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Governor

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## **IDOH Guidance for Implementation of Newly Enforceable Patient Informed Consent Requirements**

July 19, 2022

Dear Providers:

As a result of recent action by the Seventh Circuit U.S. Court of Appeals (*Whole Woman's Health Alliance v. Rokita*), an injunction preventing the enforcement of certain informed consent disclosure laws was vacated on July 11, 2022 and these provisions are now enforceable.

Providers are immediately required to disclose the following information to patients seeking an abortion as part of the informed consent process:

- That human physical life begins when a human ovum is fertilized by a human sperm.
- That objective scientific information shows that a fetus can feel pain at or before twenty (20) weeks of postfertilization age.
- Dissemination of the Perinatal Hospice Brochure for patients diagnosed with a lethal fetal anomaly (<https://www.in.gov/health/files/Perinatal-Hospice-Brochure.pdf>)

The Indiana Department of Health is in the process of updating all appropriate state forms and documents. Until those updates are completed, providers should continue to document informed consent and disclosure in the patient's medical record to verify compliance with state laws.

For reference, these requirements can be found under *IC 16-34-2-1.1*.

Sec. 1.1. (a) An abortion shall not be performed except with the voluntary and informed consent of the pregnant woman upon whom the abortion is to be performed. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if the following conditions are met:

- (1) At least eighteen (18) hours before the abortion and in the private, not group, presence of the pregnant woman, the physician who is to perform the abortion, the referring physician or a physician assistant (as defined in IC 25-27.5-2-10), an advanced practice registered nurse (as defined in IC 25-23-1-1(b)), or a certified nurse midwife (as defined in IC 34-18-2-6.5) to whom the responsibility has been delegated by the

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physician who is to perform the abortion or the referring physician has informed the pregnant woman orally and in writing of the following:

...

**(E) That human physical life begins when a human ovum is fertilized by a human sperm.**

...

**(G) That objective scientific information shows that a fetus can feel pain at or before twenty (20) weeks of postfertilization age.**

...

(b) This subsection applies to a pregnant woman whose unborn child has been diagnosed with a lethal fetal anomaly. The requirements of this subsection are in addition to the other requirements of this section. At least eighteen (18) hours before an abortion is performed on the pregnant woman, the physician who will perform the abortion shall:

(1) orally and in person, inform the pregnant woman of the availability of perinatal hospice services; and

**(2) provide the pregnant woman copies of the perinatal hospice brochure developed by the state department under IC 16-25-4.5-4 and the list of perinatal hospice providers and programs developed under IC 16-25-4.5-5, by printing the perinatal hospice brochure and list of perinatal hospice providers from the state department's Internet web site.**

(c) If a pregnant woman described in subsection (b) chooses to have an abortion rather than continuing the pregnancy in perinatal hospice care, the pregnant woman shall certify in writing, on a form developed by the state department under IC 16-25-4.5-6, at least eighteen (18) hours before the abortion is performed, that the pregnant woman has been provided the information described in subsection (b) in the manner required by subsection (b).