STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 2028 BY: ROACH

AS INTRODUCEDAN ACT RELATING TO PUBLIC HEALTH AND SAFETY; AMENDING 56 O.S. 1991, SECTION 206, WHICH RELATES TO CERTAIN CATEGORICALLY NEEDY WOMEN; MODIFYING USES OF STATE MONIES; CREATING THE OKLAHOMA PARENTAL NOTIFICATION FOR ABORTIONS ACT; DEFINING TERMS; REQUIRING NOTIFICATION OF CERTAIN PERSONS PRIOR TO PERFORMANCE OF AN ABORTION UPON MINORS; SPECIFYING EXCEPTIONS; PROVIDING FOR JUDICIAL PROCEEDINGS IN CERTAIN CASES; SPECIFYING PENALTIES; REPEALING 21 O.S. 1981, SECTIONS 714, 861, 862 AND 863, WHICH RELATE TO CRIMINAL ABORTIONS; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 4 of this act shall be known and may be cited as the "Oklahoma Parental Notification for Abortions Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

For purposes of the Oklahoma Parental Notification for Abortions Act:

1. "Abortion" means the intentional interruption of a pregnancy by the application of external agents, whether chemical or physical, or the ingestion of chemical agents with an intention other than to produce a live birth or to remove a dead fetus. However, it shall not be considered an "abortion" for a licensed physician to prescribe, dispense, implant, or sell or use contraceptives or contraceptive devices which are effective after conception;

2. "Counselor" means a person who is:

a. a psychiatrist licensed pursuant to the laws of this state,

b. a psychologist licensed pursuant to the laws of this state,

c. a social worker licensed pursuant to the laws of this state,

d. an ordained member of the clergy,

e. a physician's assistant certified by the State Board of Medical Licensure and Supervision, and

f. a registered nurse or practical nurse licensed pursuant to the Oklahoma Nursing Practice Act;

3. "Minor" means a person who:

a. is less than sixteen (16) years of age,

b. is unmarried, and

c. is not living independently; and

4. "Parent" means a natural parent, adoptive parent or a legal guardian or other person having legal custody of a minor. A parent whose parental rights have been terminated regarding the minor shall not be considered a parent pursuant to the provisions of the Oklahoma Parental Notification for Abortions Act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

Except as otherwise provided in the Oklahoma Parental Notification for Abortions Act, no abortion shall be performed upon a minor, until at least forty-eight (48) hours after written notice of the pending abortion has been delivered in the manner specified in this section.

1. The notice shall be addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent of the physician.

2. In lieu of the delivery required by paragraph 1 of this section, notice shall be made by mail, as evidenced by proof of mailing certificate addressed to the parent at the usual place of abode of the parent. Time of delivery of the mail shall be deemed to occur at twelve o'clock noon on the next day on which regular mail delivery takes place, subsequent to the mailing.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. No notice shall be required pursuant to Section 3 of this act if:

1. The attending physician certifies in the medical record of the minor that if the abortion is not performed it would endanger the health or life of the minor and there is insufficient time to provide the required notice;

2. The person who is entitled to notice certifies in writing that such person has been notified;

3. The minor declares in writing that she is a victim of abuse and neglect as such term is defined by Section 845 of Title 21 of the Oklahoma Statutes or that she is a victim of rape or incest;

4. The court has determined that parental notification is not necessary pursuant to subsection B of this section;

5. a. The minor has:

(1) received the information and counseling required under subsection C of this section, and

(2) secured written verification of receiving the information and counseling, and

b. the attending physician has received and will make part of the medical record the written consent of the minor, and the written verification of receiving information and counseling required under subsection C of this section; or

6. A counselor certifies that family dysfunction in such that notice is not in the best interest of the minor.

B. 1. If the minor elects not to allow the notification of her parent, any district judge of the county of the residence of the minor or of the county in which the minor desires to have an abortion upon petition, or motion, and after a hearing, shall authorize a physician to perform the abortion if said judge determines that the minor is mature and capable of giving informed consent to the proposed abortion. If said judge determines that the minor is not sufficiently mature, or if the minor does not claim to be mature, the judge shall determine whether the performance of an abortion upon her without notification of her parent would be in her best interests and shall authorize a physician to perform the abortion without such notification if said judge concludes that the minor's best interests would be served thereby.

2. Proceedings in the court pursuant to this section shall be confidential and shall be given such precedence over other pending matters so that the court may reach a decision promptly and without delay and in no instance longer than five (5) days so as to serve the best interests of the minor. A judge of the court who conducts proceedings pursuant to this section shall make in writing specific factual findings and legal conclusions supporting the decision and

shall order a record of the evidence to be maintained including the judge's own findings and conclusions.

3. An expedited confidential appeal shall be available to any such minor for whom the court denies an order authorizing an abortion without notification.

4. An order authorizing an abortion without notification shall not be subject to appeal.

5. No filing fees shall be required of any such minor at either the trial or the appellate level.

C. 1. Any physician or counselor providing pregnancy information and counseling under this section shall:

a. explain that the information being given to the minor is not intended to coerce, persuade or induce the minor to choose either to have an abortion or to carry the pregnancy to term,

b. explain that the minor may withdraw a decision to have an abortion at any time before the abortion is performed or may reconsider a decision not to have an abortion at any time within the time period during which an abortion may legally be performed,

c. explore with the minor the alternative choices available for managing the pregnancy, including:

(1) carrying the pregnancy to term and keeping the child,

(2) carrying the pregnancy to term and placing the child, and

(3) having an abortion,

d. explain that public and private agencies are available to provide birth control information and that a list of such agencies and the services available from each shall be provided,

e. discuss the possibility of involving the minor's parents, guardian or other adult family members in the minor's decision-making concerning the pregnancy and explore whether the minor believes that involvement would be in the minor's best interests, and

f. provide opportunity for the minor to ask any questions concerning the pregnancy, abortion, child care and adoption, and provide the information the minor seeks or, if the person cannot provide the information, indicate where the minor can receive the information.

2. a. After the person provides the information and counseling to a minor as required by this subsection, that person shall have the minor sign and date a form stating that the minor has received information required by this subsection, and

b. The person providing the information and counseling shall also sign and date the form, and include that person's address and telephone number. The person shall keep a copy for that person's files and shall give the form to the minor or, if the minor requests and if the person providing the information is not the attending physician, transmit the form to the minor's attending physician.

3. Consent which is evidenced in writing containing information and statements provided in this subsection and which is signed by the minor shall be presumed to be a valid consent. This presumption may be subject to rebuttal only upon proof that the consent was obtained through fraud, deception or misrepresentation of material fact.

SECTION 5. AMENDATORY 56 O.S. 1991, Section 206, is amended to read as follows:

Section 206. A. For the reduction of infant mortality and incidence of low birthweight, the Commission for Human Services is hereby authorized and directed, subject to availability of funds, to include as part of its Medicaid program an optional categorically needy group who meet the income and resource limitations and are:

1. Pregnant women;

2. Postpartum women, provided such group shall only be included in such program for the sixty-day period after parturition; and

3. Infants under one (1) year of age.

B. Eligibility criteria for the optional categorically needy program established by subsection A of this section shall be determined by rules and regulations promulgated by the Commission for Human Services subject to the following requirements:

1. The income level for eligibility shall be set at one hundred percent (100%) of the nonfarm income official poverty line, as defined by the Office of Management and Budget, and revised annually in accordance with Section 673(2) of the Omnibus Budget Reconciliation Act of 1981, applicable to a family of the size involved.

A woman described by subsection A of this section shall continue to be treated as eligible without regard to any change in income of the family of which she is a member until the end of the sixty-day period beginning on the last day of her pregnancy.

Family income shall be determined in accordance with the methodology employed under the state plan pursuant to Part A or E of Title IV of the federal Social Security Act. Costs incurred for medical care or for any other type of remedial care shall not be included in eligibility determination.

An infant described by subsection A of this section who is receiving inpatient services for which medical assistance is provided on the date the infant attains the maximum age with respect to which coverage is provided under the Medicaid State Plan for such

individuals shall continue to be treated as eligible until the end of the stay for which inpatient services are furnished.

2. The resource level for eligibility for pregnant women and postpartum women may be eliminated or may be set by the Commission for Human Services, provided that it is no more restrictive than the level set under Title XVI of the uncodified federal Social Security Act.

3. The resource level for eligibility for an infant under one (1) year of age may be eliminated or may be set by the Commission, provided that it is no more restrictive than the resource level set for the Oklahoma aid to families with dependent children program.

C. The Commission for Human Services shall, by rules and regulations, establish the amount, scope and duration of medical services provided to the optional categorically needy group established by subsection A of this section. Medical services to pregnant women pursuant to subsection A of this section shall include services and assistance for services related to pregnancy, delivery, and prenatal and postpartum care and to other conditions which may complicate pregnancy. Notwithstanding any other provision of this act, reimbursement of or payment for medical services provided through the optional categorically needy group established by subsection A of this section shall not include induced abortion, diagnostic procedures done for the purpose of inducing an abortion, or other procedures related to induced abortion unless the physician certifies in written form that the mother's life <u>or health</u> is in danger if the fetus is carried to term <u>or if the pregnancy is a result of incest or rape</u>.

SECTION 6. REPEALER 21 O.S. 1981, Sections 714, 861, 862 and 863, are hereby repealed.

SECTION 7. This act shall become effective July 1, 1992.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

43-2-7505 KSM