

The Connecticut General Assembly

Legislative Commissioners' Office

Edwin J. Maley, Jr.
Commissioner
Leonard A. Fasano
Commissioner

Nicholas F. Bombace
Director



Legislative Office Building
Suite 5500
Hartford, Connecticut
06106-1591
(860) 240-8410
fax (860) 240-8414
e-mail: lco@cga.ct.gov

Memorandum

To: Legislative Regulation Review Committee
From: Legislative Commissioners' Office
Committee Meeting Date: July 23, 2024

Regulation No:	2024-16
Agency:	Department of Public Health
Subject Matter:	Abortions
Statutory Authority: (copy attached)	19a-602, 19a-116, 19a-2a

	Yes or No
Mandatory	Y
Federal Requirement	N
Permissive	N

For the Committee's Information:

The Department of Public Health cites to various statutes as its statutory authority for the proposed regulation. In the Commissioner of Public Health's letter to this committee, the commissioner references sections 19a-602, 19a-116 and 19a-493c(b) of the general statutes, whereas, in the agency certification, the department cites to sections 19a-116 and 19a-2a of the general statutes, and, in the Notice of Intent, the department cites to sections 19a-2a and 19a-493c(b) of the general statutes. Despite the inconsistent statutory references, the department does have statutory authority for the proposed regulation pursuant to sections 19a-602, 19a-116 and 19a-2a.

Substantive Concern:

On page 1, in section 19-13-D54(a)(1), "abortion" is defined as the induced termination of a pregnancy for purposes other than producing a live birth, including, but not limited to, "medication abortions and abortion procedures". Although the term "medication abortion" is defined in the proposed regulation, the term "abortion procedures" is undefined and it is unclear which types of procedures the term "abortion procedures" may or may not include. This term should be defined or further clarified.

Technical Corrections:

1. Throughout the proposed regulation, pages should be numbered, for proper form.
2. Throughout the proposed regulation, the underlining of spaces should be deleted, for proper form. For example, on page 1, in section 19-13-D54(a), "section: " should be "section:"
3. On page 1, in section 19-13-D54(a)(1), "birth. Methods of abortion include, but are not limited to," should be "birth and includes, but is not limited to,", for proper form.
4. On page 1, in section 19-13-D54(a)(2), "induced abortion, including, but not limited to, medication abortion and abortion procedures" should be "abortion", for consistency with the defined term, and "health care providers as defined in this section" should be "a health care provider", for proper form.
5. On page 1, in section 19-13-D54(a)(3), "of the Department" should be deleted, for proper form, and "Commissioner's" should be "commissioner's", for consistency.
6. On page 1, in section 19-13-D54(a)(4), "an" should be inserted before "advanced" and "and a physician assistant" should be "or a physician assistant", for proper form.
7. On page 1, in section 19-13-D54(a), the term "outpatient clinic" should be defined as having the same meaning as provided in section 19a-490 of the Connecticut General Statutes, for clarity.
8. On page 1, in section 19-13-D54(b), in the third and fourth lines, "Connecticut" should be inserted before "General Statutes", for proper form, in the fourth line, "Statutes, may" should be "Statutes may", for proper form, and in the fifth line, "subsection (d) of" should be deleted, for accuracy.
9. On pages 1 and 2, in section 19-13-D54(c), in the fifth line, "the date of abortion services provided" should be "the date [of] on which the health care provider provided the abortion services", for clarity, and, in the ninth line, the first instance of "will" should be bracketed in accordance with the committee's directive regarding mandates, and "These records will be destroyed [within two years after the date of receipt] in accordance with applicable record retention law and schedules." should be "[These records will be

destroyed within two years after the date of receipt] The commissioner shall retain and dispose of such reports in accordance with the department's records retention schedule, as amended from time to time and approved by the Public Records Administrator pursuant to section 11-8a of the Connecticut General Statutes.", for accuracy.

10. On page 2, in section 19-13-D54(d), "Abortions performed after the second trimester shall be performed" should be "A health care provider shall perform an abortion after the second trimester", for clarity.
11. On page 2, in section 19-13-D54(e), "standards of care. These standards shall" should be "standards of care and", for clarity.
12. On page 2, in section 19-13-D54(e), in the fourth line, "hospital" should be "hospital or the", to accurately reflect the text of the existing regulation.
13. On page 3, in section 19-13-D54(g), "person who meets the definition of counselor" should be "counselor, as defined", "the outpatient" should be "an outpatient", and "the requirements of" should be "the requirements set forth in", for proper form.
14. On page 3, in section 19-13-D54(h), "outpatient" should be inserted before "clinic", for accuracy, and subdivision and subparagraph designators should be underlined, for proper form.
15. On page 3, in section 19-13-D54(h)(1), (2) and (3), "include but not necessarily" should be "include, but need not", for proper form.
16. On page 3, in section 19-13-D54(h)(1)(D), the comma after "and" should be deleted, for proper form.
17. On page 3, the one-sentence section with the heading "**Statutory Authority**" that precedes the statement of purpose should be deleted, for proper form.

Recommendation:

<p>Approval in whole with technical corrections with deletions with substitute pages Disapproval in whole or in part X Rejection without prejudice</p>

Reviewed by: Eileen Lawlor-Parker / Catriona Stratton

Date: July 12, 2024

Sec. 19a-602. Termination of pregnancy prior to viability. Abortion after viability prohibited; exception. (a) The decision to terminate a pregnancy prior to the viability of the fetus shall be solely that of the patient in consultation with the patient's physician or, pursuant to the provisions of subsection (d) of this section, the patient's advanced practice registered nurse, nurse-midwife or physician assistant.

(b) No abortion may be performed upon a patient after viability of the fetus except when necessary to preserve the life or health of the patient.

(c) A physician licensed pursuant to chapter 370 may perform an abortion, as defined in section 19a-912.

(d) An advanced practice registered nurse licensed pursuant to chapter 378, a nurse-midwife licensed pursuant to chapter 377 and a physician assistant licensed pursuant to chapter 370 may perform medication and aspiration abortions under and in accordance with said chapters.

Sec. 19a-116. (Formerly Sec. 19-66g). Regulation of facilities which offer abortion services. The Commissioner of Public Health shall adopt regulations, in accordance with chapter 54, establishing standards to control and ensure the quality of medical care provided to any pregnant woman undergoing an induced abortion at any outpatient clinic regulated under the Public Health Code. Such standards shall include, but are not limited to, provisions concerning: (1) The verification of pregnancy and a determination of the duration of such pregnancy; (2) preoperative instruction and counseling; (3) operative permission and informed consent; (4) postoperative counseling including family planning; and (5) minimum qualifications for counselors.

Sec. 19a-2a. Powers and duties. The Commissioner of Public Health shall employ the most efficient and practical means for the prevention and suppression of disease and shall administer all laws under the jurisdiction of the Department of Public Health and the Public Health Code. The commissioner shall have responsibility for the overall operation and administration of the Department of Public Health. The commissioner shall have the power and duty to: (1) Administer, coordinate and direct the operation of the department; (2) adopt and enforce regulations, in accordance with chapter 54, as are necessary to carry out the purposes of the department as established by statute; (3) establish rules for the internal operation and administration of the department; (4) establish and develop programs and administer services to achieve the purposes of the department as established by statute; (5) enter into a contract, including, but not limited to, a contract with another state, for facilities, services and programs to implement the purposes of the department as established by statute; (6) designate a deputy commissioner or other employee of the department to sign any license, certificate or permit issued by said department; (7) conduct

a hearing, issue subpoenas, administer oaths, compel testimony and render a final decision in any case when a hearing is required or authorized under the provisions of any statute dealing with the Department of Public Health; (8) with the health authorities of this and other states, secure information and data concerning the prevention and control of epidemics and conditions affecting or endangering the public health, and compile such information and statistics and shall disseminate among health authorities and the people of the state such information as may be of value to them; (9) annually issue a list of reportable diseases, emergency illnesses and health conditions and a list of reportable laboratory findings and amend such lists as the commissioner deems necessary and distribute such lists as well as any necessary forms to each licensed physician, licensed physician assistant, licensed advanced practice registered nurse and clinical laboratory in this state. The commissioner shall prepare printed forms for reports and returns, with such instructions as may be necessary, for the use of directors of health, boards of health and registrars of vital statistics; and (10) specify uniform methods of keeping statistical information by public and private agencies, organizations and individuals, including a client identifier system, and collect and make available relevant statistical information, including the number of persons treated, frequency of admission and readmission, and frequency and duration of treatment. The client identifier system shall be subject to the confidentiality requirements set forth in section 17a-688 and regulations adopted thereunder. The commissioner may designate any person to perform any of the duties listed in subdivision (7) of this section. The commissioner shall have authority over directors of health and may, for cause, remove any such director; but any person claiming to be aggrieved by such removal may appeal to the Superior Court which may affirm or reverse the action of the commissioner as the public interest requires. The commissioner shall assist and advise local directors of health and district directors of health in the performance of their duties, and may require the enforcement of any law, regulation or ordinance relating to public health. In the event the commissioner reasonably suspects impropriety on the part of a local director of health or district director of health, or employee of such director, in the performance of his or her duties, the commissioner shall provide notification and any evidence of such impropriety to the appropriate governing authority of the municipal health authority, established pursuant to section 19a-200, or the district department of health, established pursuant to section 19a-244, for purposes of reviewing and assessing a director's or an employee's compliance with such duties. Such governing authority shall provide a written report of its findings from the review and assessment to the commissioner not later than ninety days after such review and assessment. When requested by local directors of health or district directors of health, the commissioner shall consult with them and investigate and advise concerning any condition affecting public health within their jurisdiction. The commissioner shall investigate nuisances and conditions affecting, or that he or she has reason to suspect may affect, the security of life and health in any locality and, for that purpose, the commissioner, or any person authorized

by the commissioner, may enter and examine any ground, vehicle, apartment, building or place, and any person designated by the commissioner shall have the authority conferred by law upon constables. Whenever the commissioner determines that any provision of the general statutes or regulation of the Public Health Code is not being enforced effectively by a local health department or health district, he or she shall forthwith take such measures, including the performance of any act required of the local health department or health district, to ensure enforcement of such statute or regulation and shall inform the local health department or health district of such measures. In September of each year the commissioner shall certify to the Secretary of the Office of Policy and Management the population of each municipality. The commissioner may solicit and accept for use any gift of money or property made by will or otherwise, and any grant of or contract for money, services or property from the federal government, the state, any political subdivision thereof, any other state or any private source, and do all things necessary to cooperate with the federal government or any of its agencies in making an application for any grant or contract. The commissioner may establish state-wide and regional advisory councils. For purposes of this section, "employee of such director" means an employee of, a consultant employed or retained by or an independent contractor retained by a local director of health, a district director of health, a local health department or a health district.