



Steve Bullock, Governor
Richard H. Opper, Director

May 20, 2013

Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Committee Members:

We received your letter dated May 8, 2013 requesting information related to Montana's regulation of "abortion clinics." Responses to the questions from the House Committee on Energy and Commerce are attached.

Because there were no relevant documents in our possession, we are only providing responses to the questions in the letter. As requested by the Committee, I certify the following:

1. A diligent search has been completed of all documents in our possession, custody, or control which reasonably could contain responsive documents;
2. Documents responsive to this request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's request or in anticipation of receiving the Committee's request, and
3. All documents identified during the search that are responsive have been produced to the committee.

Please feel free to contact me if you have any more questions.

Sincerely,

Richard H. Opper
Director

Attachment

HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE

Montana Department of Public Health and Human Services (DPHHS)

1. Does your state license abortion clinics or those facilities and providers who perform abortions?

No, Montana does not license clinics or practices operated by health care providers. Individual providers are licensed by professional boards that establish licensing criteria and a scope of practice for each discipline that may provide the service. For example, a license is not issued by this Department for a physician's practice, but any physician providing medical care would be licensed by the relevant board. Montana does license hospitals, where abortion care may be provided.

If so, please identify what information must be provided or requirements must be met for a facility or provider to be licensed.

There is no specific requirement to license an "abortion clinic," and the term "abortion clinic" does not appear in the Montana Code Annotated (MCA) that we are aware of. The offices of private physicians or other physical or mental health care workers are exempt from licensure under statute.

The relevant MCA provision (§50.5.101(23) (a)) reads as follows:

"Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

Healthcare services or facility types not specifically listed in this statute do not require a license to operate. Furthermore, subsection (b) continues: "The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors." The DPHHS Licensure

Bureau does not license any clinics. This is predicated on the fact the practitioner is already licensed by their board to practice medicine in Montana; and does not need an additional or second license to open a practice.

In addition, please identify the number of abortion clinics licensed in your state for each year from 2008-2013.

Not applicable.

- 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.**

Not applicable.

- 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.**

This Department inspects licensed facilities, but information gathered in that process does not include whether abortion care is provided.

- 4. Does your state monitor complaints or adverse health events relating to abortions?**

Not that we are aware of.

If so, how are these complaints filed or processed?

Not applicable

How many complaints relating to abortions or abortion clinics have been filed for each year from 2008-2013?

We are not aware of any.

- a. Please explain how your state investigates the complaints it receives relating to abortions.**

Complaints regarding health care providers are not received by this Department. The Department of Labor and Industry, Business Standards Division receives complaints involving individual health care providers.

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.

Not applicable.

- 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.**

Disciplinary action would be taken by individual professional licensure boards. Those boards are part of the Montana Department of Labor and Industry, Business Standards Division and the information is available from that Department.

- 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.**

The statutes related to abortion that we are aware of are contained in MCA Title 50 Chapter 20. Please be aware that some of these statutes are no longer enforceable because of relevant court decision.

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

Not applicable.

- 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 withholding of medically indicated treatment from 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 notifications and what were the outcomes?**

The only licensed Montana health care facility type that would be capable of providing an abortion service would be a licensed hospital. Any staff of a licensed

health care facility, including a hospital, is a mandatory reporter of abuse, neglect or exploitation of any patient. (See § 41.3.102, MCA). Montana statute is stricter than 45 C.F.R. 1340.15, in that it mandates that any professional or official in such a health care facility directly report this type of suspected medical neglect to Montana's child abuse hotline operated by the DPHHS. The DPHHS provides training on mandatory reporting annually to professionals and officials at these health care facilities. Montana has not received any such notifications from health care facilities since 2005.

- 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. §1340.157? Does this contact include health care facilities that provide abortions? Please provide a list of all such designations pursuant to 45 C.F.R. §1340.15? Does this contact include health care facilities that provide abortions?**

As noted above, Montana code does not allow for mandatory reporters to designate other individuals to report child abuse or neglect on their behalf but are responsible for making the reports themselves.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-8115

Majority (202) 225-3927
Minority (202) 225-3841

May 8, 2013

Richard Opper
Director
Montana Department of Public Health and Human Services
PO Box 4210
Helena MT 59604-4210

Dear Sir:

Pursuant to Rules X and XI of the United States House of Representatives, the Committee on Energy and Commerce is examining the oversight conducted by state departments of health of clinics and facilities that perform abortions.

The criminal investigation and trial of Dr. Kermit B. Gosnell of Philadelphia, PA, raises troubling questions about the practices of abortion clinics, and whether state departments of health are aware, or even conducting appropriate monitoring, of these facilities. For example, the Grand Jury Report filed by the Pennsylvania District Attorney investigating Dr. Gosnell found that "Pennsylvania's Department of Health has deliberately chosen not to enforce laws that should afford patients at abortion clinics the same safeguards and assurances of quality health care as patients of other medical service providers. Even nail salons in Pennsylvania are monitored more closely for client safety."

In order for the Committee to better understand how states regulate and monitor abortion clinics, and protect the health and safety of women, we request that you provide the following information no later than May 22, 2013:

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.
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.

May 8, 2013, Letter
Page 2

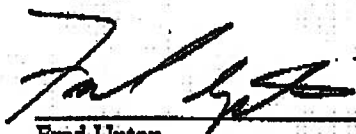
3. Does your state conduct inspections of abortion clinics or facilities that perform abortions? If so, please identify the number of clinics that your state has inspected for each year from 2008-2013. In addition, please identify how an inspection is conducted and what information is examined in the course of an inspection.
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 inspections of abortion clinics, have resulted from complaints filed for each year from 2008-2013.
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.
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?
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.
 - 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?
 - 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.

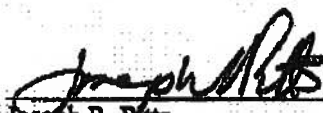
May 8, 2013, Letter
Page 3


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.

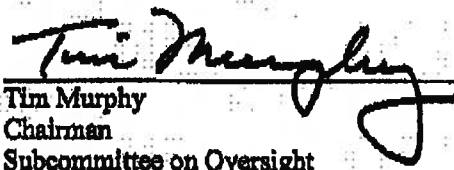
An attachment to this letter provides additional information on how to respond to the Committee's request. If you have any questions regarding this request, please contact Committee staff at (202) 225-2927.

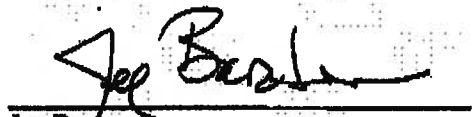
Sincerely,

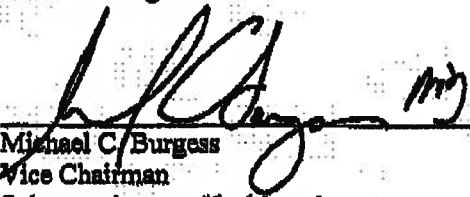

Fred Upton
Chairman


Joseph R. Pitts
Chairman
Subcommittee on Health


Marsha Blackburn
Vice Chairman


Tim Murphy
Chairman
Subcommittee on Oversight
and Investigations


Joe Barton
Chairman Emeritus


Michael C. Burgess
Vice Chairman
Subcommittee on Health and
Subcommittee on Oversight and Investigations

Attachment

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

RESPONDING TO COMMITTEE DOCUMENT REQUESTS

In responding to the document request, please apply the instructions and definitions set forth below:

INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.
4. Each document should be produced in a form that may be copied by standard copying machines.
5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's request to which the document responds.
6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.
8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.
9. The Committee requests electronic documents in addition to paper productions. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should immediately consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.

11. If any document responsive to this request was, but no longer is, in your possession, custody or control, state:

- a. how the document was disposed of;
- b. the name, current address, and telephone number of the person who currently has possession, custody or control over the document;
- c. the date of disposition;
- d. the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.

12. If any document responsive to this request cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.

13. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

14. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

15. All documents should be bates-stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.

16. Two sets of the documents should be delivered to the Committee, one set to the majority staff in Room 316 of the Ford House Office Building and one set to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee majority staff regarding the method of delivery prior to sending any materials.

17. In the event that a responsive document is withheld on any basis, including a claim of privilege, you should provide the following information concerning any such document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; (e) the relationship of the author and addressee to each

other; and (f) any other description necessary to identify the document and to explain the basis for not producing the document. If a claimed privilege applies to only a portion of any document, that portion only should be withheld and the remainder of the document should be produced. As used herein, "claim of privilege" includes, but is not limited to, any claim that a document either may or must be withheld from production pursuant to any statute, rule, or regulation.

18. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's request or in anticipation of receiving the Committee's request, and (3) all documents identified during the search that are responsive have been produced to the Committee, identified in a privilege log provided to the Committee, as described in (17) above, or identified as provided in (10), (11) or (12) above.

DEFINITIONS

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term "document" also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.

3. The term "communication" means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, discussion, release, personal delivery, or otherwise.

4. The terms "and" and "or" should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.


7. The terms "you" or "your" mean and refers to

For government recipients:

"You" or "your" means and refers to you as a natural person and the United States and any of its agencies, offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on your behalf or under your control or direction; and includes any other person(s) defined in the document request letter.

Lopach, Sheila

To: Lopach, Sheila
Subject: FW: Legislative Alert: Congressional Request for Abortion Regulation Information

	Legislative Alert: Congressional Request for Abortion Regulation Information
	This message was sent to state health officials, their assistants, senior deputies, and state legislative liaisons.
May 9, 2013	

Dear State and Territorial Health Officials, Senior Deputies, and State Legislative Liaisons:

This morning all state health agencies received a letter from the House Committee on Energy and Commerce requesting information on regulation of abortion clinics and providers. We have not seen the mailing list they utilized and are unsure of precisely who in the state health agency the letter was addressed to. A sample letter is available on the committee's website.

We suggest you obtain a copy of this letter and review it with your general council. In addition, you may wish to discuss this matter with your communications staff to be prepared to respond in the event you receive press calls.

About ASTHO
The Association of State and Territorial Health Officials is the national nonprofit organization representing the state and territorial public health agencies of the United States, the U.S. Territories, and the District of Columbia. ASTHO members, the chief health officials of these jurisdictions, are dedicated to formulating and influencing sound public health policy and to assuring excellence in state-based public health practice.

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