the definition, the bill sponsor, in consultation with staff and with having discussions with AHCA” and that she did not have any discussions with any physicians or anybody else from the medical community other than AHCA about the definition. Representative Stargel further explained that her personal experience “from being a mother of five” meant that she knew how the gestational age of a pregnancy is calculated. *1/26/16 S. Health Pol’y Comm.* (Jan. 26, 2016), 2016 Reg. Leg. Sess. at 55:22, <http://thefloridachannel.org/videos/12616-senate-health-policy-committee/>.

78. Importantly, the Trimester Definition is apparently intended to supersede AHCA’s trimester definitions, leaving providers with further confusion as to which definition applies: AHCA’s rules define the first trimester as “[t]he

first 12 weeks of pregnancy (the first 14 completed weeks from the last normal menstrual period).” Fla. Admin. Code Ann. r. 59A-9.019(14).

79. Thus, because of the Trimester Definition’s use of confusing and non-medical terms, physicians will be unable to determine whether the first trimester of pregnancy ends at the equivalent of 13.6 weeks LMP (assuming that fertilization occurs two weeks after the LMP date), or whether, instead, the first trimester ends one week earlier, at 12.6 weeks LMP (again, assuming that fertilization occurs two weeks after the LMP date).

80. The Trimester Definition has significant legal consequences for clinics that are licensed by AHCA to perform abortions only during the first trimester of pregnancy.

81. Because of the uncertainty created by the Trimester Definition, starting on July 1, 2016, PPSWCF will have to limit the availability of abortion at its three health centers with first trimester licenses, and will be unable to provide services to women whose pregnancies could fall within the “12th week of gestation” under the new Trimester Definition. These women will be forced to travel to an alternative provider that is licensed to perform abortions during the second trimester.

82. The Trimester Definition also has significant medical consequences for Plaintiffs’ patients, as any abortion that could fall within the “12th week of

gestation” will have to be treated as a second trimester procedure. Health centers that are licensed to perform abortion procedures during the second trimester of pregnancy must comply with a litany of additional rules, including physical plant requirements and clinical staffing requirements. Fla. Admin. Code Ann. r. 59A-9.022 *et seq.* Importantly for Plaintiffs’ patients, AHCA requires an IV to be inserted for all second trimester abortion patients, regardless of whether an IV is medically indicated.

83. The uncertainty created by the Trimester Definition leaves abortion providers and physicians vulnerable to penalties should AHCA find that they have provided care improperly based on an incorrect interpretation. These penalties could include (1) the revocation and suspension of Plaintiffs’ abortion licenses, (2) the imposition of administrative fines, and (3) the referral of their physicians to FDOH for investigation and to a Probable Cause panel of the Board of Medicine, with the possibility of disciplinary action. Fla. Stat. Ann. §§ 408.812(5), 408.813, 408.815, 390.018 & 456.073(2); 456.072(1)(k) & (dd); 458.331(1)(g) & (t) & (z) & (nn).

84. This vulnerability to penalties is especially apparent given AHCA’s recent politically motivated investigations of the state’s abortion providers, at the direction of Governor Rick Scott. During these investigations, AHCA arbitrarily decided that abortions being performed between 13.0 and 13.6 LMP are not within

the first trimester, even though (1) as noted above, AHCA's own rules currently define the first trimester of pregnancy as the first 14 completed weeks from the last normal menstrual period; and (2) Plaintiffs had been performing abortion procedures through 13.6 LMP in their first trimester clinics for years, and had been dutifully reporting these gestational ages, measured by LMP, to AHCA, without any complaint. But after the investigations, AHCA cited three of PPSWCF's health centers (and two other providers) for allegedly performing second-trimester abortion in facilities that are only licensed to perform abortions during the first trimester and filed administrative complaints against them. An AHCA official also filed a complaint that referred PPSWCF's medical director and one of its physicians to FDOH for investigation of the alleged improper performance of second trimester procedures.

85. The Administrative Complaints filed against PPSWCF's health centers and the complaint referring PPSWCF's physicians to FDOH were completely unfounded and were ultimately dropped.

86. The history of AHCA's arbitrary and changing interpretation of the length of the first trimester demonstrates the danger of the new Trimester Definition, as it leaves Plaintiffs at risk of discriminatory and arbitrary enforcement.

87. In addition, the Trimester Definition interferes with Plaintiffs' property interests in their first trimester abortion licenses. The Trimester Definition effectively redefines and limits the scope of Plaintiffs' first trimester abortion licenses, all of which are valid through the Spring and Summer of 2017, without any legitimate justification for doing so.

88. Plaintiffs, their staff, and their patients have no adequate remedy at law for the constitutional deprivations caused by the Defunding Provision, the Inspection Requirement, and the Trimester Definition.

CLAIMS FOR RELIEF

CLAIM I – DEFUNDING PROVISION – DUE PROCESS CLAUSE

89. Plaintiffs hereby incorporate Paragraphs 1 through 88 above.

90. The Defunding Provision violates rights guaranteed to Plaintiffs and their patients by the Fourteenth Amendment of the U.S. Constitution because it denies certain government funds to PPSWCF and PPSNFL because of—and in retaliation for—their exercise of their own constitutionally protected right to provide and their patients' exercise of the constitutional right to choose to have an abortion with private funds.

CLAIM II – DEFUNDING PROVISION – EQUAL PROTECTION CLAUSE

91. Plaintiffs hereby incorporate Paragraphs 1 through 88 above.

92. The Defunding Provision violates Plaintiffs' right to Equal Protection under the Fourteenth Amendment to the U.S. Constitution by singling out abortion providers for unfavorable treatment without adequate justification.

**CLAIM III – DEFUNDING PROVISION – RIGHT TO PRIVACY UNDER
FLORIDA CONSTITUTION**

93. Plaintiffs hereby incorporate Paragraphs 1 through 88 above.

94. The Defunding Provision violates rights guaranteed to Plaintiffs and their patients by article I, section 23 of the Florida Constitution because it denies certain government funds to PPSWCF and PPSNFL because of—and in retaliation for—their exercise of their own constitutionally protected right to provide and their patients' exercise of the constitutional right to choose to have an abortion with private funds.

**CLAIM IV – DEFUNDING PROVISION – EQUAL PROTECTION UNDER
FLORIDA CONSTITUTION**

95. Plaintiffs hereby incorporate Paragraphs 1 through 88 above.

96. The Defunding Provision violates Plaintiffs' right to equal protection of the laws in the state of Florida, as guaranteed by article I, section 2 of the Florida Constitution by singling out abortion providers for unfavorable treatment without adequate justification.

CLAIM V – INSPECTION REQUIREMENT – EQUAL PROTECTION

CLAUSE

97. Plaintiffs hereby incorporate Paragraphs 1 through 88 above.

98. The Inspection Requirement violates Plaintiffs’ and their patients’ Fourteenth Amendment right to Equal Protection under the U.S. Constitution by singling out abortion providers and abortion patients’ medical records for unfavorable treatment without adequate justification.

CLAIM VI – INSPECTION REQUIREMENT – DUE PROCESS CLAUSE

99. Plaintiffs hereby incorporate Paragraphs 1 through 88 above.

100. The Inspection Requirement violates Plaintiffs’ patients’ Fourteenth Amendment right to Due Process under the U.S. Constitution because it interferes with their right to maintain the confidentiality of private information about their health care, including the fact that they have sought an abortion, without adequate justification.

CLAIM VII – INSPECTION REQUIREMENT– FOURTH AMENDMENT

101. Plaintiffs hereby incorporate Paragraphs 1 through 88 above.

102. The Inspection Requirement violates Plaintiffs’ and their patients’ right to be free from unreasonable searches and seizures under the Fourth and Fourteenth Amendments to the U.S. Constitution by requiring Plaintiffs to consent to warrantless, baseless, and nonconsensual searches of their patient records.

**CLAIM VIII – INSPECTION REQUIREMENT – RIGHT TO PRIVACY
UNDER FLORIDA CONSTITUTION**

103. Plaintiffs hereby incorporate Paragraphs 1 through 88 above.

104. The Inspection Requirement violates Plaintiffs’ patients’ rights guaranteed by article I, section 23 of the Florida Constitution because it interferes with their ability to maintain the confidentiality of private information about their health care, including the fact that they have sought an abortion, without adequate justification.

**CLAIM IX – INSPECTION REQUIREMENT – EQUAL PROTECTION
UNDER FLORIDA CONSTITUTION**

105. Plaintiffs hereby incorporate Paragraphs 1 through 88 above.

106. The Defunding Provision violates Plaintiffs’ and their patients’ right to equal protection of the laws in the state of Florida, as guaranteed by article I, section 2 of the Florida Constitution, by singling out abortion providers and abortion patients’ medical records for unfavorable treatment without adequate justification.

CLAIM X – TRIMESTER DEFINITION – DUE PROCESS CLAUSE

107. Plaintiffs hereby incorporate Paragraphs 1 through 88 above.

108. The Trimester Definition violates Plaintiffs’ and their staff’s Fourteenth Amendment Right to Due Process because it is impermissibly vague,

fails to give fair notice of the conduct that is required, and encourages arbitrary enforcement.

CLAIM XI – TRIMESTER DEFINITION – DUE PROCESS CLAUSE

109. Plaintiffs hereby incorporate Paragraphs 1 through 88 above.

110. The Trimester Definition violates Plaintiffs' Fourteenth Amendment Right to Due Process by interfering with their property interests in their abortion licenses without adequate justification.

RELIEF REQUESTED

WHEREFORE, Plaintiffs request that this Court:

- A. Issue a declaratory judgment that the Defunding Provision violates the rights of Plaintiffs and their patients protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and article I, section 23 of the Florida Constitution as well as Plaintiffs' rights protected by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and article I, section 2 of the Florida Constitution;
- B. Issue a declaratory judgment that the Inspection Requirement violates the rights of Plaintiffs and their patients protected by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and article I, section 2 of the Florida Constitution; the rights of Plaintiffs' patients protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and article I, section 23 of the Florida Constitution; and the rights of Plaintiffs and their Patients protected by the Fourth and Fourteenth Amendments to the United States Constitution;

- C. Issue a declaratory judgment that the Trimester Definition violates the rights of Plaintiffs protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution;
- D. Issue preliminary and permanent injunctive relief, without bond, enjoining the enforcement, operation, and execution of the Defunding Provision, the Inspection Requirement, and the Trimester Definition, and directing Defendant FDOH to honor its contracts with and contractual offers to Plaintiffs;
- E. Grant Plaintiffs attorneys' fees, costs and expenses pursuant to 42 U.S.C. § 1988; and
- F. Grant such further relief as this Court deems just and proper.

Dated: June 2, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2016 a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I further certify that a copy of the foregoing pleading and the Notice of Electronic Filing has been served by ordinary U.S. mail and email upon all parties for whom counsel has not yet entered an appearance electronically.

/s/ James K. Green

Trial Attorney for Plaintiffs

EXHIBIT A

CHAPTER 2016-150

Committee Substitute for
Committee Substitute for House Bill No. 1411

An act relating to termination of pregnancies; amending s. 390.011, F.S.; defining the term “gestation” and revising the term “third trimester”; amending s. 390.0111, F.S.; revising the requirements for disposal of fetal remains; revising the criminal punishment for failure to properly dispose of fetal remains; prohibiting state agencies, local governmental entities, and Medicaid managed care plans from expending or paying funds to or initiating or renewing contracts under certain circumstances with certain organizations that perform abortions; providing exceptions; amending s. 390.0112, F.S.; requiring directors of certain hospitals and physicians’ offices and licensed abortion clinics to submit monthly reports to the Agency for Health Care Administration on a specified form; prohibiting the agency to submit certain data to the Centers for Disease Control and Prevention on a quarterly basis; amending s. 390.012, F.S.; requiring the agency to develop and enforce rules relating to license inspections and investigations of certain clinics; requiring the agency to adopt rules to require all physicians performing abortions to have admitting privileges at a hospital within a reasonable proximity unless the clinic has a transfer agreement with the hospital; revising requirements for rules that prescribe minimum recovery room standards; revising requirements for the disposal of fetal remains; requiring the agency to submit an annual report to the Legislature; amending s. 390.014, F.S.; providing a different limitation on the amount of a fee; amending s. 390.025, F.S.; requiring certain organizations that provide abortion referral services or abortion counseling services to register with the agency, pay a specified fee, and include certain information in advertisements; requiring biennial renewal of a registration; providing exemptions from the registration requirement; requiring the agency to adopt rules; providing for the assessment of costs in certain circumstances; amending s. 873.05, F.S.; prohibiting an offer to purchase, sell, donate, or transfer fetal remains obtained from an abortion and the purchase, sale, donation, or transfer of such remains, excluding costs associated with certain transportation of remains; providing an appropriation; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (6) through (12) of section 390.011, Florida Statutes, are redesignated as subsections (7) through (13), respectively, a new subsection (6) is added to that section, and present subsection (11) of that section is amended, to read:

390.011 Definitions.—As used in this chapter, the term:

(6) “Gestation” means the development of a human embryo or fetus between fertilization and birth.

(12)(11) “Third Trimester” means one of the following three distinct periods of time in the duration of a pregnancy:

(a) “First trimester,” which is the period of time from fertilization through the end of the 11th week of gestation.

(b) “Second trimester,” which is the period of time from the beginning of the 12th week of gestation through the end of the 23rd week of gestation.

(c) “Third trimester,” which is the period of time from the beginning of the 24th week of gestation through birth the weeks of pregnancy after the 24th week of pregnancy.

Section 2. Subsection (7) of section 390.0111, Florida Statutes, is amended, and subsection (15) is added to that section, to read:

390.0111 Termination of pregnancies.—

(7) FETAL REMAINS.—Fetal remains shall be disposed of in a sanitary and appropriate manner pursuant to s. 381.0098 and rules adopted thereunder and in accordance with standard health practices, as provided by rule of the Department of Health. Failure to dispose of fetal remains in accordance with this subsection department rules is a misdemeanor of the first second degree, punishable as provided in s. 775.082 or s. 775.083.

(15) USE OF PUBLIC FUNDS RESTRICTED.—A state agency, a local governmental entity, or a managed care plan providing services under part IV of chapter 409 may not expend funds for the benefit of, pay funds to, or initiate or renew a contract with an organization that owns, operates, or is affiliated with one or more clinics that are licensed under this chapter and perform abortions unless one or more of the following applies:

(a) All abortions performed by such clinics are:

1. On fetuses that are conceived through rape or incest; or
2. Are medically necessary to preserve the life of the pregnant woman or to avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman, other than a psychological condition.

(b) The funds must be expended to fulfill the terms of a contract entered into before July 1, 2016.

(c) The funds must be expended as reimbursement for Medicaid services provided on a fee-for-service basis.

Section 3. Subsection (1) of section 390.0112, Florida Statutes, is amended, present subsections (2), (3), and (4) of that section are

redesignated as subsections (3), (4), and (5), respectively, and a new subsection (2) is added to that section, to read:

390.0112 Termination of pregnancies; reporting.—

(1) ~~The director of any medical facility in which abortions are performed, including a physician's office, any pregnancy is terminated shall submit a monthly report each month to the agency. The report may be submitted electronically, may not include personal identifying information, and must include:~~

(a) Until the agency begins collecting data under paragraph (e), the number of abortions performed.

(b) The reasons such abortions were performed.

(c) For each abortion, the period of gestation at the time the abortion was performed.

(d) which contains the number of procedures performed, the reason for same, the period of gestation at the time such procedures were performed, and The number of infants born alive or alive during or immediately after an attempted abortion.

(e) Beginning no later than January 1, 2017, information consistent with the United States Standard Report of Induced Termination of Pregnancy adopted by the Centers for Disease Control and Prevention.

(2) The agency shall keep be responsible for keeping such reports in a central location for the purpose of compiling and analyzing place from which statistical data and shall submit data reported pursuant to paragraph (1)(e) to the Division of Reproductive Health within the Centers for Disease Control and Prevention, as requested by the Centers for Disease Control and Prevention analysis can be made.

Section 4. Paragraph (c) of subsection (1), subsection (2), paragraphs (c) and (f) of subsection (3), and subsection (7) of section 390.012, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

390.012 Powers of agency; rules; disposal of fetal remains.—

(1) The agency may develop and enforce rules pursuant to ss. 390.011-390.018 and part II of chapter 408 for the health, care, and treatment of persons in abortion clinics and for the safe operation of such clinics.

(c) The rules shall provide for:

1. The performance of pregnancy termination procedures only by a licensed physician.

2. The making, protection, and preservation of patient records, which shall be treated as medical records under chapter 458. When performing a

license inspection of a clinic, the agency shall inspect at least 50 percent of patient records generated since the clinic's last license inspection.

3. Annual inspections by the agency of all clinics licensed under this chapter to ensure that such clinics are in compliance with this chapter and agency rules.

4. The prompt investigation of credible allegations of abortions being performed at a clinic that is not licensed to perform such procedures.

(2) For clinics that perform abortions in the first trimester of pregnancy only, these rules ~~must~~ shall be comparable to rules that apply to all surgical procedures requiring approximately the same degree of skill and care as the performance of first trimester abortions and must require:

(a) Clinics to have a written patient transfer agreement with a hospital within reasonable proximity to the clinic which includes the transfer of the patient's medical records held by the clinic and the treating physician to the licensed hospital; or

(b) Physicians who perform abortions at the clinic to have admitting privileges at a hospital within reasonable proximity to the clinic.

(3) For clinics that perform or claim to perform abortions after the first trimester of pregnancy, the agency shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter, including the following:

(c) Rules relating to abortion clinic personnel. At a minimum, these rules shall require that:

1. The abortion clinic designate a medical director who is licensed to practice medicine in this state, and all physicians who perform abortions in the clinic have who has admitting privileges at a licensed hospital within reasonable proximity to the clinic, unless the clinic in this state or has a written patient transfer agreement with a licensed hospital within reasonable proximity to of the clinic which includes the transfer of the patient's medical records held by both the clinic and the treating physician.

2. If a physician is not present after an abortion is performed, a registered nurse, licensed practical nurse, advanced registered nurse practitioner, or physician assistant shall be present and remain at the clinic to provide postoperative monitoring and care until the patient is discharged.

3. Surgical assistants receive training in counseling, patient advocacy, and the specific responsibilities associated with the services the surgical assistants provide.

4. Volunteers receive training in the specific responsibilities associated with the services the volunteers provide, including counseling and patient

advocacy as provided in the rules adopted by the director for different types of volunteers based on their responsibilities.

(f) Rules that prescribe minimum recovery room standards. At a minimum, these rules must ~~shall~~ require that:

1. Postprocedure recovery rooms be are supervised and staffed to meet the patients' needs.

2. Immediate postprocedure care consist ~~consists~~ of observation in a supervised recovery room for as long as the patient's condition warrants.

~~3. The clinic arranges hospitalization if any complication beyond the medical capability of the staff occurs or is suspected.~~

3.4. A registered nurse, licensed practical nurse, advanced registered nurse practitioner, or physician assistant who is trained in the management of the recovery area and is capable of providing basic cardiopulmonary resuscitation and related emergency procedures remain ~~remains~~ on the premises of the abortion clinic until all patients are discharged.

4.5. A physician ~~shall~~ sign the discharge order and be readily accessible and available until the last patient is discharged to facilitate the transfer of emergency cases if hospitalization of the patient or viable fetus is necessary.

5.6. A physician discuss ~~discusses~~ Rho(D) immune globulin with each patient for whom it is indicated and ensure ~~ensures~~ that it is offered to the patient in the immediate postoperative period or ~~that it will be available to her within 72 hours after completion of the abortion procedure.~~ If the patient refuses the Rho(D) immune globulin, she and a witness must sign a refusal form approved by the agency which must be ~~shall be signed by the patient and a witness and~~ included in the medical record.

6.7. Written instructions with regard to postabortion coitus, signs of possible problems, and general aftercare which are specific to the patient be ~~are given to each patient.~~ The instructions must include information ~~Each patient shall have specific written instructions~~ regarding access to medical care for complications, including a telephone number for use in the event of a ~~to call for medical~~ emergency emergencies.

7.8. ~~There is~~ A specified minimum length of time be specified, by type of abortion procedure and duration of gestation, during which ~~that~~ a patient must remain ~~remains~~ in the recovery room ~~by type of abortion procedure and duration of gestation.~~

8.9. The physician ensure ~~ensures~~ that, with the patient's consent, a registered nurse, licensed practical nurse, advanced registered nurse practitioner, or physician assistant from the abortion clinic makes a good faith effort to contact the patient by telephone, ~~with the patient's consent~~, within 24 hours after surgery to assess the patient's recovery.

9.10. Equipment and services be are readily accessible to provide appropriate emergency resuscitative and life support procedures pending the transfer of the patient or viable fetus to the hospital.

(7) If ~~an any~~ owner, operator, or employee of an abortion clinic fails to dispose of fetal remains and tissue in a sanitary manner pursuant to s. 381.0098, rules adopted thereunder, and rules adopted by the agency pursuant to this section consistent with the disposal of other human tissue in a competent professional manner, the license of such clinic may be suspended or revoked, and such person commits ~~is guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(8) Beginning February 1, 2017, and annually thereafter, the agency shall submit a report to the President of the Senate and the Speaker of the House of Representatives which summarizes all regulatory actions taken during the prior year by the agency under this chapter.

Section 5. Subsection (3) of section 390.014, Florida Statutes, is amended to read:

390.014 Licenses; fees.—

(3) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this chapter and part II of chapter 408. The amount of the fee shall be established by rule and may not be more than required to pay for the costs incurred by the agency in administering this chapter less than \$70 or more than \$500.

Section 6. Effective January 1, 2017, present subsection (3) of section 390.025, Florida Statutes, is amended, and new subsections (3), (4), and (5) are added to that section, to read:

390.025 Abortion referral or counseling agencies; penalties.—

(3) An abortion referral or counseling agency, as defined in subsection (1), shall register with the Agency for Health Care Administration. To register or renew a registration an applicant must pay an initial or renewal registration fee established by rule, which must not exceed the costs incurred by the agency in administering this section. Registrants must include in any advertising materials the registration number issued by the agency and must renew their registration biennially.

(4) The following are exempt from the requirement to register pursuant to subsection (3):

(a) Facilities licensed pursuant to this chapter, chapter 395, chapter 400, or chapter 408;

(b) Facilities that are exempt from licensure as a clinic under s. 400.9905(4) and that refer five or fewer patients for abortions per month; and

(c) Health care practitioners, as defined in s. 456.001, who, in the course of their practice outside of a facility licensed pursuant to this chapter, chapter 395, chapter 400, or chapter 408, refer five or fewer patients for abortions each month.

(5) The agency shall adopt rules to administer this section and part II of chapter 408.

(6)(3) Any person who violates the provisions of subsection (2) commits this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In addition to any other penalties imposed pursuant to this chapter, the Agency for Health Care Administration may assess costs related to an investigation of violations of this section which results in a successful prosecution. Such costs may not include attorney fees.

Section 7. Section 873.05, Florida Statutes, is amended to read:

873.05 Advertising, purchase, or sale, or transfer of human embryos or fetal remains prohibited.—

(1) A No person may not shall knowingly advertise or offer to purchase or sell, or purchase, sell, or otherwise transfer, a any human embryo for valuable consideration.

(2) As used in this subsection section, the term “valuable consideration” does not include the reasonable costs associated with the removal, storage, and transportation of a human embryo.

(2) A person may not advertise or offer to purchase, sell, donate, or transfer, or purchase, sell, donate, or transfer, fetal remains obtained from an abortion, as defined in s. 390.011. This subsection does not prohibit the transportation or transfer of fetal remains for disposal pursuant to s. 381.0098 or rules adopted thereunder.

(3) A person who violates the provisions of this section commits is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 8. For the 2016-2017 fiscal year, 0.5 full-time equivalent positions, with associated salary rate of 39,230, are authorized and the sums of \$59,951 in recurring funds and \$185,213 in nonrecurring funds from the Health Care Trust Fund are appropriated to the Agency for Health Care Administration for the purpose of implementing this act.

Section 9. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2016.

Approved by the Governor March 25, 2016.

Filed in Office Secretary of State March 25, 2016.