



PROTECTING, MAINTAINING AND IMPROVING THE HEALTH OF ALL MINNESOTANS

March 15, 2017

The Honorable Matt Dean
Chair, House Health and Human Services Finance Committee
401 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, MN 55155

Dear Chair Dean and members of the committee:

I appreciate the opportunity to present the Department of Health's position on House File 812. This bill does have bipartisan support and we appreciate that legislators on both sides of this debate are focused on best protecting the health and safety of patients.

MDH works to achieve health equity in Minnesota, where all communities are thriving and all people have what they need to be healthy. We ensure that safe conditions exist in 4,800 health care facilities and provide a timely responses to more than 24,000 maltreatment allegations annually.

House File 812 would apply existing state rules for the regulation and licensure of ambulatory surgery centers to the five outpatient clinics which perform 10 or more abortions per month. Minnesota's 1,250 other similar clinics performing non-abortion services would still not be similarly regulated.

Minnesota Statutes (section 145.416) already directs the Commissioner of Health to license and regulate facilities providing abortion services. However, the Department of Health is unable to operationalize section 145.416 due to a permanent injunction of our agency's rulemaking issued by a federal district court in 1977 as part of the *Hodgson v. Lawson* series of 8th Circuit and Minnesota District Court decisions.

More recently, this case law has been re-litigated by the U.S. Supreme Court in *Whole Woman's Health v. Hellerstedt*. In its 2016 opinion regarding a similar Texas law, the Court held that "[b]oth the admitting-privileges and the surgical-center requirements place a substantial obstacle in the path of women seeking a pre-viability abortion, constitute an undue burden on abortion access, and thus violate the Federal Constitution." (*Hellerstedt*, pp. 19–39).

Additionally, the Court found that:

- abortion facilities already meet a host of health and safety requirements that are enforced through administrative, civil, and criminal penalties;
- a surgical center standard imposes a number of additional requirements that are generally unnecessary in the abortion clinic context;

- the standard provides no benefit when complications arise in the context of a medical abortion, which would generally occur after a patient has left the facility; and
- abortions taking place in abortion facilities are safer than common procedures that occur in outside clinics not subject to surgical-center requirements. (*Hellerstedt*, pp. 28-36).

This legislation, as proposed, would violate the Court's ruling in *Hellerstedt*.

In addition to its constitutional problems, clinic level licensure is unnecessary. Clinics are already subjected to significant oversight:

- Nurses and physicians are licensed under their respective health licensing boards which enforce the standards of practice;
- Federal Clinical Laboratory Improvement Amendments (CLIA) set requirements for clinical laboratories;
- OSHA requirements must be met,
- Local building codes enforce life safety and fire safety; and
- Health insurers inspect clinic providers as part of in-network contracting.
- Minnesota providers comply with the clinical policy guidelines and quality standards established by a national credentialing organization that works to enhance the safety and quality of services. This includes issues like infection prevention, use of antibiotics or sedation, and treatment of complications

However, if there are patient safety concerns regarding clinics, we should improve safety and standards for all clinics, not just a select few. Lastly, I respectfully remind the committee that a nearly identical bill was vetoed by Governor Dayton in 2012 based on the concerns I have described.

If you have questions, please contact Melissa Finnegan, Director of Legislative Relations, at 651-201-5805 or Melissa.Finnegan@state.mn.us.

Sincerely,



Edward P. Ehlinger, M.D., M.S.P.H.
Commissioner
P.O. Box 64975
St. Paul, MN 55164-0975