

No. 2011-122

AN ACT

SB 732

Amending the act of July 19, 1979 (P.L.130, No.48), entitled "An act relating to health care; prescribing the powers and duties of the Department of Health; establishing and providing the powers and duties of the State Health Coordinating Council, health systems agencies and Health Care Policy Board in the Department of Health, and State Health Facility Hearing Board in the Department of Justice; providing for certification of need of health care providers and prescribing penalties," further providing for definitions, for licensure, for application for license, for issuance of license and for inspections.

The General Assembly finds and declares as follows:

(1) A Philadelphia County investigating grand jury report has revealed systemic deficiencies in the manner in which the Commonwealth has regulated abortion facilities operating in this Commonwealth.

(2) These systemic deficiencies have led to horrific instances of bodily injury and death.

(3) Surgical abortions are at a minimum an outpatient surgical procedure performed in this Commonwealth.

(4) The general public has a substantial interest in the comprehensive regulation of abortion facilities operating in this Commonwealth.

(5) Comprehensive regulation of abortion facilities reasonably serves the Commonwealth's substantial interests in protecting the health, safety and welfare of the general public.

(6) Regulation of abortion facilities that perform outpatient surgical procedures as ambulatory surgical facilities is necessary to cure the systemic deficiencies present in the current regulatory scheme.

(7) Proper licensing and a system of random administrative inspections of abortion facilities operating in this Commonwealth are also a necessary part of any comprehensive regulatory scheme.

(8) Unannounced inspections are necessary to further the regulation of abortion facilities due to the controversial nature of the procedures performed in an abortion facility and understandable concerns by the patients that their medical history will not remain private if a report of a violation is made.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act, is amended by adding a definition to read:

Section 802.1. Definitions.

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given them in this section:

"Abortion facility." Any public or private hospital, not subject to inspection and regulation under this act, and any clinic, center, medical school, medical training institution, physician's office, infirmary or other institution, which provides surgical services meant to terminate the clinically diagnosable pregnancy of a woman with knowledge that termination by those means will, with reasonable likelihood, cause the death of the unborn child.

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Section 2. Section 806 of the act is amended by adding a subsection to read:

Section 806. Licensure.

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(h) Abortion facilities.—

(1) The department shall apply the same regulations promulgated under subsection (f) to abortion facilities that are applied to ambulatory surgical facilities. These regulations include classification of the facilities in the same manner as ambulatory surgical facilities.

(2) The department shall apply to abortion facilities any other provision of this chapter governing health care facilities insofar as they are applicable to ambulatory surgical facilities.

(3) For the purpose of applying the rules applicable to ambulatory surgical facilities, all of the following apply:

(i) The department shall allow the abortion facility to request an exception.

(ii) The request must identify with specificity the reasons for which the exception is sought.

(iii) In considering a petition under this paragraph, the department shall apply the same procedures and criteria that are applicable to other health care facilities.

(iv) The department shall issue a written determination stating the reasons for a decision under this paragraph.

(4) None of the following shall apply to an abortion facility:

(i) The definition of "ambulatory surgical facility" in section 802.1.

(ii) The definition of "ASF—Ambulatory Surgical Facility" in 28 Pa. Code § 551.3 (relating to definitions).

(5) Notwithstanding the definition of "abortion facility" in section 302 of the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act, an abortion facility shall continue to comply with applicable provisions of the Medical Care Availability and Reduction of Error (Mcare) Act.

(6) An abortion facility shall comply with Federal privacy statutes, including the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191, 110 Stat. 1936).

Section 3. Section 807(b) of the act, amended July 7, 2006 (P.L.334, No.69), is amended and the section is amended by adding a subsection to read:

Section 807. Application for license.

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(b) Fees.—Application for a license or for renewal of a license shall be accompanied by the following fees:

(1) Regular or special license:	
Home health agency	\$250.00
Home care agency or home care registry	100.00
Ambulatory surgical facility	250.00
Abortion facility	250.00
Birth center	70.00
Long-term care nursing facility	250.00
Plus per each long-term care bed in excess of 75 beds	2.00
Hospital	
Every two years	500.00
Plus per each inpatient bed every two years	4.00
Other health care facility	100.00
(2) Provisional license all facilities:	
Provisional I	\$400.00
Plus per each inpatient bed	4.00
Provisional II	600.00
Plus per each inpatient bed	6.00
Provisional III	800.00
Plus per each inpatient bed	8.00
Provisional IV	1,000.00
Plus per each inpatient bed	10.00

(b.1) Licensure Fee Account.—

(1) The Licensure Fee Account is established as a restricted account in the General Fund.

(2) Fees under subsection (b)(1) pertaining to abortion facilities shall be deposited in the account.

(3) Money in the account is appropriated on a continuing basis to the department for use in the performance of its duties.

Section 3.1. Section 808(A) of the act, amended December 18, 1992 (P.L.1602, No.179), is amended to read:

Section 808. Issuance of license.

(a) Standards.—The department shall issue a license to a health care provider when it is satisfied that the following standards have been met:

(1) that the health care provider is a responsible person;

(2) that the place to be used as a health care facility is adequately constructed, equipped, maintained and operated to safely and efficiently render the services offered;

(3) that the health care facility provides safe and efficient services which are adequate for the care, treatment and comfort of the patients or residents of such facility;

(4) that there is substantial compliance with the rules and regulations adopted by the department pursuant to this act; **[and]**

(5) that a certificate of need has been issued if one is necessary[.];
and

(6) that, in the case of abortion facilities, such facility is in compliance with the requirements of 18 Pa.C.S. Ch. 32 (relating to abortion) and such regulations promulgated thereunder.

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Section 4. Section 813 of the act, added July 12, 1980 (P.L.655, No.136), is amended to read:

Section 813. Right to enter and inspect.

(a) Authorization.—For the purpose of determining the suitability of the applicants and of the premises or for determining the adequacy of the care and treatment provided or the continuing conformity of the licensees to this act and to applicable local, State and Federal regulations, any authorized agent of the department may enter, visit and inspect the building, grounds, equipment and supplies of any health care facility licensed or requiring a license under this act and shall have full and free access to the records of the facility and to the patients and employees therein and their records, and shall have full opportunity to interview, inspect, and examine such patients and employees. Upon entering a health care facility the inspectors shall properly identify themselves to the individual on the premises then in charge of the facility.

(b) Abortion facilities.—

(1) In addition to an inspection under subsection (a), the department shall conduct, on an annual basis, at least one unannounced inspection of each abortion facility.

(2) An inspection of an abortion facility under this section shall be conducted in a manner which respects the privacy of each patient of the facility.

Section 5. Nothing in this act shall be construed to limit:

(1) a provision of 18 Pa.C.S. Ch. 32; or

(2) a regulation promulgated under 18 Pa.C.S. Ch. 32 if the regulation provides greater health and safety protection than this act or a regulation promulgated under this act.

Section 6. The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 7. This act shall take effect in 180 days.

APPROVED—The 22nd day of December, A.D. 2011

TOM CORBETT