Pennsylvania Catholic Health Association

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Sister Clare Christi Schiefer, OSF
President

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Commissioner Arthur Coccodrilli
Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

RE: Final – Form Regulations #10-182 (#2577)
Relating to Sexual Assault Victim
Emergency Services

Dear Commissioner Coccodrilli:

On behalf of the Pennsylvania Catholic Health Association and the Pennsylvania Catholic Conference, I write in response to Final – Form Regulation #10-182 (#2577) relating to sexual assault victim emergency services.

The Pennsylvania Catholic Health Association (PCHA), an associate of the Pennsylvania Catholic Conference (PCC), is a statewide organization that represents the Catholic health ministry in public policy matters. The Pennsylvania Catholic Conference is the public affairs arm of the Pennsylvania bishops and their ten (10) dioceses that speaks for the Church in public policy matters affecting the common good and its ministry interests concerning morality, health, welfare, education and human and civil rights.

PCHA and PCC submit the following comments regarding the Final – Form Regulations.

DEFINITION AND OBLIGATION EXCEED REGULATORY AUTHORITY

The addition of a definition of "emergency contraception" (E.C.) and mandating its administration is beyond the authority of the Department. The Department's current regulations (§101.4) reveal no similar instance when a medical term or procedure is defined. Such a definition exceeds the scope of the Department's statutorily conferred authority.

If allowed to stand, the regulations would provide a precedent for future mandates of treatment or medical therapies for other medical situations. The Department contends that its authority under the Health Care Facilities Act is very broad and includes defining and mandating administration of emergency contraception. It is submitted that the General Assembly never intended to allow the Department to delve into particular treatments or standards of medical practice through regulation.

While created under the guise of setting a standard about the whole range of care made available to a victim of sexual assault, it is clear that the primary purpose of the regulation is to force Pennsylvania hospitals to conform to the Department's views concerning emergency contraception. In other states, the issue has clearly been deemed within the purview of legislative action. Indeed, in Pennsylvania in recent legislative sessions, the General Assembly has considered a number of

different bills about treatment of victims of sexual assault. The legislative activity, including hearings, provide no indication that the General Assembly has ever considered this issue resolvable by regulatory action.

The Department could clearly have established a means to assure that victims of sexual assault would get information about emergency contraception which would prevent ovulation or fertilization, but the Department goes far beyond that proper informational role to specifically require a particular form of treatment. Such a mandate is not within the Department's present authority.

The Department further disregards its regulatory limitations by deciding to define "emergency contraception", in part, as follows:

> *Emergency contraception also includes a drug, drug regime or device approved by the food and drug administration that is used after sexual intercourse to inhibit or prevent the implantation of a fertilized ovum within the uterus.*

(§101.4 p. 1 Appendix A - notice of final rulemaking)

This definition effectively legislates what constitutes the beginning of life and ignores the widely held position that life begins at conception. Even though the regulations purport to provide hospitals with a means to interpose objections to providing emergency contraception based upon moral or religious grounds, the definition means that, as a matter of policy, the Commonwealth of Pennsylvania, by simple regulation, demands the administration of emergency contraception which, under the very definition cited, stops life. Surely, no governmental agency has that authority and the definition, as it includes the referenced language, is invalid.

COUNSELOR AUTHORITY

The Department not only requires a hospital to provide written information and oral information about emergency contraception to a victim of sexual assault (§117.53 (1) and (2)), but also lists as a minimum service requirement, that the victim be provided the opportunity to consult with a rape crisis center or sexual assault counselor in person and in private while at the hospital (§117.52 (a) (8)). However, the regulation imposes no limits about the consultation. It is submitted that there should not be any discussion about emergency contraception as that would be redundant. Why require a hospital to provide written and oral information about E.C. if identical information will be provided by a counselor?

The requirement, if it stands, should limit the counselor to providing consolation to the victim and information about the psychological and support services available to the victim after her discharge from the hospital, which address the long lasting emotional and psychological effects of sexual assault.

WRITTEN MATERIALS ABOUT E.C.

The Department revised its draft regulations by determining that the Department will prepare written information materials about E.C. (§117.55). There is no need for the Department to do so. Hospitals are fully capable of developing their own materials, either alone, or in collaboration with other facilities. Preparation of information materials about hospital activities is outside the purview of the Department's authority.

The regulation should be revised to give a facility the option to utilize its own materials or those prepared by the Department. The regulation as stated could, for example, allow the Department

to prepare materials which ridicule or debase hospitals which may choose to exercise religious or moral conscience. Furthermore, it is foreseeable that materials of the Department could quickly become outdated or be misleading and objectionable to the facility which is forced to distribute them. If hospitals are able to develop and constantly review their own materials, that will be far more efficient than hoping the Department will respond to changes. Hospitals should not be forced to rely upon a government agency in this regard.

TRANSPORTATION MANDATE NOT THE LEAST RESTRICTIVE MEANS TO ACCOMPLISH THE ANNOUNCED GOVERNMENTAL PURPOSE

The Department requires that a hospital which objects to providing E.C. must "arrange for" transport of the victim upon the victim's request (§117.57(6)). Even if a religious hospital asserts that a burden on its religious freedom is caused by this requirement, the Department claims it has a compelling reason for its mandate and further claims that the transport requirement is the least restrictive means to accomplish the purpose. That is certainly not the case.

Since the Department has decided to mandate activity which it acknowledges may clash with the religious or moral positions of some hospitals, it should be required to implement a system, paid for by the Commonwealth, to provide transportation upon request for a sexual assault victim. The State clearly has the wherewithal to organize a transport system in cooperation with local rape crisis centers, ambulance or emergency services, law enforcement authorities or similar entities. If the patient desires transport services, the Department should provide her with a means to contact a staffed center which could then make the requisite arrangements. Rather than the system proposed under the regulations, which forces religious hospitals to arrange for transportation, and, therefore, engage in material cooperation by assisting the victim to obtain a service the facility will not provide, the alternative system proposed here avoids likely litigation and assuredly would be the least restrictive means by which the State can accomplish its goal.

Because of the important points raised above, PCHA and PCC urge the Independent Regulatory Review Commission to disapprove the final – form regulations in their present form, unless the concerns expressed are addressed and the regulations are amended as noted.

Thank you for your attention.

Sincerely,

Sister Clare Christi Schiefer, OSF

Sister Clare Christi Schiefer, OSF
President

cc. Members, Senate Public Health and Welfare Committee
Members, House Health and Human Services Committee
Mr. John Jewett
Ms. Sandra Knoble
Ms. Michele Hansarick