

# Congress of the United States

## Washington, DC 20510

June 8, 2022

Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Administrator Brooks-LaSure,

As this country faces the potential overturning of *Roe v. Wade* and endures continued attacks against long-established constitutional rights to bodily autonomy, liberty, and privacy, we write to express our profound concern regarding state efforts to push essential health services out of reach for women and families covered through Medicaid. Today, several states across the country are excluding Planned Parenthood and other family planning providers from their Medicaid programs in violation of federal law, which for decades has guaranteed beneficiaries the right to receive family planning care from the qualified providers of their choice. These state efforts obstruct access to family planning services in addition to cancer screenings, vaccinations, and other important preventive care services for millions of people, particularly families with low incomes and people of color, exacerbating underlying inequities in these states. As Chairs of the committees with jurisdiction over the Medicaid program, we urge you to take steps to enforce Medicaid's long-standing protections consistent with Congressional intent and to ensure that beneficiaries are able to access the health services they need from the providers they choose.

Medicaid provides coverage to over 80 million Americans today and serves as the country's primary payer of family planning services.<sup>1</sup> Since 1967, Medicaid has also provided beneficiaries with the right to obtain care from any provider qualified to perform the service, known as Medicaid's "free choice of provider" provision.<sup>2</sup> Notably, Congress codified this guarantee in response to state efforts to restrict where beneficiaries could receive care, reflecting Congress's clear intent for Medicaid to support greater access to health services and providers.<sup>3</sup>

<sup>1</sup> Usha Raji et al, Medicaid Coverage of Family Planning Benefits: Findings from a 2021 State Survey, Kaiser Family Foundation, <https://www.kff.org/womens-health-policy/report/medicaid-coverage-of-family-planning-benefits-findings-from-a-2021-state-survey>.

<sup>2</sup> Section 1902(a)(23) of the Social Security Act. In 2016, CMS issued guidance reaffirming states' obligations under the Medicaid Act. As the guidance then described, states could not exclude qualified providers from Medicaid for reasons "unrelated to their fitness to perform covered services." Center for Medicaid and CHIP Services, State Medicaid Director Letter # 16-005 (Apr. 19, 2016), <https://www.medicaid.gov/federal-policy-guidance/downloads/smd16005.pdf>. In 2018, the Trump Administration rescinded this guidance as a clear signal that it would not enforce Medicaid's free choice of provider protection, opening the doors for states to target qualified reproductive health providers. Center for Medicaid and CHIP Services, State Medicaid Director Letter # 18-003 (Jan. 19, 2018), <https://www.medicaid.gov/federal-policy-guidance/downloads/smd18003.pdf>.

<sup>3</sup> Lara Cartwright-Smith and Sara Rosenbaum, Medicaid's Free-Choice-of-Provider Protections in a Family Planning Context: *Planned Parenthood Federation of Indiana v. Commissioner of the Indiana State Department of Health* 127

Several states, however, have excluded Planned Parenthood health centers and other qualified family planning providers from their Medicaid programs, in direct violation of federal law.<sup>4</sup> Three of these states' terminations have taken effect in the last two years. Moreover, similar providers in Louisiana and South Carolina are only able to participate in those state Medicaid programs currently due to courts stepping in and blocking – for now – similar state efforts. Importantly, these exclusions have occurred in the midst of increasing attacks to sexual and reproductive health care access, including Texas's ongoing S.B. 8 abortion ban.

These unlawful state exclusions severely harm the women and families that Medicaid serves by cutting off access to major – and sometimes the only – providers of publicly funded sexual and reproductive health care in their communities. This makes it harder to access contraception, breast and cervical cancer screenings, testing and treatment for sexually transmitted infections, vaccinations, gender-affirming care, and prenatal care.<sup>5</sup> Research has demonstrated the harmful consequences of such exclusions for reproductive health and access to care. In Texas, for example, which has excluded Planned Parenthood from its Medicaid family planning program since 2013, researchers found a 35 percent decline in women using the most effective methods of birth control and a 27 percent spike in births among women who had previously used injectable contraception over a four-year period.<sup>6</sup> Another study found that Texas patients receiving contraceptive services made fewer follow-up appointments for care, faced higher out-of-pocket costs, and delayed or missed doses due to their difficulty finding a provider.<sup>7</sup> Moreover, the higher barriers to care and worse health care outcomes that result from these exclusions fall disproportionately on already underserved and marginalized communities, including people of color, families with low incomes, and LGBTQ+ individuals, exacerbating stark disparities that already exist related to reproductive health, cancer, and maternal mortality.<sup>8</sup>

We are deeply concerned that states are continuing to exclude Planned Parenthood and other qualified reproductive health providers from their Medicaid programs in violation of federal law, Congressional intent, and with serious consequences for the health of Medicaid beneficiaries. Moreover, we are concerned that more states will take similar steps to exclude reproductive health providers from Medicaid without clear and immediate agency action.

We therefore request a briefing from CMS for the staff of our committees no later than June 24, 2022 on the steps you will take to enforce federal law and ensure that low-income

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Public Health Rep. 119-122 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3234390/>

<sup>4</sup> Arkansas, Texas, Mississippi, and Missouri have excluded Planned Parenthood and, in the case of Mississippi and Missouri, other reproductive health providers from their respective programs

<sup>5</sup> J. Frost & K. Hasstedt, Quantifying Planned Parenthood's Critical Role In Meeting The Need For Publicly Supported Contraceptive Care, *Health Affairs* (2015), <https://www.healthaffairs.org/doi/10.1377/forefront.20150908.050394>.

<sup>6</sup> A. Stevenson et al., Effect of Removal of Planned Parenthood from the Texas Women's Health Program, *New England Journal of Medicine* (2016), <https://www.nejm.org/doi/full/10.1056/nejmsa1511902>

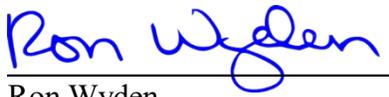
<sup>7</sup> C. Junda Woo et al., Women's experiences after Planned Parenthood's exclusion from a family planning program in Texas, *Contraception* (2015), [https://www.contraceptionjournal.org/article/S0010-7824\(15\)30038-X/fulltext](https://www.contraceptionjournal.org/article/S0010-7824(15)30038-X/fulltext)

<sup>8</sup> See, e.g., M. Sutton et al., Racial and Ethnic Disparities in Reproductive Health Services and Outcomes, 2020, *Obstetrics and Gynecology* (2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7813444>.

individuals are able to access the care to which they are entitled. Please respond to the staff contacts listed below to coordinate a briefing.

Thank you for your attention to this important matter. If you have any questions, please contact Elizabeth Dervan with the Senate Finance Committee at (202) 224-4515 and Rick Van Buren with the House Energy and Commerce Committee at (202) 225-2927.

Sincerely,



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Ron Wyden  
United States Senator  
Chairman, Committee on  
Finance



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Frank Pallone, Jr.  
Member of Congress  
Chair, Committee on Energy  
and Commerce

CC: Xavier Becerra, Secretary, United States Department of Health & Human Services  
Daniel Tsai, Deputy CMS Administrator and Director of the Center for Medicaid and  
CHIP Services