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January 23, 2023

Via Email and U.S. Mail

Paula M. Stannard
Chief Legal Counsel
Montana Department of Public Health and Human Services
111 N. Sanders Street, Ste 210
Helena, MT 59601
paula.stannard@mt.gov

Re: DPHHS proposed rule change related to Medicaid coverage of abortion services

Dear Ms. Stannard:

This office represents Planned Parenthood of Montana. The Department's proposed changes to the Medicaid program will deny low-income Montanans access to abortion care services. The proposed rules invade rights secured by the Montana Constitution and are squarely prohibited by the decisions in *Jeanette R. v. Ellery*, No. BDV-94-811 (1st. Jud. Dist., May 22, 1995), *Armstrong v. State*, 1999 MT 261, 296 Mont. 361, 989 P.2d 364, and *Weems v. State*, 2019 MT 98, 395 Mont. 350, 440 P.3d 4. The proposed changes to the Medicaid program also trigger several other legal issues.

Despite these legal issues, the Department has not provided for any time between the publication of the adoption notice and the effective date of the rules. *See* MAR Notice No. 37-1024, Item 5 ("The proposed rule changes are intended to be effective upon the day after the date of publication of the adoption notice."). If the proposed rules take effect, they will have an immediate, grave, and irreparable impact on the health of patients in Montana seeking abortion care and their constitutional rights.

Planned Parenthood of Montana requests the Department's confirmation that it intends to adopt the proposed rules (or substantively similar rules), as well as the date DPHHS plans to publish the adoption notice. Should the rules become effective as proposed, Planned Parenthood of Montana and other providers intend to seek declaratory and injunctive relief against the new rules. To facilitate orderly and expedient judicial review, Planned Parenthood of Montana requests that the Department consider either (1) delaying the effective date of the rules to 90 days after the publication of the adoption notice, or (2) stipulating to a stay of enforcement of the rules until such time as a court is able to rule on a request for declaratory relief regarding their statutory and constitutional legality. Co-counsel and I are available to discuss these proposals with you at your convenience. Please provide the above information and confirm the Department's position on these proposals by the end of business on Wednesday, January 25, 2023.

Should the Department refuse to provide information regarding the planned publication date of its adoption notice or consider these proposals, Planned Parenthood of Montana and other providers will need to seek immediate injunctive relief to protect their patients, causing the Department to expend further time and expense. *See* § 27-19-315(2), MCA.

Finally, please preserve all information in your possession—documents, correspondence, and other communications, including any information you assert is subject to a claim of privilege—related to the proposed rule changes to the Medicaid program affecting coverage for abortion care services. This preservation request applies to, but is not limited to, electronic communications such as emails, text

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messages, or any other electronic messaging or media, as well as call logs and calendars. The request extends to any auspice of state government outside the Department that the Department communicated with regarding the proposed rules or related matters, including the Office of the Governor, the Legislature and individual legislators, and the Office of the Attorney General. Please do not hesitate to contact me with any questions regarding this preservation request.

I will calendar January 25, 2023 for your reply. Co-counsel and I stand ready to discuss the proposals regarding a delayed effective date or a stipulated stay of enforcement at your earliest convenience.

Sincerely,



Raph Graybill

CC: Office of the Governor, via:
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Office of the Attorney General, via:
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