



March 23, 2020

Sent via email to:

Governor Michelle Lujan-Grisham

Office of Governor Lujan-Grisham, Jane Wishner, Executive Policy Advisor for Health and Human Services, jane.wishner@state.nm.us

Office of Governor Lujan-Grisham, Matt Garcia, General Counsel, matt.garcia@state.nm.us

Office of Governor Lujan-Grisham, Dominic Gabello, Senior Advisor, dominic.gabello@state.nm.us

Office of Governor Lujan-Grisham, Victor Reyes, Legislative Director, victor.reyes@state.nm.us

Re: COVID-19 Preparation and Response in New Mexico and Reproductive Health Care

Dear Governor Lujan-Grisham,

It is essential that all government officials follow public health and medical experts' recommendations to help ensure a response plan that protects the health, safety, and civil liberties of our communities. Even in a public health emergency, officials must make every effort to protect the rights of all. In times of crisis and rapidly changing public health emergencies, we know that people still need access to reproductive health care and abortion access is particularly at risk.

The ability of New Mexicans to make decisions about their reproductive health is critical even, and perhaps especially so, during a public health crisis like COVID-19. Further, it is virtually assured that any restrictions on access to timely reproductive health care will disproportionately and negatively impact women of color, immigrants, young people, incarcerated people, LGBTQ+ folks, people with limited income, and rural and isolated New Mexicans. We believe that all reproductive health care services are "essential," including but not limited to: abortion care; birth control of all forms, including emergency contraception; STI screening, testing, and treatment; vaginal health and treatment; prenatal, delivery, and postnatal care. Officials should secure New Mexicans' access to these health care services and ensure that marginalized communities are not disproportionately impacted by official's efforts to address this public health crisis.

Given existing limited access to reproductive health care, and tremendous barriers anti-abortion politicians and extremists have put in the way of people accessing reproductive health care, particularly abortion care, it is critically important that as the COVID-19 crisis unfolds, officials ensure that our health care system remains accessible to reproductive health patients with time sensitive medical needs. Abortion care is a time-sensitive, essential service that is part of the full scope of pregnancy care that cannot be denied or deferred without acute consequences for women and their families.

As officials enact emergency powers, limit which businesses and offices may operate and when, and limit individual movement and travel, they must work to ensure access to time-sensitive reproductive health care, like abortion care, is not denied or delayed. In responding to the COVID-19 public health crisis, there are several steps officials can take to meet this duty and the ACLU of New Mexico urges direct work with reproductive health care providers and advocates to further identify unintended consequences and impacts of emergency response for patients and providers. Further, reproductive health care providers are essential pillars of the public health infrastructure and are well suited to responding to crises.

The following are policies and recommendations for decision makers to adopt as this crisis unfolds:

- It is critical that officials treat reproductive health care clinics and outpatient abortion providers as essential businesses, and that hospital systems ensure the continuation of abortion care as an essential, time-sensitive service. The American College of Obstetricians and Gynecologists and other leading medical organizations has recognized the potential for impact on reproductive health care in this way and has issued a joint statement that included the following: “[We] do not support COVID-19 responses that cancel or delay abortion procedures...Abortion is an essential component of comprehensive health care. It is also a time-sensitive service for which a delay of several weeks, or in some cases days, may increase the risks or potentially make it completely inaccessible. The consequences of being unable to obtain an abortion profoundly impact a person’s life, health, and well-being.”
- Any limitations on travel and lodging must contain exceptions for people accessing time-sensitive reproductive health care, including abortion.
- Officials should work with reproductive health care centers that provide abortion care on policies to ensure that anti-abortion protestors do not expose clinic patients and their families, staff, and themselves to COVID-19 during protests. Officials should also work reproductive health care centers to ensure that anti-abortion protestors do not prevent or inhibit access to reproductive health care centers.
- Centennial Care (Medicaid) and the Office of the Superintendent of Insurance (OSI) plans should suspend or increase limits on prescription refills in order to support social distancing while ensuring continued access to essential medications. New Mexico law allows for up to six months of dispensing for prescribed contraception in private plans and up to twelve months for Medicaid plans. Officials and insurance providers should ensure that their plans and points of sale are familiar with these requirements.
- Opening a special enrollment period to enroll uninsured New Mexicans in OSI plans.
- Halting pending disenrollments of Centennial Care and New MexiKids (CHIP) to the fullest extent possible.
- Anticipating supply chain interruption, requiring coverage for off formulary prescription drugs in the event of medication shortages for Centennial Care and OSI plans.
- Infant and maternal morbidity and mortality are profound concerns in New Mexico, and with even more limited access to prenatal and postpartum care during this public health

crisis, officials should work with the medical community to prevent dangerous disruptions in pregnancy and postpartum care. During a pandemic, these critical issues are likely to increase in under-resourced areas with strained health systems, severe resource shortages, and absenteeism of critical staff. Therefore strategies are needed to address access to the full scope of pregnancy care within the broad range of emergent health needs.

- Essential time-sensitive reproductive health care, like abortion care, for incarcerated individuals should not be denied or delayed during this crisis. Incarcerated individuals are already at increased risk during public health crises and we should ensure that incarcerated individuals and officials understand that access to essential time-sensitive reproductive health care, including abortion care, should not be delayed.
- Officials must ensure that healthcare facilities are immigration enforcement-free zones so that immigration status does not prevent a person from seeking medical care generally or within the context of reproductive health.
- It is clear that schools provide so much more than an education for their students. Schools provide meals, health care, and hygiene supplies for students that they would not be able to access otherwise. We encourage officials to coordinate with schools and other organizations setting up meal pick up zones for students to also provide free menstruation products at these locations for students who will not otherwise be able to access those products.

We are in a national and global public health emergency that will reverberate throughout our communities. We must do everything we can to ensure health care that cannot be postponed is available, accessible, legal, and safe for patients and health care providers. The ACLU of New Mexico will be watching closely to make sure that the government's response is scientifically justified and no more intrusive on civil liberties than absolutely necessary. Should you wish to discuss this with me further, please do not hesitate to contact me at my below email address or telephone number.

Sincerely,



Elinor J. Rushforth
Reproductive Rights Attorney
ACLU of New Mexico
P.O. Box 566
Albuquerque, NM 87103
T: (505) 266-5915 Ext. 1010
F: (505) 266-5916
erushforth@aclu-nm.org

cc:

Cabinet Secretary, Health, Kathyleen Kunkel, kathy.kunkel@doh.state.nm.us

Cabinet Secretary, Human Services, Dr. David R. Scrase, david.scrase@state.nm.us

Cabinet Secretary, Corrections, Alisha Tafoya Lucero, Alisha.TafoyaLucero@state.nm.us

Cabinet Secretary, Children, Youth, and Families, Brian Blalock, brian.blalock@state.nm.us