WISCONSIN LEGISLATIVE COUNCIL
ACT MEMO

2011 Wisconsin Act 217 [2011 Senate Bill 306]	Voluntary and Informed Consent to Abortion

Informed Consent Requirements

Current law requires a woman to provide voluntary and informed consent for an abortion. 2011 Wisconsin Act 217 amends the law to add the following requirements:

- Before an abortion is performed on a woman, the physician who is to perform or induce an abortion on a woman must determine whether the woman's consent is, in fact, voluntary. This determination must be made by speaking to the woman in person, out of the presence of anyone other than a person working for or with the physician. This provision applies notwithstanding the provision in current law that allows a woman to have a family member, or any other person of her choice, present during her private counseling.

- If the physician has reason to suspect that the woman is in danger of being physically harmed by anyone who is coercing the woman to consent to an abortion against her will, the physician must inform the woman of services for victims or individuals at risk of domestic abuse, and provide her with private access to a telephone.

- The information that must be provided orally and in-person (by either the physician who is to perform the abortion or another qualified physician) to the woman at least 24 hours before the abortion is performed, must include the following additional information:

  - If the abortion is induced by an abortion-inducing drug, the physician must inform the woman that she must return to the abortion facility for a follow-up visit 12 to 18 days after the use of an abortion-inducing drug to confirm the termination of the pregnancy and evaluate the woman's medical condition.

  - The physician must tell the woman that she has a right to refuse to consent to an abortion, that her consent is not voluntary if anyone is coercing her to consent to an abortion

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701-2536
(608) 266-1304 • Fax: (608) 266-3830 • Email: leg.council@legis.state.wi.us
http://www.legis.state.wi.us/lc

against her will, and that it is unlawful for the physician to perform or induce the abortion without her voluntary consent.

- The physician must inform the woman that the printed materials that will be given to her at least 24 hours before the abortion contain information on services available for victims or individuals at risk of domestic abuse.

The penalty in the current informed consent law applies to these newly created provisions. That penalty is a forfeiture of not less than $1,000 nor more than $10,000. The Act provides that no penalty may be assessed against the woman upon whom the abortion is performed or induced or attempted to be performed or induced.

Felony Provision for Abortions Performed With Abortion-Inducing Drugs

Act 217 creates a new statute, s. 253.105, Stats., "Prescription and use of abortion-inducing drugs." Section 253.105 (2) provides that no person may give an abortion-inducing drug to a woman unless:

- The physician who prescribed, or otherwise provided, the abortion-inducing drug for the woman performs a physical exam of the woman before the information that is required to be provided orally and in person at least 24 hours prior to the abortion is given to the woman.

- The physician who prescribed or otherwise provided the abortion-inducing drug for the woman is physically present in the room when the drug is given to the woman.

Any person who violates these provisions is guilty of a Class I felony. The penalties for a Class I felony are a fine not to exceed $10,000 or imprisonment not to exceed three years and six months, or both. The Act provides that this penalty may not be assessed against the woman to whom the drug is given.

Civil Remedies

Act 217 allows a civil claim to be brought against a person who intentionally or recklessly violates s. 253.105 (2), Stats. The action may be brought by a woman (or if the woman is a minor, by the minor's parent or guardian) to whom an abortion-inducing drug was given in violation of s. 253.105 (2); or by the father of the unborn child aborted as a result of the abortion-inducing drug that was given in violation of s. 253.105 (2), unless the pregnancy was the result of sexual assault and the violation was committed by the father. The claim for relief may include damages for personal injury, emotional and psychological distress, and other damages arising out of the abortion, punitive damages, and reasonable attorney fees if damages are awarded. If such a court proceeding is brought, the court may keep the identity of the woman who had the abortion confidential, unless confidentiality is waived.

Penalties Do Not Apply to Woman Who Has an Abortion

The Act repeals two criminal abortion penalties that apply against a woman who has an abortion: s. 940.04 (3), Stats., which provides that any pregnant woman who intentionally destroys the life of her unborn child or who consents to such destruction by another may be fined not more than $200 or imprisoned not more than six months, or both; and s. 940.04 (4), Stats., which provides that any pregnant woman who intentionally destroys the life of her unborn quick child or who consents to such destruction by another is guilty of a Class I felony.

Effective date: The Act's provisions relating to abortion-inducing drugs, civil remedies, and the elimination of criminal and forfeiture penalties against the woman, took effect on April 20, 2012. The other provisions of the Act take effect on July 1, 2012.

Prepared by: Laura Rose, Deputy Director April 25, 2012

LR:jb;jal