

December 14, 2020

Executive Commissioner Cecile Young
Texas Health and Human Services Commission
4900 N. Lamar Boulevard
Austin, TX 78751
P.O. Box 13247

Dear Executive Commissioner Young:

We write in light of the COVID-19 public health crisis facing Texas, to ask the Texas Health and Human Services Commission (“HHSC”) to allow Planned Parenthood of Greater Texas, Planned Parenthood South Texas, and Planned Parenthood Gulf Coast (collectively, “Planned Parenthood providers”) to continue serving Texans insured through the Medicaid program. At minimum, it is imperative that HHSC permit a brief grace period so that Planned Parenthood providers can provide continuity of care throughout the holiday season and the current crisis point of the pandemic.

The Shortage of Texas Medicaid Providers in the Current Public Health Crisis and Planned Parenthood’s Essential Role

As HHSC is well aware, Texas is one of the hardest-hit states in the worst public health crisis to face this country since the flu pandemic of 1918–19. More than 1.2 million Texans have been infected with COVID-19, and more than 23,000 have died from it.¹ As Governor Abbott has repeatedly recognized, including as recently as December 6, 2020, COVID-19 “poses an imminent threat of disaster for all counties in the State of Texas.”² Indeed, on December 10, 2020, 12,211 new coronavirus cases were reported in Texas—a figure exceeding July’s record high.³ Hospitalization rates are currently highest in Northern and Western Texas, where many rural hospitals are “overwhelmed” and have “reported difficulty transferring patients to bigger, better-

¹ *COVID Data Tracker*, CDC, <https://covid.cdc.gov/covid-data-tracker/> (last visited Dec. 11, 2020).

² Tex. Proclamation (Dec. 6, 2020), https://gov.texas.gov/uploads/files/press/DISASTER_renewing_covid19_disaster_proclamation_IMAGE_12-06-2020.pdf; *see also* Tex. Exec. Order GA 28 (June 26, 2020), https://gov.texas.gov/uploads/files/press/EO-GA-28_targeted_response_to_reopening_COVID-19.pdf.

³ Tex. Trib. Staff, *Coronavirus in Texas*, Tex. Trib. (Dec. 11, 2020), <https://archive.org/details/httpsapps.texastribune.org/features2020texas-coronavirus-cases-map>.

equipped facilities in larger cities.”⁴ The virus has had a disproportionate toll on Black and Latinx Texans, who have died at rates higher than their share of the state’s population.⁵

For decades, Planned Parenthood providers have been an essential part of the public health safety net in Texas, providing high-quality and accessible preventative health care to Texans insured through the Medicaid program. Since January 2017, when the Medicaid termination was first scheduled to go into effect, Texas’s Planned Parenthood providers have provided more than 51,000 health care visits to approximately 24,000 Medicaid patients. Indeed, in those four years, Planned Parenthood’s 30 health centers across the state have provided over 44,000 tests for sexually transmitted infections (including HIV screenings), more than 2,100 cancer screenings, more than 52,000 units of contraception (including hormonal birth control and long-acting reversible contraception), and more than 4,400 annual well visits to Medicaid-insured Texans, without any claim of wrongdoing by HHSC.

Texas has some of the most stringent Medicaid requirements in the country: to be eligible, a patient must not only have a low income, but also have dependent children or a disability that keeps them from working.⁶ And the income restrictions are strict; for example, to qualify for Medicaid a single woman with a dependent child must have a monthly income of under \$196, well below the federal poverty guideline.⁷ Texas Medicaid patients are therefore an especially vulnerable population, who already face severe obstacles in accessing health care.

Moreover, it is well-documented that people of color in the United States are disproportionately unable to access quality health care due to the intersections of racism, sexism, classism, xenophobia, and other systemic barriers, making them more likely to rely on Medicaid.⁸ Policies

⁴ Shawn Mulcahy, “*We Are in a Very Dangerous Place*”: *White House COVID-19 Task Force Pleads with Texas Health Officials to Warn the Public*, Tex. Trib. (Dec. 3, 2020), <https://www.texastribune.org/2020/12/03/texas-coronavirus-white-house/>.

⁵ Emma Platoff & Carla Astudillo, *Across Texas and the Nation, the Novel Coronavirus is Deadlier for People of Color*, Tex. Trib. (July 30, 2020), <https://www.texastribune.org/2020/07/30/texas-coronavirus-deaths/>.

⁶ Sophie Novak, *Who Really Gets Government Benefits in Texas?*, Tex. Observer (June 22, 2017), <https://www.texasobserver.org/who-gets-benefits-texas-medicaid-cuts/>; Shannon Najmabadi & Edgar Walters, *They Lost Their Jobs and Insurance in the Pandemic. Now They’re Slipping Through Texas’ Health Care Safety Net*, Tex. Trib. (May 22, 2020), <https://www.texastribune.org/2020/05/22/texas-medicaid-health-insurance-coronavirus/>.

⁷ Tex. Health and Hum. Servs., *Medicaid for Parents & Caretakers*, <https://hhs.texas.gov/services/health/medicaid-chip/programs-services/children-families/medicaid-parents-caretakers> (last visited Dec. 11, 2020). The 2020 Federal Poverty Guideline for a family of two is \$17,240 per year, or about \$332 per week. See U.S. Dep’t of Health and Hum. Servs., *2020 Poverty Guidelines* (Jan. 21, 2020), <https://aspe.hhs.gov/2020-poverty-guidelines>.

⁸ Hannah Katch et al., *Medicaid Works for Women—But Proposed Cuts Would Have Harsh, Disproportionate Impact*, Ctr. on Budget & Policy Priorities (May 11, 2017),

that restrict Medicaid access, therefore, exacerbate these systemic barriers for Black and Latinx communities—the same groups who have been disproportionately affected by the COVID-19 crisis.

In part because of low reimbursement rates and onerous reimbursement policies, Texas suffers from a shortage of willing Medicaid providers. According to the Texas Medical Association, in 2014, only 34 percent of physicians were willing to take on new Medicaid patients.⁹ Planned Parenthood providers know this first-hand, from the hours staff spend on the phone trying to find providers who will accept a referral to begin lifesaving medical care when patients receive a positive result from a cancer screening, or when Medicaid patients require referrals for other urgent care. In the pandemic, this crisis has only worsened, as economic turmoil and sky-high unemployment rates¹⁰ have increased the number of Texans eligible for Medicaid.¹¹

Planned Parenthood health centers, in Texas and across the country, serve an outsized role in meeting the health care needs for those who are enrolled in federally funded health programs like Medicaid. More than half of Planned Parenthood health centers provide care to underserved patient communities in Health Professional Shortage Areas, Medically Underserved Areas, or Rural

<https://www.cbpp.org/research/health/medicaid-works-for-women-but-proposed-cuts-would-have-harsh-disproportionate-impact>; David R. Williams & Toni D. Rucker, *Understanding and Addressing Racial Disparities in Health Care*, 21 Health Care Fin. Rev. 75 (2000); UCLA Ctr. for Health Policy Rsch. & Henry J. Kaiser Fam. Found., *Racial and Ethnic Disparities in Access to Health Insurance and Health Care* (Apr. 2000), <https://www.kff.org/wp-content/uploads/2013/01/racial-and-ethnic-disparities-in-access-to-health-insurance-and-health-care-report.pdf>.

⁹ Ashley Lopez, *Texas Lawmakers Look for the Cure to Fewer Doctors Taking Medicaid Patients*, KUT 90.5 (Mar. 9 2016), <https://www.kut.org/health/2016-03-09/texas-lawmakers-look-for-the-cure-to-fewer-doctors-taking-medicaid-patients>.

¹⁰ Tex. Workforce Comm'n, *Unemployment Rate Is 8.3 Percent in September* (Oct. 16, 2020), <https://www.twc.texas.gov/unemployment-rate-83-percent-september>; Anna Novak & Mitchell Ferman, *Texans Have Filed More Than 3.9 Million Unemployment Claims During the Coronavirus Pandemic*, Tex. Trib. (Dec. 10, 2020), <https://apps.texastribune.org/features/2020/texas-unemployment/>; Chris Mathews, *Texas Weekly Unemployment Claims Reach Lowest Level Since March—But Still Much Higher Than Normal*, Austin Bus. J. (Nov. 13, 200), <https://www.bizjournals.com/austin/news/2020/11/13/texas-unemployment-claims-november-7-coronavirus.html>; Erika Esquivel, *West Texas Unemployment Claims Increase in November*, KFOX14 (Nov. 24, 2020), <https://kfoxtv.com/news/local/west-texas-unemployment-claims-increase-in-november>; Diana Zoga & Eva Parks, *Up to 830,000 Texans Impacted by Expiring Unemployment Benefits*, NBCDFW (Dec. 3, 2020), <https://www.nbcdfw.com/news/nbc-5-responds/up-to-830000-texans-impacted-by-expiring-unemployment-benefits/2496079/>.

¹¹ Shannon Najmabadi & Edgar Walters, *They Lost Their Jobs and Insurance in the Pandemic. Now They're Slipping Through Texas' Health Care Safety Net*, Tex. Trib. (May 22, 2020), <https://www.texastribune.org/2020/05/22/texas-medicaid-health-insurance-coronavirus/> (“In Texas and the other states that rejected Medicaid expansion, one-third of the newly jobless are estimated to get Medicaid, with 40% becoming uninsured.”).

Areas.¹² Planned Parenthood health centers are also considerably more likely to offer Medicaid patients a broader range of birth control methods than other providers.¹³ In a study of Community Health Centers, 69 percent reported referring their patients to family planning providers, like Planned Parenthood health centers, for family planning care.¹⁴ Indeed, Planned Parenthood Providers have continued to conduct STI testing and treatment for Medicaid patients in Texas while the pandemic has strained the capacity of other health care providers to offer these services across the country.

For many young women of reproductive age in Texas, Planned Parenthood is their only source of health care. Planned Parenthood designs its services around the reality that patients with low incomes face grave barriers to health care such as childcare 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, and same-day contraceptive services. Patients choose Planned Parenthood for its uniquely non-judgmental, high-quality and accessible care.

During this public health crisis, it is more important than ever that patients have access to uninterrupted health care. When people can't access Medicaid coverage or are unable to see the provider they know and trust, they may simply forgo critical health care. Indeed, Texas has gone down this road before with the Texas Women's Health Program in 2013; a study in the *New England Journal of Medicine* showed that blocking patients from going to Planned Parenthood providers in Texas was associated with a 35 percent decline in women in publicly funded programs using the most effective methods of birth control and a dramatic 27 percent increase in births among women who had previously accessed injectable contraception through those programs.¹⁵ In other words, women who could not financially afford health care at other places were not able to receive health care at all.¹⁶

¹² Planned Parenthood Federation of America, *The Irreplaceable Role of Planned Parenthood Health Centers* (Jan. 2019), https://www.plannedparenthood.org/uploads/filer_public/33/63/3363814b-938e-4ad5-87d2-57ee98790766/190117-irreplaceable-role-pp-v01.pdf.

¹³ *Id.*

¹⁴ Susan Wood et al., George Washington University School of Public Health and Health Services, *Health Centers and Family Planning: Results of a Nationwide Study*, at 26 (Mar. 7, 2013), http://www.rchnfoundation.org/wp-content/uploads/2013/04/Health_Centers_and_Family_Planning-final-1.pdf.

¹⁵ Amanda J. Stevenson et al., *Effect of Removal of Planned Parenthood from the Texas Women's Health Program*, *New Eng. J. Med.* (Mar. 3, 2016), <https://www.nejm.org/doi/full/10.1056/NEJMsa1511902>.

¹⁶ *Id.*

The Medicaid Terminations

As HHSC is aware, over the past four years Texas has sought to terminate the Planned Parenthood Providers from the Medicaid program not because of any failure to provide high-quality health care, but because of a widely-debunked video about Planned Parenthood Gulf Coast made by a discredited group determined to end abortion access, even using unlawful tactics to pursue their goal. Indeed, those responsible for the video are currently awaiting trial on multiple felony charges in California for actions related to the smear campaign.¹⁷

Following the release of the unlawfully-recorded videos, a Harris County grand jury looked at the allegations made against Planned Parenthood Gulf Coast and found no wrongdoing. Likewise, investigations in at least 13 states concluded that Planned Parenthood engaged in no wrongdoing,¹⁸ and eight other states declined to investigate at all, citing lack of evidence. What's more, none of the many heavily partisan congressional investigations¹⁹—including a select panel created for that sole purpose—concluded that any Planned Parenthood provider violated any laws or ethical obligations.²⁰

At any rate, two of the three Texas Planned Parenthood providers (Planned Parenthood Greater Texas and Planned Parenthood South Texas) do not even appear on the discredited video. Texas has nevertheless sought to terminate them from Medicaid on the basis that they share the name “Planned Parenthood”—despite the grave public health harms such termination would cause, particularly during the COVID-19 pandemic.

¹⁷ Moreover, in November 2019, a jury empaneled by a federal district court found that the Center for Medical Progress (CMP) and those who manufactured the discredited campaign broke multiple state and federal laws in their efforts to discredit Planned Parenthood. The jury awarded Planned Parenthood both compensatory and punitive damages, totaling more than \$2 million, for the injuries that CMP and its co-conspirators caused. The trial court made clear that the only people who engaged in wrongdoing were those behind the smear campaign, explaining that “[t]he ‘evidence’ defendants actually gathered and then published as a result of the conduct the jury found was illegal did not itself show any illegal conduct by Planned Parenthood or plaintiff affiliates.” See Order Resolving Unfair Competition Claim & Entering Judgment, *Planned Parenthood Federation of America v. Center for Medical Progress*, Case No. 16-cv-00236 (N.D. Cal. Apr. 29, 2020), https://www.plannedparenthood.org/uploads/filer_public/69/55/69556c3a-cc90-4017-b43794a8857562f1/1073_order_resolving_unfair_comp_claim_and_entering_judgment_1.pdf.

¹⁸ Kate Sarna, *Growing List of Planned Parenthood Investigations Hyped by Conservative Media Clears Organization of Any Wrongdoing*, Media Matters (Aug. 24, 2015), <https://www.mediamatters.org/research/2015/08/24/growing-list-of-planned-parenthood-investigation/205116>.

¹⁹ Emily Crockett, *Congress Has Spent 15 Months “Investigating” Planned Parenthood Using McCarthy-Like Tactics*, Vox (Dec. 7, 2016), <https://www.vox.com/2016/4/29/11469044/congress-planned-parenthood-witch-hunt-fetal-tissue-scientists>.

²⁰ Meredith Wadman, *Fact-Checking Congress’s Fetal Tissue Report*, Science Magazine (Jan. 5, 2017), <https://www.sciencemag.org/news/2017/01/fact-checking-congress-s-fetal-tissue-report>.

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For these reasons, in light of the five years that have passed since the claimed wrongdoing in the videos (which two of the three Planned Parenthood providers were not on) and the high-quality services the Planned Parenthood providers have provided to approximately 24,000 Medicaid patients since then, we ask that you allow us to remain in the Medicaid program so that our skilled clinicians can continue providing medical care to the most vulnerable Texans during this public health crisis.

In the alternative, at minimum, we respectfully request a six-month grace period to allow our patients to take care of urgent health needs during this crisis stage of this pandemic, and to allow us to help our patients attempt to find new providers willing to accept new patients insured through Medicaid. The well-being of patients is our top priority and we fear that abruptly discontinuing services will leave patients with nowhere else to turn during a pandemic that has pushed the capacity of our health care system to the brink. We would very much like to continue to serve these patients, but hope that, at a minimum, we can work with HHSC to establish a smooth transition period for the thousands of Texans we serve every year through the Medicaid program.

Respectfully,



Ken Lambrecht
President & CEO, Planned
Parenthood Greater Texas



Jeffrey Hons
President & CEO, Planned
Parenthood South Texas



Melaney Linton
President & CEO, Planned
Parenthood Gulf Coast

Cc: Stephanie Stephens, Deputy Executive Commissioner Medicaid/CHIP
Karen Ray, HHSC Chief Counsel
Patrick Sweeten, Associate Deputy Attorney General for Special Litigation
Adam Biggs, Special Litigation Counsel