20YEARS CENTER FOR REPRODUCTIVE RIGHTS

December 13, 2012

VIA FACSIMILE AND FEDERAL EXPRESS

The Honorable Rick Snyder
Governor of Michigan
111 South Capitol Avenue
Lansing, MI 48933

Re: House Bill 5711

Dear Governor Snyder,

The Center for Reproductive Rights strongly opposes House Bill 5711, which would impose unnecessary, medically inappropriate and harmful regulations on the provision of abortion services in Michigan. Although the bill includes a myriad of restrictions and burdens on access to and provision of reproductive health care services, this letter will focus on only a few of the most harmful provisions that will impact women in Michigan.

The Center for Reproductive Rights is a non-profit advocacy organization that seeks to advance reproductive freedom as a fundamental human right. A key part of our mission is ensuring that women throughout the United States have meaningful access to high-quality, comprehensive reproductive health care services. In furtherance of our mission, we have litigated cases all over the United States that secure the rights of women to have safe and legal abortions, including in Michigan.

In light of our background and experience, we believe that House Bill 5711 would create ideologically-motivated regulations totally divorced from appropriate medical standards and could result in the closure of safe, reliable health care providers across the state. Moreover, at a time when the state has expanded access to telemedicine for Michigan residents across the board, this bill would directly discriminate against women seeking safe, legal, medication abortions through telemedicine. The Center for Reproductive Rights urges you to veto this legislation.

I. House Bill 5711 Would Impose Medically Inappropriate Regulations on Health Care Providers, Potentially Eliminating Access to Care

Abortion is one of the most common surgical procedures sought by women in America. By the age of forty-five, approximately one in three women in this country will have had an abortion.[1] Women seek abortions for many reasons: some choose to terminate unwanted

[1] Guttmacher Institute, An Overview of Abortion in the United States, http://www.guttmacher.org/media/presskits/2008/01/12/abortionoverview.html (last visited April 18, 2012).

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pregnancies, some seek abortions to protect their own health, and some seek abortions because of a serious fetal anomaly.

House Bill 5711 would require facilities that provide 120 surgical abortions per year or more to become licensed as "freestanding surgical outpatient facilities"—essentially requiring such facilities to become "mini-hospitals." However, the Michigan regulations that govern freestanding surgical outpatient facilities are inappropriate for facilities that specialize in providing abortion. Abortion care is routinely provided in office-based practices and it is neither necessary nor consistent with medical standards of care to require that it be provided in outpatient surgical centers. Procedures provided in those facilities are far more complicated and invasive than abortion, typically requiring more staff, longer operating times and deeper anesthesia. Surgical abortion care, in contrast, is a simple procedure, and is similar in both its risks and level of invasiveness to a variety of other office-based surgeries.[2]

If House Bill 5711 became law, reproductive health providers would be required to make numerous changes to their staffing, equipment, and physical facilities, all for purely political reasons. Such changes might be difficult or impossible, particularly if significant construction is necessary to comply with physical plant requirements. If this bill forces abortion facilities to shut their doors, women in Michigan will be harmed. Young, minority, low-income, uninsured, rural women, as well as victims of domestic violence and sexual assault, could be further marginalized by onerous regulations that reduce their access to affordable reproductive health care. Many women, particularly those with limited access to health care, go to reproductive health care facilities for a variety of essential services, including pap smears, breast cancer screening and contraception. By making it harder or impossible for health centers to stay open, this bill could limit or eliminate access for these women, not just to abortion, but to a broad range of critical reproductive health care.

Regulations for abortion facilities should reflect the medical reality and safety of abortion care, rather than incorporating extensive, burdensome requirements that will reduce or eliminate access to care without improving services. Even if abortion facilities were able to comply with House Bill 5711, the bill could vastly increase the costs of providing health care services with no gain in terms of health outcomes or quality of care. Requiring abortion facilities to meet outpatient surgical center regulations would be medically inappropriate, detrimental to patients, and a wasteful use of limited health care resources.

II. House Bill 5711 Could Impose Unconstitutional Restrictions on Women's Access to Reproductive Health Care

House Bill 5711 is clearly intended to prevent health care providers from providing abortion services. Many states regulate the provision of abortion services, as they do other health care services. However, states are not permitted to impose regulations on abortion services that are intended to impose an "undue burden" on women seeking that care. *See*

[2] Surgical procedures performed in office-based practices that have similar risks and complications to surgical abortion, include gynecological procedures, general surgery, head and neck surgery, oral surgery and plastic surgery.

Planned Parenthood of Southeast Pa. v. Casey, 505 U.S. 833, 878 (1992) (holding that while states "may take measures to ensure that the woman's choice is informed . . . . These measures must not be an undue burden on the right. Unnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on the right [to choose an abortion]."); *Planned Parenthood of Heartland v. Heineman*, 724 F. Supp. 2d 1025 (D. Neb. 2010) (granting plaintiffs' motion for a preliminary injunction based in part on the fact that "the only sensible construction that this Court can provide for" a bill that would have required physicians to provide exhaustive and potentially impossible risk-assessment screening "is that the Legislature intended to place a substantial, if not insurmountable, obstacle in the path of any woman seeking an abortion in Nebraska").

Moreover, in some cases, excessive or irrational regulatory requirements, or those adopted through unfair regulatory processes, have been enjoined. *See Hodes & Nauser v. Moser*, No. 11-2365-CM (D. Kan. 2011); *Tucson Woman's Clinic v. Eden*, 379 F.3d 531, 553 (9th Cir. 2004). Currently, the Center for Reproductive Rights is challenging onerous and medically inappropriate regulations imposed on abortion providers in Kansas and both a state and federal court have temporarily or preliminarily enjoined the regulations, indicating the serious nature of constitutional issues raised. *See Hodes & Nauser v. Moser*, No. 11-2365-CM (D. Kan. 2011); *Hodes & Nauser et al v. Moser*, No. 11C1298, Nov. 10, 2011, (3rd Judicial District Court of Kansas), Order Granting Temporary Restraining Order (note that order was later converted to a preliminary injunction at the agreement of the parties).

Such regulatory schemes not only threaten patients' rights to privacy, but also to equal protection. By targeting a procedure obtained only by women without addressing similarly or more invasive procedures obtained by men, House Bill 5711 raises serious concerns about impermissible discrimination. *See, e.g.*, *United States v. Virginia*, 518 U.S. 515, 524 (1996) (holding under the Equal Protection Clause, that statutes that classify between men and women must be closely scrutinized to ensure that there is an "important governmental objective" underlying that classification and that the "discriminatory means employed are substantially related to the achievement of those objectives").

III. House Bill 5711 Would Discriminate Against Low-income, Disabled, and Rural Women In Access to New Medical Technologies

House Bill 5711 would eliminate a critical entry point into the health care system for low-income and rural women by prohibiting the provision of medication abortion using telemedicine. As the Michigan legislature and you yourself recently affirmed, telemedicine has become a critical delivery method for health care in rural areas and to low-income individuals, and enhances the quality of medical care for many Michigan residents. Telemedicine allows patients who might otherwise be unable to consult with physicians or specialists to meet with a physician through a secure connection, in the presence of licensed medical staff. By utilizing this technology, telemedicine helps address the significant health disparities that exist between patients living in rural and urban areas, and between those who can afford to travel and those who cannot.

Those are among the reasons that you signed House Bills 5408 and 5421 just a few months ago, requiring insurers in Michigan to provide insurance coverage for healthcare delivered through telemedicine. At the time, you applauded the legislature for taking the initiative to make sure this technology is available to Michigan residents and noted that "[t]elemedicine offers an incredible opportunity to easily provide healthcare to Michigan's elderly, disabled and rural communities." The federal government agrees: Telemedicine has been such an important advance in the expansion of access to health care that the federal department of Health and Human Services has created an Office for the Advancement of Telehealth, part of the Office of Rural Health Policy, which "promotes the use of telehealth technologies for health care delivery, education, and health information services . . . to [help] assure quality health care for underserved, vulnerable, and special needs populations."[3]

Telemedicine is clearly an important means of expanding access to health care services, including access to safe, legal medication abortion for rural and low-income women.[4] Medication abortion is a safe and effective method of early abortion that is provided through the administration of medications rather than surgery. Through telemedicine, a rural patient may visit a local health clinic and be examined by an on-site health care professional, then talk with a physician working remotely who can review her health records, answer her questions, and provide the medication abortion.

Medication abortion is the preferable method for some women because of deeply held and personal reasons, such as victims of rape or sexual assault who may choose a procedure using medications alone rather than having a surgical procedure, and for other women because it allows them to experience pregnancy loss in the privacy of their home. Moreover, there are some women for whom medication abortion is a safer procedure, such as women with certain uterine anomalies.

Medical research has found that providing medication abortion through telemedicine is safe, effective, and highly acceptable among women.[5] However, this bill would cut off this safe option for women in Michigan, including many who lack transportation or could not afford to travel potentially hundreds of miles to obtain an abortion. This bill would disproportionately harm poor women, the very people for whom reproductive health care services can have the most vital consequences. Rather than improve the quality of women's health care in Michigan, House Bill 5711 would erect unnecessary barriers to obtaining needed reproductive health care services.

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[3] United States Department of Health and Human Services, Health Resources and Services Administration, Telehealth, http://www.hrsa.gov/ruralhealth/about/telehealth/ (last visited April 24, 2012).

[4] In fact, the American Congress of Obstetrics and Gynecology has urged its members to "encourage and participate in efforts to utilize effective telemedicine technologies to expand and improve services for rural women," including to improve access to abortion. ACOG Committee Opinion, Health Care Disparities for Rural Women, March 2009, *available at* http://www.acog.org/Resources_And_Publications/Committee_Opinions/Committee_on_Health_Care_for_Underserved_Women/Health_Disparities_for_Rural_Women.

[5] Daniel Grossman, et al., *Effectiveness and Acceptability of Medical Abortion Provided through Telemedicine*, Obstetrics and Gynecology 2011; 118: 296-303.

IV. Conclusion

House Bill 5711 threatens Michigan women's access to critical reproductive health care. The bill would impose medically inappropriate and unnecessary requirements on health care providers, potentially causing them to close their doors and thereby eliminating access for women. This could violate both patients' and providers' constitutional rights, as well as harming women's health. Moreover, this bill would deny Michigan women access to telemedicine for medication abortion, discriminating against them at a time when the state has made a clear commitment to expanding access to health care through telemedicine for all its residents. In light of these serious objections, we urge you to veto this legislation. Please do not hesitate to contact us if you would like further information.

Sincerely,

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