

PARLIAMENT OFFICE,
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The following Bill which will be introduced in the National Assembly is published for general information.

F. A. Narain,
Clerk of the National Assembly.



GUYANA

Bill No. 27 of 1993

MEDICAL TERMINATION OF PREGNANCY BILL 1993

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A BILL

Intituled

AN ACT to reform the law relating to abortion and to provide for matters connected therewith.

A.D. 1993

Enacted by the Parliament of Guyana:—

PRELIMINARY

Short title
and appli-
cation.

1. (1) This Act may be cited as the Medical Termination of Pregnancy Act 1993.

(2) This Act applies to treatment for the termination of pregnancy by medication, surgical procedures or other means.

2. (1) In this Act —

Inter-
pretation.

- (a) "approved institution" means any institution approved, or deemed to be approved, by the Minister for the purposes of this Act;
- (b) "foetus" includes an embryo;
- (c) "institution" means —
 - (i) a hospital;
 - (ii) a clinic;
 - (iii) a nursing home, including a maternity home;
 - (iv) any other facility where arrangements for the treatment for termination of pregnancy exist;
- (d) "medical practitioner" means any person registered as a duly qualified medical practitioner under any law, for the time being in operation in Guyana, relating to the registration of medical practitioners;
- (e) "nurse" means any person registered as a duly qualified nurse under any law, for the time being in operation in Guyana, relating to the registration of nurses;
- (f) "person of unsound mind" means an idiot or a person who is suffering from mental derangement;
- (g) "pregnancy" means an intra-uterine human pregnancy where the foetus is alive;
- (h) "prescribed" means prescribed by regulations made by the Minister;
- (i) "termination of pregnancy" means termination of human pregnancy with an intention other than to produce a live birth.

(2) For the purposes of this Act, the duration of a pregnancy shall be determined —

- (a) by calculating from the first day of the last normal menstruation of the pregnant woman and ending on the last day of the relevant week; and
- (b) by clinical examination.

APPROVED INSTITUTIONS

Approval
of institu-
tion.

3. (1) The Minister may, having regard to the qualifications or experience of the medical practitioners (in particular whether they have specialised qualifications or experience in obstetrics or gynaecology) and of the nurses and medical technical personnel employed by, or working in, an institution, the qualifications or experience of the person in charge of the institution, and the medical equipment and other arrangements available therein, approve an institution for the purposes of this Act.

(2) The approval of an institution by the Minister shall be subject to the provisions of this Act and such conditions as may be prescribed or specified by the Minister.

(3) While approving an institution the Minister shall specify whether the approval is limited to the treatment for the termination of pregnancy by any particular medical procedure or procedures, and to cases of duration of any pregnancy of less than such period as may be specified by the Minister, or whether the approval is for all procedures and in respect of all cases of treatment for the termination of pregnancy in accordance with the provisions of this Act.

(4) Where an institution is owned and managed by a person, other than the Government or any corporate body owned by the State or the controlling interest in which vests in the State or in any agency on behalf of the State, it shall be approved only on an application made therefor by the person owning the institution.

(5) Any change in the medical practitioners, nurses or medical technical personnel working in an approved institution, or any deterioration or non-functioning of the medical equipment or other arrangements available in an approved institution shall be intimated to the Minister by the person in charge of the institution as soon as may be possible and in any case before the expiry of fourteen days from the date on which the change, deterioration or non-functioning took place.

Government
hospitals
deemed
to be
approved
approved

4. All hospitals owned or managed by the Government shall be deemed to be approved institutions for the purposes of all medical procedures for, and all cases of, the treatment for the termination of pregnancy in accordance with the provisions of this Act.

5. (1) The Minister shall notify in the Gazette, and a newspaper having circulation in Guyana, the name and address of every approved institution and of the person in charge of the institution and such other particulars relating to such institution or person as may be prescribed.

Notification of approved institutions and certificate of approval.

(2) The Minister shall give a certificate to an approved institution stating that it is an approved institution and the medical procedures for the termination of pregnancy, and the cases of pregnancy having regard to its duration, to which the approval relates, the name and address of the person in charge of the institution and such other particulars as may be prescribed.

(3) A certificate issued under subsection (2) shall be displayed by an approved institution at a prominent place in the institution.

6. (1) Every approved institution, and every person employed by such institution, —

Conditions of approval of institution.

- (a) shall comply with all the provisions of this Act and the regulations made under it and shall not contravene any provision of this Act or such regulations;
- (b) maintain such documents and records as may be specified by this Act or may be prescribed.

(2) The approval of an institution under this Act shall be valid for five years or such other shorter period as may be prescribed, but may be renewed by the Minister.

7. (1) The Minister may cancel the approval of an approved institution if in his opinion —

Cancellation of approval of institution.

- (a) any person employed by the institution, or the institution, has refused or failed to comply with, or contravened, any provision of this Act; or
- (b) having regard to a change in the medical practitioners, nurses or other persons employed by, or working in the institution, or the deterioration of non-functioning of the medical equipment or other arrangements available in the institution when it was approved, it is not desirable that the institution should continue to be an approved institution.

(2) For the reasons referred to in subsection (1) (b), the Minister may instead of cancelling the approval of an institution for all the medical procedures and cases of duration of pregnancy, in relation to which it was approved, restrict the approval to some or one of such medical procedures or cases of pregnancy.

(3) The Minister shall not cancel the approval of an institution under subsection (1) or restrict the approval under subsection (2) without giving the institution a reasonable opportunity of being heard.

TERMINATION OF PREGNANCY

Termination by oral medication of pregnancy of less than six weeks' duration.

8. (1) Subject to the provisions of this Act, the treatment for the termination of a pregnancy of less than six weeks duration by administering orally any lawful and appropriate medical preparation may be administered by a medical practitioner.

(2) It is not necessary that the treatment referred to in subsection (1), in the cases referred to therein, should be administered in an approved institution and in any such case it shall not be necessary to establish the matters referred to in section 9 (1).

Termination of pregnancy in other cases.

9. (1) Where a pregnancy sought to be terminated is not of less than six weeks duration or the treatment for the termination of the pregnancy is not by administering orally any lawful, and appropriate medical preparation, then, subject to the provisions of this Act, the treatment for the termination of a pregnancy may be administered by a medical practitioner but such treatment shall be administered only —

- (a) in an approved institution approved for that purpose, having regard to the medical procedure involved and the duration of the pregnancy; and
- (b) where, in the opinion of the medical practitioner administering the treatment —
 - (i) the continuance of the pregnancy would involve risk to the life of the pregnant woman or grave injury to her physical or mental health;
 - (ii) there is substantial risk that if the child were born, it would suffer such physical or mental abnormalities as to be seriously handicapped; or

7.

- (iii) on account of being a person of unsound mind, the pregnant woman is not capable of taking care of an infant; or
- (c) where the pregnant woman reasonably believes that her pregnancy was caused by an act of rape or incest and submits a statement to that effect to the person in charge of the approved institution where the treatment is administered; or
- (d) the pregnancy was the result of the failure of the use of contraceptives by the pregnant woman who has a record of regular attendance at a family planning clinic established or maintained by the Government or approved by the Minister, and she submits a statement to that effect to the person in charge of the approved institution where the treatment is administered.

(2) In determining whether the continuance of a pregnancy would involve risk of grave injury to the health of a pregnant woman as mentioned in subsection (1) (b) (i), a medical practitioner shall take into account the pregnant woman's social and economic environment, whether actual or foreseeable.

10. (1) Having regard to considerations of health of the woman concerned and the procedures involved in the treatment for the termination of pregnancy during late stages of pregnancy and the cost of such procedures, it is hereby directed that a pregnant woman seeking treatment for the termination of pregnancy shall seek it within a reasonable time after she, if she has attained the age of majority and is not of unsound mind, or, where she has not attained the age of majority or is of unsound mind, her guardian —

Delay in treatment to be avoided.

- (a) has come to know, or has reason to suspect, that she is pregnant; and
- (b) has come to know of any of the circumstances relating to her, mentioned in section 9, being a ground for administering such treatment.

(2) For the purposes of subsection (1), a period of eight weeks from the date on which the pregnant woman, if she has attained the age of majority and is not of unsound mind, or, where she has not attained the age of majority or is of unsound mind, her guardian has come to know of the matters referred to in paragraphs (a) and (b) of subsection (1) or, if the pregnant woman or her guardian, as the case may be, has come to know of the matters referred to in the said paragraphs (a) and (b) on different dates, the last of

those dates, shall be deemed to be reasonable; and a medical practitioner shall not administer the treatment for the termination of a pregnancy of a woman after the expiry of the said period (as computed on the basis of the statement submitted by the pregnant woman under subsection (3) unless he is satisfied that there are special reasons for so doing which he shall record on the records of the treatment for the termination of pregnancy administered to that woman.

(3) Every pregnant woman seeking treatment from any medical practitioner for the termination of her pregnancy shall submit a statement to that medical practitioner stating the date or dates on which she has come to know of the matters referred to in the paragraphs (a) and (b) of subsection (1), and if she is seeking the treatment for the termination of her pregnancy after the period referred to in subsection (2), the reasons for the delay.

No treatment for termination of pregnancy of more than twenty-eight weeks' duration.

11. Notwithstanding anything contained in this Act, treatment shall not be administered for the termination of a pregnancy if it is of more than twenty-eight weeks' duration.

Consent.

12. (1) Except where the pregnant woman is of unsound mind, the treatment for the termination of a pregnancy shall not be administered except with the written consent of the pregnant woman given before administering the treatment.

(2) The treatment for the termination of a pregnancy of a woman who has not attained the age of majority or of a woman of unsound mind of any age shall not be administered except with the written consent of her guardian, in addition to the written consent of the pregnant woman where required under subsection (1).

Intimation to husband or reputed husband.

13. (1) Where a pregnant woman, seeking termination of her pregnancy is living with her husband or reputed husband and is not of unsound mind, she shall within a reasonable time before seeking the treatment intimate to the husband or reputed husband, as the case may be, her intention to seek termination of the pregnancy.

(2) For the purposes of subsection (1), a woman shall be deemed to be living with her husband or reputed husband, notwithstanding that they are residing in different places for the purposes of employment, business, education or other similar reasons, if the consortium of the woman and her husband or reputed husband, as the case may be, has not been terminated.

Non-application of certain provisions.

14. Sections 9 (2), 12 and 13 shall not apply where the treatment for the termination of a pregnancy is immediately

necessary to save the life of a pregnant woman or to prevent grave permanent injury to her physical or mental health.

15. (1) Subject to subsection (4), no person shall be under any legal duty to participate in any treatment for the termination of a pregnancy to which he has a conscientious objection.

Conscientious objection to participate in treatment.

(2) In any legal proceedings the burden of proof of conscientious objection shall lie on the person claiming such objection.

(3). The burden of proof referred to in subsection (2) may be discharged by any person by a statement on oath or affirmation to the effect that he has a conscientious objection to participating in any treatment authorised by this Act.

(4) Nothing in subsection (1) shall affect the duty of a person to participate in treatment for the termination of a pregnancy that is immediately necessary to save the life of a pregnant woman or to prevent grave permanent injury to her physical or mental health.

16. The Minister may by regulations make arrangements in respect of the provision of counselling services to pregnant women desirous of having treatment for the termination of pregnancy and to women who had such treatment.

Counselling services.

17. (1) A medical practitioner administering treatment for the termination of the pregnancy of a woman under this Act shall take proper care and have regard to all matters concerning the health of the woman to whom the treatment is administered, and where he is of the opinion that it is necessary or desirable, shall consult any other medical practitioner or practitioners, having special qualifications or experience in the appropriate field such as medicine, surgery or psychiatry.

Duty of medical practitioner in administering treatment.

(2) Where the decision of a medical practitioner to administer any treatment for the termination of a pregnancy under this Act has to be based on his opinion on the existence of any particular state of physical or mental health of the pregnant woman or any other fact or circumstance, he shall form his opinion *bona fide* after taking into account all the facts and circumstances of the case in so far as they are known to him or could be ascertained by him by reasonable enquiry or by medical investigation of the pregnant woman.

18. The treatment for the termination of the pregnancy of a woman shall be administered only if the woman has been residing in Guyana for not less than such period as may be prescribed by the Minister.

Requirements as to residence.

Modifi-
cation of
sections
78, 79, 80
and 99 of
Criminal
Law
(Offences)
Act.

Cap: 8:01

19. Notwithstanding sections 78, 79, 80 and 99 of the Criminal Law (Offences) Act, the treatment for the termination of a pregnancy shall be lawful if administered in accordance with the provisions of this Act.

PENALTIES

Penalties
for
offences.

20. (1) Where by or under any provision of this Act any person or any approved institution is required to maintain any document or record, and such person or institution refuses or fails to maintain such document or record, or maintains such document or record but it is incomplete or contains any statement which is false or misleading in any material particular, that person or, in the case of an approved institution, the person in charge of the institution shall be liable, on summary conviction, to a fine of ten thousand dollars and imprisonment for six months.

(2) Where any statement made by a pregnant woman or her guardian under section 9 or 10 is false or misleading in any material particular, the pregnant woman or her guardian, as the case may be, shall be liable, on summary conviction, to a fine of five thousand dollars and imprisonment for six months.

(3) Where any medical practitioner, approved institution or person employed by, or working in, any approved institution contravenes section 24, the medical practitioner, approved institution, or person shall be liable, on summary conviction, to a fine of twenty thousand dollars and imprisonment for one year.

(4) Any person who contravenes or refuses or fails to comply with any provision of this Act or the regulations made thereunder, and for which no penalty has been prescribed by this Act or the Criminal Law (Offences) Act, shall be liable, on summary conviction, to a fine of five thousand dollars and imprisonment for three months.

Cap. 8:01

MISCELLANEOUS

State-
ment by
guardian:

21. Any statement required to be made by a pregnant woman under this Act shall, where she has not attained the age of majority or is of unsound mind, be made by her guardian, and any reference in this Act to a statement by a pregnant woman shall, in such cases be construed as a reference to a statement by the guardian of the pregnant woman.

Sums pay-
able for
treatment.

22. (1) The Minister may, if he is of the opinion that it is necessary in the public interest to do so, prescribe by regulations the

sum to be charged by a medical practitioner or an approved institution for the treatment for the termination of a pregnancy and different fees may be prescribed for different medical or surgical procedures for such treatment and with reference to different cases of duration of pregnancy.

(2) Where the Minister has prescribed the fees for any procedure for the treatment for the termination of any case of pregnancy, a medical practitioner or an approved institution shall not charge for any procedure for the treatment for the termination of that case of pregnancy any sum in excess of the sum so prescribed.

23. (1) Where the treatment for the termination of a pregnancy is administered by a medical practitioner, that medical practitioner and where such treatment is administered at an approved institution, that institution, shall maintain, at the premises where the medical practitioner ordinarily carries on such treatment or the premises of the approved institution, as the case may be, true and complete records containing the name, address and other relevant particulars of the person to whom the treatment is administered and the particulars of the treatment.

Maintenance of records of treatment.

(2) An approved institution shall direct any medical practitioner administering in that institution any treatment for the termination of the pregnancy of a woman to record true and complete particulars regarding the treatment administered to her, and the reasons therefor, in the records relating to her maintained by the approved institution, and the medical practitioner shall comply with the direction.

(3) It shall be the duty of the person in charge of an approved institution to ensure that a medical practitioner, administering any treatment for the termination of a pregnancy in that institution, complies with the provisions of subsection (2).

(4) Every statement submitted under this Act by a pregnant woman shall form, and be maintained as, part of the records of the treatment of that woman referred to in subsection (1).

(5) The records of treatment referred to in subsection (1) shall be preserved by the medical practitioner or approved institution, as the case may be, for such period as may be prescribed by the Minister.

24. (1) Every medical practitioner, approved institution or person employed by, or working in, any approved institution —

Information confidential.

(a) shall deal with as secret and confidential all information, documents and matters in respect of any matter dealt with by or under this Act; and

- (b) shall not make use of any such information to the advantage or benefit of himself or any other person.

(2) Nothing in subsection (1) shall be deemed to prevent, any medical practitioner, approved institution or person employed by, or working in, any approved institution from disclosing, or entitle him or it to refuse to disclose, to the court or person referred to in paragraph (b) any information, document or matter referred to in subsection (1) where such disclosure is —

- (a) for the purpose of discharging his or its functions under this Act, or for the purpose of complying with any provision of this Act; or
- (b) when lawfully required to make the disclosure by any court, or by any person having authority to do so under any law, for the purposes of any legal proceedings in respect of the contravention of any provision of this Act or of the Criminal Law (Offences) Act.

Cap. 8:01

Powers of entry.

25. (1) The Chief Medical Officer or any public officer authorised by him in writing may at all reasonable times enter any premises —

- (a) where a medical practitioner administers; or is reasonably suspected to administer, treatment for the termination of pregnancy, or
- (b) of any approved institution,

for the purpose of ascertaining whether there has been any contravention of, or failure to comply with, any provision of this Act.

(2) Subsection (1) shall be without prejudice to the powers of a member of the Police Force while investigating any complaint or information relating to the commission of an offence.

Power to make regulations.

26. (1) The Minister may make regulations for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing, and in particular, such regulations may provide for all or any of the following matters —

- (a) form of application for the approval or renewal of approval of an institution; the parti-

culars that the application should contain and the fees that should accompany the application;

- (b) the form of the certificate of approval of an institution, the particulars that the certificate should contain and the fees payable therefor, and the period for which the approval is valid;
- (c) the documents and records to be maintained by an approved institution;
- (d) the particulars that a notification under section 5(1) shall contain;
- (e) with respect to any counselling services to be provided to pregnant women desirous of having treatment for termination of pregnancy and to women who had such treatment;
- (f) the period of residence for the purposes of section 18;
- (g) the sums payable for the treatment for termination of pregnancy;
- (h) the period for which and place at which the records referred to in section 23 (1) shall be preserved;
- (i) any other matter that is required to be or may be, prescribed by the Minister by regulations.

EXPLANATORY MEMORANDUM

At present procuring the miscarriage of any female, whether by the female herself or by any other person, is an offence under the Criminal Law (Offences) Act, Cap. 8:01. This Bill seeks to legalise the termination of pregnancy in certain cases and subject to certain conditions. The main provisions of the Bill are dealt with below.

2. Where the pregnancy is of less than six weeks duration and the treatment for the termination of the pregnancy is by the administering orally any lawful and appropriate medical preparation, the treatment can be administered by a medical practitioner. In such a case it is not necessary for the pregnant woman to have the treatment administered in an approved institution, nor is it necessary to establish any particular fact to justify the administering of the treatment, (See clause 8 of the Bill).

3. Where either of the following facts exists, namely, the duration of the pregnancy is not of less than six weeks or the treatment, for the termination of the pregnancy, to be administered is other than oral administration of any lawful and appropriate medical preparation, the treatment is required by the Bill to be administered by a medical practitioner in an approved institution. Besides, the treatment can be administered only if any of the conditions mentioned in clause 9(1)(b); (c) or (d) of the Bill is satisfied. Under clause 9(2) of the Bill a pregnant woman's social and economic environment, whether actual or foreseeable, is a relevant factor.

4. Clause 10 of the Bill directs that the treatment for the termination of a pregnancy be undertaken within a reasonable time after the pregnant woman or, where she had not attained the age of majority or is of unsound mind, her guardian has come to know of the termination of the pregnancy. Under clause 11 of the Bill, termination of a pregnancy under the Bill is not permissible if the pregnancy is of more than twenty-eight weeks' duration.

5. Clauses 3 to 7 of the Bill deal with approval of institutions for the purposes of the Bill and the cancellation of the approval.

6. Under the Bill, for the termination of a pregnancy consent of the pregnant woman is required, if she is not of unsound mind, whatever be her age; but if she has not attained the age of majority consent of her guardian also is required. Consent of the guardian of the pregnant woman is required also if she is of unsound mind. (See clause 12 of the Bill). Consent of the husband or reputed husband of a pregnant woman for the termination of her pregnancy is not necessary under the Bill, but if she is living with her husband or reputed husband she is required by clause 13(1) of the Bill to inform the husband or reputed husband, as the case may be.

7. Special provision has been made by clause 14 of the Bill to meet a situation where the treatment for the termination of a pregnancy is required immediately to be undertaken to save the life of a pregnant woman or to prevent grave permanent injury to her physical or mental health.

8. Clause 17 of the Bill requires a medical practitioner to take proper care in administering the treatment for the termination of a pregnancy and, where he is of the opinion that it is necessary or desirable, to consult any other medical practitioner or practitioners having special qualifications or experience in the appropriate field such as medicine, surgery or psychiatry.

9. Except in an emergency, a doctor having conscientious objection is not under any legal duty to participate in any treatment for the termination of a pregnancy. (See clause 15 of the Bill).

10. Clause 16 of the Bill empowers the Minister to make regulations in respect of the provision of counselling services to pregnant women

10:4

13.

desirous of having treatment for the termination of pregnancy and to women who had such treatment.

11. Clause 23 of the Bill deals with maintenance of records of treatment and clause 24 with the confidentiality of information. Clause 20 of the Bill deals with penalties; Clause 22 of the Bill empowers the Minister; if he is of the opinion that it is necessary in the public interest to do so, to prescribe by regulations the sum to be charged by a medical practitioner or an approved institution for the treatment for the termination of a pregnancy.

Gail Teixeira,
Senior Minister of Health.