

Utah's bill on fetal remains highlights abortion battle lines

Salt Lake Tribune

February 23, 2020

Bethany Rodgers

<https://www.sltrib.com/news/politics/2020/02/23/utahs-bill-fetal-remains/>

Abortion opponents are pushing the state to mandate that health providers cremate or bury fetal tissue after a pregnancy termination or miscarriage, saying the remains deserve “dignity and respect” instead of being discarded with medical waste.

Restrictions already on the books in the conservative state and ongoing negotiations around the controversial bill make it unclear how greatly the proposal will alter the process for handling fetal tissue after an abortion. But critics say the larger goal behind this and similar bills across the nation is to reinforce the personhood of the fetus.

In so doing, they contend, the legislation will place new constraints on hospitals and medical providers and force patients to consider the disposal of fetal remains as they grieve the end of a pregnancy.

“Passage of this bill will only serve to exacerbate the already devastating loss of miscarriage and abortion and cause demonstrable harm to hundreds or thousands of women,” a woman who experienced a miscarriage testified to state lawmakers through tears.

On the other side of the issue, there has been equally impassioned testimony from women who said they missed the opportunity to have a burial or cremation after a miscarriage. One woman told lawmakers she spent years “haunted by the realization that my baby had likely been disposed of as medical waste” following a miscarriage.

Predictably for a bill positioned on the abortion battleground, emotions have run high; at one point, the proposal’s sponsor became so frustrated with a representative of the state’s funeral directors that the lawmaker accused him of trying to line his pockets and hung up the phone.

And with the state’s major medical groups largely reluctant to wade into the heated public debate, the measure’s full impact on health care remains ill-defined — even as the bill progresses through the Utah Legislature.

An uncertain outcome

The legislation, which has already passed the Senate, has been reworked several times, but the latest version would require medical providers to do an in-person consultation or share a form explaining a woman’s options for disposing of fetal tissue after a miscarriage or abortion. If a patient waives her right to decide, the bill states that the provider must ensure the cremation or burial of the remains.

In response to concerns from the medical community, Sen. Curtis Bramble, the bill sponsor, has already relaxed the proposal from its initial form. To cut down on costs, medical facilities would now be permitted to store fetal remains for up to 120 business days and could arrange for mass burials. A recent iteration also appeared to exempt pathologists from the obligation to cremate or bury tissue sent for testing and leave the labs at liberty to dispose of it as medical waste after completing their review.

The carveout was particularly noteworthy because Utah’s existing law states that “any human tissue removed during an abortion” must be submitted to a pathologist for analysis — so the bill’s guarantee of burial or cremation didn’t seem to cover fetal remains after an abortion.

But changes adopted in a committee hearing this past week stripped out the broad exception for pathology labs and subjected them to the bill’s overall burial or cremation mandate, exempting only specimens permanently affixed to a slide. A representative from the Utah Medical Association reacted

strongly against the revisions, saying they weren't in keeping with an agreement between the organization and Bramble.

"We are in strong opposition to this bill because of changes that have been made," Mark Brinton, the association's general counsel and director of government affairs, told the legislative panel, adding that new version might limit the labs.

In response to these concerns, lawmakers altered the proposal for a second time in Thursday's hearing. And while the amendment did not reinstate the blanket exemption for pathologists, the bill sponsors said they were willing to continue negotiating with the association if necessary to come to a consensus. Michelle McOmber, the medical association's CEO, said she was still analyzing the changes and was not prepared to give an opinion on them.

The potential impact of the requirement for handling miscarriages is similarly unclear. The state doesn't record the number of miscarriages that occur before 20 weeks' gestation, obscuring the scope of the mandate. David Gessel of the Utah Hospital Association says some doctors estimate the total is comparable to the annual number of abortions in the state — or about 3,000.

Speaking to House Democrats, Gessel explained that some have put the price of each cremation at about \$200, while Joe Rudd of the Utah Funeral Directors Association said it could be more like \$400. Extrapolating from these numbers, the overall cost of statewide compliance for medical providers could top \$1 million.

However, the provision allowing hospitals to keep fetal remains for about four months and bury them collectively should greatly drive down this cost, Gessel said. Based on some rough calculations, Pro-Life Utah has predicted that health providers might pay as little as \$1 for each fetal disposition.

But Maryann Martindale, executive director of the Utah chapter of the American Academy of Family Physicians, pointed out that hospitals and clinics don't generally have to pay for the final disposition of patients who die in their care and wondered why they'd have to take on this expense in cases of miscarriage. The facilities will end up passing that burden on to patients, she said, telling lawmakers "that cost is going to skyrocket."

Bramble complained last month about legislative fiscal analysts' original cost estimate, which has been changed several times along with the bill. The fiscal note hasn't been updated after this week's amendments.

Rudd said it's against the professional ethics of funeral directors to conduct mass cremations, as the bill previously allowed, but explained that group burials would be in line with their standards and could significantly reduce the expense, although he didn't know by how much.

When asked whether simultaneous burials are dignified and respectful, Bramble said it's better than the status quo.

"Relative to the classification as medical waste and throwing the baby out with the rubbish, no, I don't have a problem with that," the Provo Republican said.

Rudd's organization believes the adaptations of SB67 improved on the original version, and he credited co-sponsor, Rep. Karianne Lisonbee, R-Clearfield, with listening to the concerns of funeral directors.

Bramble, on the other hand, refused to meet with association representatives and hung up on the group's legislative committee leader after accusing funeral directors of trying to pad their pockets, Rudd said.

Bramble said he hung up on the funeral directors association representative three times. The funeral group didn't want the bill to allow simultaneous cremations or burials, the senator said, the key provision to alleviate the burden and expense for medical providers.

A woman's right

Bramble has said the measure cements a woman's legal right to dispose of fetal remains in the way she sees fit.

But the need for such protections is itself a focus of debate around SB67.

Gessel, whose group has not taken an official position on the bill but has shared concerns with Bramble, told House Democrats on Tuesday that the standard practice now for medical providers across the state is to convey fetal remains to patients upon request.

Representatives of the state's two largest medical systems, University of Utah Health and Intermountain Health (neither of which has taken public positions on the bill), both confirmed they work to accommodate patients who want to bury or cremate fetal remains; if asked, University of Utah Health will even create a hand or foot cast so families can memorialize the loss, a spokeswoman said.

Planned Parenthood Association of Utah, which offers abortion services, also works with patients who "whether for religious or cultural or family reasons want to be able to inter or cremate" fetal tissue, said Karrie Galloway, the organization's CEO and president.

However, Bramble shared a story about a friend who miscarried while visiting Utah and had to battle to transfer the fetal remains back to her home in Indiana. Another woman who submitted testimony described being in a state of shock after losing her pregnancy and missing the opportunity to request fetal tissue for a burial, something she regrets to this day.

Bramble argues women shouldn't be at the mercy of hospital policy and should have legal standing to claim fetal remains. He compares the mandate to inform a woman of disposition options to a "door" that she can choose to walk through or ignore.

And if you assert the right to an abortion, he says, "you should have the right to choose what to do with the baby's remains."

Galloway counters that Bramble's bill actually limits a woman's options by permitting only two methods of disposition — "He is making the choices here," she said.

Rep. Ray Ward, a physician, falls somewhere in the middle: He agrees with Bramble that women should have the right to dispose of fetal remains according to their beliefs and wishes and that medical providers should inform them of their choices.

But he doesn't think the bill would accomplish that for everyone. A couple of physicians have told him it's critical for providers to "respect the way a woman regards her loss" rather than imposing a certain worldview.

"To some, in their mind and in their heart, that is the loss of a child," Ward, R-Bountiful, said. "To some others, it hurts them to even be forced to think about it that way."

Ward says he would support Bramble's proposal if it gave women the third choice of allowing hospitals to dispose of fetal tissue the way they currently do.

According to testimony from physicians, only a tiny fraction of women opt to handle fetal tissue themselves.

One Utah obstetrician-gynecologist, Howard Sharp, testified that he has cared for about 1,000 women who have lost a pregnancy and estimated that fewer than 10 patients have asked for the fetal remains. Sharp wrote in a letter to lawmakers that he wouldn't feel comfortable broaching the subject without invitation from his patient.

"[F]orcing that discussion on people at that moment," he wrote, " ... well, it is hard for me to think of something more inappropriate."

Shawn Gurtcheff, medical director for the Utah Fertility Center, said she, too, interacts consistently with women who have lost a pregnancy, and each situation demands an individualized approach.

Some women inquire about options for fetal remains, and others don't, she said in an interview.

"But what this bill does is it basically tells me — who went to school for 30-plus years in order to be able to do this — what I have to say and when I have to say it," she said. "It's turning me into a robot."

The changes would cover pregnancies before 20 weeks' gestation because state law already regulates later-term losses, which are considered stillbirths. And Gurtcheff and Sharp both raised questions about applying the proposed disposition guidelines to the earliest stages of a pregnancy.

"The vast majority of losses and terminations occur before the ninth gestational week," Gurtcheff said, "at a time when fetal tissue is not visible to the naked eye."

Utah's legislation is similar to model legislation produced by Americans United for Life and laws passed in several states — Indiana, Louisiana, Arkansas and Texas — in recent years.

Elizabeth Nash, state policy analyst for the Guttmacher Institute, said the bills began surfacing a few years ago after the release of hidden-camera recordings that sought to discredit Planned Parenthood by supposedly portraying conversations about selling fetal tissue. Ensuing investigations in several states found no evidence that the organization sold fetal remains, and the makers of the recording were criminally charged with invasion of privacy.

The wave of bills on disposing of tissue after abortion or miscarriage seems to reflect an effort "to raise the legal status of the fetus," explained Nash, whose institute advocates for abortion rights. And in Utah, the idea that the loss of a pregnancy is the loss of a human life is central to the argument that the bill's supporters have made.

"We need to remember that these tiny bodies are not waste," Merrilee Boyack, who helps lead Abortion-Free Utah, testified this past week. "They are human remains."

Legal challenges have been filed against the fetal remains requirements in several states that have enacted them. The U.S. Supreme Court last year upheld Indiana's disposition mandate, which covers situations involving abortion but not miscarriage. The other cases are still open, Nash said.

Bramble said his bill hews closely to the Indiana law that has passed muster in the courts.

In addition to Utah, lawmakers in Illinois, Indiana, Missouri, Ohio, Pennsylvania and Wisconsin are considering fetal remains legislation, according to Nash.