

A Woman's Right to Know (2016), by Texas Department of State Health Services

In 2016, the Texas Department of State Health Services, hereafter the DSHS, updated a booklet, called A Woman's Right to Know, which provides information about pregnancy and abortion that physicians must provide to pregnant women who seek an abortion as part of a mandated informed consent process in Texas. In 2003, the DSHS initially developed the booklet in accordance with the Texas Woman's Right to Know Act, which is a law that mandates pregnant women receive information about pregnancy and abortion. Following input from medical organizations, the DSHS amended the original booklet in 2016 to include more accurate medical information about abortion. However, those organizations point out that there are still inaccuracies present in the updated version of the booklet. In opposition of abortion care, pro-life legislators and organizations in Texas developed A Woman's Right to Know as part of a larger effort to require that health care professionals provide pregnant women with information that could dissuade them from having an abortion.

Following the passage of Texas Woman's Right to Know Act in 2003, which mandated several steps that physicians must take as part of the informed consent process, the DSHS created the first version of A Woman's Right to Know. The Texas Woman's Right to Know Act added Chapter 171 to the Texas Health and Safety Code and describes the details that the DSHS must include in informational materials that physicians must provide to women at least twenty-four hours before they can perform an abortion. It also directs the DSHS to make those materials widely available, publishing them in both English and Spanish and allowing them to be available at no cost upon request in-person, as well as on the Internet. The materials must include information about fetal development, including information about the dimensions and features of the embryo or fetus at two-week gestational increments and color pictures showing the fetus in the womb. The act also states that the DSHS should use the American College of Obstetricians and Gynecologists, or the ACOG, as a source for that information. That information must be objective, only discussing accurate scientific information about, what the law calls, the unborn child. The materials must also include the risks associated with each type of abortion procedure. The law requires physicians to list increased risk of breast cancer and increased risk of infertility among those risks, both of which the ACOG and other medical organizations consider to be inaccurate statements. Additionally, the materials must list the names and contact information for adoption agencies and agencies that offer sonogram services, or services for viewing the fetus in the womb, as well as adoption services. However, the materials may not provide information about agencies that provide abortions or abortion-related services.

On 14 March 2013, Lisa Hollier, then chair of the Texas District ACOG, responded to a DSHS request for stakeholder input in an email, detailing their concerns with the current materials and suggestions for revisions. Hollier points out that while every medical procedure comes with risks, abortion is the only medical procedure for which the state mandates the development and distribution of a script that details the risks. Hollier also notes that while the description of the risks of abortion takes up nine pages in the booklet, the risks of carrying a pregnancy to term takes up only three pages in the booklet. However, Hollier states that the risks of carrying a pregnancy to term and delivering is greater than the risks of abortion.

Thus, Hollier makes several suggestions to correct specific instances of inaccurate information and misleading language she identifies throughout the booklet and encourages the DSHS to continue to reach out to the ACOG. For example, Hollier notes that the use of the term unborn child in the 2003 materials, rather than fetus or embryo, is not scientifically accurate and sends an ideological

message. Also, in the 2003 booklet, the DSHS includes a remark, at the twenty-week mark of fetal development, that some experts have concluded that the fetus is probably able to feel pain at that point. However, Hollier states that there is no credible medical evidence that supports that claim. She also states the remark about fetal pain at twenty weeks in the booklet is included to evoke an emotional response from the reader. Hollier recommended that the DSHS remove the statement, because it was ideological rather than scientific.

During the 2015 legislative session in Texas, three Democratic state representatives, Donna Howard, Jessica Farrar, and Mary González, co-authored two bills to address the inaccuracies in A Woman's Right to Know. The first bill would have required the authors of the booklet to draw information from the National Institutes of Health, or its affiliated entities, and that medical experts recognize as accurate and objective. The second bill would have allowed healthcare providers to opt out of giving patients the state-mandated informational materials if they felt that doing so would violate accepted medical practices and ethical standards. The legislature never voted on either of the bills, and so neither bill passed.

On 28 June 2016, the DSHS posted a revised version of the booklet on the agency website and invited public comments about the proposed revisions for a period of thirty days. By the end of July, the DSHS received over five thousand comments. In July 2016, the Texas Policy Evaluation Project wrote to the DSHS and pointed out several instances of inaccurate statements and biased or misleading language, like Hollier had done on behalf of the Texas ACOG. The authors of the Texas Policy Evaluation Project letter encouraged the Texas DSHS to revise the booklet and ensure that the information provided was consistent with the most recent peer-reviewed, published literature. The authors emphasized that the DSHS has a responsibility to share the most current and accurate information.

In July 2016, The Texas Tribune reported that the ACOG stated that the DSHS had not incorporated any of their proposed recommendations into the revisions. Despite the call for revisions, researchers and physicians still criticized the updated booklet as misleading and inaccurate. In December 2016, when the DSHS released the final version of A Woman's Right to Know, the organization Texas Right to Life, which advocates against the practice of abortion, issued a statement saying that DSHS included several of the organization's changes in the revised informational materials.

The DSHS wrote the 2016 version of A Woman's Right to Know in the second person, addressing the reader directly, and refers to the fetus as the reader's baby. The DSHS also organized the booklet into seven sections, beginning with a one-page "Introduction," which informs the reader of their rights during the informed consent process. The next section, titled "Your baby's development," contains a timeline of fetal development and color images of the fetus at each stage. The following section, "Abortion risks," describes various risks associated with abortion. Then, "Making an informed decision" describes alternatives to abortion, including adoption services and child support services, as well as information that the woman has a right, by law, to know before having an abortion. After that, a section titled "Abortion procedures and side effects" describes various abortion procedures and their individual risks, while the follow section, "Pregnancy and childbirth," describes the risks and side effects of pregnancy and different methods of delivery. Finally, "After an abortion" describes what happens after the abortion procedure and warning signs of life-threatening complications that women should look out for.

The "Introduction" section begins by addressing the reader of the booklet and informing the reader of their rights regarding the decision to have an abortion. The introduction repeats several times that the reader has the right to ask their doctor for information, learn and consider all the facts, and make their decision without coercion. The booklet states, in bold letters that no one can force the reader to have an abortion, not even the reader's parents or the father of the child. The booklet advises the reader to talk to their doctor, counselor, or spiritual adviser if they feel coerced, and to call 911 for immediate help. Also, the booklet provides the number of the National Human Trafficking Resource Hotline for readers who may be victims of human trafficking. The booklet repeatedly urges readers to consult their doctor, counselor, or spiritual advisor for advice on their decision and suggests topics for readers to discuss with their doctors, including the medical risks of abortion, the medical risks of pregnancy, alternatives to adoption, and support available to new

mothers.

At the top of the next section, titled “Your baby’s development,” in red letters, is a statement that tells the reader that Texas law restricts abortion to under twenty weeks. In that statement, the booklet states that newborn infants are able to feel pain, which according to the booklet, is an ability that the newborn infant develops while in the womb before twenty weeks. Despite Hollier’s suggestion to remove the medically inaccurate claims about fetal pain, Texas Right to Life disclosed, in their 2016 statement, that they endorsed the DSHS’s decision to include an explanation of fetal pain at the beginning of the fetal development section. In opposition to the booklet’s claims about fetal pain, Hollier states that fetuses do not develop the ability to feel pain until at least twenty-four weeks of gestation.

Also, “Your baby’s development,” contains color images of the fetus in the womb and a timeline of fetal development, broken into two-week increments. Certified medical illustrator Peg Gerrity, who created a series of illustrations specifically for use in state-developed informed consent materials, leased those images. Multiple statements accompany each illustration, explaining the development of different features and vital organs at each stage. Each section of the timeline ends with the size of the fetus in inches.

Next, “Abortion risks” describes the risks generally associated with abortion. The section states, in large red letters at the top of the page, that several factors can influence the risks of having an abortion. “Death” is the first risk listed, followed by “Physical Risks,” “Mental Health Risks,” “Future Infertility,” and “Breast Cancer Risk.” The first section, “Death,” cites a CDC statistic of 0.73 deaths for every 100,000 legal abortions. That section also states that other highly developed countries have shown a higher mortality rate from legal abortions than in the US. “Physical Risks,” as the booklet states, include cramping and vaginal bleeding, nausea or vomiting, and in some cases injuries to internal organs, blood clots, or serious infections. According to Hollier, those physical risks and complications are also often associated with pregnancy. For example, in a 2012 study, researchers analyzed government data on deaths related to pregnancy and abortion and found that women were fourteen times more likely to die during or after childbirth than from complications of an abortion. The researchers commented that the results do not indicate that women should not have a child because it is safer to have an abortion. However, because women who carry their pregnancies to term have more time in which complications could develop, an abortion is not any more dangerous than continuing a pregnancy to term.

Continuing with the section titled “Abortion Risks,” the booklet states that risks include depression, thoughts of suicide, grief, anxiety, regret, sexual dysfunction, avoidance of emotional attachment, and substance abuse. The booklet also urges readers to talk with a family member or spiritual or professional counselor to better understand their decision and directs readers to pregnancy resource centers listed in the accompanying resource directory. Hollier recommends, in her 2013 letter, that the DSHS remove the list of mental health risks, because women can also experience such responses after a miscarriage or a healthy delivery. In 2016, the Texas Policy Evaluation Project cited the Turnaway Study conducted from 2008 to 2010, which explored mental health outcomes after abortion, as the best available data to refute the claims made in the booklet about mental health. The Turnaway Study compared women who had an abortion to women who initially wanted an abortion but carried the pregnancy to term and found no difference in mental health outcomes between the two groups.

The booklet continues to list several risks that can result from an abortion, including infertility and breast cancer. In “Future Infertility,” the booklet states that a woman faces a greater risk of infertility if, when she receives an abortion, she is further along in her pregnancy. Complications that can cause infertility include infection or a cut or torn cervix. In “Breast Cancer Risk,” the booklet states that if a woman gives birth, then she is less likely to develop breast cancer in the future. The booklet further states that research indicates that having an abortion does not guarantee increased protection against breast cancer. The booklet mentions that, at the time of its publication, doctors and scientists were studying the relationship between breast cancer and abortion and urges readers to ask their doctors for further information. In 2016, the Texas Policy Evaluation Project stated that the National Cancer Institute concluded that having an abortion or miscarriage does not increase a woman’s risk of developing breast cancer. Also, the American College of Obstetricians

and Gynecologists, or the ACOG, put out a statement in 2003, saying that recent studies at the time showed no causal relationship between induced abortion and an increase in breast cancer risk. As of 2021, neither the National Cancer Institute or the ACOG have not changed their positions.

In the following section, “Making an informed decision,” the booklet describes all the information that the DSHS deems necessary before a pregnant woman can make the decision to have an abortion. In a statement, in large red letters at the top of the section, the booklet states that the reader should know as much as they can about their options to make an informed decision. Also, in that statement, the booklet makes it known that there are counseling services available to help readers fully understand each option. The DSHS then further divides “Making an informed decision” into subsections, including “Before an Abortion,” “Medical and Social Assistance,” “Child Support Services,” and “Adoption Services.”

In “Before an Abortion,” the booklet describes all the information regarding abortion that the reader has a right to know and the physician has a responsibility to provide. That information includes a physical exam, a description of, what the booklet calls, “the baby in the reader’s womb,” a list of agencies that provide alternatives to abortion, and a list of organizations that provide sonogram services. A sonogram is an image created with an ultrasound, which is a procedure that uses sound waves to see inside of a woman’s body, including her fallopian tubes, ovaries, and uterus. The booklet then describes the mandated procedures that the doctor must perform if the woman decides to have an abortion as part of the informed consent process. That includes performing a sonogram at least twenty-four hours before the procedure and describing the dimensions and features of the embryo or fetus. The woman may choose not to view the sonogram image of the fetus but has the right to view it at any time. The physician must also provide the woman with A Woman’s Right to Know booklet at least twenty-four hours before the procedure and obtain her written consent for the procedure. Also, if the physician is going to perform a medication abortion, or an abortion triggered by taking certain medications without surgical interventions, then they must provide the woman with the final printed label of the drugs used in the procedure.

“Making an informed decision” continues, describing the various medical and social services available to pregnant women, specifically options beside abortion. In the section “Medical and Social Assistance,” the booklet details additional mandated information that the physician must provide to women before performing any abortion procedure. That includes information about medical assistance benefits that can help with prenatal care and childcare, public and private agencies that provide assistance to survivors of rape or incest, and agencies that provide information about pregnancy prevention and birth control. The booklet also informs women of the Texas Baby Moses/Safe Haven law, which allows parents to leave an infant who appears to be under sixty days old at any hospital, fire station, or any other designated emergency care provider. The law does not require parents to come back for the infant, and parents will not face criminal charges if the infant is safe and healthy.

Next, “Making an informed decision” includes information about Child Support Services and Adoption Services. Under the heading “Child Support Services,” the booklet directs readers to the Texas Office of the Attorney General, which can help them obtain child support from the father. Texas law mandates that the father is required to pay child support, stating that Texas has a high rate of success when it comes to child support payment collection. Further, the booklet states that if the reader is a survivor of family violence, then there are ways to pursue child support safely. Further, under the heading “Adoption Services,” the booklet addresses adoption, stating that to choose adoption means the reader wants the baby to have a good life. The booklet also later refers to adoption as a brave and loving choice for the baby. The booklet concludes, saying it is never too late to choose adoption. The booklet also states that the decision can be made even after the baby is born.

Following “Making an informed decision,” the section “Abortion procedures and side effects” describes the different abortion procedures in detail and their respective side effects and risks. In a paragraph, in large red letters at the top of the section, the booklet restates the general physical risks associated with abortion. The booklet then categorizes procedures as either First Trimester Abortions or Second Trimester Abortions.

Under “First Trimester Abortions,” the booklet includes descriptions of two types of first trimester

abortions. First, the booklet describes a medication abortion, which the booklet calls a medical or nonsurgical abortion. The booklet first states that a medication abortion requires several visits to a physician, which the Texas Policy Evaluation Project states is untrue for the administration of misoprostol, and the medicine used causes bleeding, cramping, and passing of the fetus and other tissues. The booklet also states that in some cases, excessive bleeding may require blood transfusions or other interventions, including surgery. Finally, the introductory paragraph states that severe infection is a known risk of medication abortion, though the paragraph does not state the likelihood of severe infection.

The booklet then lists statistics about possible complications of a medication abortion. For example, the booklet states that less than three percent of medication abortions will not work and will result in a surgical procedure to complete the abortion. Also the booklet states that women need emergency health care in up to six in every thousand procedures, as well as one in every hundred procedures will require surgical intervention to stop bleeding or fully remove the placenta or fetal tissue, which the booklet describes as parts of the baby. In regard to that point, the Texas Policy Evaluation Project stated that surgical intervention to stop bleeding or fully remove the placenta can also occur during pregnancy. The booklet also states that complications may lead to increased risk of infertility and that severe bacterial infections after medication abortions have rarely led to death. The booklet also provides a list of women who should not have a medication abortion, including those who are allergic to any of the medications or have a bleeding disorder.

After listing the possible risks and complications, the booklet describes the procedure of a medication abortion. The booklet states that after taking mifepristone, which is a medication that blocks the production of hormones necessary to maintain pregnancy, patients will experience vaginal bleeding for between nine and sixteen days but up to thirty days and will pass blood clots and fetal tissue. The physician will make an appointment for two days after the woman takes mifepristone, and then prescribe a medication that leads to the uterus emptying its contents, called misoprostol. The booklet states that the woman can take misoprostol either immediately after mifepristone or up to forty-eight hours later. According to the booklet, a physician prescribes misoprostol if the medication abortion is not complete. In opposition to that description, reproductive healthcare organization Planned Parenthood describes the procedure differently, only referring to bleeding in terms of misoprostol and stating that both medications are necessary to complete the abortion.

“First Trimester Abortions” continues with a description of suction curettage, which is also called dilation and curettage, vacuum curettage, or vacuum aspiration. The booklet describes the surgical procedure, stating that it takes ten to fifteen minutes but may last longer if what the booklet calls the baby is more developed. According to the ACOG, in dilation and curettage, a physician opens, or dilates, the woman’s cervix and inserts a thin suction instrument into the uterus to remove the contents. The booklet describes several risks and complications of dilation and curettage, including infection, which the booklet states is usually caused by an existing at the time of the procedure, and hemorrhaging, or excessive bleeding. The booklet also states an emergency removal of the uterus, or hysterectomy, may be necessary to end the bleeding. In their letter to the DSHS, the Texas Policy Evaluation Project stated that hemorrhage is rare after first-trimester abortion and that there are no reports of hysterectomy as a solution to treat hemorrhaging after a first-trimester abortion.

After “First Trimester Abortions,” the booklet describes dilation and evacuation under “Second Trimester Abortions.” In bolded and italicized letters at the beginning of the section, the booklet states that physicians may perform dilation and evacuation during the second trimester of pregnancy, or thirteen and twenty-two weeks after the woman’s last period. The booklet then describes the procedure, stating that it involves the physician removing the contents of the uterus with surgical instruments. The booklet also refers to what it calls the baby and tells the reader that the physician will remove it piece by piece, using surgical instruments. Then, the booklet talks about several risks associated with the procedure. The booklet lists death, in rare cases, as well as injury to the cervix, uterus, or other organs that results from injury to the uterus, hemorrhaging, and infertility resulting from complications as complications. Referring to that point, the Texas Policy Evaluation Project stated in their letter that those complications are also potential complications of pregnancy. A note at the bottom of the page states that Texas law prohibits abortion after the second trimester, except in cases of medical emergency or severe fetal abnormalities.

Next, the section called “Pregnancy and childbirth” describes the process and potential risks of pregnancy and childbirth. The booklet includes a statement, in red and italicized letters, at the top of the section saying that birth is a life-changing experience that is mostly safe. However, the booklet states that complications may arise during pregnancy and childbirth, including high blood pressure, complicated delivery, premature labor, depression, infection, and hemorrhaging. The booklet then states that women can reduce the possibility of complications if they receive early and regular prenatal care, eat healthy and exercise, and avoid alcohol, tobacco, and other drugs. The booklet then describes the possible risks and side effects of both vaginal delivery and caesarean section, or a surgery to deliver a baby. Death is the last risk mentioned for each procedure, although it is very rare. Finally, the booklet briefly discusses postpartum symptoms and postpartum depression. The booklet states that, following childbirth, women may experience intense feelings of fear, worry, or sadness, to varying degrees and offers that women should consult their healthcare providers with questions or concerns.

The final section of the booklet, “After an abortion,” describes what happens after the abortion procedure and warning signs of life-threatening complications that women should look out for. That section begins with a statement in red, italicized letters, telling the reader to call their abortion provider or go to the emergency room if the following complications occur after they receive an abortion. Those symptoms include heavy bleeding, stomach pain or illness after taking misoprostol, fever, difficulty breathing, chest pain, severe pain, or disorientation. The booklet states that the patient must schedule a follow-up appointment up to fourteen days after the abortion. The booklet also encourages women to seek counseling if they are experiencing depression, thoughts of suicide, or other psychological distress after having an abortion.

The entirety of the 2016 booklet does not contain the term unborn child at all, which was one of Hollier’s suggestions. That version, however, uses the phrase your baby 121 times and only uses embryo six times and fetus three times. In a December 2016 interview, Daniel Grossman, an investigator at the Texas Policy Evaluation Project, stated that such language was not medically appropriate and sounded very biased, and that he could only guess that such language was used to make women feel bad about their decision to have an abortion.

Supporters of A Woman’s Right to Know see it as a vital resource for women who want to have an abortion. For example, Texas Right to Life praised the booklet as an important resource for women facing, what the organization called, the life-altering decision of abortion. Texas Right to Life also praised DSHS for resisting, what they called, the ideologically motivated demands of the pro-abortion lobby and for rejecting what they called multiple deceptive and malicious recommended changes.

Conflictingly, abortion rights advocates call the booklet biased, misleading, and ideologically motivated. Heather Busby, then executive director of NARAL Texas, an organization that advocates for abortion rights, called the booklet coercive, stating it attempts to alarm people who seek an abortion. Kryston Skinner, then organizer for the Texas Equal Access Fund, another organization that advocates for abortion rights, spoke out in 2016 about her experience receiving the original version of the state-authored booklet when she had an abortion. Skinner told the Austin Chronicle that the booklet did not change her mind about her decision to have an abortion but did directly cause her emotional distress and made her feel stigmatized against. Abortion rights advocates have also criticized Texas’s Women’s Right to Know Act for intervening in the relationship between physicians and their patients by requiring physicians to violate their patients’ trust by giving their patients biased information. By Texas law, physicians can tell patients that the state required them to give the information but that they don’t agree with it. However, Eric Gonzalez, a medical student in Texas in 2016, told the Austin Chronicle that patients end up being confused when physicians try to debunk the state-mandated information.

In 2019, the Informed Consent Project at Rutgers University in New Brunswick, New Jersey examined the most, at that time, up-to-date revisions of A Woman’s Right to Know to determine the accuracy of the information they provided about fetal development. The researchers found that twenty-five percent of statements about fetal development in the booklet were medically inaccurate. In one of the main findings of the Informed Consent Project, which evaluated state-developed informational materials for abortion from twenty-seven states, the researchers described an over-

all tendency of informed consent booklets to attribute more human qualities, such as limbs and complex organ systems, to the embryo and early fetus.

As of 2021, Texas law mandates that physicians distribute A Woman's Right to Know to women in Texas who want to have an abortion.

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