



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the General Counsel

One Davis Square, Suite 100, East
Charleston, West Virginia 25301
Telephone: (304) 558-9130 Fax: (304) 558-7075

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

May 29, 2013

Via E-mail: sharona@rhrealitycheck.org

Sharon A. Coutts
Director of Research and Investigations
RH Reality Check
10125 Colesville Road #176
Silver Spring, MD 20901

Re: FOIA – Internal Equity

Dear Ms. Coutts:

Pursuant to your FOIA request, attached please find the West Virginia Department of Health and Human Services' response to the US House of Representatives Energy and Commerce Committee inquiry.

Sincerely,

A handwritten signature in blue ink, appearing to read "W.P. Jones".

William P. Jones
Assistant Attorney General

WPJ/jar
Enclosure



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

Office of the General Counsel

One Davis Square, Suite 100, East
Charleston, West Virginia 25301
Telephone: (304) 558-0684 Fax: (304) 558-7075

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

May 21, 2013

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

Re: Response to Request for Information

Dear Chairman Upton:

I am in receipt of your letter of May 8, 2013 requesting information regarding oversight of health care clinics in the State of West Virginia that perform abortions.

In response to your inquiry, my office has compiled the following responses to the Committee's inquiries:

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 your state for each year from 2008-2013

RESPONSE: No. The State of West Virginia does not have a category of state license for abortion clinics or providers. Some licensed hospitals do perform pregnancy termination procedures in certain special medical circumstances.

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: Not Applicable. See response to question 1.

3. Does your state conduct inspections of abortions 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: As stated above, there is no state agency that specifically inspects clinics or facilities that perform abortion. The Office of Health Facility Licensure and Certification within the West Virginia Department of Health and Human Resources is the responsible state licensing agency for hospitals and extended care units operated in connection with a hospital as defined in W. Va. Code St. R. tit. 64, § 12 (1994).

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?
 - 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 abortion clinics, have resulted from complaints filed for each year from 2008-2013.

RESPONSE: No complaints or adverse health events have been reported to this agency.

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: This agency is without sufficient knowledge to answer this question. The West Virginia Board of Medicine would be the professional licensure board in the State of West Virginia to receive and investigate any complaints against physicians.

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 such rules or regulations. Abortion, and all medical and surgical procedures performed in West Virginia are conducted in accordance with the existing medical standard of care for such procedures.

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 for 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 notification and what were the outcomes?

RESPONSE: Since at least 1965, West Virginia law has required that “[a]ny medical, dental or mental health professional... who has reasonable cause to suspect that a child is neglected or abused... immediately... report the circumstances or cause a report to be made to the WV Department of Health and Human Resources....” (W.Va. Code § 49-6A-2(a)).

The federal definition of “medical neglect” per 45 C.F.R. § 1340.15 [...“medical neglect includes... the withholding of medically indicated treatment from a disabled infant with a life-threatening condition.”] comports with the definition of “neglected child” per the West Virginia Child Protective Services Act, W.Va. Code § 49-1-3(11)(A) [...“Neglected child” means a child: (i) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian or custodian to supply the child with necessary... medical care....”].

Thus, as of the date of this inquiry, all medical professionals licensed and practicing in West Virginia are responsible for promptly reporting cases of suspected neglect, including medical neglect, to the WV Department of Health and Human Resources.

- 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.

RESPONSE: Because West Virginia health care facilities and the health professionals under their employ have a duty, under state law, to report all suspected cases of child neglect, including medical neglect, to the WV Department of Health and Human Resources, per W.Va. Code § 49-6A-1, et seq., there exists a continuous and ongoing

notification timeframe in lieu of an annual timeframe. As a result of this inquiry, and to state more clearly the nexus between 45 C.F.R. 1340.15 and West Virginia law, written procedures will be created to include an annual coordination, consultation and notification between providers of health care to infants (including disabled infants with life-threatening conditions) and the WV Department of Health and Human Resources.

If you have any questions or request clarification, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "William P. Jones".

William P. Jones, Esquire
Interim General Counsel
Office of the Cabinet Secretary, DHHR

WPJ/jar

cc: Rocco S. Fucillo, Esquire
Cabinet Secretary, DHHR