WEST VIRGINIA CODE: §16-2I-2

§16-2I-2. Informed consent.

An abortion may not be performed in this state except with the voluntary and informed consent of the female upon whom the abortion is to be performed. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if, and only if:

(a) The female is told the following, by telephone or in person, by the physician or the licensed medical professional to whom the responsibility has been delegated by the physician who is to perform the abortion at least 24 hours before the abortion:

(1) The particular medical risks associated with the particular abortion procedure to be employed, including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies, and infertility;

(2) The probable gestational age of the embryo or fetus at the time the abortion is to be performed;

(3) The medical risks associated with carrying her child to term; and

(4) If a chemical abortion involving the two-drug process of mifepristone is initiated and then a prostaglandin such as misoprostol is planned to be used at a later time, the female shall be informed that:

(A) Some suggest that it may be possible to counteract the intended effects of a mifepristone chemical abortion by taking progesterone if the female changes her mind, before taking the second drug, but this process has not been approved by the Food and Drug Administration.

(B) After the first drug involved in the two-drug process is dispensed in a mifepristone chemical abortion, the physician or agent of the physician shall provide written medical discharge instructions to the pregnant female which shall include the statement:

“If you change your mind and decide to try to counteract the intended effects of a mifepristone chemical abortion, if the second pill has not been taken, please consult with your physician.

(i) You might experience a complete abortion without ever taking misoprostol;

(ii) You might experience a missed abortion, which means the fetus is no longer viable, but the fetus did not leave your body; or

(iii) It is possible that your pregnancy may continue; and

(iv)You should consult with your physician.”

(C) The female shall certify, as part of the informed consent process for any medical procedure, that she has been informed about the above possibilities regarding a chemical abortion.

(D) Notwithstanding any law to the contrary, a physician acting in conformity with the informed consent provisions of this section relating to the possibility of counteracting the intended effects of a chemical abortion, or a physician prescribing a non-Food and Drug Administration approved drug therapy to counteract a chemical abortion is not liable for any loss, damage, physical injury, or death arising from any information provided by the physician related to counteracting the intended effects of a chemical abortion or arising from prescribing a non-Food and Drug Administration approved drug therapy to counteract a chemical abortion.

The information required by this subsection may be provided by telephone without conducting a physical examination or tests of the patient, in which case the information required to be provided may be based on facts supplied by the female to the physician or other licensed health care professional to whom the responsibility has been delegated by the physician and whatever other relevant information is reasonably available to the physician or other licensed health care professional to whom the responsibility has been delegated by the physician. It may not be provided by a tape recording, but must be provided during a consultation in which the physician or licensed health care professional to whom the responsibility has been delegated by the physician is able to ask questions of the female and the female is able to ask questions of the physician or the licensed health care professional to whom the responsibility has been delegated by the physician.

If a physical examination, tests or the availability of other information to the physician or other licensed health care professional to whom the responsibility has been delegated by the physician subsequently indicate, in the medical judgment of the physician or the licensed health care professional to whom the responsibility has been delegated by the physician, a revision of the information previously supplied to the patient, that revised information may be communicated to the patient at any time before the performance of the abortion procedure.

Nothing in this section may be construed to preclude provision of required information in a language understood by the patient through a translator.

(b) The female is informed, by telephone or in person, by the physician who is to perform the abortion, or by an agent of the physician, at least 24 hours before the abortion procedure:

(1) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care through governmental or private entities;

(2) That the father, if his identity can be determined, is liable to assist in the support of her child based upon his ability to pay even in instances in which the father has offered to pay for the abortion;

(3) That she has the right to review the printed materials described in §16-2I-3 of this code, that these materials are available on a state-sponsored website and the website address; and

(4) That the female will be presented with a form which she will be required to execute prior to the abortion procedure that is available pursuant to §16-2I-3 of this code, and that the form to be presented will inform her of the opportunity to view the ultrasound image and her right to view or decline to view the ultrasound image, if an ultrasound is performed.

The physician or an agent of the physician shall orally inform the female that the materials have been provided by the State of West Virginia and that they describe the embryo or fetus and list agencies and entities which offer alternatives to abortion.

If the female chooses to view the materials other than on the website, then they shall either be provided to her at least 24 hours before the abortion or mailed to her at least 72 hours before the abortion by first class mail in an unmarked envelope.

The information required by this subsection may be provided by a tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to have the printed materials given or mailed to her.

(c) The form required pursuant to subdivision (b)(4) of this section shall include the following information:

(1) It is a female's decision whether or not to undergo any ultrasound imaging procedure in consultation with her health care provider;

(2) If an ultrasound is performed in conjunction with the performance of an abortion procedure, the female has the right to view or to decline to view the image; and

(3) That the female has been previously informed of her opportunity to view the ultrasound image and her right to view or decline to view the ultrasound image. The female shall certify her choice on this form prior to the abortion procedure being performed.

The female shall certify in writing, before the abortion, that the information described in subsections (a) and (b) of this section has been provided to her and that she has been informed of her opportunity to review the information referred to in subdivision (b)(3) of this section.

Before performing the abortion procedure, the physician who is to perform the abortion or the physician's agent shall obtain a copy of the executed certification required by the provisions of subsections (b) and (c) of this section.