IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

WEST ALABAMA WOMEN'S CENTER and WILLIAM J. PARKER, M.D., on behalf of themselves and their patients,	)	
PLAINTIFFS,	)	
vs.	)	**Case No. 2:15-CV-497-MHT**
THOMAS M. MILLER, M.D., in his official capacity as State Health Officer,	)	
DEFENDANT.	)	

DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION TO LIFT STAY AND FILE SUPPLEMENTAL COMPLAINT

COMES NOW Defendant, Thomas M. Miller, M.D.,[1] and submits the following response in opposition to Plaintiffs' Motion to Lift Stay and to File a Supplemental Complaint Pursuant to Fed. R. Civ. P. 15(d) (Doc. 32):

BACKGROUND

This action was filed on July 10, 2015, against the State Health Officer, in his official capacity, by West Alabama Women's Center ("WAWC") and its sole physician to challenge an Alabama Department of Public Health ("ADPH") regulation requiring at least one physician at an Alabama abortion clinic to have local hospital privileges or, in the alternative, for the clinic to contract with an outside covering physician who does have local hospital privileges. Following the retirement of WAWC's former physician at the end of 2014, the clinic asserted it would have to close because it was no longer able to comply with the regulation. Shortly after this action

[1] Since the filing of this action, Thomas M. Miller, M.D., has succeeded Dr. Williamson as State Health Officer, who was named as a defendant only in his official capacity. Accordingly, the Court has ordered that Dr. Miller be substituted in place of Dr. Williamson as the named defendant. *See* Doc. 44.

was filed, the Court entered a preliminary opinion which mostly agreed with the concerns raised by the Plaintiffs. Rather than continue with litigation, a waiver from the regulation (Ala. Admin. Code r. 420-5-1-.03(6)(b)) was granted to WAWC for a period of one year, expiring on August 24, 2016, and Defendant offered to initiate the rulemaking process pursuant to the Alabama Administrative Procedure Act, 1975 Ala. Code § 41-22-1, *et seq.*, to modify the regulation so that it would continue to meet ADPH's goal of ensuring the health and safety of patients while also addressing the undue burden concerns discussed in this Court's August 13 Opinion (Doc. 22).

The Court stayed the litigation while ADPH engaged in the rulemaking process, and an amended regulation was approved for final adoption by the State Committee of Public Health on April 14, 2016. The amended regulation allows for clinics such as WAWC – whose physicians are unable to obtain local hospital privileges and which are unable to contract with an outside covering physician[2] – to maintain their license as long as they meet certain criteria with respect to training, availability, follow-up care, *etc.*[3] The regulation, as amended, undisputedly resolves the claims originally raised by Plaintiffs and there is nothing in the amended regulation which would cause the closure of WAWC or any other clinic.

However, on June 2, 2016, Plaintiffs moved to lift the stay in this matter and to file a proposed "supplemental complaint" which alleges privacy and safety concerns relating to one provision of the regulation as amended, specifically the requirement that an abortion patient at a clinic such as WAWC must receive "a copy of her medical record that pertains to the current abortion procedure prior to leaving the facility." In addition, the proposed complaint adds claims

[2] To date, WAWC is the only Alabama abortion clinic that falls into this category.

[3] The specific criteria set forth in the amended regulation can be found in Exhibit A to Plaintiff's proposed supplemental complaint. (Doc. 32-1, pp. 44-46.) Plaintiffs do not object to these criteria, other than the medical record requirement discussed *infra*. (Pl. Brf,, Doc. 33, pp. 4-5.)

relating to two new laws passed by the Alabama Legislature in May 2016, asserting that these laws violate women's constitutional right to abortion. In challenging the new statutes, the plaintiffs also seek to add new parties (both plaintiffs and defendants). The claims against the statutes and the new parties to be added in Plaintiffs' proposed complaint are not sufficiently related to the concerns regarding the amended regulation and should be litigated separately.[4]

ARGUMENT

I. The claims regarding the statutes are wholly different from the claims regarding the regulation's medical record requirement.

In the proposed complaint, Plaintiffs assert claims regarding three separate laws. In their attempt to lump their claims against the two statutes with their claims against the ADPH regulation, Plaintiffs allege that the regulation's record requirement burdens access to abortion. (Pl. Brf., Doc. 33, p. 12.) While it is true that Plaintiffs' claims against the two new statutes are rooted in the alleged "restricted access to abortion in Alabama and the effect of that restriction on women" (Id., p. 9), their claims against the ADPH regulation solely relate to concerns about patient privacy and confidentiality.[5]

The question of the constitutionality of the statutes, which allegedly will close two Alabama clinics and severely restrict access to second-trimester abortions, is not sufficiently related to the patient privacy concerns of the amended regulation. Clearly, Plaintiffs' concerns about the regulation are about patient privacy/confidentiality and security/safety, not access to abortion. *See, e.g.*, Pl. Brf., Doc. 33, pp. 5, 12; Supp. Compl., Doc. 32-1, ¶¶ 3, 44, 67, 72, 84, 128, 129, 145. In contrast, Plaintiffs' concerns about the two statutes are clearly about access to abortion. *See, e.g.*, Supp. Compl., Doc. 32-1, ¶¶ 130-141.

[4] As previously stated, the claims raised in Plaintiffs' original Complaint have been resolved. Defendant reserves all defenses to Plaintiffs' claims in the proposed complaint.

[5] As will be discussed, *infra*, Plaintiff has mischaracterized the regulation's requirement and, as a result, their alleged concerns are generally unfounded.

For example, in Act 2016-388 (the "School Proximity Bill") the Legislature directed ADPH not to issue a license or renew a license for any abortion clinic located within 2000 feet of a K-8 school. Plaintiffs assert that on December 31, 2016, WAWC's license (along with Alabama Women's Center's license) will not be renewed as a result of the School Proximity Bill.[6] Plaintiffs further assert that neither clinic would be able to open in a new location outside of the requisite 2000 feet. In short, according to Plaintiffs, the School Proximity Bill will ultimately close two Alabama abortion clinics which will not be able to reopen anywhere else, thus reducing women's access to abortion in Alabama.

Likewise, according to Plaintiffs, Act 2016-397 (the "Dismemberment Bill") would reduce women's access to abortion in Alabama, specifically with regard to second-trimester abortions. As will be discussed further, *infra*, ADPH's tie to the Dismemberment Bill is tenuous and there is no indication that adverse licensure action would be required by ADPH as a result of this bill. Again, however, Plaintiffs' claims against the Dismemberment Bill are about access to abortion. Namely, their claims are founded upon allegations that an inability of physicians to legally perform a certain type of abortion will lead to a significant decrease in the availability of second-trimester abortions for Alabama women.

Thus, the litigation over the two statutes will primarily involve evidence and arguments about access to abortion in Alabama. This litigation can and should take place in the form of a separate lawsuit. Plaintiffs' attempt to supplement their complaint with claims against the two new statutes is not the result of facts learned during discovery, a need to correct a defective pleading or add exhausted claims, or a desire to refine the pleadings or simplify the issues. *See, e.g., Dickerson v. Donald*, 252 F. App'x 277, 279 (11th Cir. 2007) (upholding district court's

[6] Defendant will simply follow the law, either the bill if it is in effect or any superseding court ruling.

decision to disallow supplement, noting that the proposed supplement only concerned events that took place after the incidents alleged in the complaint as amended, that the supplement would make the case more complex, and the supplement included unexhausted claims); *AT & T Mobility, LLC v. Digital Antenna, Inc.*, No. 09-60639-CIV, 2010 WL 3608247, at *3 (S.D. Fla. Sept. 9, 2010) ("Courts liberally allow amendments or supplements because ordinarily they are efficient mechanisms to refine the pleadings to reflect the facts that diligent parties learn during discovery or to address new events which impact the dispute between the parties and that can be efficiently resolved in the course of the litigation. … Moreover, while supplementation can be used to correct a defective pleading, here that is not the case.").

More importantly, the supplementation with regard to the two statutes is wholly unrelated to the dispute between the existing parties over ADPH's regulation. *See Skinner v. Derebail*, No. 1:13-CV-44 WLS, 2014 WL 2612471, at *9 (M.D. Ga. June 11, 2014)("A § 1983 plaintiff may set forth only related claims in one civil rights complaint. He may not join unrelated claims and various defendants unless the claims arise 'out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.'") (citing *Jackson v. Burnside*, 2010 WL 1691606, *2 (M.D. Ga., March 19, 2010) (quoting Fed.R.Civ.P. 20(a)), and at *10 (citing *Cone Financial Group, Inc. v. Employers Ins. Co. of Wausau*, 2010 WL 4639295, *2 (M.D. Ga., Nov.4, 2010) ("new claims may only be added pursuant to Rule 15(d) if the claims are adequately related to the originally stated claims"). Furthermore, the dispute over ADPH's amended regulation, as discussed below, seems to be more the result of a misinterpretation and can likely be resolved on a different scale compared to the anticipated litigation over the statutes.[7]

[7] As previously noted, the initial concerns in this matter regarding the ADPH regulation were effectively resolved after approximately nine months outside of litigation via the rulemaking process. In contrast, the

II. Litigating the claims against the statutes together with the claims against the regulation unnecessarily increases the complexity of the case because it requires the addition of new plaintiffs and new defendants, none of which have any relation to the ADPH regulation.

Plaintiffs assert that they should be allowed to supplement their complaint in the name of "judicial efficiency." (Pl. Brf., Doc. 33, p. 8.) As discussed above, the issues regarding the statutes are distinctly different from the issues regarding the ADPH regulation. Moreover, neither the new proposed plaintiffs nor the new proposed defendants have any relation to the ADPH regulation. Plaintiffs make clear that only WAWC will be affected by the ADPH regulation and that none of the proposed plaintiffs have any claims with regard to the ADPH regulation. *See* Pl. Brf., Doc. 33, n. 1; Supp. Compl., Doc. 32-1, ¶67. In addition, none of the proposed defendants would be defending WAWC's claims with regard to the ADPH regulation. None of the proposed defendants – Luther Strange, Lyn Head, Robert L. Broussard, Dr. H. Joseph Falgout, or Dr. James E. West – interpret or enforce the ADPH regulation. And to the extent any change to the regulation may result from this litigation, the authority over such amendments lies solely with ADPH, in conjunction with the State Board of Health and State Committee of Public Health. Moreover, Plaintiffs incorrectly state that Defendant has "enforcement authority for all three requirements" (Pl. Brf., Doc. 33, p. 10; Supp. Compl., Doc. 32-1, ¶16); Defendant does not have responsibility with regard to the defense of the statutes.

The School Proximity Bill does not relate to matters of concern of the State Board of Health/ADPH in the regulation of health care facilities. *See* Ala. Code § 22-21-28 (listing the matters of concern of regulatory authority as follows: setting uniform minimum standards in

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concerns regarding access to abortion as a result of the Women's Health and Safety Act required a multi-day trial and almost three years of litigation at the district court level, and are currently pending before the Eleventh Circuit Court of Appeals. *See Planned Parenthood Southeast, Inc. v. Bentley*, Case No. 2:13-cv-405-MHT (M.D. Ala.) Plaintiffs in the *Planned Parenthood* case have also requested approximately $2.5 million in attorneys' fees and expenses, a matter which is still pending before this Court, and costs have been taxed against the *Planned Parenthood* defendants in the amount of approximately $30,000.

view of the type of care being offered, setting minimum standards of sanitation and equipment found to be necessary, and prohibiting conduct and practices inimical to the public interest/health). Although ADPH would be prohibited under the School Proximity Bill from granting a new license or renewing the license of an abortion clinic located too close to a school as deemed by the Alabama Legislature, Defendant is concerned with matters of health as set forth in the enumerated statutory powers of the State Board of Health. *See* Ala. Code § 22-2-2. Thus, Defendant will either deny a license application of an abortion clinic pursuant to the School Proximity Bill, if it is in effect at the pertinent time, or will disregard any provisions of the School Proximity Bill to the extent they may be enjoined by the Court or found unconstitutional at the pertinent time.

Likewise, ADPH's tie to the Dismemberment Bill is tenuous at best.[8] The Dismemberment Bill applies to physicians, who are not licensed by ADPH but rather by the Board of Medical Examiners ("BME"). That is, the bill allows for a physician to have a hearing before the BME to determine whether a dismemberment abortion was performed to prevent risk to the mother, and it subjects a physician to potential criminal and/or civil liability. (Ex. C to Supp. Compl., Doc. 32-1, pp. 64-67.) The Dismemberment Bill specifically exempts everyone from liability except the physician who performed the abortion – including nurses, technicians, secretaries, receptionists, and other employees or agents who act at the direction of the physician. (*Id*. at p. 65.) Nothing in the Dismemberment Bill directs ADPH or the State Board of Health to take adverse licensure action against a clinic.[9] Even if some type of action were required of

[8] Even in the proposed complaint, Plaintiffs could only cite to the general rule regarding Defendant's responsibility for ensuring that patient care at abortion clinics is "rendered in accordance with all applicable … state … laws" in their effort to connect Defendant to the Dismemberment Bill. (Supp. Compl., Doc. 32-1, ¶ 16, citing Ala. Admin. Code r. 420-5-1-.03(1)).

[9] In contrast, the Women's Health and Safety Act affirmatively required that "Any abortion or reproductive health center that is found to have provided an abortion, in a manner that violates this

Defendant by the Dismemberment Bill, again ADPH would simply follow the law (either the law as passed by the Legislature or, in the event of a subsequent ruling, as required by the Court).

Thus, Defendant has little, if any, relation to either the School Proximity Bill or the Dismemberment Bill, and the proposed defendants have no relation to the ADPH regulation – which is the fulcrum of this case. Similarly, the proposed plaintiffs also have no relation to the ADPH regulation. By attempting to add unrelated claims and parties to this matter, Plaintiffs seek to unnecessarily complicate this case and have failed to avail themselves of the more adequate and appropriate remedy of filing a separate lawsuit. This Court has not been given sufficient reason to combine the proposed statutory challenges with the proposed rearticulated regulatory challenge, and Plaintiffs' motion should be denied accordingly.

III. Plaintiffs' proposed claims regarding the regulation should not require extensive litigation, further making it inappropriate to use this action as a vehicle to challenge the statutes.

As will be more fully detailed in response to the Plaintiffs' claims once filed with regard to the amended regulation, the proposed complaint mischaracterizes how the regulation will be interpreted by ADPH. It is well-established that "the interpretation of an agency regulation by the promulgating agency carries controlling weight unless it is plainly erroneous or inconsistent with the regulation." *Columbiana Health & Rehab., LLC v. Statewide Health Coordinating Council*, 138 So. 3d 305, 310 (Ala. Civ. App. 2013) (internal quotations omitted) (citing *Fraternal Order of Police, Lodge No. 64 v. Personnel Bd. of Jefferson Cnty.*, 103 So. 3d 17, 25 (Ala. 2012), *Brunson Constr. & Envtl. Servs., Inc. v. City of Prichard*, 664 So. 2d 885, 890 (Ala. 1995), and *Sylacauga Health Care Ctr., Inc. v. Alabama State Health Planning Agency*, 662 So. 2d 265, 268 (Ala. Civ. App. 1994)).

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chapter or any rule or regulation adopted under the provision of this chapter, may be subject to adverse licensure action, up to and including license revocation." Ala. Code § 26-23E-14(b).

Plaintiffs have made several bald assumptions about the medical record provision in the regulation, including the allegations that the provision requires the production of a patient's entire medical record which will include (but not be limited to): name, date of birth, social security number, contact information, race, relationship status, referral contact, medical and surgical history, HIV status, history of sexual transmitted infections, mental health history, pregnancy history, number of children, number of miscarriages, number of prior abortions, abortion counseling notes, and the name and signature of the person driving her home. (Supp. Compl., Doc. 32-1, ¶70.) Given that no clinic has been cited for any deficiencies relating to this new requirement and given that no pronouncement has been made by ADPH that supports Plaintiffs' allegations, Defendant is at a loss to understand the basis of Plaintiffs' claims in the proposed complaint.

In fact, in response to comments received during the notice period of the rulemaking process pertaining to the medical record and other provisions of the amended regulation – and as required by Ala. Code § 41-22-5(a)(2) – a memorandum addressing comments was prepared and presented to the State Committee of Public Health at its April 14, 2016 meeting; the meeting at which the amended regulation was adopted. In regards to comments received relating to the medical record provision, the memorandum states that clinics such as WAWC can comply with the requirement by providing a discharge summary or a similar document to the patient. *See* "Summary of Public Comments and Principal Reasons for and against Adoption for Proposed Amendments to Rules Chapter 420-5-1-.03," with accompanying cover memorandum issued by ADPH**,** attached hereto as **Exhibit 1**, page 2.

Not only do Plaintiffs assert an overly broad interpretation of the regulation which is not in agreement with the agency's interpretation – the controlling interpretation to be given

deference by the Court – but Plaintiffs additionally fail to acknowledge that all Alabama abortion clinics are already providing written information to their patients upon discharge. Specifically, written instructions issued to all abortion patients upon discharge must include, at a minimum: a list of possible complications, the signs and symptoms for each complication, recommended procedures to be followed in the event of such complications, activities to be avoided and the period of time to avoid them, a telephone number to call with questions or concerns (including, if applicable, a different telephone number for after-hours calls), the date and time for a follow-up or return visit (with information regarding the importance of keeping the follow-up appointment), the contact information for the physician who will provide care in the event of complications, and the name of the medications given at the clinic. *See* Ala. Admin. Code r. 420-5-1-.03(6)(g).

Under ADPH's interpretation of the amended regulation, clinics such as WAWC will only need to provide marginally more information as compared to those patients who leave any other Alabama abortion clinic after a procedure. It is already known that WAWC patients who may present at an emergency room with complications will not be seen or treated by the physician who performed the abortion or anyone associated with the clinic. As such, if the patient has this additional medical information specific to her procedure in hand, this will help minimize the gap between the clinic and the emergency room, particularly if the patient has not contacted the clinic in advance of her presentment to the emergency room.

Plaintiffs also incorrectly allege that the regulation's requirement is "unique" to abortion patients. (Supp. Compl., Doc. 32-1, ¶¶ 3, 44, 69, 83, 147.) In fact, most every hospital patient is given written medical information relating to their hospital stay upon discharge. In addition, both the BME's office-based surgery rules and the federal regulations governing ambulatory

surgical centers require that patients receive certain written information upon discharge. *See* Ala. Admin. Code r. 540-x-10-.09; 42 C.F.R. §416.52(c). Although Plaintiffs may argue that the ADPH regulation is drastically different from other, non-abortion rules and regulations, such argument is inconsistent with ADPH's interpretation of the regulation.

Finally, Plaintiffs speculate that the amended regulation could jeopardize the safety of certain patients based on the alleged risk of disclosure of medical information to third parties. To be clear, the amended regulation does not call for the patient's information to be given to anyone other than the patient herself. It is difficult to understand how providing a patient a copy of her own medical information violates her right to privacy. Moreover, patients who do not wish to leave the clinic with written documentation are not required to do so. Although Defendant would prefer patients to maintain written information for their reference in the event of questions or complications, and for purposes of follow-up care or a possible visit to the emergency room, there may be patients who will not wish to do so based on their personal circumstances. Nothing in the amended regulation requires such patients to leave the clinic with any documentation or to take it home with them, as was pointed out by ADPH in its memorandum responding to comments received during the amended regulation's notice period (**Ex. 1**, p. 2).[10] In addition, the amended regulation does not require much more information be given to the patient than what is already required of all abortion clinics, so any risk associated with giving a patient written documentation upon discharge is not created by the medical record requirement.

CONCLUSION

In moving to lift the stay in this matter, Plaintiffs are seeking to file a "supplemental" complaint which adds new, unrelated, unexhausted claims as well as new, unrelated parties. By

[10] Moreover, and also as noted in **Exhibit 1**, WAWC can offer the use of its shredder to its patients. *See* Supp. Compl., Doc. 32-1, ¶ 88.

granting the filing of the proposed complaint, the Court would unnecessarily complicate this matter in contravention of the purpose behind Fed. R. Civ. P. 15. The only real issue between the parties relates to conflicting interpretations of the regulation that have arisen since the regulation was amended as a result of the original complaint. Adding unrelated parties and unrelated statutory challenges to this matter will only delay resolution, and such relief is both unnecessary and inappropriate in light of the more prudent and obvious solution, which is to litigate those claims among those parties in a separate lawsuit.

For all of the foregoing reasons, Defendant respectfully requests that the Court deny Plaintiffs' Motion to Lift Stay and to File a Supplemental Complaint Pursuant to Fed. R. Civ. P. 15(d).

/s P. Brian Hale
P. Brian Hale
Bethany L. Bolger
Carol R. Gerard
Assistant Attorneys General on behalf of Defendant

OF COUNSEL:
Alabama Department of Public Health
P.O. Box 303017
Montgomery, AL 36130-3017
T | (334) 206-5209
F | (334) 206-5874
brian.hale@adph.state.al.us
bethany.bolger@adph.state.al.us
carol.gerard@adph.state.al.us

CERTIFICATE OF SERVICE

I hereby certify that on this the 15th day of June 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will serve a copy of same upon the following counsel of record:

Randall C. Marshall
ACLU Foundation of Alabama, Inc.
P.O. Box 6179
Montgomery, AL 36106-0179
rmarshall@aclualabama.org

Alexa Kolbi-Molinas
Andrew David Beck
Jennifer Lee
American Civil Liberties Foundation
125 Broad Street, 18th Floor
New York, NY 10004
akolbi-molinas@aclu.org
abeck@aclu.org
jlee@aclus.org

/s P. Brian Hale
Of Counsel

STATE OF ALABAMA DEPARTMENT OF
PUBLIC HEALTH
Thomas M. Miller, M.D.
State Health Officer

MEMORANDUM

TO: State Committee of Public Health

THROUGH: Thomas M. Miller, M.D.
State Health Officer

FROM: Walter T. Geary, Jr., M.D., Director
Bureau of Health Provider Standards

DATE: April 14, 2016

SUBJECT: Proposed Rule Revision - Rules for Abortion or Reproductive Health Centers, Chapter 420-5-1

I respectfully request final adoption of the amendments to the State Board of Health's Rules for Abortion or Reproductive Health Centers, Rule 420-5-1-.03.

A public hearing regarding the additional changes was held on March 9, 2016. Written comments were received during the comment period. The proposed rule was presented to the Licensure Advisory Board (LAB) at its meeting on April 5, 2016. The LAB approved the rules as amended and recommended that they be sent to the State Committee of Public Health for approval.

Your consideration of this request is appreciated.

WTG/
Attachments

SUMMARY OF PUBLIC COMMENTS AND PRINCIPAL REASONS FOR AND AGAINST ADOPTION FOR PROPOSED AMENDMENTS TO RULES CHAPTER 420-5-1-.03

Pursuant to the requirements of the Alabama Administrative Procedures Act, the State Committee of Public Health provided notice of its intent to promulgate amendments to the Rules for Abortion or Reproductive Health Centers, Chapter 420-5-1-.03. A thirty-five (35) day comment period allowed interested persons an opportunity to comment on the proposed amendments by submitting arguments or opinions concerning the proposed amendments, both orally and in writing. A public hearing was held on March 9, 2016, at the office of the Alabama Department of Public Health (the Department). All written and oral submissions have been fully considered by the Department. A summary of all comments, including conflicting views, received during the public comment period are reflected below, followed by the response of the Department.

Comment

Several writers commented that providing a copy of the patient's complete medical record at the time of discharge from the clinic would expose the patient to the loss of confidentiality of very sensitive personal health information since, many patients are reluctant to share this experience with their family. They could discard the clinic documents without first shredding them, which could lead to unintended consequences.

Response

The proposed amendments do not require that the patient receive a copy of their complete medical record, only the information that pertains to the current procedure. This information could come in the form of a discharge summary or a similar document prepared by the clinic. Nonetheless, the Department is cognizant of the consequences that might result from the improper disposal of the medical records information by the patient. However, the patient may refuse to take their copy of the records or be given the choice to have it shredded on site.

Comment

Several writers commented that a patient who is experiencing post-abortion complications may fail to notify the clinic of the hospital emergency department she is going to or may elect to go to a different hospital emergency department than that suggested by the clinic staff or physician, and that providing confidential protected health information to the hospital emergency department could be a

breach of federal HIPAA regulations. The suggestion was made to add the words "if known" to the obligation to notify the hospital emergency department.

Response

Physician-to-physician communication regarding a patient's medical history and condition is not protected health information under the Health Insurance Portability and Accountability Act. In addition, the Department believes that contact between the clinic physician and the emergency physician is an important process to measure for ensuring coordination of care. If the patient fails to follow the instructions and presents to a different hospital emergency department, the clinic would still be in compliance with the rule by making the good-faith notification.

Comment

Several writers commented that the phone number of the facility physician on call should not be available to all staff members of any abortion center; rather, known only to those who are involved in taking calls from patients regarding possible post-abortion complications.

Response

The Department believes that internal signed confidentiality documents provide adequate protection against inadvertent disclosure of phone numbers of physicians who provide abortion services. Moreover, the proposed amendments do not require a physician's phone number to be automatically disclosed to all staff members; only that the number be readily available in the context of providing post-abortion care. Additional precautions involving phone number identification can also be taken to protect the confidentiality of the physicians providing abortion services.

Comment

Several writers commented that the medical director or other clinic physician may not always be able to obtain the complete records from the hospital within 24 hours of becoming aware that a patient presented to the hospital emergency department. In addition, comments provided stated that a thorough review of the clinic medical record may not be feasible within 24 hours of learning that a patient sought care at a hospital; and that this review was not necessary. The suggestion was that the clinic medical record review be accomplished within 24 hours or as soon as reasonably possible.

Response

The Department believes it is reasonable for the medical director or other clinic physician to conduct its own review of the medical record within 24 hours of becoming aware that one of its patients presented to a hospital emergency department for post-abortion related care. This review is not of the hospital's emergency room visit record, but of the clinic's own medical record to determine

if the clinic has information that may assist the hospital physician and staff with providing post-abortion related care and for the physician conducting the medical record review to be assured clinical standards of care were followed by all clinic staff.

Comment

Numerous comments were received in support of the amendments as proposed.

Response

The Department acknowledges these comments; since these comments are supportive of the amendments as written, no further response is required.