

United States Senate

WASHINGTON, DC 20510

February 14, 2018

The Honorable Alex Azar
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Secretary Azar:

We write to express our deep concern regarding the Department of Health and Human Services' decision to rescind 2016 guidance regarding women's right to receive care under Medicaid from the qualified family planning provider of their choice.¹ Since day one, this Administration has taken direct aim at women's health by obstructing access to services critical for women's health, financial security, and equality, including contraceptive care. This most recent decision is another step in this ideological and discriminatory agenda, as it encourages states to block Planned Parenthood and other essential providers from participating in state Medicaid programs. Excluding these qualified providers would have devastating consequences for millions of women who need access to affordable family planning services and would violate Congress's longstanding intent to protect beneficiaries' right to see the family planning providers they trust.

Medicaid is the primary provider of family planning services in the United States, covering one of every five women of reproductive age and 75 percent of all publicly funded contraceptive services.² Medicaid has provided women with the unequivocal right to seek family planning services from the providers of their choice for decades. Yet, despite such clear protections, numerous states have attempted to use the Medicaid program to target providers of

¹ See Letter from Brian Neale, Director, Center for Medicaid and CHIP Services (CMCS) to State Medicaid Directors (Jan. 19, 2018), <https://www.medicaid.gov/federal-policy-guidance/downloads/smd18003.pdf> ("Rescission of Guidance"), *rescinding* Letter from Vikki Wachino, Director, CMCS to State Medicaid Directors (Apr. 19, 2016), <https://www.medicaid.gov/federal-policy-guidance/downloads/smd16005.pdf> ("Free Choice of Provider Guidance").

² Usha Ranji, Yali Bair, & Alina Salganicoff, Medicaid and Family Planning: Background and Implications of the ACA, Kaiser Family Foundation (Feb. 2016), <http://files.kff.org/attachment/issue-brief-medicaid-and-family-planning-background-and-implications-of-the-aca>.

legal abortion services, including Planned Parenthood. In response to these state efforts, the Centers for Medicare & Medicaid Services released guidance in April 2016 to reaffirm the free choice of provider right, stating clearly that the Medicaid Act prohibits states from targeting providers for reasons unrelated to their fitness to perform or bill for covered medical services.³ This guidance reinforced the requirement and the principle that states should use evidence-based standards, not ideological agendas, to determine who should be able to provide care to their communities.

On January 22nd, the Administration rescinded this guidance, signaling its intent to allow states to exclude qualified providers from their Medicaid programs. These exclusions target health care providers for reasons wholly unrelated to the fitness of the provider and their ability to provide professional care in a competent, safe, and legal manner. Accordingly, approving such proposals would elevate an ideological agenda above the needs of Medicaid beneficiaries and the rights and protections guaranteed to them under federal law.

Excluding qualified family planning providers from the Medicaid program would have far-ranging and dire consequences for women's health. Many beneficiaries rely on family planning health centers as their only source of essential primary and reproductive health services, including contraception, testing for HIV and sexually transmitted infections, screenings for cervical and breast cancer, and vaccines.⁴ By withholding Medicaid funds from trusted family planning providers like Planned Parenthood, states would undermine access to these services, inevitably leaving women with higher rates of unintended pregnancy, cancer, and maternal mortality.⁵ These effects would be disproportionately borne by women of color and women in rural communities, widening our nation's health disparities.⁶

Allowing states to exclude qualified providers from state Medicaid programs would also plainly violate the longstanding protections and objectives of the Medicaid Act. While the Medicaid Act grants states the flexibility to waive certain federal requirements, Congress has made it clear that states must promote, not restrict, access to health care in order to obtain waivers under the program.⁷ Further, when Congress amended the Medicaid Act in 1967 to include the free choice of provider provision, it did so in response to state efforts to restrict

³ Free Choice of Provider Guidance, *supra* note 1.

⁴ Jennifer Frost & Kinsey Hasstedt, "Quantifying Planned Parenthood's Critical Role in Meeting The Need For Publicly Supported Contraceptive Care," *HEALTH AFFAIRS* (Sept. 8, 2015), <https://www.healthaffairs.org/doi/10.1377/hblog20150908.050394/full>.

⁵ See Amanda Stevenson et al., "Effect of Removal of Planned Parenthood from the Texas Women's Health Program," *NEW ENGLAND JOURNAL OF MEDICINE* (Mar. 3, 2016), <http://www.nejm.org/doi/full/10.1056/NEJMSa1511902>.

⁶ Marcela Howell & Ann Starrs, "For Women of Color, Access to Vital Health Services is Threatened," *GUTTMACHER INSTITUTE* (Jul. 27, 2017), <https://www.guttmacher.org/article/2017/07/women-color-access-vital-health-services-threatened>; Planned Parenthood, *The Urgent Need for Planned Parenthood Health Centers* (2016), https://www.plannedparenthood.org/files/4014/6773/0282/20160620_Defunding_fs_d1_4.pdf.

⁷ 42 U.S.C. § 1315 (permitting states to waive certain federal Medicaid requirements under Section 1115 waivers to conduct an "experimental, pilot, or demonstration project" that achieves the goals of the Medicaid program).

beneficiaries' access to care, including efforts to exclude providers from the program.⁸ This amendment plainly reflected Congress's intent to expand, not limit, Medicaid beneficiaries' ability to make health care decisions free of a state's ideological interference. As a result, since these protections have been in place, a state has never been permitted to bar a qualified family planning provider from Medicaid because of the legal services that provider offered.

Reproductive health care is essential for all Americans and in particular for women's health, economic security, and equality. Yet, this Administration has undertaken a campaign to obstruct access to these services by allowing employers to deny birth control coverage to their employees, gutting evidence-based teen pregnancy prevention programs, jeopardizing the lives of women abroad through reinstating and expanding the Global Gag Rule, censoring language related to abortion and health care for LGBTQ individuals, allowing providers' personal beliefs to dictate how and whether someone should be treated, and supporting legislation to prevent Planned Parenthood from participating in the Medicaid program nationwide.⁹ Continuing this agenda of discrimination by promoting the state-by-state repeal of the free choice of provider provision and defunding of qualified family planning providers like Planned Parenthood is unacceptable, unlawful, and threatens the lives and rights of millions of women across the country. For these reasons, we urge you to reconsider your decision to rescind the 2016 guidance and reject state proposals that would undermine access to qualified family planning providers in Medicaid.

Sincerely,



Ron Wyden
United States Senator



Patty Murray
United States Senator



Richard Blumenthal
United States Senator



Sherrod Brown
United States Senator

⁸ Lara Cartwright-Smith and Sara Rosenbaum, Medicaid's Free-Choice-of-Provider Protections in a Family Planning Context: Planned Parenthood Federation of Indiana v. Commissioner of the Indiana State Department of Health 127 PUBLIC HEALTH REP. 119-122 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3234390/>.

⁹ Julie Rovner, "In Trump's First Year, Anti-Abortion Forces Make Strides Despite Setbacks," KAISER HEALTH NEWS (Jan. 22, 2018), <https://khn.org/news/in-trumps-first-year-anti-abortion-forces-make-strides-despite-setbacks>.



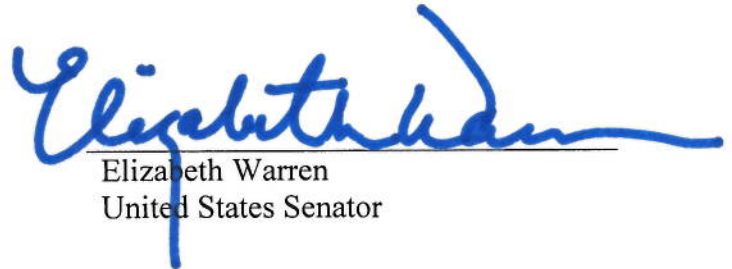
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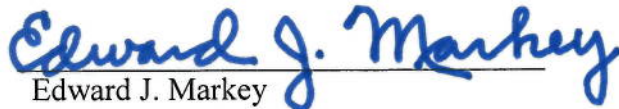
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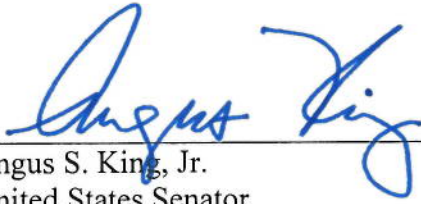
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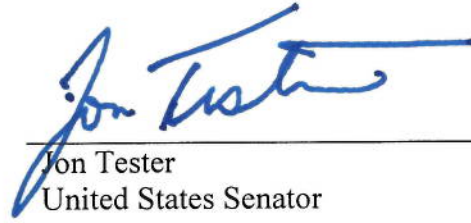
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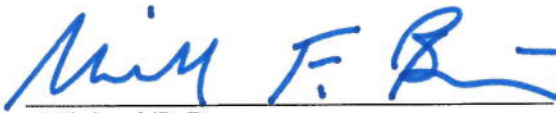
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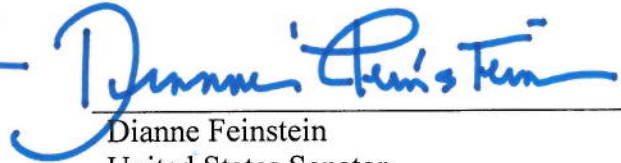
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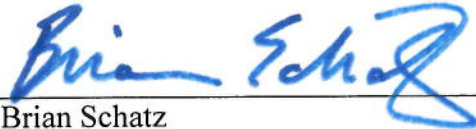
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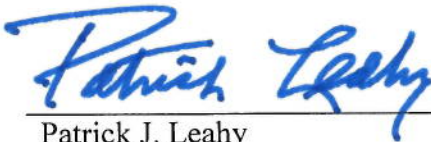
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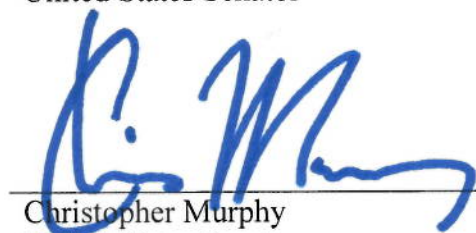
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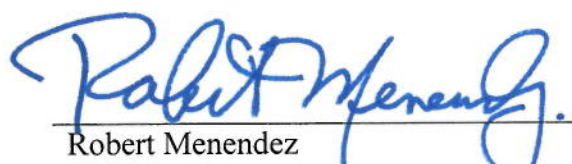

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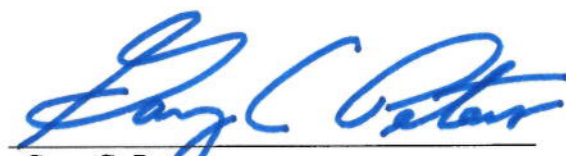

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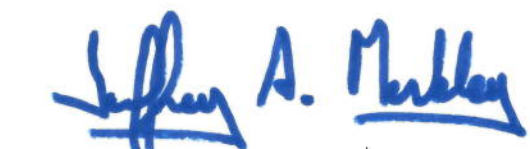

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cc: Seema Verma, Administrator for the Centers for Medicare and Medicaid Services
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