Texas H.B. 1210: Combatting Bad Medicine Laws

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H.B. 1210, referred to as the “You Can’t Force Doctors to Lie” Act and introduced by Representative Donna Howard (D-Austin), is based on the fundamental concept that politicians are not medical experts, and that patients and their health care providers – not politicians – should make health care decisions. H.B. 1210 would prohibit interference with licensed health care providers’ ability to exercise their professional judgment so that patients can receive care that is based on medical evidence, not politics.

Bad Medicine Laws in Texas

Across the country, politicians are increasingly passing laws that mandate how health care providers must practice medicine, regardless of established medical standards, their professional medical judgment or the needs of their patients. Bad Medicine: How a Political Agenda is Undermining Women’s Health Care, a 2014 report by the National Partnership for Women & Families, documents this trend, finding that a majority of states have one or more of these “bad medicine” laws.

Texas is a key offender, with a number of abortion restrictions that bear no relationship to medical standards and undermine health care providers’ efforts to provide the highest quality, patient-centered care. Under H.B. 1210, health care providers would be permitted to determine whether following those mandates would be “inconsistent with accepted, evidence-based medical practices and ethical standards” and, if so, to apply their professional judgment in the care of their patients.

The bad medicine laws specifically addressed by H.B. 1210 include:

- **Mandatory provision of biased and inaccurate information.** Under Texas law, providers are required to offer women state-drafted materials that include biased and false information such as a link between abortion and risk to future fertility and an increased chance of breast cancer – both of which are patently false.

- **Describe and display ultrasound mandate.** Under Texas law, providers are required to administer an ultrasound, display the image and give a pre-scripted description of it – even when a woman objects. Providers must also make the fetal heartbeat audible. This process serves no medical need; instead it usurps health care providers’ medical judgment and ignores the needs and best interests of women.

- **Mandatory delay in care and an extra unnecessary visit to the doctor.** Under Texas law, a patient must wait 24 hours after receiving a state-mandated ultrasound and biased information before being able to obtain abortion care – despite the fact that
such a delay serves no medical purpose and actually undermines the provision of care. As a result of the mandatory delay, a woman seeking abortion care must make a medically unnecessary second trip to the doctor to receive the abortion. The 24-hour delay may only be waived if she can certify that she lives more than 100 miles from the nearest abortion provider.\(^5\)

- **Ban on providing medication abortion via telemedicine.** Telemedicine is the delivery of health care services using telecommunications technology. It is a safe way to make health care more accessible, especially to individuals in rural or underserved areas. When medication abortion is administered via telemedicine, a woman meets in-person with a trained medical professional at a health care clinic. She then meets via video conference system with a physician who has reviewed her medical records and the results of her in-person examination. Once the medical visit is completed, the medication is dispensed to the patient.\(^6\)

Studies comparing in-person medication abortion with telemedicine medication abortion show equivalent effectiveness and rates of positive patient experience\(^7\); as the American College of Obstetricians and Gynecologists has noted, the two types of visits are “medically identical.”\(^8\) Yet Texas bans medication abortion via telemedicine,\(^9\) contrary to medical evidence demonstrating it is safe and improves access.

- **Ban on providing medication abortion in accordance with the most up-to-date standards.** Under Texas law, providers are prohibited from following the current, evidence-based protocols when administering medication abortion. Instead, they must follow an outdated FDA protocol from 15 years ago. The restriction limits the provision of medication abortion to the first seven weeks of pregnancy, despite the fact that research shows medication abortion is effective through at least 10 weeks of pregnancy – thereby eliminating medication abortion as an option for many women entirely. And although current medical standards provide that women can safely take the second medication in the privacy of their own home, Texas law mandates that women make an unnecessary return trip to the doctor to take the medication there. The law also requires providers to follow the dosage instructions specified by the American College of Obstetricians and Gynecologists Practice Bulletin as of January 2013,\(^10\) guidelines that were no longer current as of March 2014, when a new updated Practice Bulletin was issued. As ACOG and the American Medical Association explained in a brief urging the Fifth Circuit Court of Appeals to strike down this restriction, “[e]ven laws that mandate a protocol that is valid at the time of the law’s enactment are ill-advised because medical knowledge is not static. As knowledge advances, medical treatments enshrined within such laws become outdated, denying patients the best evidence-based care.”\(^11\)

**Conclusion**

Health care providers should not be forced to choose between following their medical and ethical obligations to their patients and following the law. Yet that is exactly what is happening in Texas. Numerous laws in Texas directly interfere in medical decision-making and undermine the patient-provider relationship by usurping providers’ medical judgment and ignoring patients’ needs and preferences. H.B. 1210 would combat these bad medicine laws by bringing health care decisions back where they belong – between a woman and her health care provider.
1 Tex. H.B. 1210, 84th Leg., R.S. (2015)

2 Tex. Health & Safety Code Ann. § 171.012(a)(1)(B)(ii-iii). Texas law requires providers to give information claiming that there is a link between abortion and breast cancer and a risk to future fertility. State-drafted materials in Texas also include an unfounded assertion that fetuses can feel pain, despite the lack of scientific evidence, and content emphasizing negative emotional responses to abortion, even though such content is not mandated by Texas law. Guttmacher Institute. (2015, August 1). State Policies in Brief: Counseling and Waiting Periods for Abortion. Retrieved 2 September 2015, from http://www.guttmacher.org/statecenter/spibs/spib_MWPA.pdf


9 Ibid. Note that the text of the law says “American Congress of Obstetricians and Gynecologists Practice Bulletin”; however, it is the American College of Obstetricians and Gynecologists that produces these bulletins.