

April 14, 2016

The Honorable Trent Franks
Chair, Subcommittee on the Constitution
and Civil Justice
Judiciary Committee
2435 Rayburn House Office Building
Washington, DC 20515

The Honorable Steve Cohen
Ranking Member, Subcommittee on the
Constitution and Civil Justice
Judiciary Committee
2404 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Franks and Ranking Member Cohen:

We, the undersigned medical and public health organizations, stand in strong opposition to the Prenatal Nondiscrimination Act (PRENDA) of 2016. We are extremely concerned that this bill represents government intrusion into the clinical exam room, by allowing the government to inappropriately interfere with confidential communications between patients and their providers.

If passed into law, PRENDA would require that medical and mental health professionals violate patient-provider confidentiality and report “known or suspected violations” of the law to law enforcement authorities. The penalty for failure to report is a fine and/or incarceration for up to one year.

We strongly believe that the government should not interfere in the patient-provider relationship and providers should not be threatened with criminal penalties for open, honest communication with their patients. This legislation potentially puts providers in an untenable position of risking disciplinary proceedings and criminal prosecution in order to meet ethical obligations to patient autonomy and communications. PRENDA is written so broadly that a patient’s simple comment “We hope it’s a girl” could put a health professional at risk of incarceration should they not report the conversation to law enforcement.

PRENDA would chill communications between providers and patients—providers because they might hear something that would put them at risk for criminal prosecution and patients because they would fear that their conversations with their providers would not remain private. A provider’s exercise of clinical judgment is already subject to peer review processes and regulation by the state licensing boards. Health professionals abide by a code of conduct to ensure patient informed consent and to guard against coercion. The American College of Obstetricians and Gynecologists’ Committee Opinion on Informed Consent (Number 439) in particular discusses the importance of “obtaining informed consent for medical treatment” and this act “expresses respect for the patient as a person; it particularly respects a patient’s moral right to bodily integrity, to self-determination regarding sexuality and reproductive capacities. . . . Communication is necessary if informed consent is to be realized, and providers can and should help to find ways to facilitate communication.”¹ Open and honest communication between providers and patients is crucial to proper medical care.

¹ Informed consent. ACOG Committee Opinion No. 439. American College of Obstetricians and Gynecologists. *Obstet Gynecol* 2009; 114:401–8. *Reaffirmed 2015*. See attached. Available at <https://www.acog.org/-/media/Committee-Opinions/Committee-on-Ethics/co439.pdf?dmc=1&ts=20160408T1635464999>

Furthermore, the American Medical Association Policy on Freedom of Communication between Physicians and Patients, H-5.989, stresses this important principle: “It is the policy of the AMA: (1) to strongly condemn any interference by the government or other third parties that causes a physician to compromise his or her medical judgment as to what information or treatment is in the best interest of the patient.”²

Communication free from government interference allows patients and providers to openly discuss all medical issues and is vitally important to high quality health care. PRENDA jeopardizes the patient-provider relationship and our organizations oppose this interference.

Sincerely,

American College of Nurse-Midwives
American Congress of Obstetricians and Gynecologists
American Medical Student Association
American Medical Women's Association
American Nurses Association
American Psychological Association
American Public Health Association
American Society for Reproductive Medicine
Jacobs Institute of Women's Health
Medical Students for Choice
National Abortion Federation
National Association of Nurse Practitioners in Women's Health
National Family Planning & Reproductive Health Association
National Medical Association
National Physicians Alliance
Physicians for Reproductive Health
Planned Parenthood Federation of America
Society for Maternal-Fetal Medicine

² American Medical Association. Policy on Freedom of Communication between Physicians & Patients, H-5.989 (see attached).

**American College of Obstetricians & Gynecologists’
Committee Opinion on Informed Consent Number 439**

Informed consent is an ethical concept that has become integral to contemporary medical ethics and medical practice. In recognition of the ethical importance of informed consent, the Committee on Ethics of the American College of Obstetricians and Gynecologists (ACOG) affirms the following eight statements:

1. Obtaining informed consent for medical treatment, for participation in medical research, and for participation in teaching exercises involving students and residents is an ethical requirement that is partially reflected in legal doctrines and requirements.
2. Seeking informed consent expresses respect for the patient as a person; it particularly respects a patient's moral right to bodily integrity, to self-determination regarding sexuality and reproductive capacities, and to support of the patient's freedom to make decisions within caring relationships.
3. Informed consent not only ensures the protection of the patient against unwanted medical treatment, but it also makes possible the patient's active involvement in her medical planning and care.
4. Communication is necessary if informed consent is to be realized, and physicians can and should help to find ways to facilitate communication not only in individual relations with patients but also in the structured context of medical care institutions.
5. Informed consent should be looked on as a process rather than a signature on a form. This process includes a mutual sharing of information over time between the clinician and the patient to facilitate the patient's autonomy in the process of making ongoing choices.
6. The ethical requirement to seek informed consent need not conflict with physicians' overall ethical obligation of beneficence; that is, physicians should make every effort to incorporate a commitment to informed consent within a commitment to provide medical benefit to patients and, thus, to respect them as whole and embodied persons.
7. When informed consent by the patient is impossible, a surrogate decision maker should be identified to represent the patient's wishes or best interests. In emergency situations, medical professionals may have to act according to their perceptions of the best interests of the patient; in rare instances, they may have to forgo obtaining consent because of some other overriding ethical obligation, such as protecting the public health.
8. Because ethical requirements and legal requirements cannot be equated, physicians also should acquaint themselves with federal and state legal requirements for informed consent. Physicians also should be aware of the policies within their own practices because these may vary from institution to institution.

**American Medical Association Policy on Freedom of Communication between
Physicians and Patients, H-5.989**

It is the policy of the AMA: (1) to strongly condemn any interference by the government or other third parties that causes a physician to compromise his or her medical judgment as to what information or treatment is in the best interest of the patient;

(2) working with other organizations as appropriate, to vigorously pursue legislative relief from regulations or statutes that prevent physicians from freely discussing with or providing information to patients about medical care and procedures or which interfere with the physician-patient relationship;

(3) to communicate to HHS its continued opposition to any regulation that proposes restrictions on physician-patient communications; and

(4) to inform the American public as to the dangers inherent in regulations or statutes restricting communication between physicians and their patients. (Sub. Res. 213, A-91; Reaffirmed: Sub. Res. 232, I-91; Reaffirmed by Rules & Credentials Cmt., A-96; Reaffirmed by Sub. Res. 133 and BOT Rep. 26, A-97; Reaffirmed by Sub. Res. 203 and 707, A-98; Reaffirmed: Res. 703, A-00; Reaffirmed in lieu of Res. 823, I-07; Reaffirmation: I-09; Reaffirmation: I-12; Reaffirmed in lieu of Res. 5, I-13)