

April 8, 2009



Office of Public Health and Science
Department of Health and Human Services
Attention: Rescission Proposal Comments
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Via electronic mail

Re: Comments on Provider Conscience Regulation

We write to express our strong support for rescinding, in its entirety, the regulation entitled “Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law” (the Regulation). The Regulation’s ambiguous terms and incomplete definitions set up a potential conflict with both medical standards of care for sexual assault victims and the state laws in the Pacific Northwest designed to ensure that those standards are met.

Introduction

For more than 30 years, Legal Voice has worked to advance women’s legal rights in the northwest states. Though we work on all areas affecting women’s rights, we have long been a regional leader in protecting the legal rights of survivors of domestic and sexual violence. Because we have seen the impact of post-traumatic stress and unwanted pregnancy on rape survivors, and worked directly with women raising children born as a result of rape in a legal system hostile to their safety, we advocate for and support laws that require hospital emergency rooms to give women information about emergency contraception and provide it upon request.¹

¹ Washington and Oregon mandate the provision of emergency contraception to sexual assault survivors seeking emergency care. Revised Code of Washington 70.41.350; Oregon Revised Statutes § 435.254.

Emergency Contraception is Standard Medical Care for Rape Survivors

Emergency contraception, packaged and sold in the United States as Plan B, is birth control that works after sexual intercourse or assault to prevent pregnancy. It is not an abortifacient and cannot harm an existing pregnancy.² Rather, it works to prevent pregnancy.³ It is most effective if taken as soon as possible after sexual intercourse or a sexual assault, preferably within the first 24 hours but up to 120 hours after the event.⁴ Because it can prevent pregnancy after a sexual assault, emergency contraception is the required standard of care for providers treating women and girls who have been raped.⁵

Nonetheless, prior to the enactment of laws requiring the provision of emergency contraception in emergency rooms, some hospitals in our region refused to inform rape victims about the availability of emergency contraception and refused to provide them the drug. Women were harmed by these failures, which is why we work to ensure that all hospitals in our region comply with basic standards of medical care for survivors of sexual assault. The Regulation fails even to consider that patients, including trauma survivors, will suffer health consequences from refusals to provide reproductive healthcare.

The Fear of Pregnancy Resulting from Rape is Profound and EC Can Alleviate It

Despite many advances in the law to protect women from sexual assault and intimate partner violence, these remain common crimes, often resulting in death or serious injury.⁶ Young women and girls, ages 16 to 19, are the most likely to suffer sexual assault.⁷ Women and girls who survive domestic or sexual violence may suffer post-traumatic stress disorder,⁸ a mental and physical reaction to a traumatic event or series of events. PTSD and its symptoms can last for many years and have devastating effects on a victim, her family, and her community.⁹

² American College of Obstetricians & Gynecologists, *Practice Bulletin: Clinical Management Guidelines for Obstetrician-Gynecologists*, Vol. 69 (December 2005) at 2.

³ *Id.* at 1.

⁴ *Id.* at 4-5.

⁵ Smugar, S., et al., *Informed Consent for Emergency Contraception: Variability in Hospital Care of Rape Victims*, American Journal of Public Health, Vol. 90, No. 9 (September 2000) at 1372; American Medical Association, *Strategies for Treatment and Prevention of Sexual Assault* (October 1995).

⁶ Tjaden, P. & Thoennes, N., *Extent, Nature and Consequences of Rape Victimization: Findings from the National Violence Against Women Survey* (U.S. Dep't of Justice Jan. 2006) (more than 18 million women in the United States have been raped); *Costs of Intimate Partner Violence Against Women in the United States*, National Center for Injury Prevention, Atlanta (GA) (2003) (an estimated 1.3 million women are victims of physical assault by an intimate partner each year).

⁷ *National Crime Victimization Survey: Criminal Victimization, 2002* (U.S. Dept. of Justice, Washington, DC), August 2003 at 8.

⁸ See Orsillo, S., *National Center for Post Traumatic Stress Disorder Fact Sheet: Sexual Assault Against Females*, United States Department of Veterans Affairs, available at www.ncptsd.va.gov/ncmain/ncdocs/fact_shts/fs_female_sex_assault.html?opm=1&rr=rr87&srt=d&echorr=true (last visited September 25, 2008).

⁹ *National Center for Post Traumatic Stress Disorder Fact Sheet: What is Post Traumatic Stress Disorder (PTSD)?*, United States Department of Veterans Affairs, available at www.ncptsd.va.gov/ncmain/ncdocs/fact_shts/fs_what_is_ptsd.html (last visited September 25, 2008).

Among the fears a survivor suffers after a rape is the fear that she will contract HIV or become pregnant as a result of the rape.¹⁰ Fortunately, we have the ability to immediately address both of these fears by providing emergency contraception and HIV prophylaxis to everyone who seeks medical care after a rape. Refusals to tell women and girls about emergency contraception or provide it to them put them at risk of pregnancy and compound the trauma they suffer.

Pregnancy Resulting from Rape Can Have Significant, Lifelong Consequences

Each year, approximately 32,000 women in the United States become pregnant as a result of rape.¹¹ Of those women, many decide to terminate their pregnancies, rather than cope with the psychological torment of carrying to term. Many others, for just as legitimate reasons, decide to continue their pregnancies.

There are many health consequences associated with an unintended pregnancy, both for the mother and the child. Women with unplanned pregnancies have two to four times the risk of experiencing domestic violence as do women whose pregnancies are planned¹², and are more likely to delay seeking prenatal care.¹³ For all women, whether a pregnancy is planned or unintended, the risks associated with pregnancy may include high blood pressure, diabetes, or heart, breathing, and kidney problems.¹⁴ Unfortunately, there are additional lifelong consequences a woman may suffer while raising a child born of rape.

Most people assume a rapist has no legal parental rights to the child born of a rape. This is not the case. Family laws throughout the United States do in fact grant parental rights to rapists in many if not most situations.¹⁵ When a rape victim chooses to give the child up for adoption, these same laws limit a court's ability to grant an adoption without the rapist's consent.¹⁶ Even if the rapist attempting to establish his paternity is ultimately

¹⁰ Smugar, *supra*, note 5.; see also Osterman, J., et al., *Emergency Interventions for Rape Victims*, Psychiatric Services, Vol. 52, No. 6, 733-740 at 733 (June 2001) (emergency intervention with a rape victim includes providing that person with information to help her address fears about future medical problems, including pregnancy).

¹¹ Holmes, M.M. et al., *Rape-related Pregnancy: Estimates and Descriptive Characteristics from a National Sample of Women*, 175 Am. J. of Obstetrics & Gynecology 320, 320-325 (1996).

¹² Moore, M., *Special Report: Reproductive Health and Intimate Partner Violence*, Family Planning Perspectives, Volume 31, No. 6, (1999), citing Gazmararian, J. et al, *The relationship between pregnancy intendedness and physical violence in mothers of newborns*, Obstetrics and Gynecology, Vol. 85 No. 6, 1031-1038 (1995).

¹³ D'Angelo, D.V. et al, *Differences between mistimed and unwanted pregnancies among women who have live births*, Perspectives on Sexual and Reproductive Health, Vol. 36 No. 5, 192-197 (2002).

¹⁴ See, e.g., the National Institutes of Health Pregnancy Fact Sheet, available at <http://www.nichd.nih.gov/health/topics/pregnancy.cfm> (last visited September 25, 2008).

¹⁵ See, e.g., Revised Code of Washington 26.26 (Washington's Uniform Parentage Act, which allows a presumed or alleged father to either automatically or through court or administrative processes establish legal parentage of a child. The statute and case law fail to address the situation of a child born of rape.)

¹⁶ See, e.g., Revised Code of Washington 26.33.170(a), permitting a court to grant an adoption over the objection of an alleged father *convicted* of certain crimes of sexual assault. There is no provision addressing the situation where the crime was not reported – the vast majority of sexual assaults in the

unsuccessful under state law, he still has the legal ability to force the rape victim into court, violating her privacy and causing her to relive the rape through court testimony. Rape survivors in these situations often lack legal representation, and must face their perpetrators alone while trying to protect their children. In these circumstances, the child is also put at risk, and both victim and child may face a lifetime of contact and interactions with the perpetrator of the sexual assault.

The proposed regulation ignores the significance of emergency contraception to rape survivors, and utterly fails to account for the costs – both short and long term – to patients of a refusal to provide care. Washington State and Oregon, however, have determined that it is good public policy to require the provision of emergency contraception to rape victims in emergency rooms.

Requiring Hospitals to Provide Emergency Contraception to Rape Victims Is Sound Public Policy

As the Washington State Legislature declared, approximately 38 percent of women in Washington are raped in their lifetimes – a rate 20% higher than the national average.¹⁷ Given these staggering figures, Washington and Oregon have determined that hospitals should provide basic, standard medical care to the girls and women who seek emergency care in these states after a rape. This requirement is standard healthcare; it comports with medical ethics and laws that require informed consent to medical treatment;¹⁸ and it ensures that women's fundamental rights to use birth control are protected when seeking care after a rape.¹⁹ Finally, and significantly, it ensures that the healthcare system works to address rape trauma, rather than compound it.

HHS Should Rescind the Regulation

The Regulation privileges the objections of a broad group of people and entities working in the provision of healthcare over the needs of patients, particularly survivors of sexual assault and domestic violence. Accordingly, HHS should reject it in its entirety. Every system should work together to address and prevent sexual assault and domestic violence, and act to ensure that victims of rape receive optimal medical treatment.

Sincerely,

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Senior Legal & Legislative Counsel

United States. *See* Tjaden & Thoennes, *supra*, note 6, at 29(only 36 percent of rape victims who suffered physical injuries reported the crimes to law enforcement).

¹⁷ RCW 70.41.350 Findings -- 2002 c 116.

¹⁸ Patients have the right to informed consent to medical care, including information about treatment options. Oregon Revised Statutes § 677.097; *Stewart-Graves v. Vaughn*, 162 Wn.2d 115, 122-123; 170 P.3d 1151 (2007).

¹⁹ All people in the United States have a fundamental right to use birth control. *Griswold v. Connecticut*, 381 U.S. 479 (1965); Revised Code of Washington 9.02.100(1); Oregon Revised Statutes § 435.250.