

United States Senate

WASHINGTON, DC 20510

March 18, 2020

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD, 21244

Administrator Verma:

We write to express our serious concern regarding the Centers for Medicare & Medicaid Services (CMS) recent approval of Texas's section 1115 demonstration project, or "waiver," that allows the state to receive federal Medicaid funds for family planning services while excluding qualified providers from its Medicaid family planning program. As many of us wrote to you in 2017 when Texas first submitted its request to CMS, permitting Texas to receive federal Medicaid funding to implement its family planning demonstration will not provide women with adequate access to family planning and other preventive care. In addition, it fails to meet statutory requirements, and runs counter to Congress's longstanding intent for the Medicaid program.¹ Texas women should be able to depend on access to all qualified providers so they can get the family planning services and preventive care they need. CMS's approval is in violation of Congressional intent and federal law and must be withdrawn.

As highlighted in the 2017 letter, Texas first implemented a Medicaid family planning demonstration in 2007. The project improved access to contraception, and, as a result, reduced unintended pregnancies and Medicaid-funded births.² When the demonstration period ended, Texas asked the Secretary of Health and Human Services to renew the project with a troubling restriction – a request to not apply Medicaid's longstanding "freedom of choice" provision that ensures patients can see the qualified family planning provider they trust. CMS declined to waive this crucial patient protection. Rather than comply with federal requirements and continue to receive much-needed federal Medicaid funding, Texas implemented a solely state-funded family planning program in 2013 that excluded qualified providers who were deemed to perform or "promote" abortion services or affiliate with providers who do so.

¹ Letter to Administrator Verma re Teas Family Planning Proposal from Members of Senate (Aug. 4, 2017), <https://www.finance.senate.gov/imo/media/doc/080417%20Verma%20Texas%20Waiver%20Signed.pdf>.

² See, e.g., Texas Health and Human Services Commission, 2010 Annual Savings and Performance Report for the Women's Health Program, Austin: Texas Health and Human Services Commission, 2011.

This decision had serious negative consequences for Texan women both in terms of worsening health outcomes and access to health services. Although research has shown long-acting reversible contraception (LARC) to be the most effective method of reversible contraception, after Texas excluded qualified family planning providers from its project, LARC use among beneficiaries declined by more than one-third.³ In addition, the rate of Medicaid-funded births increased.⁴ As of 2014, 55 percent of women in Texas reported at least one barrier to accessing reproductive health services, including family planning services and cervical cancer screenings.⁵ Maternal mortality rates in Texas also doubled between 2011 and 2014, a period of time that largely coincides with the state eliminating beneficiaries' access to Planned Parenthood health centers.⁶ Pregnancy-related deaths were even higher among women of color, further exacerbating stark health disparities in the state. And finally, nearly 45,000 fewer women were able to access care through the program.⁷

Unfortunately, instead of working to address the poor health outcomes that have arisen from restricting beneficiaries' choice of qualified provider in Texas, CMS has now approved Texas's request to receive federal Medicaid funding to operate its family planning program without applying Medicaid's longstanding guarantee allowing women to choose their own family planning provider and significantly restricting providers available to beneficiaries of the program.

Texas's program, and CMS's corresponding approval, are clearly part of this Administration's ongoing efforts to undermine access to family planning providers, including Planned Parenthood, and advance ideological goals without concern for the health and well-being of women across the country. Such actions single out providers who provide or support—or are affiliated with those who provide or support—abortion services as part of their scope of practice, with the ultimate goal of making legal abortion services unavailable in states such as Texas. Other states such as South Carolina and Tennessee have submitted similar requests to restrict beneficiaries' choice of provider. A separate pending waiver for Idaho proposes to single out family planning providers by introducing a referral requirement that could create similar unnecessary barriers to care. In addition, the Administration is actively encouraging states to apply for Medicaid block grant programs that would limit federal funding, further cut access to care, and try to give states another avenue to not apply longstanding freedom of choice protections guaranteed to Medicaid beneficiaries. Programs such as the one in Texas will continue to result in women losing access to critical care, which in turn will result in high rates of unintended pregnancy and maternal mortality.

³ Amanda J. Stevenson et al., "Effect of Removal of Planned Parenthood from the Texas Women's Health Program," *The New England Journal of Medicine*, February 2016.

⁴ *Id.* at 858.

⁵ Tex Policy Evaluation Project Research Brief: Barriers to Family Planning Access in Texas, Evidence from a Statewide Representative Survey (May 2015).

⁶ MacDorman, Marian F. et al. "Recent Increases in the U.S. Maternal Mortality Rate." *Journal of Obstetrics and Gynecology*. (2016), available at http://d279m997dpfwgl.cloudfront.net/wp/2016/08/MacDormanM.USMatMort.OBGYN_2016.online.pdf.

⁷ CTR. FOR PUB. POLICY PRIORITIES, EXCLUDING PLANNED PARENTHOOD HAS BEEN TERRIBLE FOR TEXAS WOMEN: AND TEXAS STILL WANTS MEDICAID TO PAY FOR ITS BAD IDEA (Aug. 2017), available at https://forabettertexas.org/images/HW_2017_08_PlannedParenthoodExclusion.pdf.

The Secretary has never before granted a waiver of freedom of choice to allow states to purposefully target certain qualified providers such as family planning providers, much less one that has already been shown to be harmful to women. To exclude qualified family planning providers from the Medicaid program and receive federal Medicaid funding for such services runs directly counter to Texas's stated objectives – increasing access to family planning and other preventive care for women. It also fails to comply with the statutory requirements of Section 1115. There is no question that excluding these providers, namely Planned Parenthood, from the Texas program has already reduced access to family planning services for enrollees. Accordingly, approval of Texas's program is in violation of Congressional intent and federal law and must be withdrawn.

Sincerely,



Senator Ron Wyden



Senator Patty Murray



Senator Sherrod Brown



Senator Tammy Baldwin



Senator Maria Cantwell



Senator Catherine Cortez Masto



Senator Jon Tester



Senator Bernard Sanders



Senator Kamala D. Harris



Senator Michael F. Bennet



Senator Benjamin L. Cardin



Senator Robert Menendez



Senator Jacky Rosen



Senator Edward J. Markey



Senator Patrick Leahy



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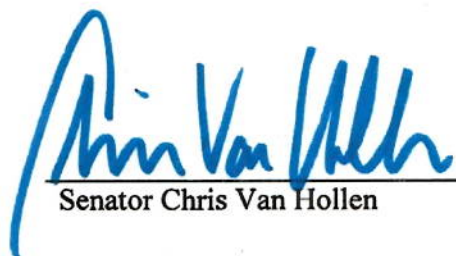
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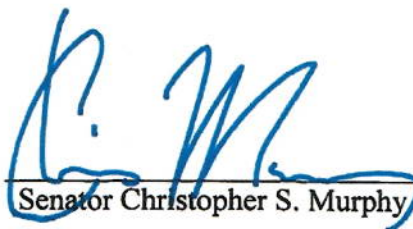
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Senator Kirsten Gillibrand



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Senator Dianne Feinstein



Senator Tammy Duckworth