



Oklahoma State Department of Health  
Creating a State of Health

June 17, 2013

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

RE: Request dated May 8, 2013

Dear Representatives Upton, Blackburn, Barton, Pitts, Murphy and Burgess:

As Commissioner of the Oklahoma State Department of Health (OSDH), I received the above-referenced request on May 8, 2013 by fax and on May 13, 2013 via the mail. Pursuant to a phone conversation between the General Counsel for the OSDH, Donald D. Maisch, and counsel for the Committee on Energy and Commerce, Carl Anderson, the May 23, 2013 deadline, contained in the May 8, 2013 request, for the OSDH to submit responses was extended. Below are the questions posed in the May 8, 2013 letter and the responses from the OSDH:

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.

**Response** – The OSDH only licenses abortion facilities in the State of Oklahoma. The OSDH does not have jurisdiction to license providers. The information that is necessary for a facility to be licensed is contained in ODH forms 777 and 779 which are enclosed with this response. Additionally, each applicant must meet the requirements in Oklahoma Administrative Code, Title 310, Chapter 600-3-1 (OAC 310:600-3-1) and pay the fees established in OAC 310:600-3-2, which are linked below. The number of facilities licensed

in the State of Oklahoma from 2008 – 2013 are as follows: 2008 – 3 facilities were licensed; 2009 – 3; 2010 – 3; 2011 – 3; 2012 – 3; and 2013 – 3.

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

**Response** – The OSDH has not suspended or revoked any licenses for any facilities licensed from 2008 – 2013.

2. 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** – The OSDH conducts yearly inspection at each licensed facility. The inspections conducted by the OSDH from 2008 – 2013 are as follows: 2008 – 3 facilities were inspected; 2009 – 3; 2010 – 3; 2011 – 3; 2012 – 3; and 2013 – 3. The following is how an inspection (called a “survey” in Oklahoma) is conducted. The survey is unannounced. Surveyors review the facility’s files for changes to the operational narrative from the information submitted to the Department. Once the survey begins, if there are operational changes, surveyors will review to determine if the narrative is consistent with current operations. Surveyors will request a list of the patients for the past year and select a minimum 30 records. Medical records are reviewed to determine compliance with narrative and regulatory standards. Surveyors tour and observe care provided in the facility. Facility staff are interviewed regarding duties, patient care, infection control practices, and pharmaceutical services. Surveyors review personnel files and credentialing files. Review of personnel and credentialing files includes insuring each licensed provider has a current unencumbered license, CPR, competencies or continuing education units received. If a license has been sanctioned the facility must provide documentation that includes how the sanctions will be monitored. Surveyors will watch cleaning and disinfection of equipment used on patients. Surveyors will review medications listed on the formulary and out in the patient care area for appropriate use and safe injection practices.

3. Does your state monitor complaints or adverse health effects 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?
  - 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.

**Response** – The OSDH does monitor and track complaints it receives concerning the licensed abortion facilities in the State of Oklahoma. All complaints, once received by the OSDH are sent to the complaints review division of the Protected Health Service for the OSDH. OSDH staff input any complaint into the OSDH Aspen Complaints Tracking System. Once the complaint is entered in the system, an intake is created and is assigned to a survey team for investigation. The number of complaints of facilities licensed in the State of Oklahoma from 2008 – 2013 are as follows: 2008 – 0 facilities receiving complaints; 2009 – 0; 2010 – 0; 2011 – 0; 2012 – 0; and 2013 – 0.

- a. Once the survey team is assigned the complaint, a survey is conducted. During survey, the survey team will also review incidents, complaints, and grievances received by the facility. Surveyors will look to see if the problem was handled according to policy. If a deficient practice is found, and there has been no corrective action to prevent reoccurrence, the facility is cited for the deficient practice. This would be written on the Statement of Deficiencies. The number of inspections (surveys) that resulted from complaints of facilities licensed in the State of Oklahoma from 2008 – 2013 are as follows: 2008 – 0 surveys resulting from receiving complaints; 2009 – 0; 2010 – 0; 2011 – 0; 2012 – 0; and 2013 – 0.
4. Please explain whether your state, including 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 each year from 2008 – 2013 and the underlying violation or reason for the action.

**Response** – The OSDH only licenses abortion facilities in the State of Oklahoma. While the OSDH does license certain health care providers (like nurse aides in a long term care setting or certain behavioral health providers) the OSDH does not license the health care providers generally associated with a facility that conducts abortions. The number of disciplinary actions against facilities licensed in the State of Oklahoma from 2008 – 2013 are as follows: 2008 – 0 disciplinary actions were filed; 2009 – 0; 2010 – 0; 2011 – 0; 2012 – 0; and 2013 – 0.

5. 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** – The OSDH only licenses abortion facilities in the State of Oklahoma. The OSDH does not have jurisdiction to license health care providers. Therefore, the OSDH only has rules and regulations that govern abortion facilities. In a conversation between Mr. Maisch and Mr. Anderson, it was agreed, to save costs, to provide links to the internet of the rules and regulations of the OSDH that are applicable to licensed abortion facilities in Oklahoma. In Oklahoma, the Secretary of State has all state regulations on the internet and available at no cost to the public. The rules that govern licensed abortion facilities in Oklahoma are located at Oklahoma Administrative Code (OAC), Title 310, Chapter 600, entitled Abortion Facility Regulations. The internet link to the rules and regulations that govern licensed abortion facilities in Oklahoma is: <https://www.sos.ok.gov/oar/online/viewCode.aspx> Once on the Oklahoma Secretary of State's Permanent Rules and Executive Orders web page, scroll down to Title 310, Oklahoma State Department of Health and click on the link. Once that page appears, scroll down to Chapter 600 and click on the link. This link will open the page with the links to the rules that govern abortion facilities licensed by the OSDH.

Additionally, the OSDH has rules at OAC, Title 310, Chapter 527, entitled Alternatives-to-Abortion Services, which are a part of the jurisdiction of the OSDH. Please follow the same procedure as above, and click on the Chapter 527 link as opposed to the Chapter 600 link to review links to these rules.

- a. The OSDH enforces OAC, Title 310, Chapters 527 and 600 referenced above. The OSDH does not have jurisdiction and does not enforce any regulations that govern health care providers that provide abortion services.
6. 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 condition 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?

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.

**Response** – CAPTA program funds cover several different federal grants. The OSDH does receive certain specific CAPTA program funds, specifically the Community-Based Child Abuse Prevention Grant. This grant is specifically earmarked for the improvement of child protective services. The OSDH does not receive any CAPTA program funds that deal with the withholding of medically necessary treatment. The OSDH does not have jurisdiction concerning the withholding of medically necessary services in the State of Oklahoma. Therefore, the OSDH does not administer those portions of the CAPTA program in Oklahoma to implement the Program Instruction.

- a. It is unknown to the OSDH whether any actions have been taken by licensed health care facilities that provide abortions in Oklahoma whether the facility has a designated individual to report suspected medical neglect within the facility. Medical neglect issues are not within the jurisdiction of the OSDH. Additionally the OSDH does not have any information whether the State of Oklahoma has received any such notifications and their outcomes.
- b. The OSDH does not have any knowledge whether the child protective services agency in Oklahoma has contact with each of the health care facilities licensed to provide abortions in Oklahoma to provide coordination, consultation and notification pursuant to 45 C.F.R. §1340.15.

If you have any questions or need any further information, please contact Donald D. Maisch, General Counsel with the OSDH at 1000 N.E. 10<sup>th</sup> Street, Room #206, Oklahoma City, OK 73117, (405) 271-6017, or at [DonM@health.ok.gov](mailto:DonM@health.ok.gov)

Respectfully Submitted,



Terry Cline, Ph.D.  
Commissioner of Health  
State of Oklahoma

Enclosures

**PROTECTIVE  
HEALTH  
SERVICES**

**Oklahoma State Department of Health**  
 Protective Health Services  
 Medical Facilities  
 1000 NE 10th Street  
 Oklahoma City, OK 73117-1299  
 Telephone: (405) 271-6576  
 FAX: (405) 271-1308

**APPLICATION FOR LICENSE TO OPERATE AN ABORTION FACILITY**  
*INSTRUCTIONS*

- I. Read carefully and complete all portions of the application. Please type or print.
- II. Application for license must be made by the legal entity responsible for the operation of the abortion facility.
- III. License fee must accompany the application. Checks, money orders or bank drafts must be made payable to OKLAHOMA STATE DEPARTMENT OF HEALTH. No such fee shall be refunded. The fee for licensure of each facility shall be ten dollars (\$10.00) for each bed (procedure table, gurney or recovery bed that may be occupied by patients undergoing or recovering from abortions).

Number of Licensed Beds	
Number of Licensed Beds:	
TOTAL FEE: (total above x \$10.00)	\$ _____ .00

IV. Any changes are to be reported promptly to the address above.

The undersigned hereby makes application for license to operate an Abortion Facility subject to the provisions of the Oklahoma Statutes and to the regulations adopted thereunder by the State Board of Health for:

- 1. **NAME OF INSTITUTION:** \_\_\_\_\_ **License Number:** \_\_\_\_\_  
 Telephone Number: ( ) \_\_\_\_\_  
 D.B.A. \_\_\_\_\_ FAX Number: ( ) \_\_\_\_\_
- 2. **Finding Address** \_\_\_\_\_  
 (Number & Street)  
 \_\_\_\_\_  
 (City) (County) (State) (Zip)
- 4. **Mailing Address** \_\_\_\_\_  
 (Number) (Street) (City) (County) (State) (Zip)
- 5. **Name and Title of Administrator/Director:** \_\_\_\_\_
- 6. **Entity:** \_\_\_\_\_  
 (Name of applicant responsible for the operation of the facility)  
 \_\_\_\_\_  
 (City) (County) (State) (Zip)  
 Sole-proprietorship     Partnership     Corporation     Limited Liability Company (LLC)  
 Other: \_\_\_\_\_
- 7. **Indicate if this is an initial application or renewal application:**     Initial Application     Renewal Application

**Hours of Operation: Please indicate the hours of operation the address listed on your application.**

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
<b>From (AM) :</b>							
<b>To (PM) :</b>							

**FOR DEPARTMENT USE ONLY**

Receipt # \_\_\_\_\_

License # \_\_\_\_\_

Certificate # \_\_\_\_\_

Amount \$ \_\_\_\_\_

Issued: \_\_\_\_\_

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Expires: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Changes: \_\_\_\_\_  
\_\_\_\_\_

**8. ATTACHMENTS:**

Applicants must include the following documents based on the type of application.

**Initial Application:**

- Application for License To Operate an Abortion Facility;
- Operational Program Narrative; and
- Scaled drawings of the facility construction.

**Renewal Application:**

- Application for License To Operate an Abortion Facility;
- Operational Program Narrative Update.

**8. SIGNATURE OF APPLICANT(S)**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Title or Position: \_\_\_\_\_

Title or Position: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**9. AFFIDAVIT**

STATE OF OKLAHOMA

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, personally appeared before me

\_\_\_\_\_ and \_\_\_\_\_

whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that to the best of his/her knowledge and belief, the statements in the foregoing application are true and correct and the he/she acknowledged the he/she executed it.

Subscribed and sworn to before me \_\_\_\_\_

(Notary Public)

My Commission Expires: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**PROTECTIVE  
HEALTH  
SERVICES**

**Oklahoma State Department of Health**  
Protective Health Services - 0505  
Medical Facilities  
1000 NE 10th Street  
Oklahoma City, OK 73117-1299  
Telephone: (405) 271-6576  
FAX: (405) 271-1308

**Operational Program Narrative Update**

**Facility Name:** \_\_\_\_\_ **License No:** \_\_\_\_\_

*INSTRUCTIONS*

Each abortion facility must have an operational program narrative that has been approved by the governing body and accepted by the Department. The facility must provide services as outlined by the narrative. If no operations program changes have been modified, please mark the "No Change" box. Return **completed** forms: Application for License to Operate and Abortion Facility (ODH Form 777), Operational Program Narrative Update (ODH Form 779), and renewal license fee to the Department at the address above. The facility **revised** operations are specified in the following areas:

**No Change**

- 1. **Governance and administration:** Must describe as specified in 310:600-9-1. Please provide the required information on an 8.5" x 11" attachment and number the response (1).
- 2. **Patient Rights:** Must describe as specified in 310:600-9-2. Please provide the required information on an 8.5" x 11" attachment and number the response (2).
- 3. **Staffing and personnel:** Must describe as specified in 310:600-9-3. Please provide the required information on an 8.5" x 11" attachment and number the response (3).
- 4. **Clinical services:** Must describe as specified in 310:600-9-4. Please provide the required information on an 8.5" x 11" attachment and number the response (4).
- 5. **Quality assessment and performance improvement:** Must describe as specified in 310:600-9-5. Please provide the required information on an 8.5" x 11" attachment and number the response (5).
- 6. **Examinations, tests and procedures:** Must describe as specified in 310:600-9-6. Please provide the required information on an 8.5" x 11" attachment and number the response (6).
- 7. **Facility design and construction:** Must describe as specified in 310:600-9-7. Please provide the required information on an 8.5" x 11" attachment and number the response (7).
- 8. **Construction drawings:** Must describe as specified in 310:600-9-8. Please provide the required information on an 8.5" x 11" attachment and number the response (8).

**SIGNATURE OF APPLICANT(S)**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Title or Position: \_\_\_\_\_

Title or Position: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_