Testimony by the Connecticut State Medical Society

Public Health Committee
House Bill 5261

An Act Increasing Access to Reproductive Health Care

March 9, 2022

Senator Abrams, Representative Steinberg, and distinguished members of the Public Health Committee; on behalf of the physicians and physicians in training of the Connecticut State Medical Society (CSMS), thank you for the opportunity to provide this testimony on House Bill 5261, An Act Increasing Access to Reproductive Health Care.

CSMS supports increasing access to reproductive health care, and we understand and recognize the conceivable access issues that will be created by the possible or potential repeal of *Roe vs. Wade*. That said, we have concerns about the unintended consequences this bill presents. We hope to be able to work with members of this Committee and other parties to construct statutory language that best balances the goals of this legislation with the needed protections.

The heart of the issue is whether abortion care constitutes a surgical procedure. Section 20-9 of the Connecticut General Statutes provides that no person may perform surgery unless that person has obtained a license to practice medicine under Section 20-10 of the Connecticut General Statutes. Therefore, it is not in the current scope of practice for advanced practice registered nurses, physician assistants and mid-wives (collectively mid-level providers) to perform any type of surgical procedure. Allowing mid-levels any entrance into surgical territory would certainly be a significant scope of practice change that would necessitate using the statutorily created scope of practice review process created under Public Act 11-209.

Section 19-13-D54(a) of the Public Health Regulations states that abortions may only be provided by a physician. In 2001, Connecticut's Attorney General issued an option interpreting this regulation and concluded that mid-level providers can issue prescriptions for the drug that would cause a woman to have an abortion. In that opinion, the Attorney General noted that there are two types of abortions: non-surgical (medication induced) and surgical abortions. Planned Parenthood also refers to abortions as surgical procedures as their website (https://www.plannedparenthood.org/learn/abortion/in-clinic-abortion-procedures) states that "[i]n-clinic abortions are also called surgical abortions. Further, the CPT billing codes for abortion only make the distinction between medication (also refered to as non-surgical) abortions and surgical abortions.

As we understand it, however, in-office or in-clinic aspiration abortions done by manual vacuum aspiration are defined by the American College of Obstetricians and Gynecologists (ACOG) to be

procedural in nature, similar for example to the insertion of an intrauterine device, and not surgical. Some types of abortions, however, are truly surgical in nature. Abortions done by dilation and curettage or those involving suction curettage are done in the operating room, with anesthesia and are, as defined by ACOG, surgical processes. The question that we are posing to this Committee is how we craft statutory language that would limit mid-level providers to in-clinic or in-office aspiration abortions done by manual vacuum aspiration. There are unintended consequences of simply stating that mid-levels can perform abortions or failing to specify what types of vacuum aspirations can be done. We head down the slippery slope to allowing those procedures that are in fact surgical to be done by mid-level providers, creating patient safety concerns and significant scope of practice issues. Statutory language must clearly state that mid-level providers cannot perform surgical abortions.

It is also unclear to us from a legal perspective what would happen if a statute permitting mid-levels to perform aspiration abortions were passed. The result would be a regulation and a statue in direct conflict. Generally, regulations are afforded the same weight as statutes. Would the regulation be repealed by the Department of Public Health? How timely would this happen? We do not want to create legal uncertainty as to what mid-levels are permitted to do under Connecticut's legal framework.

The issues posed by this bill are emotional and complex. We are concerned that by rushing to pass statutory language, we are overlooking some important considerations outlined in this testimony. This may not be legislation that is wise to pass in a short session and without the benefit of a full working group to explore the many complex facets presented. We look forward to working with this Committee on these issues.