



## MEMORANDUM

**TO:** The Pennsylvania Senate Health and Human Services Committee

**FROM:** Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

**DATE:** December 10, 2021

**RE: OPPOSITION TO HOUSE BILL 118 P.N. 1724 (RYAN)**

**Bill Summary:** [HB 118](#) (PN 1724) would require a hospital or clinic to arrange for the burial or cremation of all medical tissue—at any gestational age—following a spontaneous or induced termination of a pregnancy, such as miscarriage, abortion, ectopic pregnancy or in vitro embryo reduction that occurs within a healthcare facility.

### **HB 118 would create a new mandate for burial or cremation of all products of conception.**

- Under **current law**, there is no requirement for the ritual disposal (via burial or cremation) for any product of conception, no matter the gestational age. However, there are disposal and reporting requirements for products of conception from abortion, which are covered under [28 Pa. Code § 29.33 \(8\)](#) and Pennsylvania's [Abortion Control Act](#), specifically [18 Pa. C.S. § 3214 \(c\)](#).
- HB 118 would create a **new requirement** that hospitals or clinics must arrange for ritual disposal (via burial or cremation) of all medical tissue following a miscarriage or abortion that would occur within a facility, regardless of gestational age.

### **HB 118 would introduce an expanded definition of fetal death.**

- Under **current law**, fetal death is defined as “the expulsion or extraction from its mother of a product of conception after sixteen (16) weeks gestation, which shows no evidence of life after such expulsion or extraction.” [Section 105 \(4\)](#)
- HB 118 creates a free-standing act that would introduce a new definition of “fetal death.” Its definition is nearly identical to current law, but removes the 16 week gestation threshold. Without that threshold, this new definition includes *any product of conception*, i.e., fetal tissue and embryonic tissue, as well as medical tissue containing a blastocyst or fertilized ovum, including those that were never implanted.
- As a result, for the purposes of a ritual burial, HB 118 defines **any** induced or spontaneous abortion (miscarriage) as a death, regardless of the length of the pregnancy.

### **HB 118 would trigger a requirement to issue a fetal death certificate for all products of conception.**

- Under **current law**, [Section 501](#) of the Vital Statistics Law requires a fetal death certificate after 16 weeks gestation following either an expulsion (miscarriage) or extraction (abortion).
- HB 118 (PN 1724) includes an amendment that claims the bill does not “require the issuance of a death certificate.” However, under *existing* PA law, in order to arrange for the burial or cremation of the medical tissue, a “person in charge of interment” must go through a defined process, which includes filing a fetal death certificate and medical certification from a physician, certified registered nurse practitioner or physician assistant. [Article V of the Vital Statistics Law](#)
- In other words, despite amended language stating that HB 118 does not require fetal death certificates, the bill fails to change the permitting process by which burial or cremation is handled under **current** law, which requires the “person in charge of interment” to file a fetal death certificate prior to burial/cremation.
- As a result, HB 118 would, indeed, require a death certificate be issued for all medical tissue.

### **HB 118 would threaten facilities with fines and penalties and would impose costs to the patients.**

- Citing [Section 901](#) of the Vital Statistics Law, HB 118 mandates that a **healthcare facility** that violates this act will be **fined** between \$50 and \$300 or a person charged with fulfilling these duties may be imprisoned in county jail for up to thirty days.
- **Patients** may be responsible for **costs** that are either a) out of pocket if they want to make other arrangements for the disposition of the tissue, or b) fees associated with the cost of the procedure, which they may pay out of pocket if they don't have insurance or may vary depending on what their healthcare plan covers, their deductible, and other related cost variables.

**Because HB 118:**

1. Removes the 16 week gestation limit from the definition of “fetal death;” **AND**
2. Requires that ALL products of conception be buried or cremated; **AND**
3. Requires burial or cremation for any product of conception following an extraction (abortion) or expulsion (miscarriage) at a healthcare facility ...

**HB 118 would:**

4. Create a new requirement that *all* medical tissue extracted or expelled at a healthcare facility be buried or cremated; and would therefore
5. Change current law requiring fetal death certificates for pregnancies that end after 16 weeks gestation to requiring fetal death certificates be issued for *all* tissue extracted or expelled at a healthcare facility.

**On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 118.**

**HB 118 is unnecessary:** Under current law, there is nothing that prevents a woman from arranging for burial or cremation for a miscarriage or abortion before 16 weeks gestation. Rather than leaving that decision to women, [HB 118](#) would require the ritual disposition of *all* products of conception extracted or expelled at a healthcare facility, whether resulting from miscarriage, abortion, or embryo reduction for in vitro pregnancies.

**HB 118 is redundant:** Current law already requires the procedures outlined in HB 118 for pregnancies that end after 16 weeks. Clinics currently handle embryonic or fetal tissue in accordance with state law, to ensure that it is safe and appropriate. Pennsylvania already regulates: [fetal death and Department of Health requirements following abortion, miscarriage, or stillbirth](#); [examination and disposal of tissue following an abortion](#); and [medical disposal requirements](#).

**HB 118 is invasive and shaming:** By triggering the requirement for fetal death certificates, women will be required to participate in filling out a death certificate ([Section 502 \(1\)](#)) for any product of conception, including instances when the woman was not even aware she was pregnant. HB 118 also compromises patient privacy by effectively creating a state-run database of miscarriages and abortion. Currently, miscarriages prior to 16 weeks are documented in a woman’s health record and are confidential under both federal and state laws. These records are never released without the woman’s permission. But by requiring a death certificate for ALL miscarriages, HB 118 risks granting family members immediate access to those records. And after fifty years, all records are made public, further compromising women’s privacy and safety.

**HB 118 imposes burdens on women and providers:** Currently, healthcare facilities manage all documentation and routine processing of products of conception. Similar to other medical procedures, all care-related expenses including the disposition of tissue are included in the fees paid by patients / insurers. Mortuaries assess fees based on the services the patient seeks, which are billed separately to the patient from the medical care they receive for their induced or spontaneous abortion. By requiring ritual disposition for *all* products of conception, HB 118 would increase providers’ time, paperwork, and costs, which would then increase healthcare costs to women. If a woman wants to make arrangements different from those provided by the facility, HB 118 requires that she pay the additional costs. And notably, if a woman miscarries in any healthcare facility—including facilities such as psychiatric facilities and ambulatory surgical facilities—those facilities would be responsible for ritual disposition of the medical tissue.

Legislation like HB 118 creates difficult, vague, conflicting, and sometimes impossible, new regulations for clinics to comply with—all of which would ultimately impede women’s access to abortion.

**For these reasons, we urge you to oppose House Bill 118.**