

Congress of the United States
House of Representatives
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515-6115

Topic: Information Request related to North Dakota Regulation and Monitoring of Abortion Clinics

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 requirement must be met for a facility to be licensed. In addition, please identify the number of abortion clinics licensed in your state from 2008 – 2013.

Response: North Dakota does not license clinics, including abortion clinics. The North Dakota Board of Medical Examiners does license physicians in the state of North Dakota. In order to practice in North Dakota, a physician would need to be licensed by the North Dakota Board of Medical Examiners. Complaints regarding the physician practice in the one abortion clinic in North Dakota would be forwarded to the North Dakota Board of Medical Examiners. North Dakota only has one abortion facility in the state.

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.

Response: As North Dakota does not license abortion clinics, there is no abortion clinic license that can be revoked or suspended.

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.

Response: Under our contract with the Centers for Medicare and Medicaid Services (CMS), we perform surveys of the laboratory services consistent with the Clinical Laboratory Improvement Amendments (CLIA). Routine laboratory recertification surveys are conducted every two years, and our most recent survey of the laboratory services provided at the one abortion clinic in North Dakota was spring 2013. Only the laboratory services are reviewed while the surveyor is onsite.

4. Does your state monitor complaints or adverse health events relating to abortions? If so, how are these complaints filed or processed?

Response: The North Dakota Department of Health, Division of Health Facilities, would monitor and investigate any complaints related to the laboratory services under their agreement with CMS related to CLIA. Complaints received by the Department's Division of Health Facilities may be received in writing or verbally, and may be anonymous.

The North Dakota Department of Health, Environmental Health Section, did receive a complaint in November 2010 from a concerned citizen regarding the alleged illegal disposal of fetuses. The complaint was investigated by the department and the information obtained during the investigation did not substantiate the claims. The department's investigation noted that the abortion clinic contracts to have infectious waste handled pursuant to state law and each fetus is sent to a crematorium (handling of infectious waste must comply with North Dakota Administrative Code [NDAC] infectious waste rules, 33-20-12).

Any other complaints other than a complaint regarding the laboratory services or infectious waste at the abortion clinic would be forwarded to the appropriate regulatory authority for follow-up, including the North Dakota Board of Medical Examiner's for violations of the provisions of the Medical Practice Act, North Dakota Century Code [NDCC] 43-17-31.

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

Response: The North Dakota Department of Health, Division of Health Facilities, has not had any complaints filed with the Division against the abortion clinic regarding the clinic's laboratory services during that time frame. The North Dakota Department of Health, Environmental Health Section, has only had the one complaint related to infectious waste management filed within the timeframe as identified and discussed above.

The North Dakota Board of Medical Examiners has the responsibility of investigating complaints filed against physicians practicing in North Dakota, and reported that in 2010 two complaints were filed with the Board regarding providers at an abortion clinic as follows:

1. A complaint was filed that a physician practiced in the state while failing to renew her North Dakota medical license. Under North Dakota law, NDCC 43-17-26.1, the board is to assess an administrative penalty, which it did in the form of triple renewal fees, and because practicing without a license may be a criminal violation, NDCC 43-17-34, the board referred the matter to the Cass County State's Attorney, who declined to prosecute.
 2. A complaint was filed alleging quality of care issues regarding a physician who once practiced at the clinic. All investigations of the board are confidential under NDCC 43-17.1-08, but newspaper articles in which others have publicly spoken about the investigation are enclosed. No disciplinary action was taken.
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.

Response: The North Dakota Department of Health is not aware of any disciplinary actions against facilities or health-care providers related 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 the rules and regulations that specifically govern how abortions are conducted in your state.
 - a. Which of these laws is your agency tasked with enforcing and how do you enforce them?

Response: There are no specific rules and regulations that monitor or regulate abortion clinics in North Dakota.

However, specific regulations related to abortions in North Dakota are as follows:

Abortion Control Act 14-02.1:

<http://www.legis.nd.gov/cencode/t14c02-1.pdf>

The Division of Family Health, North Dakota Department of Health, is responsible for the educational material in this law, 14-02.1-02.1. Printed Information - Referral Services. The law requires that this information is given to the women 24 hours before the abortion. While we are responsible for developing and printing the educational materials, we do not make site visits to verify compliance. Here are the links to the documents required:

Pregnancy and Abortion Booklet:

http://www.ndhealth.gov/familyhealth/Preg_Abortion_booklet_final.pdf

A Connection for Families and Agencies - Resources for North Dakota Families with Young Children Ages Birth - 8:

<http://www.ndhealth.gov/familyhealth/publications/Connection%20Directory.pdf>

In addition, the Department's Division of Family Health also has responsibility for section 14.02.1-03.4. Required Notice at Abortion Facility. Once again, we made this sign and notified the abortion clinic of the requirement. We do not make site visits to inspect how this signage is displayed.

The Division of Vital Records, North Dakota Department of Health, has responsibility for the Forms and Reporting reports part of this law (NDCC 14-02.1-02.2 Abortion Report Form; 14-02.1-07 Records Required - Reporting of practice of abortion; 14-02.1-07.1 Forms) and requires the department to collect and evaluate all reports, complete an annual report and report to Attorney General any violations of the chapter.

The Department of Health is also mentioned in the law in NDCC section 14-02.1-09. Humane disposal of nonviable unborn child. This section specifically states "...under regulations established by the state department of health." The regulation implemented is as follows: **North Dakota Administrative Code 33-03-02-05. Humane disposal of nonviable fetus.** Disposal of a nonviable fetus in a humane fashion shall consist of

incineration, burial, or cremation. The licensed physician performing the abortion or the licensed hospital in which an abortion is performed may contract for out-of-state incineration, burial, or cremation of nonviable fetuses. Incinerators within the state of North Dakota used for the disposal of nonviable fetuses must meet the requirement of NDAC chapter 33-15-14.

These laws provide guidance on how we use and/or accept funds:

Limitation of Abortion:

NDCC chapter 14-02.3-01 State policy on abortion and childbirth – Use of public funds

NDCC chapter 14-02.3-02 Use of public funds for family planning – Use for performance, referral and encouragement of abortion prohibited

<http://www.legis.nd.gov/cencode/t14c02-3.pdf>

This law is specific to schools and not the North Dakota Department of Health, but we work very closely with schools so we stay up-to-date with these laws:

Abortion Referrals:

NDCC chapter 15.1-19 Students and Safety, section 6 – Employee or agent of the school may not refer for abortion and supports/gives preference to childbirth

<http://www.legis.nd.gov/cencode/t15-1c19.pdf?20130214095520>

There were several new bills that were passed relating to abortion and restrictions during the 2013 legislative session as follows.

HB 1305 - Prohibition on abortions for sex selection or genetic abnormalities (the provisions in this bill will be added as new sections to the Abortion Control Act NDCC 14-02.1).

HB 1456 - Relating to limitations on abortion after determination of detectable heartbeat in an unborn child and to grounds for disciplinary action for physicians; and to provide a penalty (some of the provisions in this bill will be added as new sections to the Abortion Control Act 14-02.1. One provision will be added as a section to NDCC 43-17-31 - Physicians and Surgeons).

SB 2305 - Relating to limitations on physicians and abortion facilities (the provisions in this bill will be added as new sections to the Abortion Control Act 14-02.1-04).

SB 2368 - Relating to limitations on and penalties for performing or inducing an abortion or attempts to perform or induce an abortion and to grounds for disciplinary action for physicians; to amend and reenact sections 14-02.1-02 and 14-02.1-07 of the North Dakota Century Code, relating to definitions and reporting requirements; and to provide a penalty. A part of this bill requires a change the abortion compliance report that is the responsibility of the Division of Vital Records, North Dakota Department of Health.

SCR 4009 - Relating to the inalienable right to life of every human being at every stage of development (this will go to vote of the people in the general election).

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.

Responses: *The North Dakota Department of Human Services is the state agency that administers the CAPTA program and provided the following responses to the questions asked.

- 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?

Response: Since 2005, North Dakota has maintained a comprehensive procedure within the state's child protective services system for responding to the reporting of medical neglect, including instances of withholding medically indicated treatment from disabled infants with life-threatening conditions. Since North Dakota does not license abortion clinics, there is not a designated individual to report suspected medical neglect of born-alive infants to the state child protective services agency in this type of facility. The state has not received any such notifications.

- b. Does your state child protective services agency annually contact each health care facility to obtain purpose 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.

Response: Under North Dakota law, all physicians, nurses, and other medical personnel and religious practitioners of the healing arts are mandated to report reasonable cause to suspect that a child is abused or neglected, including circumstances of suspected medical neglect (including the withholding of medically indicated treatment from disabled infants with life-threatening conditions). Mandated reporter training is universally available, on the Internet (<http://www.stopchildabusend.com/NDDHS/mandatedreportertraining/index.html>), to inform medical professionals mandated to report suspicions of medical neglect, including withholding medically indicated treatment from disabled infants with life threatening conditions. The North Dakota child protective services system is state supervised and county administered. Local county social services agencies work closely with medical providers in local communities for the purpose of coordination, consultation and notification pursuant to 42 U.S.C. 5106a. Contact between local agencies takes place regularly through child abuse/neglect reporting, assessment, and follow up and occurs far more often than annually. This does not include health care facilities that provide abortions.

The document labeled "Suspected Medical Neglect...." is a copy of the CPS Service Manual Chapter policy addressing "suspected medical neglect of a disabled infant...."; The "Baby Doe flow chart" (enclosed) is the chart referred to in the manual chapter

policy. The two links below reference the Child Abuse and Neglect statute (NDCC 50-25.1) and the Uniform Juvenile Court Act (NDCC 27-20), under which legal actions are brought to the Courts for the protection of children, including disabled infants with a life threatening condition where medical neglect is suspected. The document titled "Mandated reporter Medical prof" is a scanned copy of the online training for mandated reporters, specific to the training provided to medical professionals regarding their responsibility under state law to report suspicions of medical neglect of a disabled infant with a life threatening condition.

<http://www.legis.nd.gov/cencode/t27c20.pdf?20130515141144>

<http://www.legis.nd.gov/cencode/t50c25-1.pdf?20130515141225>