

DAVID S. BENTZ
STATE REPRESENTATIVE
18th District



HOUSE OF REPRESENTATIVES
STATE OF DELAWARE
411 LEGISLATIVE AVENUE
DOVER, DELAWARE 19901

COMMITTEES
Health & Human Development, Chair
Energy, Vice-Chair
Appropriations
Joint Finance
Labor
Natural Resources

House Health and Human Development Committee Meeting Minutes
March 17, 2021

Chair Bentz called the virtual meeting to order at 10:00 a.m. He stated that the meeting was planned in accordance with HCR 1 and took the roll call of the committee's members. Members present included Vice Chair Minor-Brown and Reps. Chukwuocha, Johnson, Baumbach, Heffernan, Morrison, Kowalko, Lynn, Postles, Shupe, Smith, Briggs King, Hensley, and Collins. For a list of guests present please see the attendance list below.

Chair Bentz introduced **SS 1 for SB 59, AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO MEMBERSHIP OF THE PRIMARY CARE REFORM COLLABORATIVE.**

Chair Bentz explained that this bill revises the appointment process for members of the Primary Care Reform Collaborative who are not members by virtue of position. Under this act, these members are appointed by a government official to comply with the requirements of the Delaware Constitution. There were not questions from the committee.

Chair Bentz opened the floor to public comment, there was none.

A motion was made by Rep. Briggs King and seconded by Rep. Kowalko to release SS 1 for SB 59 from committee, the motion carried. Yes = 13 (Chair Bentz, Vice Chair Minor-Brown, Reps. Chukwuocha, Johnson, Baumbach, Heffernan, Kowalko, Postles Shupe, Smith, Briggs King, Hensley, Collins); No = 0; Absent = 2 (Reps. Morrison and Lynn). The bill was released from committee with a F=4, M=8, U=0 vote.

Chair Bentz introduced **HB 40, AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO THE OFFER OF AN ULTRASOUND BEFORE TERMINATING A PREGNANCY.**

Rep. Collins explained that this bill requires physicians to offer abortion patients the chance to see an ultrasound and hear the fetal heartbeat with a penalty for the physician if they refuse to do so. It is up to the patient if they would like to see or hear this. Rep. Collins stated that ultrasounds must be taken in order to perform an abortion and that some of the providers have policies where they refuse to show ultrasounds. He emphasized that the goal of this bill is to make abortion rarer and shared a 2013 National Institute of Family and Life Advocates survey of their clinics which showed out of 75,318 ultrasounds performed, 78% of those who saw the ultrasound choose not to have an abortion.

Rep. Kowalko referred to line 56 in asking if this bill would overstep their authority as legislators by declaring a civil malpractice action. Rep. Collins responded that he believes there is not a more regulated field than being a medical doctor as they are subject to sanctions from the law, medical societies, and licensing procedures as well as always being subject to civil suits.

Rep. Kowalko stated that he does not think it is their place as legislators to define what would be considered medical malpractice so specifically. Rep. Collins responded that virtually all legislation passed has some penalty associated with it. He clarified that compliance with this bill would be as simple as having the patient sign a paper.

Rep. Briggs King asked why a doctor would do a test and not share the results with the patient. Rep. Collins stated that he does not think this would occur in other areas of medicine for an elective procedure. He highlighted that the bill does exclude emergency situations, it would not be in effect if a patient is at risk of death or serious injury. He stated that some providers refuse to show the ultrasound and fetal heartbeat sound to patients.

Rep. Briggs King inquired about any other workers who are involved in the ultrasound procedure, and if they can discuss what they are doing during the procedure as patients are typically alert during the process. Rep. Collins responded that some expert witnesses will be able to speak to this. He then shared that the ultrasound is routinely done, and in the same location

as the abortion procedure. Rep. Briggs King clarified that this is an issue of transparency and enabling fully informed decision-making which Rep. Collins confirmed. Rep. Collins further stated that no doctor has ever been held liable for sharing too much information.

Rep. Briggs King shared that she is disturbed by the conflicting information found on different websites, she thinks it is important to have transparency on why a medical procedure is being performed without the results being shared.

Vice Chair Minor Brown asked for an explanation on how this bill would lead to safer abortions. Rep. Collins clarified that the bill would not lead to safer abortions, the references to safe abortions come from a saying President Clinton used, that abortions should be safe, legal, and rare. He stated that this bill is focused on the “rare” as he would like women to be better informed which he believes will make abortion more rare.

Vice Chair Minor Brown stated that she could see the bill having an impact on the stress or anxiety of the patient. She then asked if there are any laws that require doctors to ask the patient if they would like to see a kidney stone or gallbladder that has been removed, with the threat of legal action if they do not. Rep. Collins responded that laws are state dependent, and that there are laws regarding informing patients having abortion in other states. He shared that there have been court decisions about situations where doctors did not fully inform their patients with serious consequences for the doctors.

Vice Chair Minor Brown shared that she is a Registered Nurse who has worked for Planned Parenthood of Delaware. She asked if Rep. Collins had data showing that doctors have refused to show an ultrasound when asked to see it. Rep. Collins responded that it is his understanding from numerous sources that this is Planned Parenthood’s policy to not show ultrasounds, and he has heard testimony from former employees that it was policy when they worked there. Vice Chair Minor Brown stated that when she was an employee of Planned Parenthood at the location on 7th and Shipley Street in Wilmington, every time a patient requested an ultrasound picture, they received it. Rep. Collins explained that this bill would require that patients be informed about the opportunity to see an ultrasound and listen to the fetal heartbeat.

Rep. Heffernan stated her understanding that an ultrasound was not always taken before abortion procedures. Therefore, she asked why physicians would perform unnecessary tests that have additional costs. Rep. Collins responded that it is his understanding that the ultrasound is needed as a part of the procedure and that it is not an extra charge for the patient. Rep. Heffernan disagreed.

Rep. Kowalko commented that any procedure where an ultrasound is needed as a guide during the process is not the ultrasound requirement discussed in this bill. He then shared his concern with line 59, he is not sure if the law allows a wrongful death charge if the child has not been born. Rep. Collins responded that every law must have an enforcement mechanism to give it validity. He said that witnesses will explain why the physical and mental harm caused by refusing to abortion patients justifies these actions.

Rep. Baumbach acknowledged the sponsor’s well-intentioned motives. He asked if there was a medical expert that could verify some of Rep. Collins’s statement.

At the request of the sponsor, Leslie Dean, a representative of Silent No More, introduced herself as a Registered Nurse who has worked in the OB field for 20 years. Rep. Baumbach asked if she practices in Delaware.

Ms. Dean responded that she practiced in Maryland and was the regional coordinator for Delaware for the Silent No More awareness campaign.

Rep. Baumbach confirmed that she does not practice under Delaware’s laws and regulations and then stated he would like to ask questions of a medical expert familiar with Delaware practices.

Chair Bentz opened the floor to public comment.

Morgan Keller, the Communications Director for American Civil Liberties Union of Delaware, spoke in strong opposition explaining that Delaware codified Roe v. Wade in the state Constitution in 2017, choosing to protect a person’s right to abortion. As that right is now inherent for all Delawareans, any legislation that would place barriers in the way of abortion, is blatantly unconstitutional. Furthermore, it is unnecessary and unethical with the sole purpose of shaming and intimidating people seeking an abortion service. Ms. Keller referenced Rep. Collins’s statement that under current law some providers refuse to offer ultrasound and oscillation services, stating that it is not true, care providers already follow best practices and adding needless steps to the process only adds unnecessary costs and boundaries. Additionally, threatening civil or criminal penalties if the physician does not follow exact guidelines is subjective and excessive.

Bessie McAneny, a Registered Nurse in Delaware, spoke in support of the bill. She shared the specific role of nurses as mandated by the ethical obligation to the patient, the State Nurse Practice Act, and American Nurses Association as comprising providing patient education, facilitating patient comprehension, and reducing fear and anxiety. The patient has a legal right to be informed about proposed treatments, surgery, and research so that informed consent standards are met. Ms. McAneny stated that according to the Joint Commission of 2016 standards; the state of Delaware is negligent in upholding its own standards of informed consent by allowing termination of pregnancy procedures without allowing the women to view the fetus in the womb.

Monica Beard spoke as a member of the Delaware United Policy Committee and an adult survivor of childhood abuse. She shared that more than 20 years after her abuse she finds gynecological procedures, including transvaginal ultrasounds or pap smears to be deeply triggering. She noted that ultrasounds are not always needed in abortion procedures so for many people this bill would require them to have an ultrasound administered against their will which would be very difficult for anyone who has survived abuse or sexual assault. Ms. Beard shared that in her recent pregnancy she found her relationship with her care provider helpful as she knew any procedures advised were absolutely necessary. Ms. Beard shared that she understands the intent of the bill is to reduce abortion and brought up other bills being heard this session like parental leave and raising the minimum wage which would help someone who wants to continue a pregnancy but is without financial resources.

Melanie Ross Levin, Director of the Office of Women's Advancement and Advocacy, spoke in opposition because there is no medical justification for mandatory ultrasounds, and they therefore can be a barrier to termination of pregnancy. The bill also creates significant liability civilly and criminally for providers who violate the bill and penalizes them for not performing a procedure they do not deem necessary. Ms. Levin shared the recent strides Delaware has made to support women's health as well as measures that reduce abortion including contraceptive access, investing in paid parental leave for state employees, and looking to raise the minimum wage. These measures assist families with the financial burden of having children. Ms. Levin urged the committee to focus on these other ways to support families and vote no on the bill.

Janet Grayson, a board member of Delaware Right to Life, spoke in support on behalf of the organization and President Moira Sheridan. She highlighted the importance of women being fully informed regarding the decision to terminate life. She expressed the necessity of allowing women to see an ultrasound and hear the fetal heartbeat, especially when paying for the service. Ms. Grayson stated that the decision to have an abortion is often hasty and uninformed leading to regret.

Lynn Mey spoke in support of the bill, highlighting her concern for maternal health and women having access to all information before making decisions. Ms. Mey stated her concerns of racial disparity as the highest mortality rate during birth is seen in Black women, and that she believes this bill will strengthen the maternal health awareness for Black women who received 43% of abortions in Delaware in 2017. She countered the view that the bill is only a punishment for the physician stating that it is also a benefit to the pregnant mother who is offered the choice to view critical information to patient health.

Jane Mitchell-Werbrich, a Registered Nurse in Delaware and former employee of Planned Parenthood, spoke on the duty of health care providers to provide patients with informed consent. In her past experiences, Ms. Mitchell-Werbrich stated that when working for Planned Parenthood she was instructed not to show the ultrasound photo as it would cause confusion for the patient. She shared that she currently works at a facility where ultrasounds are shown and believes women are capable of viewing the information and making an informed decision for themselves.

Cheri Boyer spoke on behalf of Planned Parenthood in opposition to the bill. She shared that the American College of Obstetricians and Gynecologists has deemed that an ultrasound prior to abortion is medically unnecessary and only creates undue burden for women trying to access abortion care. She further stated that medically unnecessary procedures hurt those who already have the least access to quality health care most, particularly people of low-income, minorities, and people who live in a rural community. Ms. Boyer stated that this bill is an attempt to shame women who seek an abortion by adding testing that has nothing to do with the decision to terminate a pregnancy, emphasizing that the decision to perform any diagnostic testing should be between the provider and patient.

Nancy Protin spoke in support of the bill. She shared her personal experience of leaving her boyfriend at age 23 when she was pregnant and "crisis thinking" rather than thinking critically. When she went to the doctor, she described the appointment progressing without being informed or instructed about what was happening and being too scared to ask questions. She stated she did not know why she was not provided information nor shown the sonogram, and believed it was because it may have caused her to make a different decision and not pay \$900 for the procedure.

Dr. Margaret Chou spoke on behalf of the American College of Obstetricians and Gynecologists. She first pointed out that when discussing informed consent, any law that attempts to delineate the specific medical details comprising informed consent is fraught with peril as the law is not agile enough to address the rapid evolution of medical technology. Informed

consent is at the discretion, expertise, and training of the provider for each unique discussion. Dr. Chou then urged the committee to vote no on this bill, as any legislation that interferes with the doctor-patient relationship should not be passed.

Christina Mattes shared her experience of having an abortion which she has regretted over the last 37 years and stated her support for the bill.

Katrina Stubbs spoke in support of the bill and shared her experience of having an abortion 30 years ago where she felt she did not get appropriate information before making her decision.

Mary K spoke in support of the bill, questioning the constitutional rights of people who are pro-life. She shared her support for babies with autism and other disabilities.

Larry Glazerman also spoke as a member of the American College of Obstetricians and Gynecologists in opposition to the bill. He expressed the concerns they have about legislating specific diagnostic protocols. He then shared his personal experience as a former Medical Director of Planned Parenthood of Delaware where he said it was always the policy to give patients the option to see the ultrasound and take home a picture when it was performed, and their decision was always documented in the medical record.

Rep. Collins asked Leslie Dean if an ultrasound is necessary. She shared that an ultrasound is necessary to determine if there is an ectopic pregnancy and if abortion medication is taken when an egg is imbedded in the fallopian tube it can be dangerous and deadly to the patient.

Ms. Dean then shared that she has had two abortions and she was told it was not a life and was not shown an ultrasound either time. When she had her son, she did see the ultrasound and was upset that she had not been given this information before she had her abortions as her decisions would have been different. She stated that based on her personal experience and experience as a nurse she believed patients need to be given all the information to make a decision on their own and questioned what the motive of not sharing this information with women as all other medical procedures do share all information.

Rep. Briggs King inquired if it would be best to table the discussion to have a witness with Delaware medical experience brought in. Rep. Collins responded that he would be okay with this but thinks it would be valuable to see who on the committee is opposed to empowering women by not providing them information vital to their health.

Rep. Briggs King then commented that when a woman is facing this decision it is a vulnerable time for her and she would always err on the side of making a truly informed decision. She also suspects that opposition to this bill is fueled by a desire to keep the human element out of this decision.

Rep. Morrison highlighted his deepest concern with the bill, that it is not about informing women and aims to shame women out of exercising their moral, legal, and human right to have an abortion.

Rep. Shupe expressed a desire to have more education around this topic and the opinion that he does not have enough information to vote this out of committee as there was not a clear answer about what is currently being done in the field.

Rep. Baumbach shared that his earlier questions were addressed by the public comments from members of the American College of Obstetricians and Gynecologists. His concerns were satisfied when they shared that current practice is for providers to make the decision to call for an ultrasound if they think it is medically necessary.

Vice-Chair Minor-Brown expressed her disappointment that the expert witness, Ms. Dean, did not decide between being an expert witness as a provider or sharing her personal opinions. As she did both, her statements appear to be biased based on her opinion.

Rep. Smith acknowledged that this is an issue that brings out passion in people. He is concerned when the right to life group and Planned Parenthood are pitted against each other as this leaves out the legality and nuance of what the bill could mean. He believes that people may be mistaking the word "offer" for "mandatory" and enforcing something rather than being granted an opportunity. He further expressed that he does not think Rep. Collins's intent was to shame women, however he wishes there were more expert testimony and preparation today.

Rep. Collins emphasized that this bill is only about providing information, and that the requirements of the bill are met by signing a form. He is troubled by the testimony of professionals who make money from these procedures which is in conflict to life experiences shared by members of the public. He does not understand why women are able to have a medical

procedure where the law does not ensure they have all information made available to them. Lastly, he appealed to committee members' religious beliefs by referencing Psalm 139.

A motion was made by Rep. Postles and seconded by Rep. Briggs King to release HB 40 from committee, the motion failed. Yes = 5 (Reps. Postles, Smith, Briggs King, Hensley, Collins); No = 10 (Chair Bentz, Vice Chair Minor-Brown, Reps. Chukwuocha, Johnson, Baumbach, Heffernan, Morrison, Kowalko, Lynn, Shupe); Absent = 0.

Chair Bentz adjourned the meeting at 11:33 a.m.

Respectfully submitted by:
Chelsea Chatterton

Speaker List:

- Leslie Dean (Silent No More)
- Morgan Keller (Delaware American Civil Liberties Union)
- Bessie McAneny
- Monica Beard (Delaware United Policy Committee)
- Melanie Ross Levin (Office of Women's Advocacy and Advancement)
- Janet Grayson (Delaware Right to Life)
- Lynn Mey
- Jayne Mitchell-Werbrich
- Cheri Boyer (Planned Parenthood)
- Nancy Protin
- Dr. Margaret Chou (American College of Obstetricians and Gynecologists)
- Christina Mattes
- Katrina Stubbs
- Mary K
- Larry Glazerman (American College of Obstetricians and Gynecologists)

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

March 16 , 2021

SENT VIA EMAIL

David.Bentz@delaware.gov

The Hon. David Bentz
Chair
House Health & Human Development Committee

Re: Testimony in opposition to H.B. 40

Dear Chairman Bentz and Committee members:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to testify in strong opposition to H.B. 40. FFRF is a national nonprofit organization with more than 35,000 members across the country, including many members in Delaware. FFRF protects the constitutional separation between state and church, and educates about nontheism.

H.B. 40 would require doctors to offer an ultrasound and auscultation of fetal heart tone prior to performing an abortion. This is a paternalistic intrusion of the state into the doctor-patient relationship. Whether or not it is appropriate to offer these services is a decision for doctors to make, not legislators. The notion that this requirement would advance a pregnant woman's "right to know" is deeply insulting, suggesting that pregnant women do not understand what it means to be pregnant.

This sort of imposition into women's healthcare is common for religion, but is totally inappropriate in our secular government. Bills like this amount to legislators attempting to insert into the law their personal religious beliefs about women's inability to make their own decisions.

This is especially inappropriate given how many Americans are not religious. Non-religious Americans are the fastest growing segment of the U.S. population by religious identification—35 percent of Americans are non-Christians, and this includes the more than

one in four Americans who now identify as religiously unaffiliated.¹ Younger Americans are not just religiously unaffiliated, they are largely atheist or agnostic. A recent survey found that 21 percent of Americans born after 1999 are atheist or agnostic.²

Thank you for taking the time to review this testimony, and for protecting women's reproductive rights. Please vote "no" on H.B. 40.

Sincerely,

A handwritten signature in blue ink that reads "Ryan D. Jayne". The signature is stylized and cursive.

Ryan D. Jayne
Staff Attorney

¹ Pew Research Center, "In U.S., Decline of Christianity Continues at Rapid Pace," (Oct. 17, 2019) at <https://pewrsr.ch/2VPiFS7>.

² *Atheism Doubles Among Generation Z*, The Barna Group (Jan. 24, 2018), <https://www.barna.com/research/atheism-doubles-among-generation-z/>.



TALKING POINTS on HB 40/SB 17

Government Mandates: Ultrasound and Abortion

Legislative Landscape

More than 25 states (as of January 2022) have passed ultrasonography requirements on the provision of abortion care. The earliest laws date to the mid-1990s. These laws require an ultrasound to be offered and/or performed prior to an abortion. These laws often contain additional requirements, such as a simultaneous explanation of what the ultrasound is depicting, and/or that the patient receive a detailed description of the image, view the image, or listen to Doppler cardiac tones. Many of these laws threaten clinicians with professional, civil, or even criminal penalties for not following the law's requirements.

Ultrasound mandates are unique in ways that should concern all physicians. The government is dictating specific diagnostic protocols physicians must follow before performing a medical procedure and how they must counsel patients.

Talking Points

- **This bill sets a dangerous precedent by legislating specific diagnostic protocols physicians must follow before performing a medical procedure.** These decisions are between the doctor and patient, not the government's. Decisions about a patient's medical care and management are always best made between the patient and the expert in medical care, the clinician.
- **This bill will not enhance the health or safety of patients.** This bill substitutes a government mandate for a doctor's judgment. The government will require ultrasounds even though ultrasounds are not always necessary prior to an abortion. In cases where an ultrasound is not done, the clinician relies on evidence-based and effective approaches, such as a clinical exam and patient history.
- **Some patients are referred from outside clinics and have already had an ultrasound.** Mandating another one is an unnecessary duplication of an expensive test and adds financial stress to an already difficult decision.
- **All medical procedures must be done consensually within the privacy of a doctor's relationship with the patient – not by state intrusion.** A patient's decision about medical care must be voluntary – not dictated by government – and no procedure should be done

without a patient’s consent. But under this bill, women requesting abortions would lose this autonomy.

- **This bill is about government mandates, not patient rights.** This bill is not about a woman’s right to know all of the medical information before she makes a decision about a treatment plan or procedure. Women already have that right. As health professionals, we have a legal, professional and ethical obligation to share with the patient all relevant information about the range of health care choices that are available, the benefits and risks of treatments, and to respect the patient’s decision. There is no evidence to suggest that doctors are not complying with this obligation prior to performing abortions. This bill is demeaning and disrespectful to the women of our state, and insulting to the doctors and nurses who care for them.
- **Patients must rely on their physicians’ best medical judgment.** This bill misuses the long-standing practice of informed consent whereby a patient and her doctor openly discuss the diagnosis, prognosis and possible options – privately, without outside interference. This legislation interferes with the exercise of professional judgment and imposes unduly burdensome and questionable obligations on health care providers.
- **Mandating an unnecessary medical diagnostic test will increase costs to the health care system, including patients.** We urge lawmakers to consider legislation that would more appropriately utilize health care dollars to improve access to cancer screenings, preconception care and family planning for women and their families. ACOG would welcome a dialogue about maximizing limited resources to improve the health care of the women of our state.

ACOG supports individuals’ rights to make decisions about their pregnancy and the right to safe, evidence-based, legal abortion. The intervention of the Legislature into medical decision-making is inappropriate, ill-advised and dangerous.

ACOG Supporting Documents:

ACOG Practice Bulletin 225, *Medication Abortion Up to 70 Days of Gestation*, 2020.

ACOG Committee Opinion 815, *Increasing Access to Abortion*, 2021

ACOG Committee Opinion 612, *Abortion Training and Education* 2009.

ACOG Statement of Policy, *Abortion Policy*, 1993, reaffirmed July 2020.

ACOG Statement of Policy, *Legislative Interference with Patient Care, Medical Decisions, and the Patient-Physician Relationship*, July 2019

Does this mean that women who go for abortions will not be totally and completely informed regarding what they are killing? Unbelievable. Even animals don't do this. Why would you want women uninformed? A woman willing to kill her son or her daughter in her own womb is barbaric.

Barbara Choplinsky
906 Quail Lane
Newark, DE 19711

Cell: (302) 383-4329

Sent from my iPad

Dear Members of the Health and Human Development Committee,

My Name is Nancy Protin, I live in Middletown. I was 23 years old and pregnant and had just left my boyfriend. I was scared and could not see any other way out. I know now this is called "crisis thinking" and I needed someone to help me get to critical thinking! I drove to the clinic by myself. The doctor came in, with the nurse. He told me to relax, put my feet in the stirrups, saying he would give me a shot to numb me. He told me the only thing I would feel after that was pressure. I was told nothing about the baby growing inside me or given the facts. He gave me the shot, turned on the "suction machine" and asked the nurse to start the sonogram. I heard him catch his breath then shut off the machine. He then told me he was going to insert "sticks" in my cervix to expand it because I was too far along. He didn't tell me why he was using these sticks, he only said it would cause some cramping. He didn't tell me what "too far along" meant. How old was my baby? I was too scared to ask questions. I went back for the procedure and was released with NO instructions. NO explanations. I bled so heavily for 10 days I knew something had to be wrong. Why was so much information withheld from me? Could it be because if I had known the truth I would have made a different decision and left with my \$1400 cash? Why wasn't the sonogram done before the procedure and offered to me? If you think that abortion should be treated like any other medical procedure then please vote YES on this bill. Women deserve the right to know all the facts before making a decision to abort a baby. Thank you so much for taking the time to read this. May you all continue to be safe, God bless!

Nancy Protin
410 N Ramunno Dr #912
Middletown, DE 19709
nancyprotin@gmail.com

CC: Representative Moore