Maine Medical Association

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July 24, 2018

Office of the Assistant Secretary for Health, Office of Population Affairs
Attention: Family Planning
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 716G
200 Independence Avenue SW
Washington, DC 20201

RE: FAMILY PLANNING

Dear Sir or Madam:

The Maine Medical Association ("MMA") appreciates the opportunity to comment on the proposed rulemaking under Title X of the Public Health Service Act published in the *Federal Register* on June 1, 2018 (83 *Federal Register* 106 @ 25502).

The MMA is a professional organization representing more than 4200 physicians, residents, and medical students in Maine whose mission is to support Maine physicians, advance the quality of medicine in Maine, and promote the health of all Maine citizens. The MMA represents Maine physicians in all medical specialties from primary care to surgeons, and in all practice settings – those in private practice, hospital systems, federally-qualified health centers, administrative medicine, and family planning clinics. The MMA represents the State of Maine in the federation of the American Medical Association.

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I know that you will receive many comments from individuals and organizations with specific interest in Title X programming and the MMA concurs with the concerns they express about this proposed rulemaking. The proposed rulemaking will limit patient access to family planning services, including legal abortions, contrary to the intent of Title X. The MMA believes that the existing rulemaking guidance better balances the interests of patient access to all family planning services and respect for the funding restrictions of Section 1008 of Title X.

The MMA, moreover, wishes to emphasize our members' objection to any governmental intrusion into the physician-patient relationship, including any attempt to restrict communication within the physician-patient relationship. While this rulemaking involves the difficult topic of abortion, our members would similarly object to attempts by the government to limit a physician's right to discuss any one of many other topics about which our society has substantial disagreement. These topics include, for example, gun safety; use of tobacco, marijuana or other "recreational" drugs, and alcohol; appropriate nutrition (consumption of sugar-sweetened beverages) and level of exercise; amount of "screen time," particularly for children; and humans' impact on climate change. This rulemaking proposal, as well as any effort by the government to restrict communication between physicians and their patients about any of these other topics, is in conflict with several provisions of the Code of Medical Ethics of the American Medical Association, including Opinion 1.1.1, *Patient-Physician Relationships*, Opinion 1.1.3, *Patient Rights*, Opinion 2.1.1, *Informed Consent*, and Opinion 2.1.3, *Withholding Information from Patients*. I have enclosed these ethics opinions with this letter for the record.

Thank you for considering the MMA's concerns with this family planning rulemaking proposal.

Sincerely,

Robert J. Schlager, MD

Robert J. Schlager, M.D., President

Enclosures

Code of Medical Ethics

1.1.1 Patient-Physician Relationships

Topic: Code of Medical Ethics	**Policy Subtopic:** Opinions on Patient-Physician Relationships (1.1 Responsibilities of Physicians & Patients)
Meeting Type: NA	**Year Last Modified:** 2017
Action: NA	**Type:** Code of Medical Ethics
Council & Committees: NA	

The practice of medicine, and its embodiment in the clinical encounter between a patient and a physician, is fundamentally a moral activity that arises from the imperative to care for patients and to alleviate suffering. The relationship between a patient and a physician is based on trust, which gives rise to physicians' ethical responsibility to place patients' welfare above the physician's own self-interest or obligations to others, to use sound medical judgment on patients' behalf, and to advocate for their patients' welfare.

A patient-physician relationship exists when a physician serves a patient's medical needs. Generally, the relationship is entered into by mutual consent between physician and patient (or surrogate).

However, in certain circumstances a limited patient-physician relationship may be created without the patient's (or surrogate's) explicit agreement. Such circumstances include:

(a) When a physician provides emergency care or provides care at the request of the patient's treating physician. In these circumstances, the patient's (or surrogate's) agreement to the relationship is implicit.

(b) When a physician provides medically appropriate care for a prisoner under court order, in keeping with **ethics** guidance on court-initiated treatment.

(c) When a physician examines a patient in the context of an independent medical examination, in keeping with **ethics** guidance. In such situations, a limited patient-physician relationship exists.

AMA Principles of Medical Ethics: I,II,IV,VIII

*The Opinions in this chapter are offered as **ethics** guidance for physicians and are not intended to establish standards of clinical practice or rules of law.*

Policy Timeline

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Code of Medical Ethics

1.1.3 Patient Rights

Topic: Code of Medical Ethics	**Policy Subtopic:** Opinions on Patient-Physician Relationships (1.1 Responsibilities of Physicians & Patients)
Meeting Type: NA	**Year Last Modified:** 2017
Action: NA	**Type:** Code of Medical Ethics
Council & Committees: NA	

The health and well-being of patients depends on a collaborative effort between patient and physician in a mutually respectful alliance. Patients contribute to this alliance when they fulfill responsibilities they have, to seek care and to be candid with their physicians, for example.

Physicians can best contribute to a mutually respectful alliance with patients by serving as their patients' advocates and by respecting patients' rights. These include the right:

(a) To courtesy, respect, dignity, and timely, responsive attention to his or her needs.

(b) To receive information from their physicians and to have opportunity to discuss the benefits, risks, and costs of appropriate treatment alternatives, including the risks, benefits and costs of forgoing treatment. Patients should be able to expect that their physicians will provide guidance about what they consider the optimal course of action for the patient based on the physician's objective professional judgment.

(c) To ask questions about their health status or recommended treatment when they do not fully understand what has been described and to have their questions answered.

(d) To make decisions about the care the physician recommends and to have those decisions respected. A patient who has decision-making capacity may accept or refuse any recommended medical intervention.

(e) To have the physician and other staff respect the patient's privacy and confidentiality.

(f) To obtain copies or summaries of their medical records.

(g) To obtain a second **opinion**.

(h) To be advised of any conflicts of interest their physician may have in respect to their care.

(i) To continuity of care. Patients should be able to expect that their physician will cooperate in coordinating medically indicated care with other health care professionals, and that the physician will not discontinue treating them when further treatment is medically indicated without giving them sufficient notice and reasonable assistance in making alternative arrangements for care.

AMA Principles of Medical Ethics: I,IV,V,VIII,IX

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Code of Medical Ethics

2.1.1 Informed Consent

Topic: Code of Medical Ethics	**Policy Subtopic:** Opinions on Consent, Communication & Decision Making (2.1 Informed Consent & Shared Decision Making)
Meeting Type: NA	**Year Last Modified:** 2017
Action: NA	**Type:** Code of Medical Ethics
Council & Committees: NA	

Informed consent to medical treatment is fundamental in both **ethics** and law. Patients have the right to receive information and ask questions about recommended treatments so that they can make well-considered decisions about care. Successful communication in the patient-physician relationship fosters trust and supports shared decision making.

The process of informed consent occurs when communication between a patient and physician results in the patient's authorization or agreement to undergo a specific medical intervention. In seeking a patient's informed consent (or the consent of the patient's surrogate if the patient lacks decision-making capacity or declines to participate in making decisions), physicians should:

(a) Assess the patient's ability to understand relevant medical information and the implications of treatment alternatives and to make an independent, voluntary decision.

(b) Present relevant information accurately and sensitively, in keeping with the patient's preferences for receiving medical information. The physician should include information about:

(i) the diagnosis (when known);

(ii) the nature and purpose of recommended interventions;

(iii) the burdens, risks, and expected benefits of all options, including forgoing treatment.

(c) Document the informed consent conversation and the patient's (or surrogate's) decision in the medical record in some manner. When the patient/surrogate has provided specific written consent, the consent form should be included in the record.

In emergencies, when a decision must be made urgently, the patient is not able to participate in decision making, and the patient's surrogate is not available, physicians may initiate treatment without prior informed consent. In such situations, the physician should inform the patient/surrogate at the earliest opportunity and obtain consent for ongoing treatment in keeping with these guidelines.

AMA Principles of Medical Ethics: I,II,V,VIII

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Code of Medical Ethics

2.1.3 Withholding Information from Patients

Topic: Code of Medical Ethics
Policy Subtopic: Opinions on Consent, Communication & Decision Making (2.1 Informed Consent & Shared Decision Making)
Meeting Type: NA
Year Last Modified: 2017
Action: NA
Type: Code of Medical Ethics
Council & Committees: NA

Truthful and open communication between physician and patient is essential for trust in the relationship and for respect for autonomy. Withholding pertinent medical information from patients in the belief that disclosure is medically contraindicated creates a conflict between the physician's obligations to promote patient welfare and to respect patient autonomy.

Except in emergency situations in which a patient is incapable of making an informed decision, withholding information without the patient's knowledge or consent is ethically unacceptable. When information has been withheld in such circumstances, physicians' should convey that information once the emergency situation has been resolved, in keeping with relevant guidelines below.

The obligation to communicate truthfully about the patient's medical condition does not mean that the physician must communicate information to the patient immediately or all at once. Information may be conveyed over time in keeping with the patient's preferences and ability to comprehend the information. Physicians should always communicate sensitively and respectfully with patients.

With respect to disclosing or withholding information, physicians should:

(a) Encourage the patient to specify preferences regarding communication of medical information, preferably before the information becomes available.

(b) Honor a patient's request not to receive certain medical information or to convey the information to a designated surrogate, provided these requests appear to represent the patient's genuine wishes.

(c) Assess the amount of information the patient is capable of receiving at a given time, and tailor disclosure to meet the patient's needs and expectations in keeping with the individual's preferences.

(d) Consult with the patient's family, the physician's colleagues, or an **ethics** committee or other institutional resource for help in assessing the relative benefits and harms associated with delaying disclosure.

(e) Monitor the patient carefully and offer full disclosure when the patient is able to decide whether to receive the information. This should be done according to a definite plan, so that disclosure is not permanently delayed.

(f) Disclose medical errors if they have occurred in the patient's care, in keeping with **ethics** guidance.

AMA Principles of Medical Ethics: I,III,V,VIII

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