

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641
April 19, 2018

The Honorable Alex M. Azar
Secretary
U.S. Department of Health & Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Azar:

We are writing to express our serious concerns regarding the recent decision by the U.S. Department of Health and Human Services (HHS) to rescind existing guidance on the rights of Medicaid beneficiaries to receive family planning and preventive care services from their qualified providers of choice.¹ This decision is a complete reversal of prior guidance and stands in stark contrast to the longstanding principle that individuals enrolled in Medicaid should be afforded the same basic rights and privileges as those with private coverage when choosing from whom to receive covered health services. We oppose this action, as it violates the Medicaid statute and Congressional intent for the Medicaid program.

We are also gravely alarmed by reports that an anti-abortion advocacy organization provided input and assistance in drafting HHS' recent announcement.² This calls into question the legitimacy of HHS' actions into this matter, as well as the true motivations of this Administration.

¹ Letter from Brian Neale, Director, Center for Medicaid and CHIP Services (CMCS) to State Medicaid Directors (Jan. 19, 2018), (<https://www.medicaid.gov/federal-policy-guidance/downloads/smd18003.pdf>).

² Letter from Hon. Elijah E. Cummings, Ranking Member, Cmte Oversight & Gov't Reform, to Hon. Eric D. Hargan, Deputy Sect., Dep't Health & Human Services (Feb. 12, 2018).

Medicaid is the country's single largest source of public funding for family planning and provides coverage to one out of every five women of reproductive age in the U.S.³ Family planning services provided by state Medicaid programs are a mandatory benefit category under federal law and Congress has clearly emphasized the importance of this care by providing an enhanced federal matching rate for the costs of family planning services.⁴

Most importantly, under federal law, Medicaid beneficiaries have the right to obtain medical services, including family planning and reproductive health care, "from any institution, agency, community pharmacy, or person, qualified to perform the service or services required ... who undertakes to provide ... such services."⁵ This requirement, often referred to as the "any willing provider" or "free choice of provider" provision, has served as the cornerstone of the Medicaid program and has ensured that patients can receive the care they need from the providers they know and trust.

However, in recent years, certain states have attempted to limit the ability of Medicaid enrollees to access family planning and reproductive health care services from certain providers that may separately offer legal abortion services. In response to these efforts, the Centers for Medicare & Medicaid Services (CMS) released guidance in April 2016 that reiterated that states are not permitted to "target a provider or set of providers for reasons unrelated to their fitness to perform covered services" and that states may not deny qualifications to family planning providers solely because they separately provide the full range of legally permissible gynecological and obstetric care, including abortion services.⁶

This guidance followed a similar interpretation from the Department of Justice (DOJ) in 2015, in response to Louisiana's attempt to block Planned Parenthood-affiliated health centers from participating in the state's Medicaid program. DOJ explained that Louisiana's attempts to evade the free choice of provider provision in the Medicaid statute "contravene clear congressional intent" and contradict HHS's longstanding interpretation of the Medicaid statute.⁷

On January 19, 2018, CMS issued a letter rescinding the April 2016 guidance, signaling this Administration's support for state efforts to exclude qualified family planning providers, like Planned

³ Usha Ranji, Yali Bair, Alina Salganicoff, Medicaid and Family Planning: Background and Implications of the ACA, Kaiser Family Foundation (Feb. 3, 2016), (<https://www.kff.org/womens-health-policy/issue-brief/medicaid-and-family-planning-background-and-implications-of-the-aca/>).

⁴ Social Security Act, 1905(a)(4)(C), codified at 42 U.S.C. 1396a(a)(4)(C).

⁵ Social Security Act, 1902(a)(23).

⁶ Letter from Vikki Wachino, Re: Clarying "Free Choice of Provider" Requirement in Conjunction with State Authority to Take Action against Medicaid Providers (Apr. 19, 2016), (<https://www.medicaid.gov/federal-policy-guidance/downloads/smd16005.pdf>).

⁷ Planned Parenthood Gulf Coast, Inc., et al., v. Kliebert, Statement of Interest of the United States, Aug. 31, 2015.

Parenthood-affiliated health centers, from their Medicaid programs and timed the release of this announcement with the annual “March for Life” rally. We are very concerned by this decision and by HHS’s apparent willingness to allow an ideological agenda to undermine longstanding Medicaid law.

Our concerns are heightened because it also appears HHS worked in tandem with the anti-abortion organization Alliance Defending Freedom in drafting the January 19 letter.⁸ New documents reveal that senior HHS and CMS officials were planning for, and ultimately received, a draft letter rescinding the 2016 guidance originating from the organization on January 11, 2018.⁹ Alliance Defending Freedom has been designated a hate group by the Southern Poverty Law Center and the organization’s own website urges followers to “join the movement to defund Planned Parenthood.”¹⁰ The apparent coordination between HHS and Alliance Defending Freedom raises serious ethical questions and makes clear that this document should not be relied upon.

Efforts to exclude qualified providers from state Medicaid programs would restrict Medicaid enrollees’ access to quality family planning and preventive care services, often for some women their only source of primary care. Preventive care services include screenings for breast and cervical cancer, sexually transmitted infection (STI) screenings, and contraception counseling and care. These services help to further the public health goals of detecting cancer, stopping the spread of STIs, and preventing unintended pregnancy. By limiting access to qualified providers, those public health goals are unnecessarily put at risk.

⁸ Letter from Hon. Elijah E. Cummings, Ranking Member, Cmte Oversight & Gov’t Reform, to Hon. Eric D. Hargan, Deputy Sect., Dep’t Health & Human Services (Feb. 12, 2018).

⁹ *Id.*

¹⁰ Southern Poverty Law Center, *Alliance Defending Freedom* (<https://www.splcenter.org/fighting-hate/extremist-files/group/alliance-defending-freedom>); Alliance Defending Freedom, *Four Critical Efforts to Defend Life* (<https://adflegal.org/issues/sanctity-of-life/overview>).

Limiting access to qualified family planning providers solely for ideological reasons separate from their ability to provide care harms patients and restricts women from making their own health care decisions. We believe this Administration's recent action is unlawful and sets a dangerous precedent for the future of the Medicaid program. For these reasons, we urge you to reinstate the 2016 guidance, and reject any attempts to roll back the critical protections in the Medicaid statute that ensure patients have access to care from their providers of choice.

Sincerely,



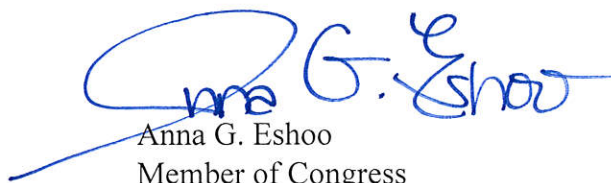
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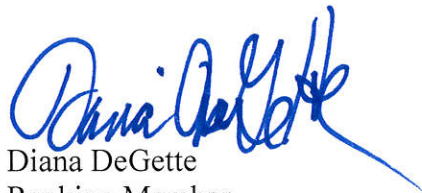
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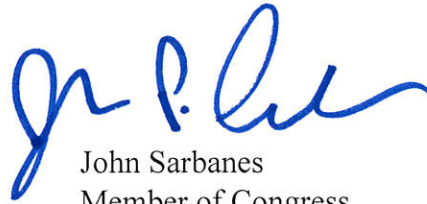
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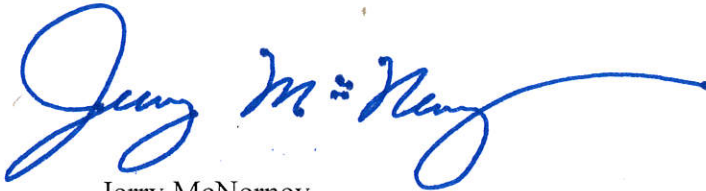
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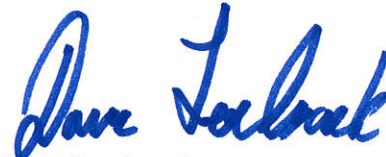
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Scott H. Peters
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Debbie Dingell
Member of Congress

Cc: The Honorable Seema Verma, Administrator, Centers for Medicare & Medicaid Services