NEW YORK CITY
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH

Notice of Adoption of Amendments to Article 203 of the New York City Health Code

In compliance with section 1043(b) of the New York City Charter ("the Charter") and pursuant to the authority granted to the New York City Board of Health ("Board of Health") by section 558 of the Charter, a notice of intention to amend Article 203 of the New York City Health Code ("the Health Code") was published in the New York City Record on October 27, 2023, and a public hearing was held on November 28, 2023. Two individuals testified at the hearing and seven written comments were received. At its meeting on December 19, 2023, the Board of Health adopted the following resolution.

Statement of Basis and Purpose of Rule

Medication-induced termination of pregnancy involves the intentional use of medicines to end a pregnancy. More than half (54%) of induced terminations of pregnancy ("ITOPs") in the United States are conducted using this method.[1] Eligible patients who opt for medication ITOPs can receive their medication from a licensed provider, or from a retail or mail-order pharmacy.

Currently, the most common medication ITOP in the United States is a two-drug regimen using mifepristone and misoprostol. This regimen is approved for use up to 10 weeks of pregnancy,[2] and research has shown provision beyond 10 weeks is safe and effective.[3] The U.S. Food and Drug Administration ("FDA") first approved mifepristone for medication abortion in 2000, and issued subsequent updates to its approved use in 2016 and 2021. Since 2016, the FDA labeling for mifepristone no longer indicates that the medication should be used only in the clinician's office. Since 2021, the FDA has allowed patients to receive the medication either in person or via mail delivery. As of January 2023, the FDA also authorized retail pharmacies to dispense mifepristone. With the removal of the requirement for in-person dispensing, telemedicine has increasingly become a more common modality for patient access. Patients can safely and effectively receive and use mifepristone along with misoprostol at home and routine in-person follow up is not normally necessary after a medication ITOP.[4]

All ITOPs in New York City must be reported to the Department pursuant to Article 203 of the Health Code. However, there has been some uncertainty among health care providers about whether medication ITOPs should be reported pursuant to Article 203 because the Health Code does not include

[1] https://www.guttmacher.org/article/2022/02/medication-abortion-now-accounts-more-half-all-us-abortions

[2] Information about Mifepristone for Medical Termination of Pregnancy Through Ten Weeks Gestation | FDA

[3] Abortion care guideline (who.int)

[4] National Academies of Sciences, Engineering, and Medicine. The safety and quality of abortion care in the United States. Washington, DC: National Academy of Sciences; 2018.

an explicit provision for a medication ITOP that occurs in the home without a health care provider in attendance then or afterwards. This amendment is intended to eliminate that uncertainty.
The Board is amending Article 203 to specifically include medication ITOPs within the existing definition of ITOP, clarify that they must be reported to the Department when the patient is within New York City at the time the abortion medication is prescribed or ordered, and specify the timing of the reporting. In addition, the Board is modifying first sentence of section 203.07(a) to insert the words "certification and" preceding "confidential medical report," which had been inadvertently omitted when that section was recently amended.

Seven written comments were received and two individuals testified at the public hearing on November 28, 2023. The comments all reflect the uncertainty that exists in the public and medical community about the current long-standing requirement to report all ITOPs, including medication-induced ITOPs, to the Department as part of its important vital records function. These reporting requirements are important to the development of appropriate population-level services and policies ensuring equity-based reproductive health care for all. The comments also expressed concern that information reported could become public. It bears emphasizing that all vital records reports, including termination of pregnancy reports, are kept strictly confidential and are protected by stringent City, State, and Federal law. The same holds true for the reporting of ITOPs, as clarified by these amendments. Moreover, all vital records data is reported by the Department in a manner using protective statistical methods to ensure that re-identification of any individual is impossible. As such, no changes have been made in response to the comments.

The Board is, however, making three changes from the proposed rule. First, the Board is making the definition of "medication-induced termination of pregnancy" in section 203.01(f) clearer by deleting unnecessary language. Second, the Board is changing "prescribing" to "prescribing or ordering" in section 203.03(a)(5) in order to be consistent with language describing the same event in other provisions of Article 203. And finally, the words "including five business days" are being added to the amendment of section 203.03(c) to clarify that all ITOPs must be reported within that period of time.

The amendments are as follows:

<u>New material is underlined.</u>

[Deleted material is in brackets.]

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

RESOLVED, that subdivision (c) of section 203.01 of Article 203 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, is amended, and a new subdivision (f) is added to such section, to read as follows:

(c) "Induced termination of pregnancy" means the purposeful interruption of an intrauterine pregnancy with the intention other than to produce a live-born infant and which does not result in a live birth.

<u>(1) This definition includes "medication-induced termination of pregnancy" as defined in this article.</u>

(2) This definition excludes management or prolonged retention of products of conception following a spontaneous termination of pregnancy.

(f) "Medication-induced termination of pregnancy" means an induced termination of pregnancy using medication prescribed or ordered by a licensed heath care practitioner. A medication-induced termination of pregnancy occurs in the City when a licensed heath care practitioner prescribes or orders the medication for a patient.

RESOLVED, that subdivisions (a) and (c) of section 203.03 of Article 203 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

(a) When a termination of pregnancy occurs in the City it shall be reported as follows:

[* * *]

(4) If the event is investigated by the office of chief medical examiner, by a medical examiner within that office; or

(5) If the event is a medication-induced termination of pregnancy, by the licensed health care practitioner prescribing or ordering the medication.

(c) A certificate of termination of pregnancy required by this section shall be filed within 24 hours after the event if a disposition permit [to dispose of the conceptus] issued pursuant to Article 205 of this Code is required or requested, and in all other cases a certificate of termination of pregnancy shall be filed [within five business days after the event] with any office maintained and designated by the Department for such purposes within five business days, including within five business days after the date the medication for a medication-induced termination of pregnancy was prescribed or ordered.

RESOLVED, that subdivision (a) of section 203.07 of Article 203 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

(a) The certificate and confidential medical report of a spontaneous termination of pregnancy and the certificate of induced termination of pregnancy shall be confidential and not subject to disclosure or to inspection by persons other than the Commissioner or authorized personnel of the Department. The Commissioner or the Commissioner's designee may, however, approve the inspection by others of such medical reports and certificates for scientific purposes or in accordance with federal, New York State, or New York City law.