

**Virginia Department of Health (VDH)**  
**Office of Licensure and Certification**

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**Guidance Document: Informed Written Consent for Abortions Performed in Licensed Facilities**

**Purpose:** To provide guidance to licensed facilities in which abortions are performed and applicants for licensure for consistency in the understanding of the requirements of informed written consent and compliance with licensure regulations as it relates to facility policy development.

**Effective Date:** July 1, 2012

**Introduction**

Licensed facilities in which abortions are performed or that are applying for license, must have and follow a policy that assures that before abortions are performed, the informed written consent of the patient, or the patient's representative when the patient has been adjudicated incapacitated by a court, has been obtained in accordance with Virginia Code § 18.2-76. Issues related to the provision of care come under the regulatory purview of the Virginia Department of Health Professions.

**Definition**

"Informed written consent" means the knowing and voluntary written consent to abortion by a pregnant woman of any age, without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion by the physician who is to perform the abortion or his agent.

**General Tenets of Informed Written Consent Policy for Abortions**

A facility's informed written consent policy will conform to all the requirements of:

- Code of Virginia § 18.2-76 Informed written consent required; civil penalty – Abortion

**Guidance**

- It is the responsibility of the physician to obtain informed written consent prior to performing any abortion or inducing any miscarriage or terminating a pregnancy. Each licensed health care facility must, through adopted policies, assure that the requirements of informed written consent as set forth in Virginia Code § 18.2-76 are met, e.g.;
  - The policy should reflect that it is the responsibility of the physician performing the abortion, to assure that all required elements for informed written consent are met.
  - The policy should reflect that the ultrasound requirement will be met if an obstetric ultrasound study or a more advanced imaging technique was performed within the required timeframes as well as the other conditions of the informed written consent provisions of §18.2-76. Virginia Code § 18.2-76 requires that the facility where the abortion is performed maintain a copy of the ultrasound image.
  - Virginia Code § 18.2-76 requires that the patient be verbally offered the opportunity to view the ultrasound image, receive a printed copy of the image and hear the fetal heart tones pursuant to the standard medical practice in the community. Verification of this offer must be obtained through written certification from the patient. The lack of resources needed to comply with any of the required elements of informed written consent does not absolve the physician and/or the abortion facility through their policies, from meeting the required elements.
  - Virginia Code § 18.2-76 requires that ultrasound imaging be performed 24 hours prior to the abortion procedure. If the patient lives more than 100 miles away from the facility, then the ultrasound may be performed 2 hours prior to the abortion procedure. The facility's policy should reflect that verification that a patient lives more than 100 miles away is required. A written statement from the patient that she lives at least 100 miles from the abortion facility

- constitutes sufficient verification.
- When fetal ultrasound imaging is performed at a location other than the location where the abortion, induced miscarriage, or termination of pregnancy will be performed or by individuals other than the physician who will perform the abortion, the facility's policies must ensure that the physician who will perform the abortion will verify that fetal ultrasound imaging was performed and the outcome of such imaging, including the determination of gestational age, and that the woman was offered the opportunity to view the ultrasound image, receive a printed copy of the ultrasound image and hear the fetal heart tones. Verification may occur by direct contact with the medical provider, either in person or by telephone/email, or by receipt of a copy of the medical record or written certification obtained pursuant to Virginia Code § 18.2-76(C). In accordance with Virginia Code § 18.2-76(C), a printed copy of the ultrasound image shall be maintained in the patient's medical record at the abortion facility where the abortion is performed.
  - The policy should reflect that when a specific requirement of informed written consent is waived for abortions in cases where the patient has reported to law enforcement authorities that she is the victim of rape or incest, an attestation by the patient that she reported the rape or incest to law enforcement authorities is sufficient evidence that the standard is met. It is incumbent on the professionals and staff of the facility to comply with the reporting requirements of Virginia Code § 63.2-1509 for an abused or neglected child as defined by Virginia Code § 63.2-100.
  - The policy should reflect compliance with Virginia Code § 18.2-76(D) regarding the provision of specific information to the patient at least 24 hours prior to the performance of the abortion.
  - The policy should reflect that the physician does not need to obtain informed written consent as set forth in Virginia Code § 18.2-76 when the abortion procedure is to be performed pursuant to a medical emergency or spontaneous miscarriage. "Medical emergency" is defined in Virginia Code § 18.2-76(E).
  - Virginia Code § 18.2-76 is attached to this Guidance Document.