

MINUTES

Rules Review Committee



Representative Jon Hansen, Chair
Senator Jean Hunhoff, Vice Chair

Four hundred fifth meeting
Thursday, January 6, 2022

Room 414 – State Capitol
Pierre, South Dakota

The four hundred fifth meeting of the Interim Rules Review Committee (IRRC) was called to order by Representative Jon Hansen, Chair, at 2:00 p.m. (CT) on January 6, 2022, via electronic conference and in Room 414 at the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members present: Representatives Ryan Cwach, Jon Hansen, Chair, and Kevin Jensen; and Senators Troy Heinert, Jean Hunhoff, Vice Chair, and Timothy Johns. Staff members present were John McCullough, Code Counsel, Kelly Thompson, Supervisor of Text Editing Services, and Hilary Carruthers, IT Support Specialist.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For continuity, these minutes are not necessarily in chronological order.

Approval of Minutes

Senator Hunhoff moved, seconded by Senator Johns, that the December 27, 2021, meeting minutes be approved. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, Jensen, and Johns.

Rules Reviewed

Department of Health: Amend rules to require that:

- No medical abortions by use of mifepristone and misoprostol be conducted except in a licensed abortion facility, with an observation period;
- The pregnant woman be informed that if she changes her mind and decides to carry the baby to term, the effects of the medications maybe reversable; and
- Abortion facilities collect and maintain certain information.

Ms. Ali Turnow and Ms. Lynne Valenti, Department of Health, reviewed the proposed rules, which received their initial hearing by the Interim Rules Review Committee on December 27, 2021.

Public Testimony - Proponents

Dr. Donna Harrison, American Association of Pro-Life Obstetricians and Gynecologists, testified and submitted [written testimony](#) in support of the proposed rules.

Dr. Lynn Ritter, a general physician, represented himself in testifying in support of the changes, saying the terminology in the rule is to help protect both the mother and the fetus.

Dr. Michael Fiegen, a retired obstetrician/gynecologist, spoke on his own behalf. Dr. Fiegen said limiting the number of encounters with the patient weakens the process with the procedure and limiting the number of visits as an "inconvenience" misses the medical point.

Public Testimony - Opponents

Dr. Sarah Traxler, Planned Parenthood Northcentral States, told members the rule interferes with her ability to treat her patients as they should be treated and was not medically necessary. Dr. Traxler said medication or chemical abortion is a standard method of abortion with a two-drug procedure being the most common method. According to Dr. Traxler, in 2020, 40 percent of abortions in South Dakota were medication abortions and South Dakota patients currently live under stricter guidelines than those required by the Food and Drug Administration (FDA).

Dr. Erica Schipper, an obstetrician/gynecologist representing herself, explained that the drugs used for a chemical abortion (mifepristone and misoprostol) are also used for other conditions, including miscarriages. Dr. Schipper testified the second drug was not included in the FDA Risk Evaluation and Mitigation Strategies (REMS) and was being added to the proposed rule without precedent, and the state had offered no viable explanation of why it needed to be administered in person. She added that the in person visit requirement could be problematic for patients using the drugs for miscarriage for both practical and emotional reasons.

[Written testimony](#) in opposition to the proposed rules was provided to the committee members by the **South Dakota section of the American College of Obstetricians and Gynecologists**.

In rebuttal, Ms. Turnow reiterated her assertion that [SDCL 34-23A-51](#) gives the department the authority to promulgate the rule and said the rule will protect the health and safety of patients.

Representative Hansen asked Dr. Ritter for his input on the comments made by the opponents. Dr. Ritter said there are vast differences between a spontaneous abortion and an induced abortion, due to informed consent issues. He added that ethics dictate the involvement of a professional physician during visits with the patient to ensure that the woman is aware of what is happening and what could happen as a result of the procedure.

Senator Heinert asked why a woman needs to come to a facility to receive the second drug. Dr. Schipper responded that the drug can take from four hours to 48 hours to act, and women who are choosing chemical abortions do so because they want to complete them in the privacy of their own home.

Representative Cwach inquired as to whether the drugs are used in a second trimester situation and noted the FDA regulations say it is only allowable for the first 70 days. Dr. Schipper confirmed the drugs are used in the second trimester and that safety data shows it is not unusual for the drugs to be used outside of 70 days though it happens rarely.

Senator Hunhoff asked what the timeframe is for expelling the fetus after the first drug is administered. Dr. Ritter replied that the first drug makes the body not support the fetus and the second drug expels it; there is a 70 percent chance the child will make it to term if the mother does not take the second drug.

Responding to Senator Hunhoff on the matter of patient safety and the potential for drug-to-drug interactions, Dr. Ritter said if a woman already had a miscarriage there is no need to administer the second drug and the common practice is to not give any of these medications if the miscarriage has already occurred.

Representative Hansen said the requirement for an initial consultation between the patient and a physician is important and the South Dakota Task Force to Study Abortion found Planned Parenthood in South Dakota does not properly screen for coercion or sex trafficking or offer guidance to the mother. He commented that this is a medical procedure that terminates the life of an unborn child, and Planned Parenthood seems only interested in moving mothers through the process as quickly as possible.

Representative Hansen moved, seconded by Representative Jensen, that the review of the rules proposed by the Department of Health is complete.

Senator Heinert said that today's rules hearing has been turned into a debate on abortion, which should never have happened, and the law the department is citing as authority is overly broad. He added that he was not willing to give up the committee's authority to review and act on administrative rules by putting into rule something that originated out of an Executive Order.

Representative Jensen agreed that the process would have been better served by bringing a bill to the legislature for a thorough debate and said he supported the motion even though it is a highly emotional issue, and the hearing should not have been a discussion about abortion.

Senator Johns commented that his role on the IRRRC is to determine if the process is complete which means all the procedures have been complied with, and it is not his position to decide if the rule itself is reasonable. Although he is troubled by the situation, he will support the motion.

Motion prevailed on a roll call vote with 4 ayes and 2 nays. Voting aye: Hansen, Hunhoff, Jensen, and Johns. Voting nay: Cwach and Heinert.

Public Testimony

No public testimony was provided in addition to that offered on specific rules.

Adjournment

Representative Hansen moved, seconded by Senator Johns, that the meeting be adjourned. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, Jensen, and Johns.

Chair Hansen adjourned the meeting at 3:14 p.m.