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October 15, 2007

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

Re: Sexual Assault Victim Emergency Services [#10-182 (#2577)]

Dear Mr. Coccodrilli:

On behalf of the Pennsylvania National Organization for Women (PA NOW), I am submitting our comments regarding the proposed rules for Sexual Assault Victim Emergency Services (28 Pa. Code §§ 117.51-117.58, #10-182 (#2577).

Pennsylvania NOW, Inc. was formed in 1972. Today PA NOW is a grassroots, non-profit, volunteer organization with over 13,000 contributing members and 30 chapters statewide. We are the state organization of the National Organization for Women with headquarters in Washington, DC which has over 500,000 members. NOW members are women and men, young and old, all colors, classes and backgrounds, working together to bring about equal rights for all women.

First of all, we would like to commend the Department of Health for taking the concerns of sexual assault victims seriously and for taking the time to review in depth the needs of victims and to review the comments we originally sent to the Department on these proposed rules on November 15, 2006. We believe that most of your revisions to the proposed rules will help assault victims receive a standard of care necessary to help alleviate some of the trauma and concerns they might have (including fear of pregnancy and sexually transmitted diseases). We are particularly pleased that the following changes that you have made are laudable:

- Replacing "rape" with "sexual assault" throughout the regulations and including the criminal definition of "sexual assault;"
- Allowing only hospitals that provide only the "most limited range of services" **(§ 117.58 Exemption for hospitals providing limited emergency services)** to opt out of providing any sexual assault emergency service.
- Requiring hospitals to utilize rape kits that comply with the "minimum standard requirements developed by the department or as otherwise approved

by the Department pursuant to the Sexual Assault Testing and Evidence Collection Act (35 P.S. §§ 10172.1 - 10172.4).

- Adding the text in **§ 117.52 (9) (b)** relating to record maintenance that clarifies that "*all* [emphasis added] other applicable laws and regulations" regarding records of sexual assault victims. This helps clarify the issue of medical records privacy as well as providing some protection of the victim under the state's rape shield law.

- That all hospitals providing sexual assault services objectively inform victims of the availability of emergency contraception using the materials provided by the Department of Health (**§ 117.53 Emergency contraception**).

- Eliminating the section on pregnancy testing.

- Clarifying the hospital's responsibility for providing initial dosages of HIV prophylactic medication as well as the information and prescriptions necessary to obtain the remainder of the treatment regimen (**§117.54 (d) Prevention of sexually transmitted diseases**).

- Clarifying provisions to require hospitals that do not provide sexual assault victim service or who do not provide emergency contraception to not only notify the Department of Health, but also to notify ALL law enforcement agencies, ambulance services, and emergency medical care and transport services that these hospitals do not provide full services for victims of sexual assault (**§ 117.57 (1), (2), and (3) and (§ 117.57 (1), (2), and (3))** and that the Department will annually publish a list of these hospitals in the Pennsylvania Bulletin a list of hospitals that do not provide full services.

However, in some circumstances, these regulations as currently written (#10-182 (#2577) continue to fall short in meeting the needs of women. We are therefore submitting comments once again in the hopes that these proposed regulations can be further improved.

After reviewing these proposed rules, we have some specific concerns. The concerns can be summarized into five distinct issues:

1. We would like to see further clarification on **§117.53 (1) and 117.55 Emergency contraception informational materials** for people with disabilities;
2. We are still concerned that, as written, **§ 117.56. Information regarding payment for sexual assault emergency services** does not clearly state that victims of sexual assault will be notified that they are not personally, financially responsible for services and medication received when they present themselves at the hospital for sexual assault emergency services;
3. We are concerned about the breath of hospitals that can opt out of providing emergency contraception based on the hospital's "moral or religious" stance (Proposed **§ 117.57. Religious and moral exemptions**).

4. We are concerned that when victims are transferred from limited emergency service hospitals to "the closest hospital that provides emergency sexual assault emergency services" that they may be sent to a hospital that has opted out of providing emergency contraception and will then be required to be transferred a second time (**§ 117.58 (6). Exemption for hospitals providing limited emergency services**).
5. There is nothing in these regulations that mandates communications and training of these regulations to hospital staff that potentially interact with sexual assault victims.

I will present these concerns by Section, quoting your proposed rule where appropriate and then presenting the concern or question we have about that section. If any of these comments are unclear, please do not hesitate to contact me for clarification.

§117.53 (1) and §117.55 Emergency contraception informational materials

We gratefully acknowledge the change in the provisions in section 117.55 that now has the Department developing the informational materials for sexual assault emergency services and that hospital, pursuant to §117.53 (1), must

> Provide the victim with medically and factually accurate written informational materials regarding emergency contraception prepared under § 117.55 (relating to informational materials).

Your comments indicate that the Department will create these materials in multiple languages, which allows access to this information to people who are not fluent in English. Once these materials are sent to the hospitals in electronic format, hospitals would be then required to print these materials to present to victims of sexual assault. We applaud this provision to create access to objective, medically, and factually accurate materials across cultural lines.

In addition, there needs to be a provision whereby hospitals are also tasked to create these materials in alternative formats so that they will also be accessible to people with disabilities. This means that Braille, large print, and audio tapes/CDs need to be created for people who are blind, have low vision, or who otherwise are unable to read printed materials.

§ 117.56. Information regarding payment for sexual assault emergency services

We previously questioned these regulations in terms of the victim being personally responsible for payment of sexual assault emergency services. We stated on November 15, 2006 that

> [W]e do not believe that the victim is legally responsible for <u>any</u> of these bills, including the cost of STD prophylactic or EC medication. In 1995, the legislature passed and the Governor signed into law a bill relating to costs incurred as a result of sexual assault. From my reading of P.L. 1056, Act of Sep. 26, 1995, Special

Session, § 1726.1, the cost of medications should never be charged to the victim (see Attachment B). The section reads as follows:

> "The cost of a forensic rape examination or other physical examination conducted for the purpose of gathering evidence in any criminal investigation and prosecution under 18 Pa.C.S. Ch. 31 (relating to sexual offenses) and the cost to provide medications prescribed to the victim therein *shall not be charged* [emphasis added] to the victim. If appropriate insurance is unavailable, reimbursement may be sought pursuant to the provisions of section 477.9 of the act of April 9, 1929 (P.L. 177, No. 175), known as The Administrative Code of 1929."\

In your commentary and in the revised provisions of §117.57, you have appropriately clarified sources of payment for treatment and medication. We appreciate your responding to this concern. However, we still believe that these provisions should clearly state that hospitals need to orally and in writing inform the victim that she is not personally liable for payment of these services when providing her with the information on these sources of payment. If you only tell her where she can go for assistance, without also telling her that the hospital will not bill her directly, she may refuse full forensic and medical services because of concerns over subsequent payment requirements.

You have referred to specific laws in other sections of these provisions (e.g., §117.41 (b) (9) relating to failure to report injuries by firearm or criminal act and §117.53 (a) (1) relating to rape kits). In relation to this payment issue, your commentary on page 30 provides reference to existing law. Therefore, would it not also be appropriate to refer to existing law regarding payment of services in §117.57? We believe that this would assist hospitals in providing accurate information to the victim such that she will clearly understand the payment process without fear of financial burden.

§ 117.57. Religious and moral exemptions

We continue to be highly concerned about exempting hospitals from providing emergency contraception. This section allows a hospital to exempt itself from complying with § 117.53(3) to offer or supply emergency contraception to a sexual assault victim "if compliance would be contrary to the stated religious or moral beliefs of the hospital."

This exemption violates the woman's constitutional rights to freedom of religion. We also believe that this exemption denies full and adequate care to a woman who has been sexually assaulted by placing an institution's or an individual health care provider's viewpoint before the critical health care needs of the woman.

We understand that you have carved out the mandate of prescribing emergency contraception when appropriate due to your interpretation of Pennsylvania's Religious Freedom Protection Act as stated in Section 902(a) of the act (35 P. S. § 448.902(a)). We once again draw your attention to the larger public interest issue at stake: women's health and women's right to health care. Not only should the state minimize discrimination, and avoid the "slippery slope" that could easily develop from this

loophole exemption you are proposing; in our opinion, the Department should be advocating for good public policy that benefits the health of all of its residents equally and equally effectively. Denying a class of people a medically related service is offensive to the public interest and the traditions, morality and ethics of the State of Pennsylvania. Denial of such services to women could cause additional adverse consequences of pregnancy and childbirth, and a decline in the health of women.

We also note that Pennsylvania's anti-discrimination law (Act of 1955, P.L. 744, No. 222, as Amended June 25, 1997 By Act 34 Of 1997, 43 P.S. §§ 951-963) does indeed protect people from discrimination on the basis of creed, which is broader than and includes religion.

Your comments on page 37 state that the "Department has not been presented with any law or court ruling which would support the position that an individual has a religious or civil right to be provided a particular medication in a hospital" and will therefore not eliminate this exemption at this time. Would you make the same argument for blood transfusions? Transfusion, like emergency contraception is a form of treatment (comparable to "medication") for a medical problem. Some religions do not believe that transfusions should be allowed; yet the Department and hospitals expect their staff to give transfusions to patients when medically necessary, regardless of their religious beliefs. Emergency contraception should be treated no differently.

In rural counties where there is none or only one hospital in the county (27 of the 67 counties in PA according to the Duval Emergency Contraception Survey), this loophole could make it even harder for victims to receive complete medical services when they have been assaulted.

This exemption is also overly broad. If you refuse to eliminate this exemption, then we believe you should as least narrow the opt-out provision to allow only religiously-affiliated hospitals to opt out of providing emergency contraception. You need to remove the word "moral" from this exemption.

As stated in our previous letter, we are concerned about the process for certifying that a hospital meets the guidelines for taking this exemption. Nowhere in these proposed regulations – in either this section or in § 101.4 Definitions – is there a definition of what constitutes a religious hospital. It is unclear as to what a hospital needs to show other than a statement indicating they don't want to offer or provide emergency contraception. Can any hospital's board, with a majority vote decide that their hospital falls under this exemption? Even if that hospital's corporate basis is that of a public rather than a religious institution?

We raise this question because we fear that any hospital, regardless of ownership, could deny emergency contraception with this loophole. In the Lebanon County case in the summer of 2006, a young woman was denied emergency contraception by the Good Samaritan Hospital when she requested it. With these proposed provisions, would Good Samaritan now be allowed to deny emergency contraception to a sexual assault victim? Good Samaritan's mission statement says, "The Good Samaritan Health System (GSHS)

is a ***non-sectarian*** [emphasis added] health system whose purpose is to provide high quality health services for the entire community.[1]" More specifically, would these rules allow them to continue that policy since they do not define themselves as a religious hospital?

Your commentary on page 39 indicates that you have taken this concern into account to some extent. You state:

> the Department is only requiring that a hospital inform the Department of its intent to exercise the exemption in §117.57, and provide it with documentation, reviewed and approved by the hospital's governing body, to confirm the hospital's stated religious or moral beliefs. The Department will review this notification to ensure a facility does in fact have a stated religious or moral belief against the provision of emergency contraception.

But upon review of the proposed provisions, we do not see this clearly stated within the regulation itself. Nor do we see any mechanism for denying the exemption should the hospital's documentation not confirm that they do indeed have a religious belief against the provision of emergency contraception.

At minimum therefore, we believe you should remove the word "moral" and add wording similar to your comments quoted above to this section to more clearly define and limit who may opt out of providing emergency contraception.

§ 117.58. Exemption for hospitals providing limited emergency services

We are concerned that when victims are transferred from limited emergency service hospitals to "the closest hospital that provides emergency sexual assault emergency services" that they may be sent to a hospital that has opted out of providing emergency contraception and then have to be transferred a second time.
The closest hospital that provides emergency services in some instances will be a hospital that has opted out of providing emergency contraception under § 117.57. Your provision in § 117.58(6) needs to be rewritten to state:

> Upon request of the victim, arrange for the immediate transfer of the victim to the closest hospital that provides FULL sexual assault emergency services, INCLUDING EMERGENCY CONTRACEPTION pursuant to §§ 117.51 - 117.56 (relating to sexual assault victim emergency services).

This revision would ensure that the woman would not have to endure a second transfer in order to receive full services.

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1 http://www.gshleb.org/aboutus.cfm?id=16, retrieved November 1, 2006.

Communication and training on this regulation

Finally, in order to insure full compliance with these regulations, hospital staff needs to know what the rules say and what they need to do when presented with a victim of sexual assault. We believe that these new rules need to mandate that hospital administration communicate these rules to their staff so that they will be in compliance with these regulations. If there are other portions of the Department's regulations that deal with staffing, training and communication, these rules should be referred to in these rules to ensure that staff have a clear understanding of these rules and their obligations to the hospital and most especially to their clients who are victims of assault.

In Conclusion

Overall we are pleased that you have crafted these proposed rules for Sexual Assault Victim Emergency Services. We would like to see them revised to fully – and without discrimination – provide full access to the entire breadth of emergency services. We hope that you will carefully review our comments and improve the ruling where needed so that all victims of sexual assault receive compassionate quality care when they present themselves at a hospital here in Pennsylvania for treatment.

If you have any questions regarding our comments, please do not hesitate to call me. Thank you for your concern and commitment to quality care of our citizenry who have had to experience these types of traumatic events.

Sincerely,

Joanne L Tosti-Vasey

Joanne Tosti-Vasey
President, Pennsylvania NOW, Inc.

Cc: Sandra Knoble, Acting Director, Bureau of Facility Licensure and Certification, PA Dept of Health
Frank Oliver, Chair, House Health and Human Services Committee
George T. Kenney, Jr., Minority Chair, House Health and Human Services Committee
Edwin B. Erickson, Chair, Senate Public Health and Welfare Committee
Vincent J. Hughes, Minority Chair, Senate Public Health and Welfare Committee