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September 15, 2015

Ms. Leah Rutman
Policy Counsel
ACLU of Washington
901 Fifth Avenue, Suite 630
Seattle, WA 98164

Re: San Juan County Public Hospital District No. 1
ACLU Letter Dated July 8, 2015

Dear Ms. Rutman:

In your letter to San Juan County Public Hospital District No. 1 (the "District"), dated July 8, 2015, you expressed concern regarding the District's compliance with the Reproductive Privacy Act (the "Act").¹ Foster Pepper serves from time-to-time as special counsel to the District and they have asked us to respond to your letter. For the reasons stated below, we believe that the District is in compliance with the Act's requirements and therefore need not revise its policies or practices with respect to the Act.

I. The District Does Not Provide Maternity Care Directly.

The applicable provision of the Act provides as follows:

If the state provides, directly or by contract, maternity care benefits, services, or information to women through any program administered or funded in whole or in part by the state, the state shall also provide women otherwise eligible for any such program with substantially equivalent benefits, services, or information to permit them to voluntarily terminate their pregnancies.

RCW 9.02.160 (emphasis added). RCW 9.02.170 defines "state" to include counties, cities, towns, municipal corporations, and quasi-municipal corporations in the state of Washington. The statute's requirement to provide termination services applies *only if* the state or municipal corporation provides "maternity care benefits, services, or information." Further, the statute does not impose a requirement for the state or municipal corporation to provide the types of maternity care that trigger the obligation to provide termination services. Indeed, in AGO 2013 No. 3, the Washington Attorney General concluded that the Act does not require public hospital districts to provide maternity care:

¹ Laws of 1992, ch. 1; RCW 9.02.100-.170, .900-.902.

Nothing in I-120 requires that a public hospital district provide “maternity care benefits, services, or information to women.” If a public hospital district does not do so, the requirement in RCW 9.02.160 that the district provide “substantially equivalent benefits, services, or information to permit them to voluntarily terminate their pregnancies” is not triggered.

AGO 2013 No. 3 at 6.

The District does not provide maternity care. Instead, the District’s services are limited to 9-1-1 advanced life support emergency medical care and transport services through San Juan Island EMS and MedEvac. The District therefore does not provide the services that trigger the Act’s requirement to provide “substantially equivalent benefits, services, or information to permit [women otherwise eligible for state benefits programs] to voluntarily terminate their pregnancies ...”

II. The District Does Not Provide Maternity Care Services By Contract.

In addition to not providing maternity care services directly, the District does not provide maternity care by contract. Under its Subsidy Agreement with PeaceHealth,² the District provides subsidy payments to Peace Island Medical Center from a portion of the District’s regular property tax levy collections. Peace Island Medical Center is directed to “utilize” the payments “exclusively for the provision of... charitable healthcare services, emergency department services and the provision of physician services.” See Subsidy Agreement at § 1.1.23. The Subsidy Agreement does not require Peace Island Medical Center to provide maternity care.

The charity care provision of the Subsidy Agreement allows Peace Island Medical Center to use the District’s payments to “provide medical care at the combined clinic/hospital facility regardless of patients’ ability to pay” and without discrimination “against Medicare or Medicaid patients ...” See Subsidy Agreement at § 1.1.20. This provision requires Peace Island Medical Center to accept patients regardless of their ability to pay, but does not require it to provide maternity care to those patients.

The emergency department services provision allows Peace Island Medical Center to use the District’s payments to “assume all financial responsibility for ... and exercise due diligence in providing ... emergency care and inpatient care consistent with the limitations upon critical access hospitals services seven (7) days per week, twenty-four (24) hours per day, three hundred and sixty five (365) days per year.” See Subsidy Agreement at § 1.1.18(2). This provision requires Peace Island Medical Center to provide emergency care, but does not require it to provide maternity care.

² Subsidy Agreement for a Combined Clinic and Hospital Facility between Peace Health and San Juan County Public Hospital District No. 1, dated March 18, 2009, as amended by the First Amendment executed September 15, 2010 and the Second Amendment last executed March 28, 2012 (the “Subsidy Agreement”).

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The physician services provision allows Peace Island Medical Center to use the District's payments to "assume all financial responsibility for ... and exercise due diligence in providing ... primary care services (scheduled office visits with primary care providers) no fewer than five (5) days per week, with the hours of operation averaging forty (40) hours per week ..." See Subsidy Agreement at § 1.1.18(1). This provision requires Peace Island Medical Center to provide primary care services, but does not require it to provide maternity care.

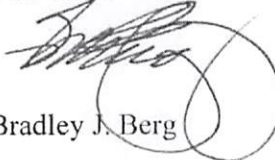
III. Conclusion.

The District does not provide maternity care directly nor does it provide maternity care services through its contract with Peace Island Medical Center. The Act's requirement to provide "women otherwise eligible for" maternity benefits programs "administered or funded in whole or in part by the state" with "substantially equivalent benefits, services, or information to permit" otherwise eligible women to "voluntarily terminate their pregnancies" accordingly does not apply to the District. RCW 9.02.170; AGO 2013 No. 3 at 6.

We trust the foregoing is responsive to your request. Please contact me if you would like to discuss the matter further or if I can be of additional assistance.

Very truly yours,

FOSTER PEPPER PLLC



Bradley J. Berg

cc: ✓ Pamela Hutchins, Superintendent
San Juan County Public Hospital District No. 1