

May 28, 2013

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

Dear Committee Members:

This letter is being sent in response to your May 8, 2013 letter in which you requested information regarding oversight of health clinics and facilities that perform abortions. The paragraphs that follow specify the questions from your committee and Nebraska's response.

**Question 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:** Neb Rev Stat § 71-416 requires that any facility that performs 10 or more abortions during any one calendar week must be licensed as a health clinic.

- The regulations governing the licensure for facilities are found at 175 NAC 7 and the regulations governing licensure of providers are found at 172 NAC 88. Copies of which are enclosed.
- Nebraska has three health clinics licensed to perform abortions. Two of the facilities were licensed from January 2008 – April 2011. The third clinic was licensed in May 2011.

**Question 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:** Nebraska has not suspended or revoked the licenses of any of the clinics that provide abortion services from January 2008 – present.

**Question 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:** Nebraska inspects health clinics that perform abortions as follows:

- Up to 25% are inspected annually based on random selection; and
- For cause as specified in 175 NAC 7-005.04B.

Six inspections have been conducted from January 2008 – present. Inspections are unannounced and are completed by trained investigators using an outlined set of inspection tasks and protocols. Evidence gathered from interviews, records reviews and observations is utilized to determine compliance.

**Question 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?

**Response:** Complaints may be filed as follows:

- A toll-free APS/CPS Hotline;
- A dedicated complaint intake telephone line that is available for reporting 24 hours daily;
- Online via the DHHS website;
- Through a dedicated email address; and
- In person during business hours, M-F, 8:00am – 5:00pm, CST.

Complaints are processed as followed:

- The complaint gets logged into a complaint database;
- Review by an intake specialist is completed to determine if potential violation issues are evident and if the Department has authority to investigate that particular issue;
- An investigation is conducted by going onsite to the facility or by off-site means; and
- If the complaint is not within the agency’s purview or authority, a referral may be made to another agency.

The number of complaints that Nebraska has received between January 2008 – present are as follows:

- Four complaints against health clinics; and
- Two complaints against licensed professionals that provide abortion services.

**Question 4a.** 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:** Investigations are unannounced and are completed by trained investigators. Evidence gathered from interviews, records reviews and observations is utilized to determine compliance. If the investigation is that of a licensed professional, the professional board and Attorney Generals’ office are also involved in the handling of the case and its outcome.

Nebraska has received six complaints related to abortion and/or abortion clinics from January 2008 – present.

**Question 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:** Nebraska has not taken disciplinary action against health clinics or providers from January 2008 – present relating to abortions.

**Question 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.

**Response:** Regulations that govern facilities and licensed health care providers in the state of Nebraska can be accessed at:

- Statutes related to Medicine and Surgery Practice Act/Perfusion Practice Act/Genetic Counseling Practice Act:  
<http://dhhs.ne.gov/publichealth/Documents/Medicine%20and%20Surgery.pdf>
- Statutes related to the Uniform Credentialing Act:  
<http://dhhs.ne.gov/publichealth/Documents/Uniform%20Credentialing%20Act.pdf>
- Statutes related to Health Care Facilities:  
<http://dhhs.ne.gov/publichealth/Documents/Facilities-Health%20Care%20Facilities.pdf>
- Regulations related to the Licensure of Health Clinics:  
[http://www.sos.ne.gov/rules-and-regs/regsearch/Rules/Health\\_and\\_Human\\_Services\\_System/Title-175/Chapter-07.pdf](http://www.sos.ne.gov/rules-and-regs/regsearch/Rules/Health_and_Human_Services_System/Title-175/Chapter-07.pdf)
- Regulations related to Professional and Occupational Licensure/Medicine and Surgery and Osteopathic Medicine and Surgery:  
[http://www.sos.ne.gov/rules-and-regs/regsearch/Rules/Health\\_and\\_Human\\_Services\\_System/Title-172/Chapter-088.pdf](http://www.sos.ne.gov/rules-and-regs/regsearch/Rules/Health_and_Human_Services_System/Title-172/Chapter-088.pdf)

**Question 6a.** Which of these laws is your agency tasked with enforcing and how do you enforce them?

**Response:** The Department of Health and Human Services is tasked with enforcing all of the above listed statutes and regulations. The manner in which they are enforced is found within the aforementioned documents and outlined on the following:

- DHHS Professional and Occupational License Disciplinary Process
- DHHS – Licensure Unit, Health Facilities Licensure Discipline Process

**Question 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.

**Question 7a.** 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 agency? Has the state received any such notifications and what were the outcomes?

**Response:** Nebraska has not had any reports related to withholding of medically indicated treatment of born-alive infants.

**Question 7b.** 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.



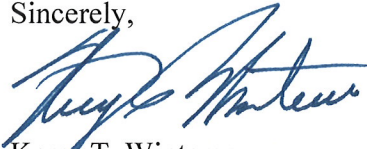
**Response:** Ne Rev. Stat § 28-711 requires reporting to the proper law enforcement agency or to the department's toll-free hotline number as follows:

- By any physician; any nurse; any school employee, any social worker or any other person under section 43-4317 including any person with knowledge of such incident;
- If there is reasonable cause to believe neglect of a child has occurred;
- Observation of neglect or child abuse; or of
- Any circumstances that would reasonably result in such abuse or neglect.

The regulations and procedures governing reporting requirements are as follows:

- Regulations for reporting child abuse and neglect are found in 175 NAC 9-006; and
- Procedures outlined for a report of medical neglect of a handicapped infant are found in Program Memo 06-2005. Copies of which are enclosed.

Sincerely,



Kerry T. Winterer  
Chief Executive Officer  
Department of Health and Human Services

cc: 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

Enclosures:

Statutes Relating to Health Care Facilities, 2012  
Title 175 Chapter 7, Regulations Governing Licensure of Health Clinics, 2007  
Title 172 Chapter 88, Regulations Governing the Practice of Medicine and Surgery and  
Osteopathic Medicine and Surgery, 2004  
Statutes Relating to Medicine and Surgery Practice Act/Perfusion Practice Act, 2011  
DHHS Professional and Occupational License Disciplinary Process  
DHHS Licensure Unit, Health Facilities Licensure Discipline Process  
Health Clinic Inspection Tasks, 6/02  
Health Clinic Compliance Inspection Protocols, 11/09  
Statutes Relating to Uniform Credentialing Act, 2012  
Statutes, Rules and Regulations Relating to Mandatory Reporting, 2011  
Nebr Rev Statute § 28-711  
Program Memo 06-2005