

NEW HAMPSHIRE

N.H. Rev. Stat. Ann. § 132:33. Notification Required.

I. No abortion shall be performed upon an unemancipated minor or upon a female for whom a guardian or conservator has been appointed pursuant to RSA 464-A because of a finding of incompetency, until at least 48 hours after written notice of the pending abortion has been delivered in the manner specified in paragraphs II and III.

II. The written 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.

III. In lieu of the delivery required by paragraph II, notice shall be made by certified mail addressed to the parent at the usual place of abode of the parent with return receipt requested and with restricted delivery to the addressee, which means the postal employee shall only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 o'clock noon on the next day on which regular mail delivery takes place, subsequent to mailing.

N.H. Rev. Stat. Ann. § 132:34. Waiver of Notice.

I. No notice shall be required under RSA 132:33 if:

- (a)** The attending abortion provider certifies in the pregnant minor's medical record that a medical emergency exists and there is insufficient time to provide the required notice; or
- (b)** The person or persons who are entitled to notice certify in writing that they have been notified.

II. If such a pregnant minor elects not to allow the notification of her parent or guardian or conservator, any superior court judge shall, upon petition, or motion, and after an appropriate hearing, authorize an abortion provider to perform the abortion if said judge determines that the pregnant minor is mature and capable of giving informed consent to the proposed abortion. If said judge determines that the pregnant minor is not mature, or if the pregnant minor does not claim to be mature, the judge shall determine whether the performance of an abortion upon her without notification of her parent, guardian, or conservator would be in her best interests and shall authorize an abortion provider to perform the abortion without such notification if said judge concludes that the pregnant minor's best interests would be served thereby.

(a) Such a pregnant minor may participate in proceedings in the court on her own behalf, and the court may appoint a guardian ad litem for her. Any guardian ad litem appointed under this subdivision shall maintain the confidentiality of the proceedings. The court shall, however, advise her that she has a right to court-appointed counsel, and shall, upon her request, provide her with such counsel.

(b) Proceedings under this section shall be held in closed court, shall be confidential and shall ensure the anonymity of the minor. All court proceedings under this section shall be sealed. The minor shall have the right to file her petition in the court using a pseudonym

or using solely her initials. All documents related to this petition shall be confidential and shall not be available to the public. These proceedings shall be given such precedence over other pending matters so that the court may reach a decision promptly and without delay so as to serve the best interest of the pregnant minor. In no case shall the court fail to rule within 2 court business days from the time the petition is filed, except that the 2 court business day limitation may be extended at the request of the minor. A judge of the court who conducts proceedings under 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. If the court fails to rule within the 2 court business day period and an extension was not requested, then the petition shall be deemed to have been granted, and the notice requirement shall be waived.

(c) An expedited confidential appeal shall be available, as the supreme court provides by rule, to any such pregnant minor for whom the court denies an order authorizing an abortion without notification. The court shall make a ruling within 2 court business days from the time of the docketing of the appeal. An order authorizing an abortion without notification shall not be subject to appeal. No filing fees shall be required of any such pregnant minor at either the trial or the appellate level. Access to the trial court for the purposes of such a petition or motion, and access to the appellate courts for purposes of making an appeal from denial of the same, shall be afforded such a pregnant minor 24 hours a day, 7 days a week.

(d) The supreme court shall make rules to ensure that procedures followed in the appeals process are handled in an expeditious manner and protect the confidentiality of the parties involved in the appeal to satisfy the requirements of the federal courts.

N.H. Rev. Stat. Ann. § 132:35. Penalty.

Performance of an abortion in violation of this subdivision shall be a misdemeanor and shall be grounds for a civil action by a person wrongfully denied notification. A person shall not be held liable under this section if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the pregnant minor regarding information necessary to comply with this section are bone fide and true, or if the person has attempted with reasonable diligence to deliver notice, but has been unable to do so.

N.H. Rev. Stat. Ann. § 329:34. Prohibition; Limitations.

I. A person shall not knowingly perform or attempt to perform a partial-birth abortion.

II. No person shall perform or induce a partial-birth abortion on a viable fetus unless such person is a physician and has a documented referral from another physician not legally or financially affiliated with the physician performing or inducing the abortion and both physicians determine that the life of the mother is endangered by a physical disorder, physical illness, or physical

injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

N.H. Rev. Stat. Ann. § 329:35. Reporting.

I. If a physician determines in accordance with the provisions of RSA 329:34, II that a partial-birth abortion is necessary and performs a partial-birth abortion on the woman, the physician shall report such determination and the reasons for such determination in writing to the medical facility in which the abortion is performed for inclusion in the report of the medical facility to the department; or if the abortion is not performed in a medical facility, the physician shall report the reasons for such determination in writing to the department as part of the written report made by the physician to the department. The physician shall retain a copy of the written reports required under this section for not less than 5 years.

II. Failure to report under this section shall not subject the physician to criminal or civil penalties under RSA 329:36 and 329:37.

III. Paragraph II shall not preclude sanctions, disciplinary action, or any other appropriate action by the board.

N.H. Rev. Stat. Ann. § 329:36. Criminal Penalties.

I. In addition to other penalties under this chapter, any person who intentionally or knowingly violates this subdivision shall be guilty of a class B felony.

II. Any physician who intentionally or knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined not less than \$10,000 nor more than \$100,000 under this subdivision, or be imprisoned not less than one year nor more than 10 years, or both.

329:40. Prosecutorial Exclusion.

A woman upon whom a partial-birth abortion is performed may not be prosecuted under this subdivision for a conspiracy to violate RSA 329:34.

N.H. Rev. Stat. Ann. § 329:41. Construction.

I. Nothing in this subdivision shall be construed as creating or recognizing a right to abortion.

II. It is not the intention of this subdivision to make lawful an abortion that is currently unlawful.

329:43. Definitions.

- I. "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the fetus. Such use, prescription, or means is not an abortion if done with the intent to:
 - a. Save the life or preserve the health of the fetus;
 - b. Remove a dead fetus caused by spontaneous abortion; or
 - c. Remove an ectopic pregnancy.
- II. "Attempt to perform" means an act or omission of a statutorily required act that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or inducement of an abortion.
- III. "Conception" means the fusion of a human spermatozoon with a human ovum.
- IV. "Gestational age" means the time that has elapsed since the first day of the woman's last menstrual period.
- V. "Major bodily function" includes, but is not limited to, functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- VI. "Medical facility" means any public or private hospital, clinic, center, medical school, medical training institution, health care facility, physician's office, infirmary, dispensary, ambulatory surgical treatment center, or other institution or location wherein medical care is provided to any person.
- VII. "Health care provider" means any person who provides health care services. The term includes but is not limited to medical doctors, doctors of osteopathy, nurses, or any employee of a medical facility.
- VIII. "Pregnant" or "pregnancy" means the female reproductive condition of having one or more developing embryos or fetuses implanted in the uterus or elsewhere in the female body.
- IX. "Probable gestational age" means what, in reasonable medical judgment, will with reasonable probability be the gestational age of the fetus at the time the abortion is considered, performed, or attempted.
- X. "Reasonable medical judgment" means that medical judgment that would be made by a reasonably prudent health care provider in the community, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
- XI. "Fetus" means an unborn offspring, from the embryo stage which is the end of the twentieth week after conception or, in the case of in vitro fertilization, the end of the twentieth week after implantation, until birth.

RSA 329:43

Added by 2021 , 91: 39, eff. 1/1/2022.

329:44. Prohibition.

- I. Except in the case of a medical emergency as specifically defined in paragraph III, no abortion shall be performed, induced, or attempted by any health care provider unless a health care provider has first made a determination of the probable gestational age of the fetus. In making such a determination, the health care provider shall make such inquiries of the pregnant woman and perform or cause to be performed all such medical examinations, imaging studies, and tests as a reasonably prudent health care provider in the community, knowledgeable about the medical facts and conditions of both the woman and the fetus involved, would consider necessary to perform and consider in making an accurate diagnosis with respect to gestational age, provided, however, that

the health care provider shall conduct an obstetric ultrasound examination of the patient for the purpose of making the determination. This paragraph shall be construed to require the performance of an ultrasound only if the provider either knows that the fetus has a gestational age of at least 24 weeks or is conscious of a substantial risk that the fetus has a gestational age of at least 24 weeks.

II. Except in the case of fetal abnormalities incompatible with life, or a medical emergency as specifically defined in paragraph III, no health care provider shall knowingly perform, induce, or attempt to perform an abortion upon a pregnant woman when the probable gestational age of her fetus has been determined to be at least 24 weeks or in the absence of a determination by a health care provider pursuant to paragraph I as to the fetus' probable gestational age.

III. For the purposes of this subdivision only, "medical emergency" means a condition in which an abortion is necessary to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function, as defined in RSA 329:43, V, of the pregnant woman.

RSA 329:44

Amended by 2022 , 119: 1, eff. 5/27/2022. Amended by 2022 , 86: 1, eff. 5/20/2022. Added by 2021 , 91: 39, eff. 1/1/2022.

329:45. Reporting.

I. Any health care provider who performs an abortion under this subdivision shall report, in writing, to the medical facility in which the abortion is performed the reason for the determination that a medical emergency existed. The health care provider's written report shall be included in a written report from the medical facility to the department of health and human services. If the abortion is not performed in a medical facility, the health care provider shall report, in writing, the reason for the determination that a medical emergency existed to the department of health and human services as part of the written report made by the health care provider to the department. The health care provider and the medical facility shall retain a copy of the written reports required under this section for not less than 5 years.

RSA 329:45

Added by 2021, 91:39, eff. 1/1/2022.

329:46. Criminal Penalties.

Any health care provider who knowingly performs or induces an abortion in violation of this subdivision and knows that the fetus has a gestational age of at least 24 weeks, or consciously disregards a substantial risk that the fetus has a gestational age of at least 24 weeks, shall be guilty of a class B felony and, in addition to any other penalties the court may impose, be fined not less than \$10,000 and not more than \$100,000.

RSA 329:46

Added by 2021, 91:39, eff. 1/1/2022.

N.H. Admin. Rules, He-W 538.05 Non-Covered Services.

Non-covered services shall be those services which a NHCM is not legally recognized to perform, pursuant to RSA 326-D:1, V, including:

- (a)** Operative obstetrics;
- (b)** Cesarean sections;
- (c)** General and conductive anesthesia;
- (d)** Contraction stress tests;
- (e)** Treatment to enhance fertility or procreation;
- (f)** Any artificial, forcible, or mechanical means to assist the delivery; and
- (g)** Induced abortions.