

August 15, 2022

VIA EMAIL

The Honorable Danny Verdin
Chairman, Senate Medical Affairs Committee
412 Gressette Building
Columbia, SC 29201

Dear Chairman Verdin:

Thank you for the opportunity to provide input to the Senate Medical Affairs Committee as you consider legislation to further regulate abortion in South Carolina. Any such bill will have a profound impact on hospitals, physicians, and patients in our state. To protect each of these stakeholders, I ask the Committee to ensure that any legislation you advance reflect the following three priorities:

1. Protect the nature of the provider-patient relationship.

The provider-patient relationship's foundation of mutual trust and respect demands free and open communication that should not be intruded upon by the government. By no means should any new legislation contain provisions that prohibit discussion or facilitation of specific treatment options. In this vein, the legislature should follow the spirit that it adopted in the Medical Ethics and Diversity Act (§44-139-30(G)) in June, under which medical practitioners may refer, transfer, or provide information to patients about services, even if they are only available elsewhere after becoming more strictly regulated in South Carolina.

2. Ensure state law includes a safe harbor for emergency medical treatment that is required by federal law and regulation.

Under legislation signed by President Reagan in 1986, hospitals have been required to provide appropriate and necessary screening, examination, stabilizing treatment, and transfers for patients with emergency medical conditions.¹ On July 11, 2022, the U.S. Department of Health and Human Services issued clarifying guidance on the Emergency Medical Treatment and Active Labor Act (EMTALA), which stated that a "physician must provide" an abortion when it "is the stabilizing treatment necessary to resolve" an emergency medical condition.² It further stated that "when a state law prohibits abortion and does not include an exception for the life and health of the pregnant person — or draws the exception more narrowly than EMTALA's emergency medical condition definition — that state law is preempted." In fact, the letter goes so far as to threaten hospitals and physicians who fail to follow this guidance with fines and/or suspension from participation in the Medicaid and Medicare programs.

¹ Emergency Medical Treatment and Active Labor Act (EMTALA) of 1986 [42 USC §1395dd]

² <https://www.hhs.gov/sites/default/files/emergency-medical-care-letter-to-health-care-providers.pdf>

Any new state law further regulating abortion must ensure that hospitals and their employees or contractors are not prosecuted or otherwise punished for following federal law.

3. Leave the exercise of medical judgment to qualified medical practitioners.

Current South Carolina law broadly restricts abortion but allows these procedures to be performed (subject to other requirements) when necessary to preserve the life of the mother, avert serious risk of substantial and irreversible physical impairment of maternal bodily function, or if a fetal anomaly is present. Since the adoption of the Fetal Heartbeat and Protection from Abortion Act, the documentation requirements for these exceptions have been greatly expanded, and violations of these rules can now be prosecuted as felonies. These changes have, understandably, caused great concern and confusion among hospitals and healthcare providers in the state.

In the weeks since the Fetal Heartbeat law has taken effect, thoughtful and well-intentioned legal and medical professionals all across the state have struggled to understand or consistently apply the new standards. If the law is to be further amended, it should include allowances for “the risk of” or “the substantial risk of” any of the adverse outcomes described above, and it should include deference to a practitioner’s “reasonable medical judgment.”

Additionally, any bill that uses the “reasonable medical judgment” standard should leave the interpretation and enforcement of this to qualified medical professionals, such as the Board of Medical Examiners, as opposed to a law enforcement or another non-medical entity.

Thank you for your consideration of these items as your committee continues its work. Please reach out directly to me or our Vice President, Government Relations, Krista Hinson (khinson@scha.org; 507.530.1300) with any questions you may have. We look forward to working with you on this important issue.

Sincerely,



J. Thornton Kirby
President & CEO