

CHAPTER 145

AN ACT concerning parental notification for abortion, amending and supplementing P.L.1965, c.217.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 1 of P.L.1965, c.217 (C.9:17A-1) is amended to read as follows:

C.9:17A-1 Consent by minor to medical surgical care.

1. The consent to the performance of medical or surgical care and procedure by a hospital or by a physician licensed to practice medicine and surgery executed by a married person who is a minor, or by a pregnant woman who is a minor, on his or her behalf or on behalf of any of his or her children, shall be valid and binding, and, for such purposes, a married person who is a minor or a pregnant woman who is a minor shall be deemed to have the same legal capacity to act and shall have the same powers and obligations as has a person of legal age. Notwithstanding any other provision of the law, an unmarried, pregnant minor may give consent to the furnishing of hospital, medical and surgical care related to her pregnancy or her child, although prior notification of a parent may be required pursuant to P.L.1999, c.145 (C.9:17A-1.1 et al.) and such consent shall not be subject to disaffirmance because of minority. The consent of the parent or parents of an unmarried, pregnant minor shall not be necessary in order to authorize hospital, medical and surgical care related to her pregnancy or her child,.

C.9:17A-1.1 Short title.

2. Sections 2 through 13 of this act shall be known and may be cited as the "Parental Notification for Abortion Act."

C.9:17A-1.2 Findings relative to parental notification for abortion.

3. The Legislature finds that there exist compelling and important State interests in protecting minors against their own immaturity, in fostering the family structure and preserving it as a viable social unit, and in protecting the rights of parents to rear their children.

The Legislature further finds that minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences of their actions; that the medical, emotional, and psychological consequences of abortion are serious and of indeterminate duration, particularly when the patient is a minor; that parents ordinarily possess information essential to a physician's exercise of his best medical judgment concerning their child; and that parents who are aware that their minor daughter has had an abortion may better insure that the minor receives adequate medical attention after her abortion. The Legislature further finds that parental consultation regarding abortion is desirable and in the best interests of the minor.

It is, therefore, the intent of the Legislature to further the interests stated above by enacting this parental notice provision.

C.9:17A-1.3 Definitions relative to parental notification for abortion.

4. As used in this act:

"Abortion" means the use of any means to terminate the pregnancy of a female known to be pregnant with knowledge that the termination with those means will, with reasonable likelihood, cause the death of the fetus.

"Medical emergency" means a condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant unemancipated minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

"Parent" means a parent with care and control of the unemancipated minor, unless the parent has no custodial rights; or if there is no parent with care and control, then the foster parent or the guardian of the unemancipated minor; or a person standing in loco parentis to the unemancipated minor.

"Person standing in loco parentis" means (1) that the biological or adoptive parent consented to and fostered, the person's formation and establishment of a parent-like relationship with the minor; (2) that the person and the minor live together in the same household; (3) that the person assumed obligations of parenthood by taking significant responsibility for the minor's care,

education and development, including contributing towards the minor's support, without expectation of financial compensation; and (4) that the person has been in a parental role for a length of time sufficient to have established with the minor a bonded, dependent relationship parental in nature.

"Unemancipated minor" means a female under the age of 18 years who is unmarried and is not currently serving active duty in one of the military services of the United States of America or a female for whom a guardian has been appointed pursuant to N.J.S.3B:12-25 because of a finding of incompetency. For the purposes of this act, pregnancy does not emancipate a female under the age of 18 years.

C.917A-1.4 Written notice of pending operation.

5. a. Notwithstanding any other provision of law to the contrary, an abortion shall not be performed upon an unemancipated minor until at least 48 hours after written notice of the pending operation has been delivered in the manner specified in this act.

b. The notice shall be addressed to the parent at the parent's last known address and delivered personally to the parent by the physician.

c. In lieu of the personal delivery required in subsection b. of this section, notice may be made by certified mail addressed to the parent at the parent's last known address with return receipt requested and restricted delivery to the addressee, which means a postal employee may only deliver the mail to the authorized addressee. At the same time that notice is mailed by certified mail, it shall also be sent by first class mail to the parent at the parent's last known address. The 48 hour period for notice sent under the provisions of this subsection shall begin at noon on the next day on which regular mail delivery takes place following the day on which the mailings are posted.

C.9:17A-1.5 Notice not required if parent already notified.

6. Notice of a pending abortion shall not be required under this act if the parent who is entitled to notice has set forth in a notarized writing that notice was received.

C.9:17A-1.6 Notice not required if abortion due to medical emergency.

7. Notice of a pending abortion shall not be required under this act if the attending physician certifies in the unemancipated minor's medical records that the abortion is necessary due to a medical emergency.

C.9:17A-1.7 Waiver of parental notification by court proceedings.

8. a. A minor may, by petition or motion, seek a waiver of parental notification from a judge of the Superior Court. The petition or motion shall include a statement that the minor is pregnant and is not emancipated.

b. The minor may participate in proceedings in the court on her own behalf, and the court may appoint a guardian ad litem for her. 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.

c. Proceedings in the court under this section shall be confidential and insure the anonymity of the minor and 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 interests of the minor. A judge of the Superior Court who conducts proceedings under this section shall make written factual findings and legal conclusions within 48 hours of the time that the petition or motion is filed unless the time is extended at the request of the unemancipated minor. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the notice requirement shall be waived. The judge shall order a record of the evidence to be maintained including the judge's written factual findings and legal conclusions supporting the decision.

d. (1) If the judge finds, by clear and convincing evidence, that the unemancipated minor is sufficiently mature to decide whether to have an abortion, the judge shall authorize a waiver of notification.

(2) If the judge finds, by clear and convincing evidence, that there is evidence of a pattern of physical, sexual or emotional abuse of the minor by the parent, guardian or legal custodian,

the judge shall authorize a waiver of notification. Notice of a determination made under this paragraph shall be made to the Division of Youth and Family Services.

(3) If the judge finds, by clear and convincing evidence, that the notification of the parent is not in the best interests of the minor, the judge shall authorize a waiver of notification.

e. If the judge does not make a finding specified in subsection d. of this section, the judge shall dismiss the petition or motion and notice shall be given as provided for in section 5 of this act.

f. An expedited confidential appeal shall be available to a minor for whom the court denies an order waiving notification. No filing fees shall be required of any 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 minor on an emergent basis in accordance with the Rules of Court.

C.9:17A-1.8 Fact sheet for distribution to unemancipated pregnant minors.

9. The Department of Health and Senior Services shall prepare a fact sheet for distribution to unemancipated pregnant minors who are seeking abortion services.

a. The fact sheet shall be written in terms generally understood by a teenager and shall explain the parental notification requirements of this act, including, but not limited to:

(1) that a minor may, by petition or motion, seek a waiver of parental notification from a judge of the Superior Court;

(2) that a minor may participate in proceedings in the court on her own behalf, that the court may appoint a guardian ad litem for her and that the minor has a right to court appointed counsel, which shall be provided to her by the court upon her request; and

(3) the procedure established by the court for petitioning or making a motion before the court.

b. The department shall distribute the fact sheet, at no charge, to ambulatory care facilities and hospitals licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), public and private agencies and physicians' offices that provide family planning services and prenatal care.

c. The physician who is responsible for providing notification to an unemancipated minor's parent pursuant to this act, or his designee, shall provide the unemancipated minor with a copy of the fact sheet at the time the minor initially requests abortion services from the physician.

C.9:17A-1.9 Entitlement to benefits unaffected.

10. Nothing in this act shall be interpreted to deny a pregnant unemancipated minor who is under the age of 18 any benefits to which she would otherwise be entitled pursuant to law.

C.9:17A-1.10 Violation; penalty.

11. Any person who performs an abortion in violation of this act shall be subject to a civil penalty of not less than \$1,000 and not more than \$5,000 and shall be liable in a civil action by a parent wrongfully denied notification. A person shall not be liable under this act 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 unemancipated minor regarding information necessary to comply with this section are bona fide and true, or if the person has attempted with reasonable diligence to deliver notice, but has been unable to do so.

C.9:17A-1.11 Rules, regulations.

12. The Commissioner of the Department of Health and Senior Services, in consultation with the Department of Law and Public Safety, shall promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), concerning procedures for physicians to follow in effectuating the notice required pursuant to the provisions of P.L.1999, c.145 (C.9:17A-1.1 et al.).

C.9:17A-1.12 Provisions of act severable.

13. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the sections which

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can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

14. This act shall take effect on the 90th day following enactment except for section 12 which shall take effect immediately.

Approved June 28, 1999.