



North Carolina Department of Health and Human Services

Pat McCrory  
Governor

Aldona Z. Wos, M.D.  
Ambassador (Ret.)  
Secretary DHHS

Adam Sholar  
Legislative Counsel  
Director of Government Affairs

December 23, 2013

SENT VIA ELECTRONIC MAIL

The Honorable Justin Burr, Chair  
Joint Legislative Oversight Committee on  
Health and Human Services  
North Carolina House of Representatives  
300 N. Salisbury Street, Room 307A  
Raleigh, North Carolina 27603-5925

The Honorable Mark Hollo, Chair  
Joint Legislative Oversight Committee on  
Health and Human Services  
North Carolina House of Representatives  
300 N. Salisbury Street, Room 307A  
Raleigh, North Carolina 27603-5925

The Honorable Ralph Hise, Chair  
Joint Legislative Oversight Committee on  
Health and Human Services  
North Carolina Senate  
19 Jones Street  
Raleigh, North Carolina 27603

Dear Chairmen:

Section 4.(c) of Session Law 2013-366 requires the North Carolina Department of Health and Human Services to report on progress in amending the rules pertaining to clinics certified by the Department under NC Administrative Code 10A NCAC 14E. Please find the report attached.

If you have any questions or need additional information regarding this report, please contact Drexdal Pratt at (919) 855-3750.

Sincerely,



Adam Sholar

Attachment

cc: Pam Kilpatrick

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10/1/2011

## **Introduction**

In July 2013, the North Carolina General Assembly passed Session Law 2013-366, Senate Bill 353, "An Act to Modify Certain Laws Pertaining to Abortion." Section 4.(c) requires the Department of Health and Human Services ("Department") to provide the North Carolina General Assembly's Joint Legislative Oversight Committee on Health and Human Services a progress report on amending the rules pertaining to clinics certified by the Department under NC Administrative Code 10A NCAC 14E. The report of progress follows.

## **Progress Amending the Rules**

Pursuant to Session Law 2013-366, the Department shall amend its rules pertaining to clinics certified by the Department to be suitable facilities for the performance of abortions under N.C. Gen. Stat. § 14-45.1. The Department is authorized to apply standards similar to those for the licensure of ambulatory surgical centers. Additionally, the rules must ensure that standards for clinics certified by the Department address the on-site recovery phase of patient care at the clinic, protect patient privacy, provide quality assurance, and ensure that patients with complications receive the necessary medical attention, while not unduly restricting access.

Revising the NC Administrative Code is a formal process, and the regulators in the Department's Division of Health Service Regulation (DHSR) have followed the normal rulemaking policies and procedures in revising the rules pertaining to abortion clinics.

The process began with DHSR regulators reviewing the current rules set forth in 10A NCAC 14E (Certifications of Clinics for Abortion) and 10A NCAC 14C (Licensing of Ambulatory Surgical Facilities). Feedback was received from clinicians and DHSR regulators across its sections. The clinicians providing feedback include a representative from the North Carolina Board of Nursing, two representatives from providers, two OB/GYN specialty physicians, and one individual who is both an OB/GYN and provider.

Based on these preliminary steps, DHSR regulators are now in the process of writing the initial draft of the rules pertaining to abortion clinics, which will be accompanied by a fiscal note. In preparation for permanent rulemaking, DHSR will subsequently initiate additional review by the Office of Administrative Hearings (OAH) and the Office of State Budget and Management (OSBM). Once OAH reviews the proposed rules and OSBM certifies the rule and fiscal note, the Department will again review and approve the proposed rules and fiscal note. The rules are then submitted to OAH for publication in the NC Register.

In addition to publication in the NC Register, DHSR will forward the proposed draft rules and fiscal note to identified stakeholders, including certified abortion clinics and licensed ambulatory surgery facilities, for review and comment. The Department will also publish the draft rules and fiscal note on our website.

The Department is committed to transparency in the rulemaking process, and these methods of publication will allow the public the opportunity to review the proposed rules. As part of the permanent rulemaking process, a public comment period and a public hearing will be held. Publication in the NC Register will include the time period for public comment and date of the public hearing on the proposed rules and fiscal note. All comments are considered prior to the Department adopting the proposed rules and submitting to the Rules Review Commission (RRC).

The timeline for amending the North Carolina Administrative Code varies. In addition to the above-listed process, the time required will depend on the action taken by the RRC and whether objections are received pursuant to N.C. Gen. Stat. § § 150B-21.3(b2).

Although Session Law 2013-366 provides the Department with the latitude to issue temporary rules, it is unlikely that doing so will expedite the process. As a result, the Department intends to proceed with permanent rulemaking.

If you have any questions or need additional information regarding this report, please contact Drexdal Pratt at (919) 855-3750.