



# Pennsylvania Catholic Health Association

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BUREAU OF FACILITY  
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Sister Clare Christi Schiefer, OSF  
President

October 18, 2006

Gerald F. Radke  
Director, Bureau of Facility Licensure and Certification  
Department of Health  
Room 932, Health & Welfare Building  
7th and Forester Streets  
Harrisburg, PA 17120

Re: Proposed Regulations; Sexual Assault Victim Emergency Services

Dear Mr. Radke:

On behalf of the Pennsylvania Catholic Health Association (PCHA) and the Pennsylvania Catholic Conference (PCC), I write concerning the Department of Health draft proposed regulations dealing with Sexual Assault Victim Emergency Services. PCHA is a statewide organization that represents the Catholic health ministry in Pennsylvania in public policy matters and is closely aligned with PCC, the public affairs arm of the Catholic bishops of Pennsylvania.

PCHA and PCC are very concerned about the requirements in the draft regulations as noted below.

## §101.4. Definitions.

The proposed regulation is broader than necessary to address the availability of Plan B and raises substantial questions about the impact of the definition of emergency contraception. Included in the definition would be a drug which inhibits or prevents "the implantation of a fertilized ovum within the uterus." To adopt such a definition effectively legislates what constitutes the beginning of life and ignores the widely held position that life begins at conception. The regulations would mandate that non-religious hospitals administer emergency contraception under circumstances where it is clear that conception has occurred (presuming that technology will eventually allow such a determination). That would be tantamount to a Commonwealth ordered termination of life – a matter clearly not to be lightly ignored – and one which, in any event, seems to be beyond the authority of the Department even given the broadest possible reading of its regulatory authority under the Health Care Facilities Act.

PCHA and PCC submit that a way to avoid the problematic definition would be to adopt the following definition of "emergency contraception":

*An Associate of the Pennsylvania Catholic Conference*

A drug, drug regime, or device approved by the Food and Drug Administration, including Plan B, that is used after sexual intercourse to inhibit or prevent ovulation or fertilization.

**§101.203. Emergency contraception.**

**§101.207. Religious exemptions.**

Section 101.203(a)(3) requires that a facility offer emergency contraception and provide it on site unless the hospital claims an exception in accordance with Section 101.207. According to current practice, Catholic hospitals may proceed to provide emergency contraception in certain instances. In following the *Guidelines* developed by the Catholic Bishops of Pennsylvania, however, after administering the ovulation test described in those guidelines, a Catholic hospital would refrain from administering Plan B if certain results would be found. Section 101.207, when read with Section 101.302.(a)(3), might not permit the limited exercise of conscience and could be construed to mean that only full refusal to administer emergency contraception would be allowed. PCHA recommends a clarification to allow the conscience exercise as contemplated by the Bishops' guidelines.

From the standpoint of the PCHA, the exercise of conscience under Section 101.203(a)(2) is unnecessary. PCHA and PCC, in discussions with Senate staff concerning Senate Bill 990, took the position that information – written and oral – about emergency contraception for victims of sexual assault would be appropriately undertaken by Catholic facilities. (For reference, the amended Senate Bill 990 [PN 2109] is attached. The bill, as amended, contains a clear conscience provision, an acceptable definition of emergency contraception, and, for all facilities which would treat victims of sexual assault, requires oral and written emergency contraception information, the opportunity for a conversation with a sexual assault counselor and, at the request of the victim, the opportunity to meet with such a counselor on site.)

The religious exemption provision in the draft regulation seems to impose a threshold which a facility must satisfy before it can avail itself of the section. The hospital could avoid complying with Section 101.203(a)(2) and (3) "if providing the services would cause a substantial burden to the free exercise of religion...". As written, would the Department be able to challenge an attempted conscience exercise? Would the facility have to prove the substantial burden before it could avoid the mandate? The Religious Freedom Protection Act (71 P.S. 2407) is far more direct in providing a religious exemption. It states that:

Nothing in this Act shall be construed to require a religiously affiliated health care facility to provide, allow, participate in or refer for health care services which are contrary to the religious beliefs or practices of the facility...

The exemption provision should, if submitted, adopt that language (or, more precisely, the conscience provision set forth in SB 990 [PN 2109]).

### **§101.208. Hospitals not providing sexual assault emergency services.**

The draft regulations would require transport of a victim by a religious facility not willing to provide emergency contraception, and for Catholic facilities that would be in the narrow set of cases when conception might have occurred. To require such an action constitutes what ethically is said to be "material cooperation." This is itself an abridgement of the Religious Freedom Protection Act (RFPA), since it would force the Catholic hospital to assist in the rendering of emergency contraception. However, a religious facility's willingness to provide information about sexual assault counselors, and to have the victim meet with the counselor in person at the hospital obviates the need for such transportation. Such transportation would be highly unusual in that the transport would not be for a "medical emergency," since the instances when a religious facility would not provide emergency contraception would be when conception was a possibility. The termination of that life does not constitute a medical emergency, even though PCHA recognizes that a victim may opt to receive emergency contraception to prevent implantation. Further, imposing such a requirement on a religious facility, in effect, imposes a tax for the exercise of religious conscience. Such a tax is wholly inconsistent with the General Assembly's clear articulation of the conscience rights of religious facilities in RFPA. That provision required only notice of a facility's policy. The General Assembly never imposed an additional requirement of transport and, to that extent, the regulation is directly inconsistent with RFPA.

### **§101.205 Emergency contraception informational materials.**

Equally problematic is the requirement at Section 101.205(b)(3), which would apply to religious facilities that provide sexual assault emergency services. In effect, a facility would be required to give a victim a referral list which is directly inconsistent with the manner in which hospitals are permitted to exercise religious conscience under RFPA.

### **§101.208. Hospitals not providing sexual assault emergency services.**

Section 101.208 would require religious hospitals covered by Section 101.207 to provide notice to the Department. How would that section apply if emergency contraception would be covered in most, but not all, cases? The section also requires that a hospital notify "all law enforcement agencies, which may transport or refer a sexual assault victim," of a hospital's election to not provide sexual assault emergency services. How is a hospital to determine if it has complied with this? There is no geographic limitation, and, conceivably, then the notice could cover many counties if not significant parts of the state. The same concern exists in connection with the notice to ambulance and emergency medical care and transport services. How will a hospital know if it has complied? What burden does the hospital have to update the list? How closely must it monitor changes? Finally, how does a hospital comply if it provides sexual assault emergency services except for emergency contraception for the relatively rare cases which may occur at facilities complying with the Bishops' *Guidelines*?

### **§101.203. Emergency contraception.**

By way of observation, the comments concerning Section 101.203 (last paragraph page 6) fail to mention that the "*Guidelines for Catholic Hospitals Treating Victims of Sexual Assault*" discuss an ovulation test in addition to a pregnancy test. The pregnancy test, if



positive, points out that the victim would have been pregnant (that is, implantation would have occurred) before the assault and emergency contraception would be inappropriate at that time. The ovulation test focuses on possible conception and is the specific focus of the religious conscience which Catholic hospitals would exercise. The point is vital to understanding the reasons for the comments set forth above.

Catholic hospitals in Pennsylvania have a long history of providing compassionate quality care to victims of sexual assault. Based upon the above significant comments, PCHA and PCC suggest there is need for further dialogue on the draft proposed regulation, so important concerns are addressed. PCHA and its members stand ready to work with the DOH as this process goes forward.

Thank you for your attention.

Sincerely,

*Sister Clare Christi Schiefer, OSF*

Sister Clare Christi Schiefer, OSF  
President

SCC/mjs

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cc: PCHA Board of Directors  
Dr. Robert J. O'Hara, Jr.  
Richard E. Connell, Esq.  
Dr. Calvin B. Johnson

*The Pennsylvania Catholic Health Association (PCHA) is a statewide organization whose membership is comprised of Catholic hospitals, long-term care facilities, numerous multi-facility health systems and other related health care entities, sponsoring religious congregations and dioceses. PCHA provides support for the Catholic health ministry through Gospel witness in advocacy, communication, education and united action.*

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 990

Session of 2005

INTRODUCED BY CONTI, C. WILLIAMS, BROWNE, EARLL, TARTAGLIONE, BOSCOLA, MUSTO, KITCHEN, LEMMOND, LAVALLE, FERLO, WASHINGTON, FONTANA AND HUGHES, NOVEMBER 15, 2005

SENATOR CORMAN, PUBLIC HEALTH AND WELFARE, AS AMENDED, OCTOBER 3, 2006

AN ACT

1 Providing for requirements for hospitals and health care
2 facilities that provide services to sexual assault victims,
3 for provision of information and services relating to
4 emergency contraception and for powers and duties of the
5 Department of Health.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Compassionate
10 Assistance for Rape Emergencies (CARE) Act.

11 Section 2. Definitions.

12 The following words and phrases when used in this act shall
13 have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 "Department." The Department of Health of the Commonwealth.

16 "Emergency contraception." Any drug or device approved by
17 the Food and Drug Administration INCLUDING PLAN B, that is used <—
18 after intercourse to inhibit or prevent ovulation, fertilization <—

1 ~~or the or fertilization implantation of a fertilized ovum within~~  
2 ~~the uterus.~~ OR FERTILIZATION. ←

3 "Emergency services." Medical examinations, forensic  
4 examinations, procedures and services provided by a hospital or  
5 health care facility to a sexual assault victim.

6 "Health care facility." Any public or private clinic,  
7 center, medical training institution, medical facility,  
8 infirmary, dispensary or other institution or location wherein  
9 emergency medical care is provided to any person.

10 "Hospital." An institution licensed as a hospital by the  
11 Department of Health in accordance with Chapter 8 of the act of  
12 July 19, 1979 (P.L.130, No.48), known as the Health Care  
13 Facilities Act.

14 "Rape crisis center." An office, institution or center that  
15 has contracted with a Statewide nonprofit organization  
16 identified by the Department of Public Welfare as the prime  
17 grantee that arranges for the provision of services to sexual  
18 violence and rape victims and offers assistance to victims of  
19 sexual assault and their families through crisis intervention,  
20 medical and legal accompaniment and follow-up counseling.

21 "Sexual assault." Any offense specified in 18 Pa.C.S. Ch. 31  
22 Subch. B (relating to definition of offenses).

23 "Sexual assault counselor." A person who is engaged or  
24 employed by an office or center contracted with a Statewide  
25 nonprofit organization identified by the Department of Public  
26 Welfare as the prime grantee that arranges for the provision of  
27 services to sexual violence and rape victims, who has undergone  
28 40 hours of sexual assault training and is under the control of  
29 a direct services supervisor of a rape crisis center, whose  
30 primary purpose is the rendering of advice, counseling or

1 assistance to victims of sexual assault.

2 "Sexual assault victim" or "victim." A female who has been  
3 sexually assaulted and presents or is transported to a health  
4 care professional, hospital or other health care facility.

5 Section 3. Duty of hospitals and health care facilities.

6 A hospital or health care facility that provides emergency  
7 services to sexual assault victims shall, upon a victim's  
8 presenting to the hospital or health care facility, promptly:

9 (1) Provide the victim with medically accurate written  
10 informational materials regarding emergency contraception  
11 ~~prepared or approved under section 4.~~ ←

12 (2) Orally inform the victim of the availability of  
13 emergency contraception, its use ~~and efficacy~~, EFFICACY AND ←  
14 RISKS IDENTIFIED BY THE FOOD AND DRUG ADMINISTRATION OR THE  
15 PHARMACEUTICAL MANUFACTURER.

16 (3) Offer the complete regimen of emergency  
17 contraception to the victim and provide the regimen onsite  
18 upon her request.

19 (4) Inform the victim of the availability of a sexual  
20 assault counselor, provide the sexual assault victim with the  
21 telephone number of the local rape crisis center and contact  
22 the local rape crisis center at the request of the victim.

23 (5) Afford the victim an opportunity to consult with the  
24 ~~rape crisis~~ SEXUAL ASSAULT counselor in person and in private ←  
25 while at the hospital or health care facility.

26 Section 4. Informational materials regarding emergency  
27 contraception.

28 (a) Care providers.--A hospital or health care facility that  
29 provides emergency care to sexual assault victims shall ensure  
30 that a person who provides care to sexual assault victims is

1 furnished with medically accurate written informational  
2 materials about emergency contraception ~~developed under~~ ←  
3 ~~subsection (b)~~.

4 (b) Development.--The department in collaboration with a  
5 Statewide nonprofit organization identified by the Department of  
6 Public Welfare as the prime grantee that arranges for the  
7 provision of services to sexual violence and rape victims shall  
8 develop medically and factually accurate and objective written  
9 informational materials relating to emergency contraception for  
10 distribution to and use in hospitals and health care facilities  
11 in this Commonwealth, in quantities sufficient to comply with  
12 the requirements of this act.

13 (c) Requirements.--The department shall prepare, produce and  
14 distribute to the hospitals and health care facilities AS ←  
15 REQUESTED AND at no cost to the hospitals and health care  
16 facilities the written informational materials. The  
17 informational material shall:

18 (1) Be in clear and concise language, readily  
19 comprehensible, in such varieties and forms as the department  
20 shall deem necessary to inform victims in English and  
21 languages other than English.

22 (2) Explain the nature of emergency contraception,  
23 including its use ~~and efficacy~~, EFFICACY AND RISKS IDENTIFIED ←  
24 BY THE FOOD AND DRUG ADMINISTRATION OR THE PHARMACEUTICAL  
25 MANUFACTURER.

26 (3) Be circulated by the department to hospitals and  
27 health care facilities in this Commonwealth UPON REQUEST in ←  
28 quantities sufficient to comply with the requirements of this  
29 act.

30 (D) OPTIONAL MATERIALS.--A HOSPITAL OR HEALTH CARE FACILITY ←



1 USING WRITTEN INFORMATIONAL MATERIALS OTHER THAN THOSE PREPARED  
2 BY THE DEPARTMENT IN ORDER TO SATISFY THE REQUIREMENTS OF  
3 SECTION 3(1) SHALL HAVE THOSE WRITTEN MATERIALS REVIEWED BY THE  
4 DEPARTMENT PRIOR TO DISTRIBUTION. THE DEPARTMENT SHALL NOT  
5 REIMBURSE A HOSPITAL OR HEALTH CARE FACILITY FOR THE COST OF THE  
6 WRITTEN MATERIALS IF THE HOSPITAL OR HEALTH CARE FACILITY  
7 PREPARES AND PRODUCES THE OPTIONAL MATERIALS.

8 Section 5. Rules and regulations.

9 The department shall promulgate rules and regulations NOT  
10 INCONSISTENT WITH SECTION 7 as may be necessary and proper to  
11 implement the provisions of this act no later than two years  
12 from the effective date of this act.

13 SECTION 6. ENFORCEMENT.

14 THE DEPARTMENT SHALL ENFORCE COMPLIANCE WITH THIS ACT  
15 PURSUANT TO SECTIONS 811 AND 814 OF THE ACT OF JULY 19, 1979  
16 (P.L.130, NO.48), KNOWN AS THE HEALTH CARE FACILITIES ACT.

17 SECTION 7. RELIGIOUS FACILITIES EXCEPTION.

18 NOTHING IN THIS ACT REQUIRES OR SHALL BE CONSTRUED TO REQUIRE  
19 A RELIGIOUSLY AFFILIATED HEALTH CARE FACILITY TO PROVIDE,  
20 PARTICIPATE IN PROVIDING OR REFER OR TRANSPORT A VICTIM FOR  
21 EMERGENCY CONTRACEPTION IF SUCH ACTIVITY WOULD BE CONTRARY TO  
22 THE STATED RELIGIOUS BELIEFS, PRACTICES OR POLICIES OF THE  
23 FACILITY SO LONG AS THE FACILITY PROVIDES NOTICE TO A VICTIM OF  
24 ITS POLICIES REGARDING EMERGENCY CONTRACEPTION AND COMPLIES WITH  
25 SECTION 3(1), (2), (4) AND (5). THE NOTICE MUST BE POSTED  
26 CONSPICUOUSLY IN THE EMERGENCY ROOM OR WAITING AREA OF THE  
27 FACILITY.

28 Section 6 20. Effective date.

29 This act shall take effect in 60 days.