TESTIMONY OF JUDY WAXMAN

BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
ENERGY AND COMMERCE COMMITTEE
SUBCOMMITTEE ON HEALTH

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Good afternoon Chairman Pitts and Ranking Member Green and Distinguished Members of the Committee. Thank you for the opportunity to testify here today about two bills, the Protect Infants from the Partial-birth Abortion Act and the Protecting Infants Born Alive Act.

As a national expert on Medicaid with more than 35 years of experience, I have consulted with hundreds of state and national organizations working to improve the health of low-income women and their families. I have worked as a senior staff attorney at the National Women's Law Center, Families USA and the National Health Law Program. I was a senior policy analyst at the U.S. Bipartisan Commission on Comprehensive Health Care (Pepper Commission) and an attorney at the US Public Health Service. I have lectured all over the country on Medicaid implementation and strategies for enhancing access to all medical services and, in particular, family planning.

The two bills at issue here today have a single purpose – to make it easier for state officials to target Planned Parenthood and other women's health providers. The two bills would amend the statute governing Medicaid to allow state officials to exclude a provider from the Medicaid program if they, or one of their employees, is suspected by the state of violating either Section 1531 of title 18 or Section 8 of title 1 of the United States Code. This standard is unduly vague. It is also unnecessary because the statutes governing Medicaid already provide a mechanism for excluding a provider that has been convicted of a felony under federal or state law.

Planned Parenthood is a respected, high-quality, healthcare provider. They are willing and able to provide essential quality healthcare to millions of women nationwide. Planned Parenthood is a unique and critical health care provider that provides millions of women access to essential health care services, such as comprehensive contraceptive care, STI screenings, breast exams. By giving states carte blanche to exclude certain providers from Medicaid based on a politician's suspicion only, these bills would put millions of women's health at risk.

**The Bills Before the Committee Would Impose a "Guilty Until Proven Innocent" Standard**

The bills before the Committee today go dangerously beyond what the law currently provides. Specifically, the bills would allow a Medicaid provider to be excluded from the program if the state merely suspects that a provider, or an employee of an entity that receives Medicaid funds, has broken either law at issue. These bills would gut the entire purpose of the "freedom of choice" provision, a critical provision that requires states to allow all qualified providers to participate in Medicaid. These bills would instead allow politicians decide which providers women can see based on the politician's ideology. These bills would deny millions of women the ability to choose a high-quality health care provider for essential health care, and it could leave many of them with no access at all.

The primary impact of these bills would be a further reduction in Medicaid providers. As these bills are written, state officials could exclude a large number of providers with a single "suspicion" of wrong-doing. For example, the bills provide that if an entity employs someone

the state suspects of violating the law, then the entire entity could be excluded from being a participating Medicaid provider. This could mean that entire hospital systems could be denied Medicaid funding. Millions of dollars for life-saving care could be lost just because the state suspects one employee even if that employee actually did not do anything wrong.

There would be no due process – or any process at all – for determining whether or not the accusation is true. The bills give states an unlimited power to exclude any provider without so much as an investigation, a hearing, court proceedings, any opportunity for the entity to defend itself, or evidence supporting its claim.

In addition, there is no mention of notice in the bill, so how would an entity even know what the state suspects? Further, an entire entity could be excluded because it employed someone suspected of having broken the law while working for another employer. How do the bills' sponsors expect the employer to know that information?

In other words, these bills create a "guilty unless proven innocent" standard that allows state officials carte blanche to eject entities from the Medicaid program. Rather than the current legal standard, which allows states to act if there has been a conviction, these bills would allow over-eager state officials to cut off women's access to needed health care services based on mere rumor.

Moreover, the "freedom of choice" provision already contains a qualification that if a provider is convicted of a felony that is inconsistent with the best interest of the beneficiaries, then the broad "freedom of choice" provision does not apply. The statute acknowledges that "nothing in this paragraph shall be construed as requiring a State to provide medical assistance for such services furnished by a person or entity convicted of a felony under Federal or State law for an offense which the State agency determines is inconsistent with the best interests of beneficiaries."[1] Therefore, the two bills at issue here are not needed as there is already a mechanism to exclude providers for violating the law.

The result of giving states this unlimited power would be that (a) they would be free to wreak havoc on programs that advance women's health and (b) health care services for millions of women around the country would be at risk.

**Planned Parenthood Plays a Critical Role in Providing Critical Health Care Services to Millions of Women**

The Medicaid program was enacted over fifty years ago to ensure the low-income people have access to critical heath care. A recent Census Bureau report found that in 2014, 20% of all women and girls in the United States received Medicaid to cover their health services.[2] For

[1] 42 U.S.C. § 1396a(a)(23).
[2] Jessica Smith and Carla Medalia, Health Insurance Coverage in the United States: 2014, United States Census Bureau, September 2015.

women, Medicaid has guaranteed that they have access to comprehensive range of services including birth control, maternity care, prescription drugs, hospitalization, long-term care. In this manner, Medicaid addresses women's major health needs throughout their lives.

The Medicaid statute is based on the due process of law when considering who is eligible to receive services and who can provide them. Moreover, Medicaid law recognizes that not all providers will take Medicaid patients. Typically, because the reimbursement rate is lower than in Medicare or private insurance, providers that will see Medicaid patients are not always available. Accordingly, the law specifically allows women to seek care from any provider that will take the reimbursement offered by the state for that particular service. This is called the "freedom of choice" provision, and it is a central piece to the Medicaid program.

The role Planned Parenthood plays in providing critical and essential health care to millions of women cannot be overstated. Our country would face a major public health crisis if Planned Parenthood was excluded as a Medicaid provider. The Guttmacher Institute estimates that 20 million low income women need publically funded contraception care.[3] Accordingly, there is a significant need for comprehensive reproductive health care for millions of women who rely on publicly-funded health care, and the evidence shows that Planned Parenthood greatly fills this need. Excluding Planned Parenthood from the Medicaid program would dramatically impact access to such services for millions.

Planned Parenthood serves a greater share of these safety-net contraceptive clients than any other type of provider. As the Guttmacher Institute has found:

> "[a]lthough Planned Parenthood health centers comprise 10 percent of publicly supported safety-net family planning centers, they serve 36 percent of clients who obtain publicly supported contraceptive services from such centers…
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> In two-thirds of the 491 counties in which they are located, Planned Parenthood health centers serve at least half of all women obtaining contraceptive care from safety-net health centers. In one-fifth of the counties in which they are located, Planned Parenthood sites are the sole safety-net family planning center. Planned Parenthood offices served about half the needy women in two-thirds of the counties where they have offices."[4]

The facts establish that, in many instances, Planned Parenthood is the sole safety-net provider. They also establish that women vote with their feet, and when they have the option to choose

[3] Guttmacher Institute, Publicly Funded Family Planning Services in the United States, July 2015, *available at http://www.guttmacher.org/pubs/fb_contraceptive_serv.html*.

[4] Jennifer Frost and Kinsey Hasstedt, Quantifying Planned Parenthood's Critical Role In Meeting The Need For Publicly Supported Contraceptive Care, September 8, 2015, Health Affairs Blog, *available at: http://healthaffairs.org/blog/2015/09/08/quantifying-planned-parenthoods-critical-role-in-meeting-the-need-for-publicly-supported-contraceptive-care/*.

providers, they choose Planned Parenthood. They trust Planned Parenthood and the high-quality health care they provide.

This summer a series of heavily edited and manipulated videos were released in order to malign Planned Parenthood. Forensic experts have established that these videos were heavily edited and manipulated to distort and misrepresent conversations that occurred. And although no charges have been levied against Planned Parenthood for any wrong-doing, several states are once again reviving a 15-year effort to exclude Planned Parenthood from Medicaid programs. But as these states have time and again failed in these efforts to exclude Planned Parenthood, the bills at issue today would provide them the carte blanche to exclude providers just because they do not like them for ideological reasons.

What would happen if Planned Parenthood was defunded for all its family planning services for Medicaid-eligible women? Take Texas as an example. In recent years, Texas decided to refuse federal Medicaid funds for the state family planning program in order to exclude Planned Parenthood from the network. As a result of this exclusion, other clinics have faced a deluge of patients to overcome the lack of providers. Other providers simply could not handle the new patients and many women simply dropped out of the programs. Medicaid claims dropped 26 percent and contraceptive claims dropped 54%. Women are no longer getting care at the same rate that they were before Texas restructured its family planning program to exclude Planned Parenthood.[5]

Other federal-state heath programs are no more prepared than Texas to fill the gaps that would be left if Planned Parenthood is excluded from the Medicaid programs. For example, the Title X family planning program (which supports free-standing clinics, county health departments, and some Planned Parenthood offices, for example) cannot replace the Medicaid funds that could be lost if these bills are enacted. While Title X offers critical access to women in need of family planning services, it makes up 10% of the total public expenditures for family planning services.[6] Additionally, Title X funding is under severe attack, just this summer the House Appropriations Committee voted just this summer to totally defund this program.

Nor can doctors in private practice fill the gap that would be left if Planned Parenthood is excluded from the Medicaid program. Only about 2 million women of the over 19 million who needed publicly supported contraceptive services were provided by private providers who take Medicaid.[7]

In addition, Community Health Centers (CHCs) are often cited as a place women can go to get family planning services. Let's be realistic. CHCs provide a wide range of services for the whole

[5] Texas Health and Human Services Commission, Texas Women's Health Program: Savings and Performance Reporting, (Jan. 2015), *http://www.hhsc.state.tx.us/reports/2015/tx-womens-health-program-rider-44-report.pdf*.
[6] Guttmacher Institute, Publicly Funded Family Planning Services in the United States, July 2015, *http://www.guttmacher.org/pubs/fb_contraceptive_serv.html*.
[7] Jennifer J. Frost, et al. Contraceptive Needs and Services, 2010, Guttmacher Institute, July 2013.

family, from infant's services to home health for the elderly. While CHCs have seen growth nationwide since the passage of the Affordable Care Act, they cannot keep up with demand as it is.[8] For every patient served at a CHC, nearly three go without access to primary health care services.[9] Moreover, CHCs simply are not set up to offer the same comprehensive reproductive health care that is provided by Planned Parenthood. While CHCs are required to provide family planning services, studies have shown that these services can be limited and variable in quality.[10]

These bills before the Committee today purport to ensure that Medicaid funds do not go to providers that have violated the law. But, the reality is that there are already laws and mechanisms in place to make sure that is the case. Instead, these bills would give states an unprecedented ability to deny Medicaid enrollees from getting the health care services they need from their trusted health care provider. We have already seen how quickly some state officials are willing to act on such a suspicion when it comes to women's reproductive health. It is the women that these providers serve that will be the losers if these bills are enacted.

[8] Sara Rosenbaum, Planned Parenthood, Community Health Centers, And Women's Health: Getting The Facts Right, Health Affairs, (Sept. 2, 2015), *http://healthaffairs.org/blog/2015/09/02/planned-parenthood-community-health-centers-and-womens-health-getting-the-facts-right/.*
[9] *Id.*
[10] Susan Wood, et al., *Scope of Family Planning Services Available in Federally Qualified Health Centers*, 89 Contraception 85 (88) (2014).