

March 23, 2022

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

The Honorable Daniel Tsai
Deputy Administrator and Director of the Center for Medicaid and CHIP Services
Centers for Medicare & Medicaid Services
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Administrator Brooks-LaSure and Director Tsai:

We, the undersigned organizations, are writing to raise an issue of ongoing and urgent concern: the ideologically motivated actions of several states to deprive Medicaid beneficiaries of their legal right to receive family planning services from the provider of their choice. Several states have undertaken these efforts with success, including, most recently, Missouri. On Feb. 24, 2022, Missouri Governor Mike Parson signed a supplemental budget bill that excludes abortion providers from the state's Medicaid program, and this exclusion went into effect on March 11, 2022.¹ We strongly urge the Centers for Medicare and Medicaid Services (CMS) to fulfill its duty to ensure health care access for people with low incomes — who are disproportionately Black and Latina women — and enforce Medicaid's free choice of provider requirement immediately.

As you know, similar efforts have been undertaken in nearly a half dozen other states. Many Medicaid beneficiaries in Texas, Arkansas, and Mississippi have been unable to access basic and critical reproductive health care from the qualified family planning provider of their choice because of the baseless and continued termination of these providers from those states' Medicaid programs. In addition, Medicaid beneficiaries in Louisiana and South Carolina are only able to receive care from the qualified provider of their choice due to court injunctions barring those states' efforts to impose similar exclusions.

We are deeply concerned and alarmed by these unlawful actions and urge the administration to take action immediately. Enforcement of Medicaid's free choice of provider requirement is made all the more necessary by the COVID-19 pandemic and the ongoing and increasing attacks to sexual and reproductive health care access in these states, including S.B. 8 in Texas, which has made abortion inaccessible for the majority of patients across Texas for more than six months.

We appreciate the Biden-Harris Administration's efforts to address the ongoing attacks on sexual and reproductive health, including Texas's abortion ban. The steps that the administration has taken in response have been critical and needed, including suing the state of Texas to enforce the Constitution, and working to get additional Title X family planning funds to sexual and reproductive health providers. However, much more can and needs to be done, including enforcing Medicaid's free choice of provider requirement. This action can guarantee

¹ Summer Ballentine, "Missouri Senate tries again to 'defund' Planned Parenthood." The Kansas City Star (Feb. 24, 2022). <https://www.kansascity.com/news/article258711788.html>.

people access to care in Missouri, Texas, Arkansas, Mississippi, Louisiana, and South Carolina now, and send a strong signal to other states that targeting Medicaid patients will not be tolerated.

People with Medicaid coverage who seek family planning and reproductive health services should not be denied access to the providers they trust. Access to health care is more important now than ever, especially for people with low incomes, such as essential workers and single parents. Specialized sexual and reproductive health providers are uniquely positioned to meet the health needs of their patients. Ensuring that people with Medicaid are able to seek care at the provider of their choice will increase access to care and improve health outcomes, which is especially crucial now.

For many patients of reproductive age, qualified family planning providers are their only and preferred source of health care. These providers design their services around the reality that patients with low incomes face significant barriers to health care, such as child care and work obligations, limited transportation, and inflexible work schedules, and strive to accommodate these restrictions by offering evening and weekend hours, walk-in appointments, short wait times, bilingual staff or translation services, telehealth services, and same-day contraceptive services. Patients choose these providers for their accessible, affordable, nonjudgmental, and high-quality care.

This Administration has made clear that it is committed to protecting and expanding access to sexual and reproductive health care, as well as ensuring that Medicaid patients are able to use their health coverage without discriminatory barriers that undermine the program and health care access. Enforcing Medicaid's free choice of provider requirement would align with the Biden-Harris Administration's promises to that end.²

The Administration has already warned that states cannot withhold Medicaid funding from Planned Parenthood and block people with Medicaid from accessing care at Planned Parenthood health centers.³ Now, we are asking you to act. Public health should not be a political weapon. It has never been more clear that leaders in noncompliant states are not only failing to prioritize helping people, but are instead devoting time and resources to support discriminatory policies that weaken access to care.

We call on your Administration to enforce Medicaid's free choice of provider requirement and require the noncompliant states discussed in this letter to reinstate qualified family planning providers into the Medicaid program. Ensuring that people with Medicaid can access the care they need from providers of their choice is even more important as ongoing and increasing attacks to sexual and reproductive health care access continue. The law is clear that every patient in Medicaid has the freedom to choose a qualified and willing provider - it's time to take action.

² The Biden-Harris Administration has committed "to pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality." Moreover, the Gender Policy Counsel affirmed in its first-ever National Strategy on Gender Equity and Equality that this Administration will "strengthen people's ability to receive the high-quality, comprehensive care they need from the reproductive health care provider of their choice." In addition, in its Executive Order on Strengthening Medicaid and the Affordable Care Act, the Biden-Harris Administration unequivocally committed to protecting and strengthening the Medicaid program and ensuring that high-quality health care is accessible and affordable for every American. They further directed CMS to review all agency actions to determine whether those actions are consistent with that policy, and to consider taking further agency action to fully enforce that policy. See "Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government." White House (Jan. 20, 2021). <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>; *National Strategy on Gender Equity and Equality*. Gender Policy Counsel, White House (Oct. 22, 2021). <https://www.whitehouse.gov/wp-content/uploads/2021/10/National-Strategy-on-Gender-Equity-and-Equality.pdf>; "Executive Order on Strengthening Medicaid and the Affordable Care Act." White House (Jan. 28, 2021). <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/28/executive-order-on-strengthening-medicaid-and-the-affordable-care-act/>.

³ "Press Briefing By Press Secretary Jen Psaki and National Security Advisor Jake Sullivan, February 4, 2021." White House (Feb. 4, 2021). <https://www.whitehouse.gov/briefing-room/press-briefings/2021/02/04/press-briefing-by-press-secretary-jen-psaki-and-national-security-advisor-jake-sullivan-february-4-2021/>.

Please contact Mindy McGrath, Senior Director, Policy & Communications, National Family Planning & Reproductive Health Association at mmcgrath@nfprha.org for further information.

Respectfully,

Advocates for Youth
All* Above All Action Fund
American Atheists
American Civil Liberties Union
American College of Nurse-Midwives
American College of Obstetricians and Gynecologists
American Society for Reproductive Medicine
Catholics for Choice
Center for Reproductive Rights
Coalition to Expand Contraceptive Access (CECA)
Community Catalyst
Families USA
GLMA: Health Professionals Advancing LGBTQ Equality
Healthy Teen Network
Ibis Reproductive Health
Ipas
Jacobs Institute of Women's Health
Mazzoni Center
NARAL Pro-Choice America
National Center for Lesbian Rights
National Council of Jewish Women
National Family Planning & Reproductive Health Association
National Health Law Program
National Institute for Reproductive Health
National Organization for Women
National Partnership for Women & Families
National Women's Law Center
Nurses For Sexual & Reproductive Health
Physicians for Reproductive Health
Planned Parenthood Federation of America
Population Institute
Positive Women's Network-USA
Power to Decide
Reproductive Health Access Project
Transgender Law Center
Upstream USA

Cc: The Honorable Xavier Becerra, Secretary of U.S. Department of Health & Human Services
HHS Reproductive Healthcare Access Task Force
White House Domestic Policy Council
White House Gender Policy Council