

State Public Health & Environment's action is an attack on Planned Parenthood

Ms. Cynthia S. Honssinger
Director, Office of Legal and
Regulatory Affairs
Colorado Department of Public
Health and Environment

Dear Ms. Honssinger:

I am writing on behalf of Planned Parenthood of the Rocky Mountains, Inc. in response to your letter of December 14, 2001. As you correctly understood from my last letter, Planned Parenthood completely disagrees with the Colorado Department of Public Health and Environment's new "fair market value rent" rule. That rule clearly constitutes an "agency statement of general applicability and future

effect implementing, interpreting, or declaring law or policy..." and therefore fall squarely within the definition of "Rule" expressly set forth in Section 24-4-102(15) of the Colorado Administrative Procedure Act (the "APA").

As I am certain you are aware, state agencies such as the Department are prohibited from implementing new rules or changes in existing rules without first complying with the APA's rule-making procedure. Among other things, that procedure would require the Department to consider whether the fair market value rent rule interferes with Planned Parenthood's freedom to conduct its affairs, to use

its property, or to deal with others on mutually agreeable terms. The Department would also be required to consider whether its new rule would undermine the public interest by denying health care to low-income citizens and increase costs for those seeking family planning services. See C.R.S. § 24-4-101.5. As I indicated previously, complying with the APA's notice and comment requirements would not only permit public input regarding this drastic change in the Department's interpretation of the Colorado Constitution, but would also create a proper administrative record for subsequent judicial review of the Department's actions. The

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Department's resistance to conducting proper rule-making in this instance stems primarily from its desire to shield its actions from public scrutiny.

Beyond the Department's failure to comply with the APA prior to implementing a new administrative rule, there is little doubt that it has exceeded all reasonable bounds with its most recent interpretation of Article V, Section 50 of the Colorado Constitution. Simply put, the Constitution expressly prohibits the use of public funds to pay for or otherwise reimburse any person or entity for providing an abortion procedure. Nothing in this provision can reasonably be understood to permit the Department to determine how Planned Parenthood uses assets, including real property, that have no connection whatsoever to state

dollars. For more than two decades, Planned Parenthood has demonstrated time and again to the Department's satisfaction that not one penny of public funding has directly or indirectly paid or reimbursed anyone for performing an abortion. The organization is therefore entirely in compliance with both the letter and the spirit of Article V, Section 50 and the Department's contentions to the contrary are completely without merit.

Apart from legal argument, you are well aware that Planned Parenthood operates its state-funded family planning program at annual deficits exceeding a quarter of a million dollars. It goes without saying that public funds paid to Planned Parenthood do not even approach the actual cost of the services the organization provides to low-income Coloradans. As the organization has explained in every imaginable way, there are no surplus public dollars with which Planned Parenthood could directly or indirectly pay for an abortion.

Rather, Planned Parenthood has, for more than 20 years, dedicated its own revenues to covering the cost of critical health care services that the Department cannot afford to pay for itself. Indeed, the entity Planned Parenthood subsidizes is not Planned Parenthood of the Rocky Mountains Services Corporation - it is the State of Colorado.

As your letter makes clear, the Department has determined that it will not continue to fund its obligations under its existing contract with Planned Parenthood. In light of this action, Planned Parenthood therefore has no obligation to continue providing services that would have been subsidized with state funds. Planned Parenthood understands the Department's new administrative rule, and its decision to repudiate the family planning program agreement, to be limited in effect to funds provided by the State and to have no impact whatsoever on Planned Parenthood's continuing

participation in the federally-funded Title X program. Any attempt by the Department to apply its fair market value rent rule, or any other administrative rule, to that program will of course be vigorously resisted.

For the present, Planned Parenthood will make every effort to continue operating its rural health centers without state subsidy funds. However, its ability to do so over the long term may well be limited by economic factors over which it has no control. Thus the Department's action should be understood as an attack not only on Planned Parenthood, but also on the more than 13,000 Colorado citizens who depend on its state-subsidized program for critical health care services. Please be advised that the organization in no way considers this matter closed and will continue to pursue every lawful option it deems appropriate.

Very truly yours,
Gorsuch Kirgis LLP
Stuart Pack

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