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Abortion Services in Wyoming

—A report of the Wyoming Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This report will be considered by the Commission, and the Commission will make public its reaction. In the meantime, the recommendations in this report should not be attributed to the Commission, but only to the Wyoming Advisory Committee.

June 1977

Abortion Services in Wyoming

A report prepared by the Wyoming Advisory Committee to the U. S. Commission on Civil Rights

ATTRIBUTION:

The findings and recommendations contained in this report are those of the Wyoming Advisory Committee to the United States Commission on Civil Rights and, as such, are not attributable to the Commission.

This report has been prepared by the State Advisory Committee for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and the Congress.

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U.S. COMMISSION ON CIVIL RIGHTS
June 1977

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Dear People:

The Wyoming Advisory Committee, pursuant to its responsibility to advise the Commission on civil rights problems in this state, submits this report on abortion services in the State.

Through its investigation, the Advisory Committee concludes that several hospitals in the State have by-laws that are unconstitutional. The by-laws of the Lutheran Hospital and Homes Society which operates nine public hospitals in Wyoming prevent the performance of elective abortions in contravention of the U.S. Supreme Court decisions concerning abortion. The Committee found that 50 percent of all abortions on women who reside in Wyoming are performed out of State. A paucity of information about the many aspects of abortion was shown to exist; this was found to be true even among those responsible for referral services. The overwhelming majority of physicians, who legally could perform abortions, do not do so. Many in the Wyoming medical community were found to lack the medical skills to perform abortions; hence, women requiring the operation are sent several hundred miles away for the service.

The purpose of the Wyoming study was to generate data on the magnitude of the problem of lack of abortion services to women in the State and to determine difficulties and options open to women denied abortions. This report seeks to determine if there are legal, administrative, procedural, and other barriers to a woman's right to choose to have an abortion in Wyoming. Specific objectives of the study were to determine the extent of compliance of public hospitals with the Court's decisions, the availability of abortion services in the State, and medical policy in terms of paying for abortions of poor women.

In conducting the study, members of the Wyoming Advisory Committee and staff of the Commission's Rocky Mountain Regional Office reviewed available literature on abortion and the recent court decisions. Questionnaires were mailed to nine public hospital administrators with responses analyzed and tabulated. In addition, a total of 42 persons were interviewed (public hospital administrators, physicians or their support staff, personnel from other facilities providing abortion services, medicaid officials, and other interested persons).

Of particular concern to this Advisory Committee is Wyoming's disregard of a woman's constitutional right to decide whether to terminate a pregnancy, a right delineated by the Supreme Court. We urge you to communicate our concern to the Department of Health, Education, and Welfare asking that public hospitals receiving Federal funding are in compliance with the law. We also ask you to communicate with the Attorney General requesting that the Department of Justice investigate allegations that public hospitals in Wyoming are spending Federal funds in violation of the law. If such violations are, indeed, found, litigation should be initiated to correct the situation.

Respectfully,

JUANA RODRIGUEZ
Chairperson

ACKNOWLEDGMENTS

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The investigation and report were the principal staff assignment of Roger Wade, Ph.D., consultant, with assistance from William Levis, Cal E. Rollins, and support from Esther Johnson, Cathie Davis and Linda Stahnke. The project was undertaken under the overall supervision of Dr. Shirley Hill Witt, director, and William F. Muldrow, deputy director, Rocky Mountain Regional Office.

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to denials of the equal protection of the laws based on race, color, sex, religion, or national origin, or in the administration of justice: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to denials of equal protection of the law; maintenance of a national clearinghouse for information respecting denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

THE STATE ADVISORY COMMITTEES

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 as amended. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

CONTENTS

I.	Introduction -----	1
	A. Methodology -----	1
	B. Demographic Data for Wyoming -----	3
	C. Glossary of Terms -----	4
	D. Legal Background -----	6
II.	Access to Abortion Services in Wyoming -----	10
	A. Abortions In- and Out-of-State -----	10
	B. Distances -----	14
	C. Medicaid and Title XX -----	15
	D. Public Hospitals in Wyoming -----	18
	E. Hospitals Which Do Elective Abortions -----	21
	1) First Trimester Abortions -----	25
	2) Second Trimester Abortions -----	27
	F. Hospitals That Do Not Perform Abortions -----	27
	1) Hospitals With By-laws That Prohibit Abortion	28
	2) Hospitals That Do Not Outlaw Abortions -----	34
	G. Physicians and Abortions -----	35
III.	Findings and Recommendations -----	41
	Footnotes -----	47
	Appendices	
	A. Wyoming Abortion Questionnaire -----	A-1
	B. Wyoming Abortion Law -----	B-1
	C. Platte County Abortion By-laws -----	C-1
	D. Platte County Abortion Consent Forms -----	D-1
	E. Campbell County Refusal Letter -----	E-1
	F. Sheridan County Consent Form -----	F-1

I. INTRODUCTION

A. Methodology

In April 1975, the United States Commission on Civil Rights submitted to the President and the Congress its report entitled Constitutional Aspects of the Right to Limit Childbearing.^{1/} The report analyzed the manner in which the proposed constitutional amendments would nullify the right to abortion, as defined by the Supreme Court undermining the First, Ninth and Fourteenth Amendments to the Constitution.^{2/} Based on its analysis of the legal and constitutional issues, the Commission took a firm position in support of each woman's constitutional right to privacy in the decision whether to terminate a pregnancy, as delineated by the Supreme Court.^{3/} The Commission thus recommended that Congress reject constitutional amendments which "seek to abolish the historic freedom to limit childbearing as contained in the Bill of Rights and the Fourteenth Amendment and as recognized by the Supreme Court of the United States." Further, the Commission recommended that Congress reject other anti-abortion legislation and amendments, and repeal those which have been enacted.^{4/}

The extent of compliance of public hospitals with the 1973 Supreme Court decisions has not been determined. In fact, one recent study shows that most abortion services are available in large metropolitan areas. For instance, 30 percent of the public hospitals in metropolitan areas performed at least one abortion during 1973 compared to only 8 percent of public hospitals in non-metropolitan areas.^{5/} As a result of the lack of information in their State, members of the Wyoming Advisory Committee to the U.S. Commission on Civil Rights voted in November 1976 to conduct a

study on abortion services in public hospitals.

This report of the State Advisory Committee seeks to determine if there are legal, administrative, procedural and other barriers to a woman's right to choose to have an abortion in Wyoming. Specific objectives of the study were to determine: the extent of compliance of public hospitals with the Court's decisions, the availability of abortion services in the State, and medicaid policy in terms of paying for abortions of poor women.

The study has been limited to investigation of Wyoming's publicly supported hospitals. Selection of hospitals has been limited to those receiving public funds and offering obstetrical-gynecological services to women. In addition, approximately one half of the hospitals selected are from geographical locations which have the highest number of residents in Wyoming.

In conducting the study, members of the Wyoming Advisory Committee abortion services subcommittee and staff of the Commission's Rocky Mountain Regional Office reviewed available literature on abortion and the recent court decisions. In addition, questionnaires were mailed to nine public hospital administrators. The questionnaires were designed to elicit information about the number of abortions performed during the years 1973-1976, the number of abortions requested during 1973-76, and the number of requests for reimbursement for abortion services by Medicaid. After the questionnaires were returned (only five were completed and returned), the responses were analyzed and tabulated. (See Appendix A).

Additionally, the Wyoming Advisory Committee members and RMRO staff conducted interviews with hospital administrators and State Health officials. A total of 42 persons were interviewed. Of those, 14 were public hospital administrators, 14 were physicians or their support staff, five worked for facilities providing abortion services, two were State Medicaid

officials and seven other persons interested in abortion services. The interviews were conducted in March and April 1977.

B. Demographic Data for Wyoming

With its 332,000 inhabitants, less than 0.2 percent of the nation's population, and an area of 97,914 square miles, Wyoming is only more densely populated than Alaska. Both states are the only two in the nation without a population center large enough to qualify as a standard metropolitan statistical area^{6/}.

Wyoming is a state of large distances and small towns. Approximately 315,000 of Wyoming's population are whites, 18,000 are Hispanics, 3,000 are blacks, and 7,000 are people of other races, the greatest number of whom are Native Americans. The State has a large reservation in the Wind River area owned by the Arapahoe and Shoshone tribes^{7/}. In 1970, Wyoming's urban population was 201,000. Its rural population of 131,000 makes it considerably more rural than the rest of the lower United States. Of the rural residents, 31,000 live on farms. In terms of percentages, Wyoming is 60 percent urban and 40 percent rural^{8/}. The United States as a whole is 73.5 percent urban and 26.5 percent rural.

Of the State's 332,000 persons, 66,500 or 20 percent are women aged 15-44. These women are in what is generally considered to be the child bearing years^{9/}.

Approximately 33.5 percent of those Wyoming women who are the heads of households fall below the 1969 poverty level. This compares with a national figure showing 32.5 percent of such women in the poverty category. Eleven percent of the State's total population falls below the

1969 poverty line, while nationally, 13.7 percent of the U.S. population lives in poverty.^{10/}

According to the Alan Guttmacher Institute's figures in 1973, Wyoming had an abortion rate of 2.6 abortions per 1,000 women within the ages of 15-44 and a rate of 4.5 in 1974. Nationally, the abortion rate for 1973 was 16.5 and 19.5 in 1974, four to six times greater than the rate in Wyoming. The abortion ratio for the State (based on the number of abortions per 1,000 live births for a given population) was 30 in 1973 and 282 in 1974. The Wyoming ratios are five to eight times smaller than the national averages.^{11/}

C. Glossary of Terms

Abortion rate: the number of abortions per 1,000 women in the child bearing years, 15-44.

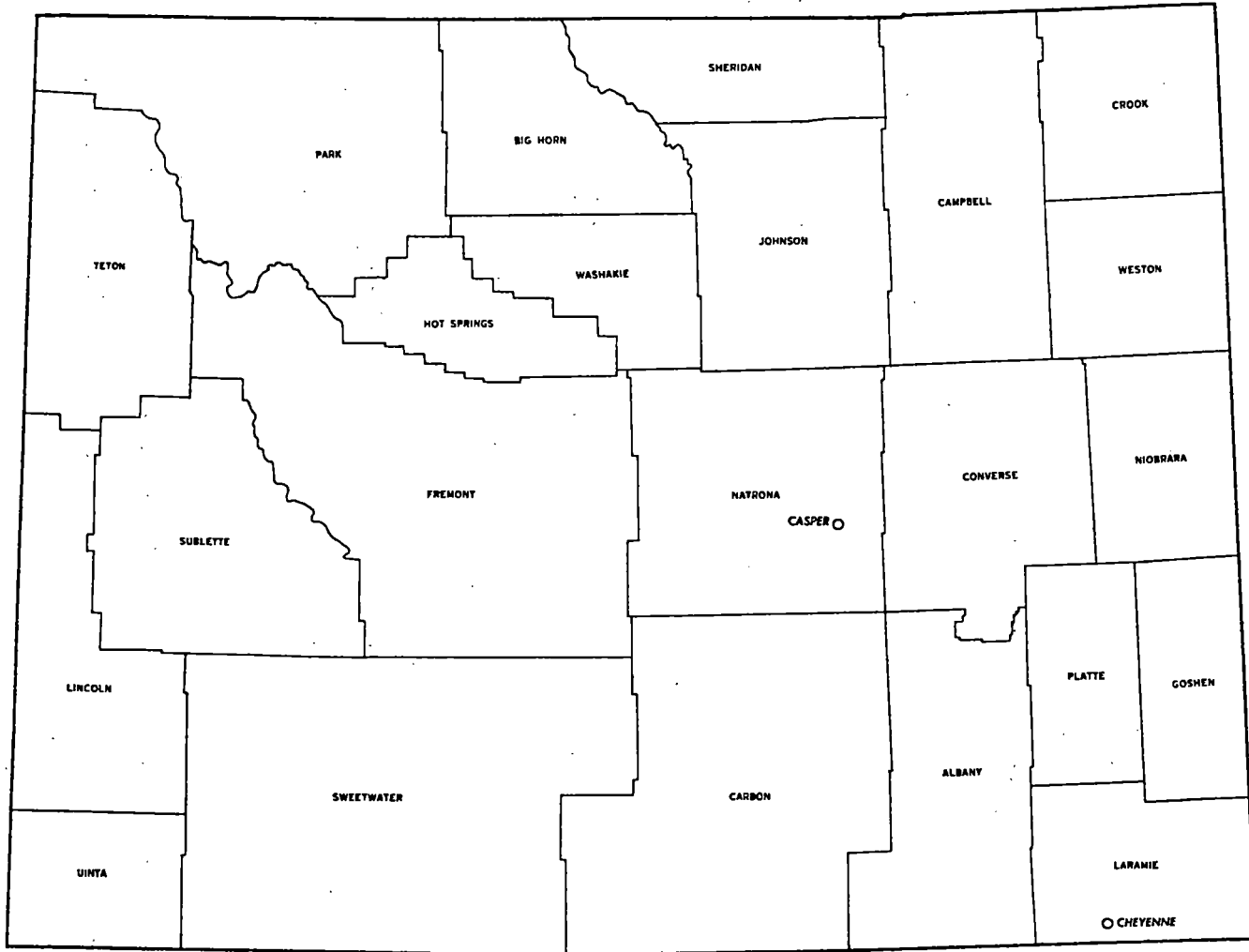
Abortion ratio: the number of abortions compared to the number of live births for a given population. The number of abortions per 1,000 live births.

D&C: dilatation and curettage is the older and still widely used technique of performing abortions. It involves dilatation of the cervix and curettage of the uterine walls.

Elective abortion: an abortion performed because the pregnant woman wishes to terminate the pregnancy.

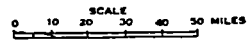
Length of Gestation: the length of time a fetus has been developing in the uterus. This is most accurately estimated by a pelvic examination. This is generally a more accurate estimate of the length of pregnancy than LMP.

LMP: an abbreviation for the length of time that has passed since a woman's last menstrual period. This is used as a rough indication of the length of pregnancy.



LEGEND

○ Places of 25,000 to 50,000 inhabitants



Therapeutic abortion: an abortion performed for reasons of possible risk to the mother. Usually of a medical nature, the term is also used to refer to instances in which the abortion is performed because of the potential for psychological damage to the mother if the pregnancy continues.

Trimester: pregnancy is broken up into three 12 week segments

1st Trimester--the first 12 weeks of pregnancy. Abortion at this point is, according to the U. S. Supreme Court in Roe v. Wade, 410 U.S. 113 (1973), a matter between a woman and her doctor.

2nd Trimester--the second 12 weeks of pregnancy. The State can interfere in abortions at this stage only in order to insure the safety of the woman.

3rd Trimester--the final 12 weeks of pregnancy. Abortions should be performed in this trimester only if the mother's life is in danger.

Vacuum aspirator: a machine used for performing abortions. It is considered to be the safest technique available.

Viability: the stage of human development (usually after 24 weeks of pregnancy) when the fetus is able to live outside the womb of the mother according to appropriate medical judgment.

D. Legal Background

In January 1973, the United States Supreme Court ruled seven to two in Roe V. Wade that during the first trimester (approximately three months) of pregnancy a State cannot bar any woman from attaining an abortion from a licensed physician. The Court reached this conclusion, in part, because

of the established medical fact that until the end of the first trimester the mortality rate in normal childbirth is greater than that in abortion.^{13/} Furthermore, the Court ruled that during the second trimester of pregnancy the State can regulate abortion procedures only if such regulations relate to the preservation and protection of the woman's health. During the third trimester the State can regulate or even prohibit all abortions except those necessary, "in appropriate medical judgment," to protect the woman's life and health.^{14/}

The Court based its decision on a right of privacy:

(W)hether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon State action, as we feel it is, or as the District Court determined, ⁱⁿ~~is~~ the Ninth Amendment's preservation of rights to the people...^{15/}

This right of privacy was limited in the second and third trimesters by the long-established doctrine of compelling State interest, which provides a basis for State restriction of certain "fundamental rights" when there is clear evidence of a State interest in the goal to be obtained by the limitation. In Roe, the health risk to the woman, and the potential for human life of the fetus at the point of viability, permitted the restriction on freedom to abort in the later stages of pregnancy.^{16/}

On the same day it decided Roe, the Supreme Court held in Doe v. Bolton that a Georgia statute which provided for certain restrictions on the accessibility of abortions was also unconstitutional.^{17/} The Court decided that the statute's requirement that the hospital in which the abortion was performed be accredited by the Joint Commission on Accreditation of Hospitals, that a committee approve the abortion, and that two practicing physicians concur in the treating physician's recommendation, were unnecessary State action and not related to the purpose of the statute.^{18/}

As a result of the two Supreme Court decisions, the Wyoming law

outlawing abortions in the State was overturned. In Doe v. Burk,^{19/} the Wyoming Supreme Court ruled the State abortion law unconstitutional.^{20/} Writing for the Court, Justice Guthrie found "(t)he regulation of abortions in this State is beyond the power of the courts and is solely a matter for the legislature, which must, of course, give heed to the pronouncements of the United States Supreme Court..."^{21/}

Based on the Burk case, the Wyoming Legislature revised its abortion statute in 1973. The new statute simply stated that no one could be forced to participate in any way in the performance of an abortion.^{22/} During the 1977 legislative session, a new statute (see Appendix B) was enacted to repeal and update the former abortion laws. The new comprehensive statute inserts the State into the abortion process during the third trimester.^{23/} In large part, the new law is based on the Danforth v. Planned Parenthood^{24/} decision of the U. S. Supreme Court announced in July 1976. In that decision, Justice Blackmun wrote that "after the stage of viability has been reached" a physician need "exercise the prescribed skill, care, and diligence to preserve the life and health of the fetus."^{25/}

The newest Wyoming statute mandates that "(t)he commonly accepted means of care shall be employed in the treatment of any viable infant aborted alive with any chance of survival" (emphasis added).^{26/} In addition, it is illegal to abort a fetus after it has reached viability except to preserve the life or health of the woman.^{27/}

The new law maintains the provision that no one can be required to perform an abortion.^{28/} The act also provides that no private hospital or clinic is required to do abortions.^{29/} The Tenth Circuit Court of Appeals, which includes Wyoming, has ruled that a hospital having tax exemption as a private institution and receiving approximately five percent of its construction monies from Federal funds is not a public institution.^{30/}

In Wyoming, however, 27 of the 28 hospitals are public facilities since they are city, county, or state controlled. The Danforth decision reaffirmed the proposition that neither a state nor any of its political subdivisions can limit a woman's access to an abortion during the first trimester. During the second 12 weeks of pregnancy, the state can only dictate where abortions will be performed.

Although Wyoming has revised its abortion statute, one pre-Roe law remains. It is presently a felony punishable by imprisonment up to 14 years to cause "miscarriage, abortion, or premature expulsion of a fetus" by assaulting a pregnant woman.^{34/} This statute could be interpreted by some to prohibit any abortions by licensed physicians. The U.S. Supreme Court has made it clear, however, that a pregnant woman has a right to an abortion. Only one condition can be placed upon a woman during the first trimester, a condition that does not apply in Wyoming. The State may require a woman to consent in writing to the procedure and certify that "her consent is informed and freely given (without) ... coercion."^{35/} It is illegal for the State to require the consent of the spouse or to "impose a blanket provision...requiring the consent of a parent...of an unmarried minor..."^{36/}

II. Access to Abortion Services in Wyoming

A. Abortions In-State and Out-of-State

According to the Division of Vital Statistics of the Wyoming Health Department, the State has never kept records of the number of abortions performed within its jurisdiction.^{37/} The recent changes in the Wyoming abortion law call for the establishment of record-keeping in this regard. In spite of the lack of data collected by Wyoming, the report of the Alan Guttmacher Institute, "Abortion 1974-75: Need and Services in the United States, Each State and Metropolitan Area," contains statistics generally considered by authorities to be accurate. The figures, derived from inclusive survey of abortion service providers, report that 180 abortions were performed in Wyoming in 1973, 320 in 1974, 530 in 1975, and a projected 500 abortions for 1976.^{38/} The report contends that less than one-sixth of the estimated need for abortions in Wyoming was being met within the State.^{39/}

Unlike Wyoming, most of its bordering states have kept records of the number of abortions performed within their boundaries. The data provided by the State health departments of Colorado, Montana, South Dakota, and Utah also indicate that Wyoming is not providing adequate abortion services for its residents.^{40/} The chart on page 23 presents the findings which are incomplete due to variation in data collection procedures and tabulations. The information also does not account for all abortions obtained by Wyoming women out-of-State, since at least one physician in the State sends women to California for abortions,^{41/}

Reports from State Health Departments
on the Number of Abortions Performed on Wyoming Women
in 1973-1976

<u>State</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>
Colorado	151	218	357	No Data
Montana	No Data	5*	15	26
South Dakota	22	49	51	50
Utah	No Data	46	88	No Data
Totals	171	318	511	Incomplete
Number of Abortions Performed in Wyoming	180	320	530	500**
Total Abortions on Wyoming Residents	351	638	1,041	Incomplete
Percentage of Total Done out of State	48%	46%	50%	Incomplete

* Data for six months only.

** An estimate from the Alan Guttmacher Report.