

## The following is a Summary of Public Comments for LSA #15-152

### Comment #1 from

Patti Stauffer, Planned Parenthood of Indiana & Kentucky, Indianapolis, Indiana

This commenter suggested two changes to the proposed rule “to provide additional clarification.”

The first suggestion was to change language in 410 IAC 35-2-1(a), as follows: “Each facility shall provide for the disposition of an aborted fetus by **any one or more** of the following methods....”

The second suggestion was to add new language to 410 IAC 35-2-1(d), as follows: “This article does not apply when the patient elects to receive the aborted fetus pursuant to IC 16-34-3 **nor when the patient elects a medication abortion procedure.**”

### ISDH Response

- (1) The suggested new language for 410 IAC 35-2-1(a) should be rejected, because it would change the meaning of the rule as proposed, and also make the rule inconsistent with the meaning and language of IC 16-34-2-1.1(a)(2)(H)-(I).

The rule as proposed requires an abortion facility to provide for disposition of fetal remains by “any of the following methods.” This deliberate wording necessarily requires that all the listed methods be made available as options to the pregnant woman. The rule is therefore consistent with IC 16-34-2-1.1(a)(2)(H)-(I), which states that the woman must be informed of “the available options for disposition of the aborted fetus,” i.e., both interment and cremation.

In contrast, the suggested new language (“one or more”) would allow a facility to have available only one of the listed options, i.e., either interment or cremation. The new language therefore would incorrectly limit the pregnant woman’s “right to determine the final disposition of the remains,” and conflict with the statute’s meaning and language.

- (2) The suggested new language for 410 IAC 35-2-1(d) should be rejected because it would make the rule less clear, and because, as a court-established factual matter, it is unnecessary and inapplicable.

- (A) The term “medication abortion procedure” is not used or defined by any Indiana statute or rule. The term might be meant to equate with the detailed statutory definition of “abortions ... by abortion inducing drugs.” See IC 16-18-2-1, 16-18-2-1.6. Such linkage, however, is neither obvious nor mandated by context. Linkage could be made plain, but only by adding even more new language, any of which might create unexpected problems with the rule.

- (B) The suggested new language is also unnecessary and inapplicable, given the established nature of a “medication abortion procedure.” Last year, federal Judge Jane Magnus-Stinson discussed the protocol for “medication abortions” in the case of *Planned Parenthood of Indiana and Kentucky v. Commissioner, Indiana State*

Department of Health, 64 F. Supp. 3d 1235, 2014 U.S. Dist. LEXIS 167214 (S.D. Indiana, Dec. 3, 2014).

A “medication abortion” starts at an abortion facility, where the pregnant woman takes the first of two prescribed medications. The abortion is not completed at the facility, however. Instead, the second medication is taken, and the abortion is completed, one or two days after the woman visits the facility, and at a different “location of her choosing.” The woman does not go back to the facility (if at all) until about two weeks later, when she is checked to make sure that the pregnancy was terminated. Id. at 1241.

The court’s discussion illustrates that a “medication abortion procedure” will never result in a facility having aborted remains that require disposition. The abortion is completed, and any remains are dealt with by the woman herself, later and at a different location. The suggested new language is thus inapplicable and unnecessary, and should not be added to the rule.