
May 22, 2013

The Honorable Fred Upton, Chairman
The Honorable Marsha Blackburn, Vice Chairman
The Honorable Joe Barton, Chairman Emeritus
The Honorable Joseph R. Pitts, Chairman
 Subcommittee on Health
The Honorable Tim Murphy, Chairman
 Subcommittee on Oversight and Investigations
The Honorable Michael C. Burgess, Vice Chairman
 Subcommittee on Health and
 Subcommittee on Oversight and Investigations
Congress of the United States
House of Representatives
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515-6115

Dear Sirs and Madam:

This letter is in response to the Committee's request dated May 8, 2013 regarding regulation and monitoring oversight conducted by state departments of health of clinics and facilities that perform abortions. Following is the response from the New Mexico Department of Health (NMDOH), the entity responsible for licensure and monitoring health care facilities in New Mexico.

1. *Does your state license abortion clinics or those facilities and providers who perform abortions? If so, please identify what information must be provided or requirements must be met for a facility or provider to be licensed. In addition, please identify the number of abortion clinics licensed in your state for each year from 2008-2013.*

The NMDOH licenses and inspects health care facilities. It does not license or oversee medical providers or private medical practitioners' offices or treatment rooms. The NMDOH does not have a licensure category unique to abortion clinics; however licenses are issued for outpatient facilities and hospitals where abortions may be performed. It is noted that outpatient and hospital licenses neither allow nor prohibit abortions; therefore, the NMDOH cannot necessarily identify and does not track whether any outpatient facility or hospital performs abortions.

The NMDOH regulations for licensure of Outpatient Facilities *Requirements for Facilities Providing Outpatient Medical Services and Infirmaries* under Title 7, Chapter 11, Part 2 of the New Mexico Administrative Code (NMAC), and of Acute Care

Hospitals, *Requirements for Acute Care, Limited Services and Special Hospitals* Title 7, Chapter 7, Part 2, NMAC identify the requirements that must be met for a facility to be licensed.

The NMDOH has licensed one abortion clinic during the years 2008-2013. Other abortion clinics may exist in New Mexico, but the NMDOH regulations do not apply and licenses are not issued because the services are provided in offices and treatment rooms of licensed private practitioners.

2. *For the years 2008-2013, please identify each abortion clinic for which your state has suspended or revoked its license and the reason for this action.*

During the years 2008-2013 the NMDOH has not suspended or revoked the license of the abortion clinic.

3. *Does your state conduct inspections of abortion clinics or facilities that perform abortions? If so, please identify the number of clinics that your state has inspected for each year from 2008-2013. In addition, please identify how an inspection is conducted and what information is examined in the course of an inspection.*

Yes, the NMDOH conducts inspections of NMDOH-licensed abortion clinics as an Outpatient Facility. During the years 2008-2013, the NMDOH has not conducted an inspection of the abortion clinic it has licensed.

An Outpatient Facility survey (inspection) would be conducted by a team of trained facility surveyors using pre-established criteria and tools that measure compliance with the relevant NMAC regulations. The survey process includes on-site observations, interviews and reviews of administrative and medical records.

The NMDOH conducts periodic federal surveys of licensed hospitals with Medicare funding when directed by the Centers for Medicare and Medicaid Services (CMS). It also conducts state surveys when a jurisdictional complaint specific to NM licensure is received. The NMDOH cannot identify whether surveyed hospitals have performed abortions.

The federal survey process for hospitals would be consistent with survey protocols required by CMS. The state licensure survey would be conducted by a team of trained facility surveyors using pre-established criteria and tools that measure compliance with the relevant NMAC regulations. The state survey process includes on-site observations, interviews and reviews of administrative and medical records.

4. *Does your state monitor complaints or adverse health events relating to abortions? If so, how are these complaints filed or processed? How many complaints relating to abortions or abortion clinics have been filed for each year from 2008-2013?*

Yes, the NMDOH monitors complaints related to abortions. Complaints are received through a state "Complaint Hotline," phone number. Complaints may also be sent by mail, email and fax, and may be self-reported by the facility. The phone and fax numbers are widely disseminated throughout the state. All health care facilities licensed by the NMDOH are required to report allegations of abuse, neglect and exploitation, and are required to inform patients how to contact the hotline. The hotline information is available on the NMDOH website.

During the years 2008-2013 no complaints have been filed regarding the NMDOH-licensed abortion clinic. Additionally, no complaints related to abortions have been filed regarding NMDOH-licensed hospitals.

- a. *Please explain how your state investigates the complaints it receives relating to abortions. In addition, please explain how many investigations, including those that included inspections of abortion clinics, have resulted from complaints filed for each year from 2008-2013.*

The NMDOH investigates complaints relating to abortions in the same manner it investigates all complaints. Please see the response to question #3 for specific details.

5. *Please explain whether your state, including state professional licensure boards, has initiated any disciplinary actions against facilities or health care providers relating to abortions? Please identify the number of disciplinary actions taken in each year from 2008-2013 and the underlying violation or reason for the action.*

The NMDOH has not initiated any disciplinary actions against the abortion clinic it has licensed. The NMDOH has not initiated any disciplinary actions against licensed hospitals relating to abortions.

6. *Please provide copies of the rules and regulations that govern facilities and licensed health care providers in your state that perform abortions, including rules and regulations that specifically govern how abortions are conducted in your state.*

The NMDOH regulations for Outpatient Facilities, 7.11.2 NMAC and for hospitals, 7.7.2 NMAC are attached.

- a. *Which of these laws is your agency tasked with enforcing and how do you enforce them?*

The NMDOH enforces these regulations through the survey process described in the answer to question #3 of this response.

7. *On April 19, 2005, the Assistant Secretary for Children and Families issued a Program Instruction to state agencies administering the Child Abuse Prevention and Treatment Act (CAPTA) program. The instruction requires states to have procedures for*

responding to reports of medical neglect (including the withholding of medically indicated treatment from disabled infants with life-threatening conditions), and applies those protections equally to born-alive infants.

- a. *What actions has your state taken since 2005 to ensure that, at every licensed health care facility that provides abortions, there is a designated individual to report suspected medical neglect (including withholding of medically indicated treatment from disabled infants with life-threatening conditions) of born-alive infants to the state child protective services agency? Has the state received any such notifications and what were the outcomes?*

Medical neglect is not reported to NMDOH; it is reported to the respective professional licensing board. Non-jurisdictional complaints about private practitioners received by the NMDOH are forwarded to the appropriate professional licensure board. The NM Regulation and Licensing Department, Board of Medical Examiners is the entity that would receive complaints of medical neglect.

- b. *Does your state child protective services agency annually contact each health care facility to obtain purpose of coordination, consultation, and notification pursuant to 45 C.F.R. § 1340.15? Does this contact include health care facilities that provide abortions? Please provide a list of all such designations.*

The NMDOH cannot answer whether the NM Children Youth and Families Department's Protective Services Division annually contacts the health care facilities.

Thank you for the opportunity to respond. I will forward your letter and this response to the NM Regulation and Licensing Department Superintendent Dee Dennis and the NM Children Youth and Families Department Cabinet Secretary Yolanda Berumen-Deines so they can provide any additional information they may have. If you have questions, please contact Ms. Judy Parks, Acting Director, DOH Division of Health Improvement at 2040 S. Pacheco Street, Suite 421, Santa Fe, NM 87508 or at 505-476-9098.

Sincerely,



Retta Ward
DOH Cabinet Secretary

C: James Ross, NM Cabinet Director
Dee Dennis, Superintendent, NM Regulation and Licensing Department
Yolanda Berumen-Deines, Cabinet Secretary, NM Children Youth and Families Department
Judy Parks, Acting Director, NMDOH

The Honorable Henry A. Waxman, Ranking Member
The Honorable Frank Pallone, Jr., Ranking Member Subcommittee on Health
The Honorable Diana DeGette, Ranking Member, Subcommittee on Oversight and
Investigations