

# United States Senate

WASHINGTON, DC 20510

May 26, 2011

The Honorable Kathleen Sebelius  
Secretary of Health and Human Services  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Sebelius:

As state legislative sessions near their completion, a number of states are considering legislation that would prohibit Planned Parenthood health centers from receiving federal funds for family planning services, including Medicaid funds and Title X family planning funds. Such a proposal was enacted in Indiana.

We appreciate the administration's recent statement concerning the illegality of restricting access to vital preventive services under the Medicaid program. We respectfully request that the U.S. Department of Health and Human Services issue guidance to state Medicaid directors clarifying that taking action to exclude family planning clinics that provide abortion services from Medicaid participation, such as Planned Parenthood, will lead to compliance actions.

Similarly, some states are pursuing legislation that would prevent Planned Parenthood health centers from receiving Title X family planning funds. State legislation to prohibit Planned Parenthood from participating in this federal program violates the rules and the intent of the program. In fact, courts have ruled that such efforts contravene the federal statute and are unconstitutional.<sup>1</sup> As such, we strongly urge HHS to make clear to states that any legislation or effort to prevent Planned Parenthood and other providers from participating in this program as well are impermissible.

State legislation to exclude such health centers from the Medicaid program explicitly contradicts several provisions of federal Medicaid law, including the "equal access protections" of the program, along with the "any willing provider" requirement.

Family planning services provided by Medicaid are a mandatory benefit under federal law.<sup>2</sup> Congress created this legal entitlement for beneficiaries in 1972, and was so concerned about the availability of family planning services that they required the federal government to cover 90% of the cost of all services in this area – an unprecedented incentive and a clear signal as to the importance of these services.

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<sup>1</sup> *Planned Parenthood of Houston & Southeast Texas v. Sanchez*, 403 F.3d 324,338 (5th Cir. 2005); *Rust v. Sullivan*, 500 U.S. 173 (1991).

<sup>2</sup> Social Security Act, 1905(a)(4)(C), codified at 42 U.S.C. 1396a(a)(4)(C).

Under the Indiana law, reimbursement has been forbidden to any provider of abortion services, other than a hospital. This removes from the pool of Medicaid providers a large swath of family planning providers, most notably and significantly, Planned Parenthood. Under Medicaid's "equal access" requirement, states must reimburse providers in a way that "assure[s] that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."<sup>3</sup> Additional requirements also exist to ensure adequate access across each state. Cutting off Medicaid funding to Planned Parenthood clearly violates the law in this regard, since 48% of Planned Parenthood' patients are Medicaid patients, and 60% of women whose care comes from health centers like those operated by Planned Parenthood say that these institutions are their main health care providers.

Moreover, the "any willing provider" requirement of federal Medicaid law directs state Medicaid programs to allow eligible individuals to receive care "from any institution, agency, community pharmacy, or person, qualified to perform the service or services required...who undertakes to provide him such services, and enrollment of an individual eligible for medical assistance."<sup>4</sup> This provision is implemented in CMS's "free choice of provider" regulation, which explicitly states that under no circumstance can the "free choice of provider" protection be compromised with respect to providers of family planning services.<sup>5</sup> These rules, which have remained constant despite significant changes in the flexibility of the Medicaid program through both Democratic and Republican administrations, clearly establish the protections that require state Medicaid programs to provide beneficiaries with the same opportunity to choose and receive covered health care services from any qualified provider in the same way as any member of the general population seeking health care services.

Legislation like the bill passed by the Indiana legislature to exclude such Medicaid providers stands in direct opposition to longstanding Congressional intent, and create serious access concerns for both patients and providers- a point that was clarified by Congress during the recent debate on the FY 2011 Continuing Resolution when a similar effort was defeated in the Senate by a vote of 58-42.

The restrictions threatened by state legislatures blatantly contradict the spirit and letter of well-established and long accepted law. These principles have been backed repeatedly over many years – truly bipartisan support. We write not to ask support for new law, but for vigorous, prompt enforcement of existing law.

Thank you, in advance, for your prompt consideration of this request.

Sincerely,

 

<sup>3</sup> Social Security Act, 1902(a)(30)(A), codified at 42 U.S.C. 1396a(a)(30)(A).

<sup>4</sup> Social Security Act, 1902(a)(23)(A), codified at 42 U.S.C. 1396a(a)(23)(A).

<sup>5</sup> Free Choice of Providers, 431.51(a)(3)

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