THE SUPREME COURT OF IOWA

Supreme Court No. 14-1415
Polk County No. CVCV046429

PLANNED PARENTHOOD OF THE HEARTLAND, INC., and DR. JILL MEADOWS, M.D.,

Petitioners-Appellants,

v.

IOWA BOARD OF MEDICINE,
Respondent-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY

BRIEF OF *AMICUS CURIAE* ON BEHALF OF IOWA COALITION AGAINST DOMESTIC VIOLENCE, ET. AL., in support of Petitioners-Appellants

---

ROXANNE CONLIN
Roxanne Conlin & Associates, P.C.
319 Seventh Street, Suite 600
Des Moines, Iowa 50309
P: 515-283-1111/ F: 515-282-0477
roxlaw@aol.com
cc: ldg@roxanneconlinlaw.com
ATTORNEYS FOR AMICUS CURIAE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Court Documents

Other Authorities

INTEREST OF *AMICI CURIAE*

Amici curiae are organizations committed to obtaining full legal and social equality for women, including access to the full range of the safest medically-approved health care. *Amici* write to highlight the negative impact of Iowa Admin. Code r. 653-13.10(2)-(3) (2014) (the "Rule") on Iowa's most vulnerable women, including sexual assault survivors, women in abusive relationships, rural women, low-income women, and women with certain pre-existing medical conditions. Specifically, *Amici* write to elucidate how the barriers imposed by the Rule will make it harder or, in some cases, impossible for vulnerable women to access abortion services. *Amici* also write to describe the serious adverse consequences the Rule would have on women's economic security and future well-being.

The Iowa Coalition Against Domestic Violence (ICADV) is a non-profit organization, incorporated in the state of Iowa in 1985. ICADV provides educational and technical assistance to domestic violence programs across Iowa, and also acts on a statewide and national level to promote public policy and legislative issues on behalf of battered women and their children. ICADV's purpose is to eliminate personal and institutional violence against women through support to programs providing safety and

services to battered women and their children. ICADV recognizes that unequal power contributes to violence against women. Therefore, ICADV advocates social change, legal and judicial reform, and the end to all oppression. ICADV believes that improving access to reproductive health services, including abortion care, is critically important to women experiencing intimate partner violence.

The Iowa Coalition Against Sexual Assault (IowaCASA) is a statewide organization of 25 member sexual assault crisis centers and shelters serving survivors of sexual assault. IowaCASA's mission is to unite people and organizations to promote a society free from sexual violence and to meet the diverse needs of survivors. Member programs serve approximately 4,000 survivors of sexual violence each year. IowaCASA believes that medication abortion can meet the needs of women who become pregnant as a result of sexual violence, particularly those in rural areas.

The National Women's Law Center (NWLC) is a non-profit legal advocacy organization that has been working since 1972 to advance and protect women's legal rights. Because of the tremendous significance to women of the right to decide whether to bear children, NWLC seeks to preserve women's right to abortion without undue government interference.

INTRODUCTION AND SUMMARY OF ARGUMENT

In this action for judicial review of an agency action, Petitioners Planned Parenthood of the Heartland, Inc. (PPH) and Dr. Jill Meadows ask the court to invalidate Iowa Administrative Code r. 653.B.10 (2014) ("the Rule"), requiring that a physician be physically present when medication abortion is provided and perform a physical exam of the pregnant woman prior to providing a medication abortion. The Rule also requires every patient to return to the same clinic for a routine follow-up visit. Iowa Admin. Code r. 653-13.10(2)-(3) (2014). In so doing, the Rule will force PPH to end its carefully designed and well-studied telemedicine program, which has significantly increased access to abortion services, particularly for Iowa's most vulnerable women.

The Rule is not founded in any rational agency policy. Its purported justification is contradicted by the actual evidence, and it provides no benefit. Instead, the Rule makes it harder for women to access needed health care, contrary to Iowa's stated public health goals of using telemedicine to improve access to care. It eliminates the option for some women to use medication abortion, which they may prefer to surgical abortion for profoundly personal reasons or because it is necessary for their health. If implemented, the Rule will also impose serious and sometimes

insurmountable barriers on Iowa women, including forcing some women to travel hundreds of miles roundtrip–twice–to obtain an abortion and increasing indirect costs such as transportation, child care, and lost wages. This will have a significant negative impact on Iowa's most vulnerable women, including rural women, women with pre-existing medical conditions, women experiencing intimate partner violence, sexual assault survivors, and low-income women. For some women, these burdens will be insurmountable and they will be forced to carry the pregnancy to term. The Rule will have significant consequences for Iowa women's equality, economic security, and ability to care for their families.

Given the lack of any benefit combined with the significant negative effects, the Court should find that the Rule's "impact on the private right[]" to abortion "is so grossly disproportionate to the benefits accruing to the public interest" that it must be deemed to "lack any foundation in rational policy" and must be invalidated under Iowa Code Section 17A.19 (10)(k). See Zieckler v. Ampride, 743 N.W.2d 530, 533 (Iowa 2007) (striking down agency rule).

I. The Rule Lacks Foundation in Rational Agency Policy, Violating Iowa Administrative Code.

The Court should reverse the Rule because it was not required by law and actually contravenes Iowa's stated public health goals, has no benefits or valid justification, and would cause an overwhelming harm, particularly for Iowa's most vulnerable women.[1] Iowa Code Section 17A.19(10)(k) provides that a court shall

> reverse, modify, or grant other appropriate relief from agency action. . . if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action . . . is not required by law and its negative impact on the private rights affected is so grossly disproportionate to the benefits accruing to the public interest from that action that it must necessarily be deemed to lack any foundation in rational policy.

The Rule's negative impact is so disproportionate to any purported benefit that it lacks foundation in rational agency policy and should be reversed.

A. The Rule Is Not Required by Law and Is Counter to Iowa's Stated Public Health Goals.

Under Iowa Code Section 17A.19(10)(k), a court must reverse, modify or grant relief from agency action if the agency action was not required by law and its negative effect on a private right is grossly

[1] As demonstrated in Petitioner's brief (Pet'r's Reply Br. in Supp. of Mot. to Stay Implementation of Agency Rule Pending Appeal 37-40 Aug. 28, 2014), the Rule also impermissibly infringes on a woman's constitutionally protected right to an abortion in violation of the substantive due process clause of the Iowa Constitution.

disproportionate to any benefit. The defendants do not contend, nor is there any indication, that the Board was required by law to promulgate the Rule.

Not only was this Rule not required by law, but the Rule, which prohibits a safe and effective means of improving access to care, is directly counter to the Iowa Department of Public Health's stated goals about improving public health for rural residents. The Iowa Department of Public Health has recognized telemedicine as a necessary tool for improving the health care of rural residents.[2] According to Department of Public Health Director Dr. Marinette Miller-Meeks, "Telemedicine will be very important in a state like [Iowa] because we are rural. With telemedicine, we will be able to do more."[3] PPH's telemedicine program has done exactly that—allowed PPH to provide more health care with limited resources.

Yet, despite no law compelling it, the Board promulgated a Rule that eliminates a vital telemedicine program, jeopardizing the ability of rural Iowa residents and other vulnerable communities to access necessary care.

II. The Rule Negatively Affects the Right to Timely and Accessible Abortion Care in Violation of Iowa Administrative Code.

[2] Iowa Dep't. of Pub. Health, Iowa Rural and Agricultural Health and Safety Resource Plan 97 (2011) available at http://www.idph.state.ia.us/IDPHChannelsService/file.ashx?file=B1C024BE-5252-4075-BE16-E57A2E914D4B.
[3] Id. at 101.

Launched in 2008, the telemedicine program connects patients and staff at outlying clinics to a physician in Des Moines or Iowa City using a live, two-way video conferencing system. It currently provides medication abortion at 7 clinics throughout Iowa and has served over 6000 Iowa women. Pet'r's Reply Br. in Further Supp. of Mot. to Stay Implementation of Agency Rule Pending Appeal 2 Sept. 15, 2014. Since its inception, PPH's telemedicine program has significantly improved access to abortion without compromising safety or patient satisfaction.[4] In fact, the only significant difference between women who used the telemedicine program and who had an in-person visit was that women who used PPH's telemedicine program were more satisfied with the clinic wait times and were more likely than those who had an in-person visit to say that they would recommend the clinic they visited to a friend.[5]

As the District Court found in the decision granting the motion for stay pending judicial review of agency action, for patients living far from any clinics offering in-person abortion services, the Rule would:

- "[I]nterfere with the relationships between physicians who provide telemedicine abortions and their patients," (Planned

[4] Daniel Grossman et al., Effectiveness and Acceptability of Medical Abortion Provided Through Telemedicine, 118 Obstetrics & Gynecology 296, 300 (2011).
[5] Id.

Parenthood of the Heartland, Inc. v. Bd. of Med., No. 046429, 11 (D. Ct. Iowa Nov. 5, 2013);

- Compromise Petitioners' "ability to care for the patients, " (Id. at 10); and
- "[C]ould delay [these patients'] ability to obtain a chemical abortion past the date where chemical abortions are prohibited, and force them to consider having a surgical abortion, or even forgo having an abortion altogether," (Id. at 12).

Indeed, the Rule will have a significant negative impact on women's private right to safe, effective, timely abortion care. It removes women's ability to obtain a medication abortion, which some women prefer and others need, in order to safeguard their health and wellbeing. It will disproportionately harm those women who already face significant barriers to health care, including women living in rural areas; women living in poverty and working low-wage jobs; and women experiencing intimate partner violence. The Rule may force women to obtain a surgical abortion or forgo the abortion altogether. As a result, the Rule will threaten women's equality, economic security, and ability to care for their families.

A. The Rule Jeopardizes Iowa Women's Ability to Use Medication Abortion, Which Some Women Prefer and Others Need.

PPH's telemedicine program increases the use of medication abortion because clinics are able to see patients earlier in pregnancy, before the window of eligibility for medication abortion ends.[6] Since the program's inception, the use of medication abortion, particularly among women living more than 50 miles from a clinic offering surgical abortion, has increased.[7]

Women using PPH's telemedicine program often chose it because it enabled them to undergo the procedure sooner, guaranteeing them the ability to use medication abortion, rather than undergoing a surgical abortion. Seventy-one percent of women in the study of PPH's telemedicine program reported that they strongly wanted a medication abortion and 94% said that having the abortion as early as possible was very important to them.[8] Indeed, the percentage of second trimester abortions has decreased since the

[6] Before the telemedicine program was implemented, patients could be forced to wait up to 2 weeks for an appointment. Because medication abortion can only be used up to a certain point in pregnancy, some women were unable to have a medication abortion. Kate Grindlay et al., Women's and Providers' Experiences with Medical Abortion Provided Through Telemedicine: A Qualitative Study, 23 Women's Health Issues e117–e122, e121 (2012).

[7] Daniel Grossman et al., Changes in Service Delivery Patterns After Introduction of Telemedicine Provision of Medical Abortion in Iowa, 103 Am. J. Pub. Health 73, 76 (2012).

[8] Daniel Grossman et al., Effectiveness and Acceptability of Medical Abortion Provided Through Telemedicine at 300.

program's inception.[9] Although second trimester abortion is very safe, it is invasive and the risk of complications increases with each week of pregnancy.[10] It is also more expensive.[11]

In general, women often have a strong preference for medication abortion[12] because it offers greater privacy and autonomy, is less invasive, and seems more "natural" than surgery.[13] For example, one woman describing her experience with medication abortion stated, "I was so thankful that there was an alternative to having a surgical abortion. And that was...my biggest concern."[14] Another woman stated, "I was in my own home. I wasn't in a hospital bed or anything. . . . I was with my family. . . . My ex was there with me. My mom was there."[15] Women also report choosing medication abortion over surgical abortion because medication

[9] Daniel Grossman et al., Changes in Service Delivery Patterns After Introduction of Telemedicine Provision of Medical Abortion in Iowa at 76.
[10] Bonnie Scott Jones & Tracy A. Weitz, Legal Barriers to Second-Trimester Abortion Provision and Public Health Consequences, 99 Am. J. Pub. Health 623, 623 (2009).
[11] The median cost of a first-trimester abortion in the United States is $490, with a range between $225 and $750. The median cost for an abortion between 14 and less than 20 weeks is $750, with a range of $490 to $1,500. Sarah C.M. Roberts et al., Out-of-Pocket Costs and Insurance Coverage for Abortion in the United States, 24 Women's Health Issues e211, e214 (2014).
[12] Beverly Winikoff, Acceptability of Medical Abortion in Early Pregnancy, 27 Family Planning Perspectives 142, 148 (1995).
[13] Mitchell Creinin & Maureen Park, Acceptability of Medical Abortion with Methotrexate and Misoprostol, 52 Contraception 41, 42 (1995).
[14] Stephen Fielding, Having an Abortion Using Mifepristone and Home Misoprostol: A Qualitative Analysis of Women's Experiences, 34 Persp. Sexual & Reprod. Health 34, 38 (2002).
[15] Id.

abortion allowed them to maintain control[16] and because it was easier for them to talk to a doctor in a more removed manner.[17]

Sexual assault survivors in particular may prefer medication abortion. Intimate exams and childbirth can trigger post-traumatic stress in sexual assault survivors.[18] Medication abortion is less invasive, allows women to have the abortion at home with the support of their families, allows them to talk to the doctor from afar, and gives them more control. App. to Pet'r's Br. 175, Jan. 21, 2014. By eliminating the telemedicine program, the Rule would leave sexual assault survivors without a vital option and might force them to undergo an invasive procedure, at a time when they most need to assert control over their lives.[19]

Access to medication abortion is also particularly important for women with pre-existing medical conditions for whom first-trimester surgical abortion is contraindicated. Medication abortion is preferred over surgical abortion for patients at risk of surgical and anesthetic

---

[16] M. Antonia Biggs et al., Understanding Why Women Seek Abortions in the U.S., 13 BMC Women's Health 1–13, 7 (2013).
[17] Kate Grindlay et al., Women's and Providers' Experiences with Medical Abortion Provided Through Telemedicine: A Qualitative Study at e120.
[18] Erica Sharkansky, Sexual Trauma: Information for Women's Medical Providers, National Center for PTSD (last updated Jan. 3, 2014), www.ptsd.va.gov/professional/treatment/women/ptsd-womens-providers.asp.
[19] See, e.g. Id. (for discussion of the importance of control to sexual assault survivors).

complications.[20] Medication abortion may also be safer for extremely obese women and women with pelvic tumors that interfere with access to the cervix. It is also safer for women with orthopedic conditions, such as hip disease, because medication abortion does not require lithotomy positioning.[21]

By ending PPH's telemedicine program, the Rule could result in fewer women being able to access medication abortion when they are already facing what can be an extremely difficult decision. By denying access to a medical procedure that is best able to preserve a woman's health or that comports with her deeply held personal or moral beliefs, the Rule severely compromises women's dignity and jeopardizes women's health and wellbeing.

B. The Rule Will Impose Substantial Burdens on Rural Iowa Women.

PPH's telemedicine program improves access to care for rural residents by ensuring that more women are able to obtain abortion services closer to home and in a timely manner. After PPH implemented the telemedicine program, it was able to offer abortion care near where more of

[20] Maryam Guiahi & Anne Davis, First-Trimester Abortion in Women with Medical Conditions, 86 Contraception 622, 625 (2012).
[21] Id.

their patients lived.[22] Thirty-five percent of Iowa's population lives in a rural area.[23] A majority of Iowa women live in a county without an abortion provider. App. to Pet'r's Br. 18, Jan. 21, 2014. After the telemedicine program was implemented, the average distance that women traveled from their home to the clinic decreased.[24]

The Rule will again force patients to travel long distances, multiple times in order to access medication abortion. For example, a woman living in Les Mars could have to travel up to 450 miles round trip–twice–to a clinic in Des Moines, for a total driving time of approximately 13 hours, rather than accessing a medication abortion via telemedicine at a much closer clinic in Sioux City. Travel can be a significant barrier for many women. Up to 10% of women who obtained a later abortion reported that difficulties in travel contributed to the delay.[25] In addition, the percentage of women able

[22] Daniel Grossman et al., Effectiveness and Acceptability of Medical Abortion Provided Through Telemedicine at 300.
[23] Iowa Quick Facts, State Data Center of Iowa (last updated Apr. 7, 2014 9:20 AM), http://www.iowadatacenter.org/quickfacts.
[24] Daniel Grossman et al., Changes in Service Delivery Patterns After Introduction of Telemedicine Provision of Medical Abortion in Iowa at 75.
[25] Diana G. Foster et al., Predictors of Delay in Each Step Leading to an Abortion, 77 Contraception 289, 292 (2007).

to obtain an abortion decreases the farther they have to travel to reach an abortion provider.[26]

C. The Rule Will Increase Barriers to Care for Women Living in Poverty or Who Face Other Obstacles in Obtaining Health Care.

PPH's telemedicine program not only reduces travel time but also eases burdens faced by other vulnerable communities because it reduces the indirect costs of abortion care. Although the direct cost of a medication abortion is the same whether a woman uses the telemedicine program or has an in-person visit, the overall cost—including factors such as transportation, child-care, and lost wages—is lower for women using the telemedicine program because they do not have to travel as far. Further, because the Rule requires women to return to the same clinic where they had the procedure, these women will have to make the trip twice.

This is especially harmful for the thirteen percent of women in Iowa living in poverty.[27] The rates of poverty are even higher for minority women—36% of African American women, 23% of Latinas, 18% of Asian

[26] See, e.g. Daniel Grossman et al., Change in Abortion Services After Implementation of a Restrictive Law in Texas, 90 Contraception 496 (2014) (discussing the effect of clinic closures in Texas on women's access to abortion).
[27] National Women's Law Center, Poverty Rates by State, 2013 (September 2014) http://www.nwlc.org/sites/default/files/pdfs/compiled_state_poverty_table_2013_final_v2.pdf.

women, and 34% of Native American women in Iowa live in poverty.[28] The added burdens and expenses imposed by the Rule will be insurmountable for some women, forcing them to forgo having an abortion.

These costs also take their toll on the twenty percent of Iowa women who work in low-wage jobs,[29] which do not typically offer any benefits, such as paid time off, and often do not have fixed schedules.[30] Women in low-wage jobs may be given their schedule only a few days in advance and may not be allowed to request particular days off or ask for changes.[31] This can make it extremely hard or even impossible to schedule an appointment weeks in advance, arrange for travel and child care, find someone to go with them to the appointment, get time off from work, miss a day's or more pay, and explain why they need to travel or miss work in order to get an abortion.

---

[28] Id.
[29] National Women's Law Center, Underpaid and Overloaded: Women in Low-Wage Jobs 25 (2014) available at http://www.nwlc.org/sites/default/files/pdfs/final_nwlc_lowwagereport2014.pdf.
[30] Id. at 3 (citing Claudia Williams et al., 44 Million U.S. Workers Lacked Paid Sick Days in 2010: 77 Percent of Food Service Workers Lacked Access, Institute for Women's Policy Research, (Jan. 2011), http://www.iwpr.org/publications/pubs/44-million-u.s.-workers-lacked-paid-sick-days-in-2010-77-percent-of-food-service-workers-lacked-access).
[31] Id.

Over a quarter of women obtaining later abortions report that the need to save money for the procedure contributed to the delay.[32] PPH's telemedicine program helps alleviate some of these burdens by making it easier to make and schedule an appointment and reducing travel times. Because women are able to visit a clinic closer to their homes, they are able to get appointments sooner. According to clinic staff, the telemedicine program allows them to offer services more frequently with a wider range of times.[33] Staff found that greater flexibility was particularly beneficial for women who could only take a specific day off from work or school.[34]

As the staff at one of PPH's telemedicine clinics reported, the telemedicine program allows clinics to use their resources more efficiently because there are fewer cancellations and delays related to travel in inclement weather.[35] One 36-year-old telemedicine patient explained, "I did not want to drive to Iowa City and have it done and then have to drive back… I didn't want an hour and a half ride home in bad weather."[36]

---

[32] Lawrence B. Finer et al., Timing of Steps and Reasons for Delays in Obtaining Abortions in the United States, 74 Contraception 334, 341–42 (2006).
[33] Kate Grindlay et al., Women's and Providers' Experiences with Medical Abortion Provided Through Telemedicine: A Qualitative Study at e121.
[34] Id.
[35] Id. at e120.
[36] Id. at e119.

An individual woman might have multiple barriers that make accessing abortion services challenging. As a 19-year-old telemedicine patient explained:

> Traveling, that'd be a full tank of gas for me there and back and I don't have money like that to blow around, [I'm] trying to get everything started and get a house and everything. So money's kind of tight . . . and then being able to get my mom to have work off so she could go with me 'cause I wanted her to be there with me, and just making sure that I wouldn't have to tell other people, "Well why are you going to Des Moines?" or something. I wouldn't have had to tell them why I was going there all day.[37]

Similarly, a member of PPH's clinic staff participating in the telemedicine program described how the telemedicine program relieves many of the burdens facing vulnerable women seeking an abortion and improves access to care:

> The helplessness you feel about not being able to help people because they can't get here—they don't have a ride, they don't have the money, they don't have whatever, you know—a lot of those problems have gone away.[38]

D. The Rule Jeopardizes an Important Safeguard for Women Experiencing Intimate Partner Violence.

[37] Id.
[38] Id. at e121.

PPH's telemedicine program has similar benefits for Iowa women experiencing intimate partner violence. There were 5,625 reported instances of intimate partner violence against women in Iowa in 2009, the most recent year for which data are available.[39] Women in small rural towns in Iowa are more likely than other women to experience intimate partner violence and the violence becomes more severe the more geographically isolated a woman is.[40] Among Iowa women who reported intimate partner violence, 61.5% of isolated rural women reported four or more events of physical violence in the past year compared with 39.3% of urban women.[41] Iowa women living in rural areas also have fewer domestic violence intervention programs available to them and have to travel farther to obtain help.[42]

PPH's telemedicine program provides a critical health care service for these women because of the unique need for and barriers they face in accessing abortion. Women in abusive relationships are more likely to experience an unintended pregnancy than other women.[43] Abusive partners may engage in "reproductive coercion"—behaviors, such as interfering with

[39] Iowa Dep't of Pub. Safety, 2009 Iowa Uniform Crime Report 125 (2009) available at http://www.dps.state.ia.us/commis/ucr/2009/2009_UCR_Table_16_DMVChar.pdf.
[40] Corinne Peek-Asa et al., Rural Disparity in Domestic Violence Prevalence and Access to Resources, 20 J. Women's Health 1743, 1745 (2011).
[41] Id.
[42] Id. at 1746.
[43] Elizabeth Miller et al., Reproductive Coercion: Connecting the Dots Between Partner Violence and Unintended Pregnancy, 81 Contraception 457, 457–58 (2010).

contraception, intended to promote pregnancy.[44] In one study, eight percent of women seeking an abortion reported they did so because of an abusive partner.[45] A 40-year-old woman in that study stated, "Our relationship became violent and I couldn't see bringing another kid into a life that was going to be surrounded by violence."[46] Another woman echoed this sentiment. "I didn't want to do [raise a child] by myself. I couldn't and the man was abusive and horrible."[47]

Not surprisingly, women reported that having a child with an abusive partner would make it harder for them to leave the abusive relationship.[48] According to one woman, "I was trying to leave an abusive relationship and I didn't want to have any ties."[49] This woman's concerns were well-founded. Among women seeking an abortion, the chance of experiencing violence decreases if they have an abortion but remains the same if they do not.[50] Women denied an abortion remain tethered to the abusive man and at

[44] Id.
[45] Karuna S Chibber et al., The Role of Intimate Partners in Women's Reasons for Seeking Abortion, 24 Women's Health Issues e131, e134 (2014).
[46] Id.
[47] M. Antonia Biggs et al., Understanding Why Women Seek Abortions in the U.S. at 7.
[48] Id.
[49] Id.
[50] Sarah C.M. Roberts et al., Risk of Violence From the Man Involved in the Pregnancy After Receiving or Being Denied an Abortion, 12 BMC Medicine 1, 5-6 (2014).

risk for continued violence, even if they are able to end the romantic relationship.[51]

Yet, obtaining an abortion can be especially difficult for women in abusive relationships. Abusive partners often engage in controlling behaviors such as isolating women from family and friends, keeping track of a woman's whereabouts and phone calls, and controlling access to money or otherwise limiting her movements.[52] Because PPH's telemedicine program makes it possible for women to access abortion care close to home, it might be the only way for a woman in an abusive relationship to obtain an abortion, enabling her to escape a violent relationship.

E. The Rule Threatens Women's Equality, Economic Security, and Ability to Care for Their Families.

If the Rule goes into effect, and PPH's telemedicine program ceases operation, all of the burdens outlined above—forcing women to have more invasive surgical procedures; forcing women to have abortions later in pregnancy; forcing women to travel long distances, take multiple days off work, and make arrangements for child care; and increasing the incidental

[51] Id. at 5.

[52] Joan B. Kelly & Michael P. Johnson, Differentiation Among Types of Intimate Partner Violence: Research Update And Implications for Interventions, 46 Family Court Review 477, 481 (2008) (describing "coercive controlling violence" as including "intimidation; emotional abuse; isolation; minimizing, denying and blaming; use of children; asserting male privilege; economic abuse; and coercion and threats") (internal citations omitted).

costs—would harm the ability of Iowa women to work, care for their families, and secure their economic future.

The additional time off needed for travel could result in a woman losing her job or having to choose between keeping the job in the moment and having the abortion.[53] Further, although abortion is safe procedure, the risks increase with each week of pregnancy.[54] A minor complication could result in a woman losing her job or having to take additional unpaid time off.[55] A woman's inability to work, or a serious reduction in her wages, can be catastrophic to her and her family's economic security. Families' reliance on women's earnings has increased dramatically over the past 40 years.[56] Working mothers are primary breadwinners in 41 percent of families with children, and they are co-breadwinners—bringing in between 25 percent and 50 percent of family earnings—in another 22 percent of these

[53] National Women's Law Center, Underpaid and Overloaded: Women in Low-Wage Jobs at 30-31 (discussing the consequences of inflexible schedules and lack of paid leave on low wage workers.
[54] Bonnie Scott Jones & Tracy A. Weitz, Legal Barriers to Second-Trimester Abortion Provision and Public Health Consequences at 623.
[55] See, e.g. National Women's Law Center, Underpaid and Overloaded: Women in Low-Wage Jobs, at 31.
[56] Id. at 3 (citing Sarah Jane Glynn, Breadwinning Mothers, Then and Now, Center for American Progress 6 (2014) available at http://cdn.americanprogress.org/wp-content/uploads/2014/06/Glynn-Breadwinners-report-FINAL.pdf).

families.[57] A lack or reduction of wages could push more women and their families closer to poverty and others deeper into the poverty they endure.

If the Rule goes into effect, some Iowa women will be forced to forgo the abortion altogether, with devastating consequences to themselves and their families. As the U.S. Supreme Court has recognized, "The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives." Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 853, 855 (1992). Having a child creates both an immediate decrease in women's earnings and a long-term drop in their lifetime earning trajectory.[58] Women who delay childbearing can mitigate this earnings loss by investing in education and obtaining crucial early work experience. Women earn 3% more for each year of delayed childbearing.[59] Mothers—especially those in low-wage

[57] Id.
[58] Adam Sonfield et al., Guttmacher Institute, The Social and Economic Benefits of Women's Ability to Determine Whether and When to Have Children 14-15 (2013) available at http://www.guttmacher.org/pubs/social-economic-benefits.pdf.
[59] See, e.g., Kelleen Kaye et al., The National Campaign to Prevent Teen and Unplanned Pregnancy, The Benefits of Birth Control in America: Getting the Facts Straight 4 (2014) available at http://thenationalcampaign.org/sites/default/files/resource-primary-download/getting-the-facts-straight-final.pdf.

jobs—also struggle to afford the safe and stable child care they need to be able to work.[60]

Indeed, women have abortions for a variety of reasons related to their economic stability and future wellbeing—to continue school, because they cannot afford to care for a child, to be able to care for the families they already have, or because they are not emotionally ready to have a child.[61] According to one woman, "I was too young, and I barely started going back to school and getting my life back on track. I wouldn't have enough things to support a baby."[62] The need to care for other children features prominently in many women's decision to have an abortion.[63] One woman with three children stated, "My son was diagnosed with cancer. His treatment requires driving 10 hours . . . The stress of that and that he relies on me."[64]

By reinstating the barriers to accessing abortion that PPH's telemedicine program helped to alleviate, the Rule undermines the decisions women make about what is best for their lives and the wellbeing of their children. By imposing substantial collateral consequences on women,

---

[60] National Women's Law Center, Underpaid & Overloaded at 3 (citing Lynda Laughlin, U.S. Census Bureau, Who's Minding the Kids? Child Care Arrangements: Spring 2011 15 (April 2013) available at http://www.census.gov/prod/2013pubs/p70-135.pdf).
[61] See M. Antonia Biggs et al., Understanding Why Women Seek Abortions in the U.S. at 6.
[62] Diana G. Foster et al., Predictors of Delay in Each Step Leading to an Abortion at 216.
[63] M. Antonia Biggs et al., Understanding Why Women Seek Abortions in the U.S. at 6.
[64] Id.

including adverse effects on a woman's financial security and ability to care for her family, the Rule undermines women's full and equal participation in society.

III. There Are No Benefits to the Rule.

As discussed in greater detail in Petitioners' Brief (Pet'r's Reply Br. in Supp. of Mot. to Stay Implementation of Agency Rule Pending Appeal 31-33 Aug. 28, 2014), there are no benefits to the Rule.[65] The Board stated, without evidence, they "believe[] an in-person interview to collect the patient's medical history and an in-person physical examination will strengthen the physician-patient relationship and result in improved and increased follow-up care of the patient."[66] But, as Judge Romano stated in the District Court decision granting the stay, the Board has not provided "any evidence whatsoever that telemedicine abortions are unsafe or negatively impact patient health." Planned Parenthood of the Heartland, Inc., v. Bd. of Med., No. 046429, 14 (D. Ct. Iowa Nov. 5, 2013).

[65] In fact, there is evidence that the Rule was motivated by an improper purpose. For example, the Rule was adopted verbatim from a petition coordinated by Governor Branstad and two anti-abortion groups whose stated goals include outlawing abortion completely. For more in-depth discussion of the improper purpose, see Pet'r's Br. 25-27 Jan. 21, 2014.

[66] Iowa Board of Medicine, Iowa of Medicine's Statement on Adopted and Filed Rule ARC 1034C 4 (2013).

In fact, research has found women who used the telemedicine program were more likely to return for a follow-up visit than women who did not use the telemedicine program.[67] Moreover, the Rule requires women to return to the same clinic for routine follow-up care, which could necessitate an additional 500 mile roundtrip, making it less likely she will return for follow-up care. Pet'r's Reply Br. in Further Supp. of Mot. to Stay Implementation of Agency Rule Pending Appeal 13, Sept. 15, 2014. Research has found that women who live more than ten miles from a clinic are less likely to return for a follow-up examination.[68] Rather than improving safety, the Rule merely prohibits PPH from following routine practices overwhelmingly supported by the health care community.[69]

Under PPH's telemedicine program, women receiving a medication abortion through telemedicine have significant in-person contact with providers at the clinic and complete an ultrasound and an education counseling session with clinic staff before the doctor's visit.[70] According to one woman, "I trusted the doctor, that she knew what she was doing and that

---

[67] Daniel Grossman et al., Effectiveness and Acceptability of Medical Abortion Provided Through Telemedicine at 298.
[68] Am. College of Obstetrics and Gynecology Practice Bulletin, Medical Management of First-Trimester Abortion, 143 Practice Bulletin 1, 9 (2014).
[69] Id. at 9 (discussing the safety of medication abortion generally as well as through telemedicine).
[70] Kate Grindlay et al., Women's and Providers' Experiences with Medical Abortion Provided Through Telemedicine: A Qualitative Study at e119.

she was going to give me my medication, I guess. I was already walked through what was going to happen, but she was very direct. She made sure I took my pill, she watched me, and that was about it. I guess another doctor [in person] would sit there and watch me take my pill too."[71]

The Rule, on the other hand, as Judge Romano found in the District Court decision granting the stay, could "interfere with the relationship between patients who provide telemedicine abortions and their patients" and compromise their "ability to care for their patients." Planned Parenthood of the Heartland, Inc., v. Bd. of Med., No. 046429, 11 (D. Ct. Iowa Nov. 5, 2013).

IV. The Harm of the Rule is Grossly Disproportionate to The Benefits so Must be Deemed to Lack Any Foundation in Rational Policy.

The evidence demonstrates that the negative effects of the Rule are grossly disproportionate to the benefits for the simple reason that there are no benefits. On the other hand, the negative effects of the Rule are overwhelming, especially for the most vulnerable Iowa women. It will reinstate barriers that the telemedicine program overcame, such as forcing women to travel long distances, wait for appointments, make multiple trips, and absorb unnecessary and possibly insurmountable costs. It will result in

[71] Id.

some women losing their ability to use medication abortion, which they may prefer or need, and will increase the incidence of more invasive second trimester abortion procedures. It will even force some women to forego their constitutionally protected right to abortion. This jeopardizes not only the health of Iowa women, but also their ability to work, get an education, care for their families, and secure their own and their family's economic future.

Thus, the Rule's negative impact on women's private right to safe, timely, and effective access to abortion is grossly disproportionate to the nonexistent benefits as demonstrated by the available data. Rather than improving women's health, the Rule will actually threaten women's health and wellbeing. As a result, this Court should find that it lacks any foundation in rational policy, violating Iowa Code Section 17A.19(10)(k), and must be reversed.

CONCLUSION

For the reasons set forth above, the Rule violates Iowa administrative law and should be reversed.