AGENDA ITEM: 4.b

SUBJECT: Abortion Facility Reporting and Licensing

BACKGROUND: ☐ Federal ☑ Legislative ☐ Other: Program Initiative

The rule amendments are required by Senate Bill 8, 85th Legislature, Regular Session, 2017 (S.B. 8), which amended the definition of abortion and expanded abortion reporting requirements in Texas Health and Safety Code, Chapter 245; House Bill 13, 85th Legislature, First Called Session, 2017 (H.B. 13), which expanded abortion complication reporting requirements in Texas Health and Safety Code, Chapter 171; and House Bill 215, 85th Legislature, First Called Session, 2017 (H.B. 215), which added information to be reported for abortions performed on minors in Texas Health and Safety Code, Chapter 171.

The adoption of §139.2, §139.4, and §139.5 amend the definition of abortion, expand abortion reporting requirements for abortion complications, and add information to be reported for abortions performed on minors.

ISSUES AND ALTERNATIVES:

Rules addressing abortion traditionally receive considerable public interest.

STAKEHOLDER INVOLVEMENT:

The proposed rule amendments were published in the March 23, 2018, issue of the Texas Register.

FISCAL IMPACT:

N/A
SERVICES IMPACT STATEMENT:

The public will benefit from the rule amendments because the adopting and enforcing of these rules will provide more immediacy and accuracy in reporting numbers and complications of abortion procedures, and it will implement S.B. 8, H.B. 13, and H.B. 215.

RULE DEVELOPMENT SCHEDULE:

- March 23, 2018: Publish proposed rules in *Texas Register*
- May 25, 2018: Publish adopted rules in *Texas Register*
- May 31, 2018: Present to HHSC Executive Council
- May 31, 2018: Effective date
ADOPTION PREAMBLE

The Health and Human Services Commission (HHSC) adopts amendments to §139.2 concerning Definitions; §139.4 concerning Monthly Reporting Requirements for All Abortions Performed; and §139.5 concerning Additional Reporting Requirements. Sections 139.2, 139.4, and 139.5 are adopted with changes to the proposed text as published in the March 23, 2018, issue of the Texas Register (43 TexReg 1827).

BACKGROUND AND JUSTIFICATION

The rules are required by Senate Bill 8, 85th Legislature, 2017, Regular Session (S.B. 8), which amended the definition of abortion and expanded abortion reporting requirements in Texas Health and Safety Code, Chapter 245; House Bill 13, 85th Legislature, 2017, First Called Session (H.B. 13), which expanded abortion complication reporting requirements in Texas Health and Safety Code, Chapter 171; and House Bill 215, 85th Legislature, 2017, First Called Session (H.B. 215), which added information to be reported for abortions performed on minors in Texas Health and Safety Code, Chapter 171. This legislation requires HHSC to adopt rules to implement Texas Health and Safety Code, Chapters 171 and 245.

COMMENTS

The 30-day comment period ended April 23, 2018. During this period, HHSC received public comments from five sources regarding the proposed rules, including members of the Texas Legislature, Texas Right to Life, and Texans for Life Coalition. Because some of the comments address similar issues, HHSC responds to the comments based on their topic.

Comment: A physician and another health care professional each submitted separate comments urging HHSC to fairly apply these new rules and to ensure that sensitive information collected in the required reports is protected and kept confidential. The commenters noted that abortion providers face intimidation and violence that jeopardize their ability to provide care in a safe environment. The commenters urged HHSC to ensure patient safety and not limit access to abortion, and to prioritize the protection of confidential information and fair application in implementing the rules. The commenters requested HHSC ensure that patient safety, and not limiting access to abortion, remains its goals.

Response: HHSC appreciates the comments and will continue to enforce reporting regulations to benefit the health and safety of patients. The amendments do not change patient confidentiality provisions currently in
rule. HHSC will continue to follow all confidentiality statutes and rules regarding collected information. No changes were made to the rule text as a result of the comments.

**Comment:** A group of sixteen state representatives collectively submitted comments and Texas Right to Life submitted separate comments, both of which included requests that HHSC amend the rules to:

1. Include the definition of ectopic pregnancy, as defined in S.B. 8.
2. Include the language in H.B. 13 which states that abortion complication reporting “must include the most specific, accurate, and complete reporting for the highest level of specificity.”
3. Clarify that the physician diagnosing and treating abortion complications is to be named on the abortion complication report as required by H.B. 13.
4. Clarify in §139.4(e) that a report must be submitted for each abortion performed, providing language consistent with Health and Safety Code §245.011(f).
5. Add to §139.4(d) an exception to the confidentiality requirement for reports of abortions performed on minors that applies to licensed medical or health care personnel currently treating the patient, as provided in H.B. 215.

**Response:** HHSC appreciates the comments and made changes to the adopted rules in response. HHSC added the definition of “ectopic pregnancy” at §139.2(19) to address the first request. HHSC added language regarding specificity in reporting and the identity of the treating or diagnosing physician to §139.5(3)(E) to address the second and third requests. HHSC added language specifying that a report must be submitted for each abortion performed to §139.4(a) to address the fourth request. HHSC added paragraph (5), noting the confidentiality exception for treating medical or health care personnel, to §139.4(d) to address the fifth request.

**Comment:** In their comments, the state representatives also requested the rules be amended to:

1. Make clear that any violation of an abortion reporting requirement will be directed to the Texas Medical Board. At present, this requirement is found in §139.4(g) for monthly reporting and in §139.5(3)(F) for complications reporting, but not in §139.5(1) for third trimester abortions or §139.5(2) for emergency abortions. The representatives asked that those sections be consistent throughout Chapter 139 in requiring all reporting violations to be sent to the Texas Medical Board.
2. Add to §139.5(3) the language in §139.5(1)(F) and §139.5(2)(E) which notifies physicians that failure to report may result in facility licensure suspension or revocation.

In a separate comment, the Texans for Life Coalition expressed a similar concern about “inconsistency in the warnings for failure to comply” with the reporting requirements in §139.5.

**Response:** HHSC appreciates the comments. Because HHSC already has independent authority to report violations of the reporting rules to the Texas Medical Board and to hold facilities responsible for any reporting requirement violations, HHSC has determined that the requested changes are not necessary at this time. HHSC will continue to enforce all abortion reporting rules in order to provide the public with accurate and complete data regarding abortions performed in the state of Texas.

**Comment:** In its comments, Texas Right to Life also requested that §139.32 of the Texas Administrative Code be amended to include a new subsection saying that “The department shall suspend or revoke the license of a facility for a third separate violation of the reporting requirements in §§139.2, 139.4, [or] 139.5 of this title."

**Response:** HHSC appreciates the comments. However, revision of §139.32 is outside the scope of these amendments, which affect only §§139.2, 139.4, and 139.5.

Additionally, HHSC updated a reporting requirement at §139.4(c)(13) to refer to embryonic and fetal tissue remains and added the definition of that term at §139.2(21) to comply with S.B. 8. HHSC also added language at §139.5(3)(H) that restates the H.B. 13 provision that the third separate violation of the abortion complication reporting requirement constitutes cause for revocation or suspension of a facility’s license or other disciplinary action against the facility.

**STATUTORY AUTHORITY**

The amendments are adopted under Senate Bill 8, 85th Legislature, 2017, Regular Session, which amended the definition of abortion and expanded abortion reporting requirements in Texas Health and Safety Code, Chapter 245; House Bill 13, 85th Legislature, 2017, First Called Session, which expanded abortion complication reporting requirements in Texas Health and Safety Code, Chapter 171; and House Bill 215, 85th Legislature, 2017, First Called Session, which added information to be reported for abortions performed on minors in Texas Health and Safety Code, Chapter 171.
Texas Government Code, §531.0055, authorizes the Executive Commissioner to adopt rules and policies necessary for the operation and provision of health and human services.

The agency certifies that legal counsel has reviewed the proposal and found to it be within the state agency’s legal authority to adopt.

For further information, please call: (512) 424-6968.
§139.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Abortion--The act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices or oral contraceptives. An abortion may be performed only by a physician licensed to practice medicine in this state. An act is not an abortion if the act is done with the intent to save the life or preserve the health of an unborn child; remove a dead, unborn child whose death was caused by spontaneous abortion; or remove an ectopic pregnancy.

(2) Abortion complication--Any harmful event or adverse outcome with respect to a patient related to an abortion that is performed on the patient and that is diagnosed or treated by a health care practitioner or at a health care facility, including:

(A) shock;
(B) uterine perforation;
(C) cervical laceration;
(D) hemorrhage;
(E) aspiration or allergic response;
(F) infection;
(G) sepsis;
(H) death of the patient;
(I) incomplete abortion;
(J) damage to the uterus; or
(K) an infant born alive after the abortion.

(3) Abortion facility--A place where abortions are performed.


(5) Administrator--A person who:

(A) is delegated the responsibility for the implementation and proper application of policies, programs, and services established for the licensed abortion facility; and

(B) meets the qualifications established in §139.46(2) of this title (relating to Licensed Abortion Facility Staffing Requirements and Qualifications).

(6) Advanced practice registered nurse (APRN)--A registered nurse approved by the Texas Board of Nursing to practice as an advanced practice registered nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner."

(7) Affidavit--A written statement, sworn to or affirmed, and witnessed by a witness whose signature and printed name appears on the affidavit. "Notarized affidavit" in these rules means an affidavit in which the statement is witnessed by a notary acting pursuant to Government Code, Chapter 406.

(8) Affiliate--With respect to an applicant or owner which is:

(A) a corporation--includes each officer, consultant, stockholder with a direct ownership of at least 5.0%, subsidiary, and parent company;

(B) a limited liability company--includes each officer, member, and parent company;

(C) an individual--includes:

(i) the individual's spouse;

(ii) each partnership and each partner thereof of which the individual or any affiliate of the individual is a partner; and
(iii) each corporation in which the individual is an officer, consultant, or stockholder with a direct ownership of at least 5.0%;

(D) a partnership--includes each partner and any parent company; and

(E) a group of co-owners under any other business arrangement--includes each officer, consultant, or the equivalent under the specific business arrangement and each parent company.

(9) Applicant--The owner of an abortion facility which is applying for a license under the Act. For the purpose of this chapter, the word "owner" includes nonprofit organization.

(10) Certified registered nurse anesthetist (CRNA)--A registered nurse who has current certification from the Council on Certification of Nurse Anesthetists and who is currently authorized to practice as an advanced practice registered nurse by the Texas Board of Nursing.

(11) Change of ownership--A sole proprietor who transfers all or part of the facility's ownership to another person or persons; the removal, addition, or substitution of a person or persons as a partner in a facility owned by a partnership; or a corporate sale, transfer, reorganization, or merger of the corporation which owns the facility if sale, transfer, reorganization, or merger causes a change in the facility's ownership to another person or persons.

(12) Commission--The Texas Health and Human Services Commission.

(13) Condition on discharge--A statement on the condition of the patient at the time of discharge.

(14) Critical item--All surgical instruments and objects that are introduced directly into the bloodstream or into other normally sterile areas of the body.

(15) Decontamination--The physical and chemical process that renders an inanimate object safe for further handling.

(16) Department--The Department of State Health Services.

(17) Director--The director of the Health Care Quality Department of the commission or his or her designee.
(18) Disinfection--The destruction or removal of vegetative bacteria, fungi, and most viruses but not necessarily spores; the process does not remove all organisms but reduces them to a level that is not harmful to a person's health. There are three levels of disinfection:

(A) high-level disinfection--kills all organisms, except high levels of bacterial spores, and is effected with a chemical germicide cleared for marketing as a sterilant by the United States Food and Drug Administration;

(B) intermediate-level disinfection--kills mycobacteria, most viruses, and bacteria with a chemical germicide registered as a "tuberculocide" by the United States Environmental Protection Agency (EPA); and

(C) low-level disinfection--kills some viruses and bacteria with a chemical germicide registered as a hospital disinfectant by the EPA.

(19) Ectopic pregnancy--The implantation of a fertilized egg or embryo outside of the uterus.

(20) Education and information staff--A professional or nonprofessional person who is trained to provide information on abortion procedures, alternatives, informed consent, and family planning services.

(21) Embryonic and fetal tissue remains--An embryo, a fetus, body parts, or organs from a pregnancy that terminates in the death of the embryo or fetus and for which the issuance of a fetal death certificate is not required by state law. The term does not include the umbilical cord, placenta, gestational sac, blood, or body fluids.

(22) Executive Commissioner--The Executive Commissioner of the Texas Health and Human Services Commission.

(23) Facility--A licensed abortion facility as defined in this section.

(24) Fetus--An individual human organism from fertilization until birth.

(25) Health care facility--Any type of facility or home and community support services agency licensed to provide health care in any state or is certified for Medicare (Title XVIII) or Medicaid (Title XIX) participation in any state.

(26) Health care worker--Any person who furnishes health care services in a direct patient care situation under a license, certificate, or registration...
issued by the State of Texas or a person providing direct patient care in the course of a training or educational program.

(27) Hospital--A facility that is licensed under the Texas Hospital Licensing Law, Health and Safety Code, Chapter 241, or if exempt from licensure, certified by the United States Department of Health and Human Services as in compliance with the conditions of participation for hospitals in Title XVIII, Social Security Act (42 United States Code, §§1395 et. seq.).

(28) Immediate jeopardy to health and safety--A situation in which there is a high probability that serious harm or injury to patients could occur at any time or already has occurred and may well occur again, if patients are not protected effectively from the harm or if the threat is not removed.

(29) Inspection--An on-site inspection by the commission in which a standard-by-standard evaluation is conducted.

(30) Licensed abortion facility--A place licensed by the commission under Health and Safety Code, Chapter 245, where abortions are performed.

(31) Licensed mental health practitioner--A person licensed in the State of Texas to provide counseling or psychotherapeutic services.

(32) Licensed vocational nurse (LVN)--A person who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse.

(33) Licensee--A person or entity who is currently licensed as an abortion facility.

(34) Medical abortion--The use of a medication or combination of medications to induce an abortion, with the purpose of terminating the pregnancy of a woman known to be pregnant. Medical abortion does not include forms of birth control.

(35) Medical consultant--A physician who is designated to supervise the medical services of the facility.

(36) Nonprofessional personnel--Personnel of the facility who are not licensed or certified under the laws of this state to provide a service and shall function under the delegated authority of a physician, registered nurse, or other licensed health professional who assumes responsibility for their performance in the licensed abortion facility.

(37) Noncritical items--Items that come in contact with intact skin.
(38) Notarized copy--A copy attached to a notarized affidavit which states that the attached copy(ies) are true and correct copies of the original documents.

(39) Patient--A pregnant female on whom an abortion is performed, but shall in no event be construed to include a fetus.

(40) Person--Any individual, firm, partnership, corporation, or association.

(41) Physician--An individual licensed by the Texas Medical Board and authorized to practice medicine in the State of Texas.

(42) Physician assistant--A person licensed as a physician assistant by the Texas Physician Assistant Board.

(43) Plan of correction--A written strategy for correcting a licensing violation. The plan of correction shall be developed by the facility, and shall address the systemic operation(s) of the facility as the systemic operation(s) apply to the deficiency.

(44) Post-procedure infection--An infection acquired at or during an admission to a facility; there shall be no evidence that the infection was present or incubating at the time of admission to the facility. Post-procedure infections and their complications that may occur after an abortion include, but are not limited to, endometritis and other infections of the female reproductive tract, laboratory-confirmed or clinical sepsis, septic pelvic thrombophlebitis, and disseminated intravascular coagulopathy.

(45) Pregnant unemancipated minor certification form--The document prepared by the commission and used by physicians to certify the medical indications supporting the judgment for the immediate abortion of a pregnant minor.

(46) Pre-inspection conference--A conference held with commission staff and the applicant or his or her representative to review licensure standards, inspection documents, and provide consultation prior to the on-site licensure inspection.

(47) Professional personnel--Patient care personnel of the facility currently licensed or certified under the laws of this state to use a title and provide the type of service for which they are licensed or certified.
(48) Quality assurance--An ongoing, objective, and systematic process of monitoring, evaluating, and improving the appropriateness, and effectiveness of care.

(49) Quality improvement--An organized, structured process that selectively identifies improvement projects to achieve improvements in products or services.

(50) Registered nurse (RN)--A person who is currently licensed by the Texas Board of Nursing as a registered nurse.

(51) Semicritical items--Items that come in contact with nonintact skin or mucous membranes. Semicritical items may include respiratory therapy equipment, anesthesia equipment, bronchoscopes, and thermometers.

(52) Standards--Minimum requirements under the Act and this chapter.

(53) Sterile field--The operative area of the body and anything that directly contacts this area.

(54) Sterilization--The use of a physical or chemical procedure to destroy all microbial life, including bacterial endospores.

(55) Supervision--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity that includes initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(56) Surgical abortion--The use of instruments, aspiration, and/or suction to induce an abortion, with the purpose of terminating the pregnancy of a woman known to be pregnant.

(57) Third trimester certification form--The document prepared by the commission and used by physicians to certify the medical indications supporting the judgment for the abortion of a viable fetus during the third trimester of pregnancy.

(58) Third trimester--A gestational period of not less than 26 weeks (following last-menstrual period (LMP)).

(59) Unemancipated minor--A minor who is unmarried and has not had the disabilities of minority removed under the Family Code, Chapter 31.
§139.4. Monthly Reporting Requirements for All Abortions Performed.

(a) The purpose of this section is to implement the monthly abortion reporting requirements for physicians who perform one or more abortions during the preceding calendar month. A report must be submitted for each abortion performed.

(b) The report may not identify by any means the patient.

(c) The report must include:

(1) whether the abortion facility at which the abortion is performed is licensed under this chapter;

(2) the patient's year of birth, race, marital status, and state and county of residence;

(3) the type of abortion procedure;

(4) the date the abortion was performed;

(5) whether the patient survived the abortion, and if the patient did not survive, the cause of death;

(6) the probable post-fertilization age of the unborn child based on the best medical judgment of the attending physician at the time of the procedure;

(7) the date, if known, of the patient's last menstrual cycle;

(8) the number of previous live births of the patient;

(9) the number of previous induced abortions of the patient;

(10) whether the patient viewed the printed material provided under Health and Safety Code, Chapter 171;

(11) whether the sonogram image, verbal explanation of the image, and the audio of the heart sounds were made available to the patient;

(12) whether the patient completed the "Abortion and Sonogram" election form;

(13) the method used to dispose of embryonic and fetal tissue remains;
(14) if the patient is younger than 18 years of age, as documented in the patient’s medical record, whether authorization for the abortion was obtained by:

(A) written consent of the patient’s parent, managing conservator, or legal guardian under Occupations Code, §164.052(a)(19) and whether the consent was given:

   (i) in person at the location where the abortion was performed; or
   (ii) at a place other than the location where the abortion was performed;

(B) judicial authorization under Family Code, §33.003 or §33.004 and:

   (i) if applicable, the process the physician or physician's agent used to inform the patient of the availability of petitioning for judicial authorization as an alternative to the written consent required by Occupations Code, §164.052(a)(19);

   (ii) whether the court forms were provided to the patient by the physician or the physician's agent;

   (iii) whether the physician or the physician's agent made arrangements for the patient's court appearance; and

   (iv) if known, whether the patient became pregnant while in foster care or in the managing conservatorship of the Department of Family and Protective Services;

(C) consent of the patient because the patient had the disabilities of minority removed; or

(D) the physician’s conclusion, documented in the patient’s medical record, that on the basis of the physician's good-faith clinical judgment:

   (i) a condition existed that complicated the medical condition of the patient and necessitated the immediate abortion to avert the patient’s death or to avoid a serious risk of substantial impairment of a major bodily function; and

   (ii) there was insufficient time to obtain the consent of the patient's parent, managing conservator, or legal guardian;
(15) the method of pregnancy verification; and

(16) the type of anesthesia, if any, used in the procedure: intravenous sedation or general anesthesia.

(d) Except as provided by Health and Safety Code, §245.023, all information and records held by the commission or the department under this chapter are confidential and are not open records for the purposes of Government Code, Chapter 552. That information may not be released or made public on subpoena, or otherwise, except that release may be made:

(1) for statistical purposes, but only if a person, patient, physician performing an abortion, the county in which a minor obtained judicial authorization for an abortion under Chapter 33, Family Code, or abortion facility is not identified;

(2) with the consent of each person, patient, physician, and abortion facility identified in the information released;

(3) to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter;

(4) to appropriate state licensing boards to enforce state licensing laws; or

(5) to licensed medical or health care personnel currently treating the patient.

(e) The reporting period for each physician is the preceding calendar month in which the physician performed one or more abortions. Each physician who performs one or more abortions shall submit the abortion report(s) to the commission no later than the 15th day of the subsequent month.

(f) The abortion reports shall be submitted via a secure electronic reporting system established and maintained by the commission. Until this system is established, the abortion reports shall be submitted on forms approved by the commission, by certified mail marked as confidential, to the Department of State Health Services, Vital Statistics Unit, Post Office Box 4124, Austin, Texas 78765-4124.

(g) Not later than the seventh day after the date the report required by this section is due, the commission shall notify the Texas Medical Board of a violation of this section.
(h) The commission shall publish on its Internet website a monthly report containing aggregate data of the information in the reports submitted under this section. The commission’s monthly report may not identify by any means an abortion facility, a physician performing an abortion, the county in which a minor obtained judicial authorization for an abortion under Chapter 33 of the Family Code Chapter 33, or a patient.

§139.5. Additional Reporting Requirements.

In addition to the annual reporting required by §139.4 of this title (relating to Monthly Reporting Requirements for All Abortions Performed), physicians and health care facilities subject to this chapter shall comply with this section when performing third trimester abortions, when performing emergency abortions, and when diagnosing or treating abortion complications.

(1) Reporting requirements for third trimester abortions.

(A) The purpose of this paragraph is to establish procedures for reporting third trimester abortions as required by the Medical Practice Act, Occupations Code, Chapters 151 - 160, and 162 - 165.

(B) A physician who performs a third trimester abortion of a viable fetus with a biparietal diameter of 60 millimeters or greater shall certify in writing to the commission the medical indications supporting the physician's judgment that the abortion is either necessary to prevent the death or a substantial risk of serious impairment to the physical or mental health of the woman, or the fetus has a severe and irreversible abnormality, as identified through reliable diagnostic procedures.

(C) The certification shall be made on a form approved by the commission.

(D) The certification form and any supporting documents shall be submitted via a secure electronic reporting system established and maintained by the commission. Until this system is established, the certification form and any supporting documents shall be submitted to the Department of State Health Services, Vital Statistics Unit, Post Office Box 4124, Austin, Texas 78765-4124, not later than the 30th day after the date the abortion was performed.

(E) The commission shall retain the certification form and supporting documents as a cross-reference to the annual reporting requirements of the Act and this section. The certification form and supporting documents
retained by the commission are confidential. Any release of the documents shall be in accordance with the provisions of the Medical Practice Act, Occupations Code, Chapters 151 - 160, and 162 - 165.

(F) A physician performing abortions at a licensed abortion facility who fails to submit the certification form required under this paragraph may subject the licensed facility to denial, suspension, probation, or revocation of the license in accordance with §139.32 of this title (relating to License Denial, Suspension, Probation, or Revocation).

(2) Reporting requirements for emergency abortions.


(B) A physician who performs an emergency abortion shall certify in writing to the commission that a medical emergency exists.

(C) The certification shall be made on a form approved by the commission.

(D) The certification form shall be submitted via a secure electronic reporting system established and maintained by the commission. Until this system is established, the certification form shall be submitted to the Department of State Health Services, Vital Statistics Unit, Post Office Box 4124, Austin, Texas 78765-4124 not later than 30 days after the date the abortion was performed.

(E) A physician performing abortions at a licensed abortion facility who fails to submit the certification form required by this paragraph may subject the licensed facility to denial, suspension, probation, or revocation of the license in accordance with §139.32 of this title.

(3) Reporting requirements for abortion complications.

(A) Within three business days after the date the complication is diagnosed or treated, a physician shall submit to the commission an abortion complication report.

(B) Within 30 calendar days after the date the complication is diagnosed or treated, a hospital, abortion facility, freestanding emergency medical care facility, or health care facility that provides emergency medical
care as defined by Health and Safety Code, §773.003 shall submit to the commission an abortion complication report.

(C) The certification form shall be submitted via a secure electronic reporting system established and maintained by the commission. Until this system is established, the certification form shall be submitted to the Department of State Health Services, Vital Statistics Unit, Post Office Box 4124, Austin, Texas 78765-4124.

(D) A report submitted under this paragraph may not identify the physician who performed the abortion, other than the reporting physician, or the patient.

(E) The report must identify the name of the physician submitting the report or the name and type of health care facility submitting the report, must include the most specific, accurate, and complete reporting for the highest level of specificity, and must include, if known:

(i) the date of the abortion that caused or may have caused the complication;

(ii) the type of abortion that caused or may have caused the complication;

(iii) the name and type of facility where the abortion was performed;

(iv) the name, date and type of facility where the complication was diagnosed and treated;

(v) description of complications;

(vi) the number of weeks of gestation at which the abortion was performed;

(vii) the number of previous live births of the patient;

(viii) the number of previous induced abortions of the patient;

(ix) the type of anesthesia, if any, used in the procedure: intravenous sedation or general anesthesia;

(x) the patient’s year of birth, race, marital status, and state and county of residence; and
(xi) the date of the first date of the patient’s last menstrual period that occurred before the date of the abortion that caused or may have caused the complication.

(F) The commission shall notify the Texas Medical Board of a violation of this paragraph by a physician.

(G) The commission shall publish on its Internet website an annual report containing aggregate data of the information in the reports submitted under this paragraph for the previous calendar year. The annual report may not include any duplicative data and may not identify by any means an abortion facility, a physician, or a patient.

(H) The third separate violation of this paragraph by a facility required to report under subparagraph (B) of this paragraph constitutes cause for the revocation or suspension of the facility’s license, permit, registration, certificate, or other authority or for other disciplinary action against the facility.