

No. 23-1275

IN THE

Supreme Court of the United States

EUNICE MEDINA, in her official capacity as Interim
Director, South Carolina Department of Health and
Human Services,

Petitioner,

v.

PLANNED PARENTHOOD SOUTH ATLANTIC, et al.,

Respondents.

JOINT APPENDIX

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TABLE OF CONTENTS

Complaint
U.S. District Court for District of South Carolina
Case No. 3:18-cv-2078
Filed July 27, 2018..... 1

Declaration of Jenny Black
in Support of Plaintiffs’ Motion for Temporary
Restraining Order and Preliminary Injunction
U.S. District Court for District of South Carolina
Case No. 3:18-cv-02078
Filed July 30, 2018..... 18

Declaration of Julie Edwards
in Support of Plaintiffs’ Motion for Temporary
Restraining Order and Preliminary Injunction
U.S. District Court for the District of South Carolina
Case No. 3:18-cv-02078
Filed July 30, 2018..... 29

Affidavit of Nancy Sharpe
U.S. District Court for District of South Carolina
Case No. 3:18-cv-02078
Filed August 13, 2018 35

Affidavit of Erin Boyce
U.S. District Court for District of South Carolina
Case No. 3:18-cv-02078
Filed August 13, 2018 38

Planned Parenthood South Atlantic’s Notice of
Appeal to SCDHHS Division of Appeals and
Hearings
Dated August 13, 2018..... 42

Supplemental Declaration of Jenny Black in Further Support of Plaintiffs’ Motion for Preliminary Injunction U.S. District Court for District of South Carolina Case No. 3:18-cv-02078 Filed August 20, 2018	45
Excerpts from Preliminary Injunction Hearing Transcript U.S. District Court for District of South Carolina Conducted August 23, 2018	50
Scheduling Order SCDHHS Division of Appeals and Hearing Dated May 28, 2019	59
Supplemental Declaration of Julie Edwards U.S. Court of Appeals for the Fourth Circuit Case No. 21-1043 Filed December 28, 2021.....	64

2. Plaintiff Planned Parenthood South Atlantic (“PPSAT”) provides critically needed family planning and preventive health services to thousands of women, men, and young adults each year in underserved areas of South Carolina. South Carolina does not pay for abortions except in extremely narrow circumstances, and reimbursement for Medicaid services is not at issue in this case.

3. As is required by federal law, patients insured through Medicaid, such as Plaintiff Julie Edwards, may seek family planning and other preventive health services from any willing provider who is qualified to provide the services in question and have those services covered by Medicaid.

4. This action challenges the unlawful and politically motivated decision by the South Carolina Department of Health and Human Services (DHHS), at the direction of Governor McMaster, to terminate PPSAT’s status as a qualified Medicaid provider solely on the basis that PPSAT provides safe, legal abortion *outside* the Medicaid program. Indeed, Governor McMaster has proudly stated that his efforts to exclude PPSAT from Medicaid are for the *purpose* of forcing PPSAT to cease providing abortion. Tim Smith, *Gov. Henry McMaster Says He Would Reject \$34 Million in Federal Aid to Stop Abortion*, Greenville News, May 29, 2018, <https://www.greenvilleonline.com/story/news/local/south-carolina/2018/05/29/gov-henry-mcmaster-says-he-would-reject-federal-aid-stop-abortion/651245002/> (quoting the Governor, “I’ll continue to be a threat until they are gone”). And DHHS has expressed its position that the Executive Order “result[s] in abortion clinics no longer being qualified to provide family planning

services to South Carolina Medicaid beneficiaries.” Lauren Sausser, *McMaster Reverses Family Planning Cuts, Orders Medicaid to Drop Abortion Clinics*, Post & Courier (Charleston, S.C.), July 11, 2018, https://www.postandcourier.com/health/mcmaster-reverses-family-planning-cuts-orders-medicaid-to-drop-abortion/article_d27852e0-86b6-11e8-92f4-bba0480f4c5b.html.

5. Under clear judicial precedent, DHHS’s efforts are unlawful under both the Medicaid Act and the United States Constitution.

6. Defendant’s actions violate 42 U.S.C. § 1396a(a)(23) (“Medicaid freedom of choice provision”) because, by barring PPSAT from the Medicaid program, Defendant prevents their patients, including Plaintiff Julie Edwards, from receiving services from their qualified, willing provider of choice.

7. Defendant’s actions further impermissibly treat PPSAT, its staff, and its patients differently than other Medicaid providers and their patients, and penalize PPSAT for the provision of constitutionally-protected abortion services without adequate justification, in violation of the Fourteenth Amendment.

8. Unless Defendant is enjoined from enforcing his termination letter, PPSAT’s patients, including Plaintiff Julie Edwards, will lose their provider of choice, will find their family planning services interrupted, and in many cases will be left with reduced access to care.

9. Plaintiffs seek declaratory and injunctive relief to protect patients' access to—and PPSAT's ability to provide—these critical medical services.

JURISDICTION AND VENUE

10. Subject-matter jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 1343.

11. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

12. Venue in this judicial district is proper under 28 U.S.C. § 1391.

THE PARTIES

I. Plaintiffs

A. PPSAT

13. For four decades, PPSAT (and its predecessor organizations) has been a trusted Medicaid provider for thousands of South Carolinians. PPSAT sues on behalf of itself and its patients.

14. PPSAT offers patients, including those insured through the Medicaid program, a range of family planning and other reproductive health services and other preventive care at two health centers in South Carolina: in Charleston and Columbia. This care includes well-woman exams; contraception (including long-acting reversible contraception or "LARC") and contraceptive counseling; hormonal counseling; screening for breast cancer; screening and treatment for cervical cancer; screening and treatment for sexually transmitted

infections (“STIs”), including human papillomavirus (“HPV”) vaccines; pregnancy testing and counseling; physical exams; and screening for conditions such as diabetes, depression, anemia, cholesterol, thyroid disorders and high blood pressure. Although PPSAT offers abortion services at a limited number of health centers, South Carolina Medicaid does not cover abortions except in rare circumstances where required by federal law.

B. Patient Plaintiff

15. Plaintiff Julie Edwards, a South Carolina resident and Medicaid patient, obtains reproductive health care from PPSAT and desires to continue to do so. She sues on behalf of herself and as a representative of a class of South Carolina Medicaid beneficiaries who obtain, or who seek to obtain, covered health care services from PPSAT.

II. Defendant

16. Joshua Baker, M.D., is Director of DHHS, which is the state agency that administers South Carolina’s Medicaid program, and has issued a termination notice to PPSAT. Defendant Baker is sued in his official capacity, as are his employees, agents, and successors in office.

THE MEDICAID PROGRAM

III. The Medicaid Statute

17. The Medicaid program, established under Title XIX of the Social Security Act of 1935, 42 U.S.C. § 1396 *et seq.*, pays for medical care for eligible needy people. A state may elect whether or not to participate; if it chooses to do so, it must comply with

the requirements imposed by the Medicaid statute and by the Secretary of the U.S. Department of Health and Human Services (“HHS”) in her administration of Medicaid. *See generally* 42 U.S.C. § 1396a(a)(1)–(83).

18. To receive federal funding, a participating state must develop a “plan for medical assistance” and submit it to the Secretary of HHS for approval. 42 U.S.C. § 1396a(a). As part of its plan, a state may contract with health plans, or Managed Care Organizations (“MCOs”), to coordinate health care for its Medicaid beneficiaries, subject to requirements set by federal law. 42 U.S.C. § 1396b(m).

19. Among other requirements, the State plan must provide that: “[A]ny individual eligible for medical assistance . . . may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required . . . who undertakes to provide him such services” 42 U.S.C. § 1396a(a)(23)(A).

20. Congress has singled out family planning services for special additional protections to ensure freedom of choice, specifically providing that, with respect to these services and with certain limited exceptions not applicable here, “enrollment of an individual eligible for medical assistance in a primary care case-management system . . . , a medicaid managed care organization, or a similar entity shall not restrict the choice of the qualified person from whom the individual may receive services” 42 U.S.C. § 1396a(a)(23)(B); see also 42 C.F.R. § 431.51(b)(2) (implementing requirement).

21. The federal government reimburses the state of South Carolina 90% of expenditures attributable to offering, arranging, and furnishing family planning services and supplies in Medicaid. 42 U.S.C. § 1396b(a)(5).

22. Although states are prohibited from using federal funds to reimburse providers for abortion generally, they are required to reimburse for abortions in cases of rape, incest, or life-threatening medical situations. *See* Pub. L. No. 115-141, div. H, tit. V, § 506–507 (2018) (Hyde Amendment, limiting federal funding for abortion to these circumstances); Letter from Sally K. Richardson, Dir., Ctr. for Medicaid & State Operations, to State Medicaid Dirs. (Feb. 12, 1998), <https://www.medicaid.gov/Federal-Policy-Guidance/downloads/smd021298.pdf> (reaffirming that “all abortions covered by the Hyde Amendment, including those abortions related to rape or incest, are medically necessary services and are required to be provided by states participating in the Medicaid program”).

EFFORTS TO EXCLUDE PPSAT FROM MEDICAID

23. Since taking office in 2017, Governor McMaster has vowed to exclude PPSAT and other abortion providers from all publicly-subsidized health care networks in an effort to eliminate access to safe and legal abortion in South Carolina. Smith, *supra* (quoting the Governor condemning Planned Parenthood for performing abortions and vowing to “continue to be a threat until they are gone”).

24. On August 24, 2017, the Governor directed DHHS

to take any and all necessary actions, as detailed herein and to the extent permitted to law, to cease providing State or local funds, whether via grant, contract, state-administered federal funds, or any other form, to any physician or professional medical practice affiliated with an abortion clinic and operating concurrently with and in the same physical, geographic location or footprint as an abortion clinic.

S.C. Exec. Order No. 2017-15 (Aug. 24, 2017), attached to Decl. of Jenny Black in Supp. of Pls.' Mot. for TRO & Prelim. Inj. (hereinafter "Black Decl.") as Exhibit A. On July 5, 2018, "to prevent taxpayer dollars from directly or indirectly subsidizing abortion providers like Planned Parenthood," the Governor vetoed over fifteen million dollars in family planning funds, none of it directed to abortion. Letter from Henry McMaster, Governor, State of S.C., to S.C. General Assembly (July 5, 2018), attached to Black Decl. as Exhibit B.

25. A week later, on July 13, he issued Executive Order 2018-21, which directed DHHS to divert other funds to continue the Family Planning program whose funding he had just cut. In this same order, the Governor also directed DHHS to "deem" abortion clinics and any affiliated physicians "unqualified," and to "immediately terminate them upon due notice and deny any future such provider enrollment applications for the same." S.C. Exec. Order No. 2018-21 (July 13, 2018), attached to Black Decl. as Exhibit C.

26. On that same day, DHSS notified PPSAT that “[t]he Governor’s actions result in Planned Parenthood no longer being qualified to provide services to Medicaid beneficiaries” and that it was terminating PPSAT *effective immediately*. Termination Letter from Amanda Q. Williams, Health Servs. Acting Program Dir., DHHS Divs. of Health Servs., Operations & Clinical Quality to PPSAT (July 13, 2018), attached to Black Decl. as Exhibit D. A department spokesperson also stated to media that the Governor’s actions “result in abortion clinics no longer being qualified to provide family planning services to South Carolina Medicaid beneficiaries.” *SC Gov to Medicaid: Cover Medical Care, Not Abortion Clinics*, Charlotte Observer, July 16, 2018, <https://www.charlotteobserver.com/news/article214955445.html>.

THE IMPACT OF DEFENDANT’S ACTIONS ON PPSAT AND ITS PATIENTS

27. Because of DHSS’s actions in terminating it from Medicaid, effective immediately, because it provides lawful and constitutionally-protected abortion services, PPSAT has been forced to stop providing basic and preventative health care services to the over three hundred Medicaid beneficiaries who rely on it each year for family planning and other preventive care, and has been forced to instead turn these patients away to attempt to seek services at other Medicaid providers. Every day that this continues, both PPSAT and its patients are irreparably harmed.

28. To be eligible for Medicaid-covered family planning services, an individual must make under

\$24,000 a year if living alone or \$32,000 a year if supporting a dependant. DHHS, Medicaid Eligibility Guidelines (2014), <https://www.scdhhs.gov/income-limits>. For non-family planning services, she must meet even stricter requirements. *Id.* These restrictions are among the tightest in the country. Liv Osby, *Could Health Care Bill Set Stage for 'Medicaid Hunger Games' in SC? A New Report Thinks So*, The State (Charleston, S.C.), June 26, 2017, <https://www.thestate.com/living/health-fitness/article158231384.html>.

29. South Carolina also has a relatively large Medicaid patient population, as well as a relatively low rate of spending per beneficiary. *Id.* Its population also has higher rates of key health problems, as compared to the national population. Kaiser Family Foundation, *Key Data on Health and Health Coverage in South Carolina* (2016), <https://www.kff.org/disparities-policy/fact-sheet/key-data-on-health-and-health-coverage-in-south-carolina/>. These factors make it all the more critical to public health for the state to maintain the fullest possible network of willing, qualified providers to ensure patients get the care they need.

30. The need for publicly supported family planning services, in particular, is great in South Carolina. In 2010, 50% of pregnancies in South Carolina were unintended. Guttmacher Institute, *State Facts About Unintended Pregnancy: South Carolina* (2014), <https://www.guttmacher.org/fact-sheet/state-facts-about-unintended-pregnancy-south-carolina#9a>. South Carolina's unintended pregnancy rate in 2010 was forty-six per 1,000 women aged

fifteen to forty-four, and forty-eight per 1,000 women aged fifteen to nineteen in 2013.

31. Moreover, South Carolina faces high, and rising, rates, particularly among teenagers, for various STIs including syphilis and HIV/AIDS. Maayan Schechter, *Sexually Transmitted Diseases Up in SC. Agency Wants Almost \$1 Million to Cut Cases*, The State (Charleston, S.C.), Jan. 26, 2018, <https://www.thestate.com/news/politics-government/politics-columns-blogs/the-buzz/article196625184.html>; Mary Katherine Wildeman, *Syphilis 'Not a Disease of the Past': STD Has Been on the Rise in South Carolina for Years*, Post & Courier (Charleston, S.C.), June 11, 2017, https://www.postandcourier.com/features/syphilis-not-a-disease-of-the-past-std-has-been/article_df3f0f42-3be8-11e7-a341-1b6b37fbe274.html; Ariel Gilreath, *South Carolina Ranks Among Top STD Rates in Nation*, Index-Journal (Greenwood, S.C.), Apr. 18, 2017, http://www.indexjournal.com/news/south-carolina-ranks-among-top-std-rates-in-nation/article_e8e014db-2c8b-5b7c-91bf-6482535ffad0.html; Zach Fox, *Rise in Teen STD Rate in S.C. Concerns Health Experts*, GoUpstate.com (Spartanburg, S.C.), Feb. 11, 2017, <http://www.goupstate.com/news/20170211/rise-in-teen-std-rate-in-sc-concerns-health-experts>.

32. PPSAT helps meet the need in South Carolina for publicly supported family planning and other health services. Both of PPSAT's health centers in South Carolina are located in high-population areas with formally-recognized provider shortages. Thirty percent of the population of South Carolina lives in U.S. Department of Health and Human Services-designated Primary Care Health Professional

Shortage Areas (HPSAs)—areas in which primary care professionals are practically inaccessible. Robin Rudowitz, et al., Kaiser Family Foundation, *Factors Affecting States' Ability to Respond to Federal Medicaid Cuts and Caps: Which States Are Most At Risk?* (2017), <https://www.kff.org/medicaid/issue-brief/factors-affecting-states-ability-to-respond-to-federal-medicaid-cuts-and-caps-which-states-are-most-at-risk/>. Both the Columbia health center and the Charleston health center provide care in population-based HPSAs. The low-income populations of both Richland County (where the Columbia health center is located) and Charleston County (where the Charleston health center is located) are designated as HPSA population groups, indicating a shortage of providers specifically for that population. Health Res. & Servs. Admin., Health Professional Shortage Area (HPSA) HPSA Detail—Primary Care, https://ersrs.hrsa.gov/ReportServer?/HGDW_Reports/BCD_HPSA/BCD_HPSA_H1_Detail_Quick_Access_HTML&rc:Toolbar=false (last visited July 18, 2018).

33. Even if other providers were available, patients insured through Medicaid choose to receive their reproductive health care from PPSAT based on a number of factors that are generally not available at other providers. With its evidence-based practices and up-to-date technology, PPSAT is known as a provider of high-quality medical care. Many patients also turn to PPSAT for their reproductive health care because they are concerned about their privacy and fear being judged by other providers. *See* Schechter, *supra* (acting Health and Environmental Control director Dave Wilson noting that patients often avoid

seeking STD-related care from their primary care provider).

34. In addition, many low-income patients have unique scheduling constraints because they are juggling inflexible work schedules, childcare obligations, transportation challenges, and lack of childcare resources. To ensure that these patients have access to family planning services, PPSAT offers extended hours and walk-in and same-day appointments, as well as same-day birth control shots, birth control implants, and intrauterine devices, so that patients only need to make one trip to a health center to obtain their contraceptive method of choice. PPSAT also makes interpreting services available to non-English speaking patients at all times.

35. Defendant's actions will deprive PPSAT's Medicaid patients, including Ms. Edwards, of access to PPSAT's high-quality, specialized care.

36. PPSAT's patients insured through Medicaid, including Ms. Edwards, rely on PPSAT as the provider they can turn to for critical medical care and for prompt, efficient, and compassionate services. If PPSAT is eliminated from Medicaid, these patients will be prevented from receiving services from their provider of choice, will have their health care interrupted, and may encounter difficulties finding alternative care.

37. Without Medicaid reimbursements, and without other financial support to fill that gap, PPSAT may not be able to keep providing services in the same manner it has been and may need to reduce health center hours. Such changes would affect not

only its Medicaid patients but all of its patients, many of whom rely on its after-hours availability.

38. In addition, turning away patients insured through the Medicaid program fundamentally defeats the core of PPSAT's mission: to provide care for underserved women and men who need its help staying healthy and planning their families and future.

39. Defendant's stated positions also violate his obligations under the Medicaid Act to cover medically necessary abortions (i.e., in case of rape, incest, or life-threatening medical emergencies), thereby endangering Medicaid enrollees in these situations.

40. Plaintiffs have no adequate remedy at law.

CLASS ALLEGATIONS

41. This lawsuit is properly maintained as a class action under Federal Rules of Civil Procedure 23(b)(1)(B) and (b)(2).

42. The class consists of all South Carolina Medicaid beneficiaries who obtain, or who seek to obtain, covered health care services from PPSAT.

43. Although the precise size of the class is unknowable, as alleged in Paragraphs 1–42 above, PPSAT provides health care services to over three hundred South Carolina Medicaid patients annually. Therefore, the approximate size of the class is over three hundred individuals.

44. Ms. Edwards is an adequate class representative because she, like other members of the class, is a South Carolina resident and Medicaid patient who obtains her reproductive health care from

PPSAT and desires to continue to do so. Unless Defendant is enjoined, Ms. Edwards and the other class members will suffer the same injury and resulting harm: they will be unable to obtain health care services at the provider of their choice. As a result, many of PPSAT's Medicaid patients, including Ms. Edwards and other class members, who already have few or no alternative options, will find it difficult or impossible to access the high-quality reproductive and other health care services they need.

45. Defendant's actions—terminating PPSAT from the South Carolina Medicaid program—applies generally to the class, such that both declaratory and injunctive relief is appropriate for all members of the class.

46. Class members raise the same questions of law, including whether Defendant's termination of PPSAT from South Carolina's Medicaid violates the Medicaid freedom-of-choice provision, 42 U.S.C. § 1396a(a)(23), and the Fourteenth Amendment of the United States constitution, such that, as a practical matter, adjudication of their claims would be dispositive of the interests of the other class members.

CLAIMS FOR RELIEF

CLAIM I—MEDICAID ACT (TITLE XIX OF SOCIAL SECURITY ACT)

47. Plaintiffs hereby incorporate Paragraphs 1 through 46 above.

48. Defendant's actions violate Section 1396a(a)(23) of Title 42 of the United States Code by denying PPSAT's patients, including Ms. Edwards,

the right to choose any willing, qualified health care provider in the Medicaid program.

**CLAIM II—FOURTEENTH AMENDMENT
EQUAL PROTECTION**

49. Plaintiffs hereby incorporate Paragraphs 1 through 46 above.

50. Defendant's actions violate the rights of PPSAT, its staff, and its patients (including Ms. Edwards) by singling them out for unfavorable treatment without adequate justification.

**CLAIM III—FOURTEENTH AMENDMENT
PENALIZING CONSTITUTIONALLY
PROTECTED ACTIVITY**

51. Plaintiffs hereby incorporate Paragraphs 1 through 46 above.

52. Defendant's action penalizes PPSAT for its constitutionally protected activity, without adequate justification.

RELIEF REQUESTED

WHEREFORE, Plaintiffs request that this Court:

53. Order that this action be maintained as a class action pursuant to Federal Rule of Civil Procedure 23(b)(1)(B) and/or 23(b)(2);

54. Issue a declaratory judgment that Defendant's actions violate the Medicaid Act;

55. Issue a declaratory judgment that Defendant's actions violate the Fourteenth Amendment;

56. Issue temporary, preliminary, and permanent injunctive relief, without bond, enjoining Defendant

and his agents, employees, appointees, delegates, or successors from terminating, or threatening to terminate PPSAT from South Carolina Medicaid;

57. Grant Plaintiffs' attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988; and,

58. Grant such further relief as this Court deems just and proper.

Dated: July 27, 2018

Respectfully Submitted:

/s/ Malissa Burnette

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**Pro hac vice motions to be filed*

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

PLANNED PARENTHOOD	}	
SOUTH ATLANTIC, et al.,	}	
	}	
Plaintiffs,	}	Case No.: 3:18-
	}	AV-99999
vs	}	
	}	
JOSHUA BAKER,	}	
	}	
Defendant.	}	

**DECLARATION OF JENNY BLACK IN
SUPPORT OF PLAINTIFFS’ MOTION FOR
TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Jenny Black declares the following:

1. I am President and CEO of Plaintiff Planned Parenthood South Atlantic (PPSAT). I am responsible for the management of this organization and therefore am familiar with our operations and finances, including the services we provide and the communities we serve. I submit this declaration in support of Plaintiffs’ Motion for a Temporary Restraining Order and Preliminary Injunction.

2. As explained more fully below, on July 13, 2018, the South Carolina Department of Health and Human Services (“DHHS”) notified PPSAT that it was terminating PPSAT’s Medicaid contract immediately, at Governor McMaster’s directive, solely because PPSAT provides abortions. Because of this termination PPSAT has been forced to stop

providing basic and preventative health care services to the over three hundred Medicaid beneficiaries who rely on us each year for family planning and other preventive care, and instead have these patients attempt to seek services at other Medicaid providers. Every day that this continues, both PPSAT and its patients are irreparably harmed.

PPSAT and Its Participation in the South Carolina
Medicaid Program

3. PPSAT is a not-for-profit corporation, headquartered in North Carolina. PPSAT and its predecessor organizations have provided Medicaid care in South Carolina for four decades, both before and after South Carolina moved to a managed care network. We provide family planning services and other preventive care to patients insured through the Medicaid program at two health centers in South Carolina: in Charleston and Columbia.

4. PPSAT and its predecessor organizations have provided care in South Carolina through the Medicaid program for forty years.

5. We offer our patients, including patients insured through the Medicaid program, a range of family planning and reproductive health services and other preventive care at these centers. This care includes well-woman exams; contraception (including long-acting reversible contraception or “LARC”) and contraceptive counseling; hormonal counseling; screening for breast cancer; screening and treatment for cervical cancer; screening and treatment for sexually transmitted infections (“STIs”), including human papillomavirus (“HPV”) vaccines; pregnancy testing and counseling; physical exams; and screening

for conditions such as diabetes, depression, anemia, cholesterol, thyroid disorders and high blood pressure.

6. Although we also offer abortion services at these centers, South Carolina Medicaid does not cover abortions except in rare circumstances where coverage is required by federal law: rape, incest and threats to the life of the woman.

7. In 2017, PPSAT provided over 450 health care visits for over three hundred women, men, and teens insured through Medicaid in Charleston and Columbia.

8. Patients insured through Medicaid choose PPSAT based on a number of advantages that are generally not available at other providers. With its specialization in family planning, evidence-based practices, and up-to-date technology, PPSAT is known as a provider of high-quality medical care.

9. PPSAT is also known as a provider of nonjudgmental, culturally sensitive care related to sexuality, which can be a sensitive topic for patients, particularly patients who come from cultures where sexuality is an especially taboo subject. Many individuals who receive other health care through community care providers or other Medicaid providers choose to have a separate provider such as PPSAT for their reproductive health care because they are concerned about their privacy and because they fear being judged by other providers. This factor is important, because patients may forego family

planning care altogether if they do not find a provider that makes them feel comfortable.¹

10. Patients also choose PPSAT and other Planned Parenthood providers because we devote time and resources to patient education, particularly about how to use contraception effectively and how to avoid, detect, and treat STIs.

11. In addition, many low-income patients have unique scheduling constraints because they are juggling inflexible work schedules, childcare obligations, transportation challenges, and lack of childcare resources. To ensure that these patients have access to family planning services and other preventive care PPSAT offers extended hours and flexible scheduling, including that it offers its full range of services to walk-in patients, as well as offering same-day appointments. This flexibility is especially important for patients receiving Depo-Provera injections (which must be given every ninety days) or starting a new form of birth control, as well as for patients who are having symptoms that make them concerned they may have a problem that requires prompt attention. We get same-day or walk-

¹ Tex. Policy Evaluation Project, The Univ. of Tex. at Austin Population Research Ctr., *Barriers to Family Planning Access in Texas: Evidence from a Statewide Representative Survey* at 1 (May 2015) [hereinafter “Barriers to Family Planning Report”], http://www.utexas.edu/cola/txpep/_files/pdf/TxPEP-Research_Brief_Barriers-to-Family-Planning-Access-in-Texas_May2015.pdf (30% of women reported, as a barrier to obtaining reproductive health services, that they “[d]on’t feel comfortable with healthcare providers”).

in patients regularly. In addition, PPSAT spaces patient appointments so as to minimize wait times.

12. PPSAT also offers the birth control shot, the birth control implant and IUDs same-day, so that patients only need to make one trip to a PPSAT health center to obtain their contraceptive method of choice. We have heard from patients that other providers often require patients to have two separate health care center visits to obtain IUDs, as much as several weeks apart. This can be a very significant barrier to care.

13. Because language also can be a barrier to care, PPSAT has interpreting services available to non-English speaking patients at all times.

Defendant's Attempts to Terminate PPSAT from the Medicaid Program

14. Since taking office in 2017, Governor McMaster has vowed to exclude PPSAT and other abortion providers from all publicly-subsidized health care networks in an effort to eliminate access to safe and legal abortion in South Carolina.²

15. On August 24, 2017, the Governor directed DHHS

² Tim Smith, *Gov. Henry McMaster Says He Would Reject \$34 Million in Federal Aid to Stop Abortion*, Greenville News, May 29, 2018, <https://www.greenvilleonline.com/story/news/local/south-carolina/2018/05/29/gov-henry-mcmaster-says-he-would-reject-federal-aid-stop-abortion/651245002/> (quoting the Governor condemning Planned Parenthood for performing abortions and vowing to “continue to be a threat until they are gone”).

to take any and all necessary actions, as detailed herein and to the extent permitted to law, to cease providing State or local funds, whether via grant, contract, state-administered federal funds, or any other form, to any physician or professional medical practice affiliated with an abortion clinic and operating concurrently with and in the same physical, geographic location or footprint as an abortion clinic.³

On July 5, 2018, “to prevent taxpayer dollars from directly or indirectly subsidizing abortion providers like Planned Parenthood,” the Governor vetoed over 15 million dollars in family planning funds, none of it directed to abortion.⁴

16. A week later, on July 13, he issued Executive Order 2018-21, which directed DHHS to divert other funds to continue the Family Planning program whose funding he had just cut. In this same order, the Governor also directed DHHS to “deem” abortion clinics and any affiliated physicians “unqualified” and to “immediately terminate them upon due notice and deny any future such provider enrollment applications for the same.”⁵

17. On that same day, the Department notified PPSAT that “[t]he Governor’s actions result in Planned Parenthood no longer being qualified to

³ S.C. Exec. Order No. 2017-15 (Aug. 24, 2017), attached hereto as Exhibit A.

⁴ Letter from Henry McMaster, Governor, State of S.C., to S.C. General Assembly (July 5, 2018), attached hereto as Exhibit B.

⁵ S.C. Exec. Order No. 2018-21 (July 13, 2018), attached hereto as Exhibit C.

provide services to Medicaid beneficiaries” and that it was terminating PPSAT effective immediately.⁶ The Department did not claim that PPSAT had provided poor-quality Medicaid services, or was unqualified for any reason other than its provision of safe and legal abortion services.

Likely Effect of Termination on South Carolina
Patients

18. Because DHSS (at Governor McMasters’ directive) terminated PPSAT’s Medicaid contract effectively immediately, PPSAT has already been forced to stop providing services through the Medicaid program, and instead have these patients attempt to seek services at other Medicaid providers. Without injunctive relief, it will continue to be unable to treat these patients, including Ms. Edwards. This result exposes PPSAT’s Medicaid patients, who are already in a vulnerable position, to significant harms. Indeed, making phone calls attempting to find places to refer patients has confirmed our fears that it may be very difficult, if not impossible, for our patients insured through Medicaid to find other equivalent providers, as many providers have long delays before an appointment can be scheduled, if they are accepting new Medicaid patients at all.

19. To be eligible for Medicaid-covered family planning services, an individual must make under \$24,000 a year if living alone or \$32,000 a year if

⁶ Termination Letter from Amanda Q. Williams, Health Servs. Acting Program Dir., DHHS Divs. Of Health Servs., Operations & Clinical Quality to PPSAT (July 13, 2018), attached hereto as Exhibit D.

supporting a dependent.⁷ These restrictions are among the tightest in the country.⁸ Thus the patients who rely on us for Medicaid-reimbursed care have limited resources to search extensively for providers or travel far for care.

20. South Carolina also has a relatively large Medicaid patient population, as well as relatively low rate of spending per beneficiary.⁹ Its population also has higher rates of key health problems, as compared to the national population.¹⁰ These factors make it all the more critical to public health for the state to maintain the fullest possible network of willing, qualified providers to ensure patients get the care they need.

21. The need for publicly supported family planning services, in particular, is great in South Carolina. In 2010, 50% of pregnancies in South Carolina were unintended.¹¹ South Carolina's unintended pregnancy rate in 2010 was forty-six per

⁷ DHHS, Medicaid Eligibility Guidelines (2014), <https://www.scdhhs.gov/income-limits>.

⁸ Liv Osby, *Could Health Care Bill Set Stage for 'Medicaid Hunger Games' in SC? A New Report Thinks So*, The State (Charleston, S.C.), June 26, 2017, <https://www.thestate.com/living/health-fitness/article158231384.html>.

⁹ *Id.*

¹⁰ Kaiser Family Foundation, *Key Data on Health and Health Coverage in South Carolina (2016)*, <https://www.kff.org/disparities-policy/fact-sheet/key-data-on-health-and-health-coverage-in-south-carolina/>.

¹¹ Guttmacher Institute, *State Facts About Unintended Pregnancy: South Carolina (2014)*, <https://www.guttmacher.org/fact-sheet/state-facts-about-unintended-pregnancy-south-carolina#9a>.

1,000 women aged fifteen to forty-four, and forty-eight per 1,000 women aged fifteen to nineteen in 2013. Moreover, South Carolina faces high, and rising, rates, particularly among teenagers, for various STIs including syphilis and HIV/AIDS.¹²

22. PPSAT is an important piece of the provider network struggling to meet these needs.

23. As explained above, PPSAT's model is designed to reduce barriers to care for patients with limited resources—for example, by emphasizing nonjudgmental communication and by offering care on a same-day basis, over extended hours, and with interpreting service available for patients who do not speak English. More generally, having specialized sexual health care providers is important because many patients are uncomfortable discussing sexual health issues with their primary care providers.

¹² Maayan Schechter, *Sexually Transmitted Diseases Up in SC. Agency Wants Almost \$1 Million to Cut Cases*, The State (Charleston, S.C.), Jan. 26, 2018, <https://www.thestate.com/news/politics-government/politics-columns-blogs/the-buzz/article196625184.html>; Mary Katherine Wildeman, *Syphilis 'Not a Disease of the Past': STD Has Been on the Rise in South Carolina for Years*, Post & Courier (Charleston, S.C.), June 11, 2017, https://www.postandcourier.com/features/syphilis-not-a-disease-of-the-past-std-has-been/article_df3f0f42-3be8-11e7-a341-1b6b37f8e274.html; Ariel Gilreath, *South Carolina Ranks Among Top STD Rates in Nation*, Index-Journal (Greenwood, S.C.), Apr. 18, 2017, http://www.indexjournal.com/news/south-carolina-ranks-among-top-std-rates-in-nation/article_e8e014db-2c8b-5b7c-91bf-6482535ffad0.html; Zach Fox, *Rise in Teen STD Rate in S.C. Concerns Health Experts*, GoUpstate.com (Spartanburg, S.C.), Feb. 11, 2017, <http://www.goupstate.com/news/20170211/rise-in-teen-std-rate-in-sc-concerns-health-experts>.

24. Moreover, both of PPSAT's health centers in South Carolina are located in high-population areas with formally-recognized provider shortages. Thirty percent of the population of South Carolina lives in U.S. Department of Health and Human Services-designated Primary Care Health Professional Shortage Areas (HPSAs)—areas in which primary care professionals are practically inaccessible.¹³ Both the Columbia health center and the Charleston health center provide care in population-based HPSAs. The low-income populations of both Richland County (where the Columbia health center is located) and Charleston County (where the Charleston health center is located) are designated as HPSA population groups, indicating a shortage of providers specifically for that population.¹⁴

25. Every day that PPSAT is unable to continue providing services to patients insured through Medicaid, the women, men, and teens who rely on us for these services are being forced to end their established relationships and seek services elsewhere (if they are able to access equivalent care at all),

¹³ Robin Rudowitz, et al., Kaiser Family Foundation, *Factors Affecting States' Ability to Respond to Federal Medicaid Cuts and Caps: Which States Are Most At Risk?* (2017), <https://www.kff.org/medicaid/issue-brief/factors-affecting-states-ability-to-respond-to-federal-medicaid-cuts-and-caps-which-states-are-most-at-risk/>.

¹⁴ Health Res. & Servs. Admin., Health Professional Shortage Area (HPSA) HPSA Detail—Primary Care, https://ersrs.hrsa.gov/ReportServer?/HGDW_Reports/BCD_HPSA/BCD_HPSA_H1_Detail_Quick_Access_HTML&rc:Toolbar=false (last visited July 18, 2018).

leaving them without the health care provider of their choice.

26. Women and men who are unable to obtain family planning care, or encounter delays in obtaining it, can face devastating consequences, including undetected cancers and diseases. Delays in obtaining contraception will result in unintended pregnancies, which will either result in increased abortions or increased Medicaid births, at great expense to the state.

27. Without Medicaid reimbursements, we may not be able to keep providing services in the same manner we have been and may need to reduce hours at our health centers. Such changes would affect all of our patients, many of whom rely on our availability after business hours. Further, even if PPSAT is reinstated as a Medicaid provider some of our patients will undoubtedly remain confused about whether PPSAT is a Medicaid provider in good standing, and for that reason will not return to us as patients. Every day that PPSAT is forced to turn away patients this harm increases.

28. In addition to the loss of revenue, turning away Medicaid patients fundamentally defeats the core of our mission: to provide care for underserved women and men who need our help staying healthy and planning their families and future.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 26, 2018

/s/ Jenny Black
Jenny Black

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

PLANNED PARENTHOOD	}	
SOUTH ATLANTIC, et al.,	}	
	}	
Plaintiffs,	}	Case No. 3:18-
	}	AV-99999
vs	}	
	}	
JOSHUA BAKER,	}	
	}	
Defendant.	}	

**DECLARATION OF JULIE EDWARDS IN
SUPPORT OF PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Julie Edwards declares the following:

1. I am a 31-year old resident of Barnwell County, South Carolina, and a patient at Planned Parenthood's Columbia location.
2. I graduated from University of South Carolina College of Pharmacy, but I am currently unable to work because of my Type 1 diabetes and complications from it. I am mostly blind in one eye and have nerve damage in my feet as a result of sustained high blood sugar levels. I am insured through Medicaid.
3. Diabetes is a condition that causes a lot of other medical problems and places a lot of treatment burdens on the patient. I have already been hospitalized twice this year, once for an episode of

diabetic ketoacidosis and another for a hypoglycemic emergency. My life orbits around doctors' offices; I see an internist and five to seven specialists at any given time.

4. Because I have to see doctors so frequently, I am well aware of how limited provider options can be for patients insured through Medicaid. The hospital in Barnwell County shut down a couple of years ago so I have to go to the next county for specialist care. A number of my doctors are in Aiken, South Carolina, but health care providers there can barely take on patients. I have called doctors in the past who have told me they are accepting new patients, only to have them reverse themselves when they find out I have Medicaid. I feel judged for being poor and disabled, and after a while that can wear a person down.

5. The lack of available providers is especially difficult for me because as a result of my diabetes complications, I only feel comfortable driving near my town and as a rule I never drive at night. I have to rely on my mom, who lives over an hour away, to take me to and from all of my appointments. I often feel like I am trying to keep spinning plates in the air and that adding one more thing could cause it all to come crashing down.

6. The lack of available, high-quality providers applies to reproductive healthcare too. Before I became a patient at the Columbia Planned Parenthood, I tried twice to get my Mirena intrauterine device ("IUD") removed and replaced.

7. The first doctor I went to told me that she would not place a Mirena IUD because she believes it is an abortifacient; it is not. She offered to give me a

copper IUD, but I am not comfortable with some of the side effects of copper IUDs, and have been using Mirena IUDs since I was twenty.

8. This doctor also offered to refer me to counseling to cure bisexuality. I felt judged and marginalized, and it was traumatic to be told I should try to change this part of myself. I can see how getting treated like this would discourage some people from getting any medical care at all; I do not have a choice because my life depends on getting appropriate care for my diabetes, but if I did, I might avoid doctors after that experience.

9. I saw a second doctor for an annual well woman exam, including a pap smear and breast exam. I made plans with her to come back for another appointment to replace my IUD, but before the date of the IUD appointment, I received a call from her office telling me she was not part of the program she needed to be in to place IUDs for patients enrolled in Medicaid. I had never heard of this before and was confused about why I could not get the care I needed from her.

10. These barriers are especially frustrating because my medical condition makes it imperative that I have access to contraception to prevent pregnancy; my doctors have told me that my high blood pressure and high blood sugar mean it would be dangerous for me to try to carry a pregnancy to term. And because of my diabetes I cannot take most oral contraceptives because of a risk of blood clots, which makes it even more important to be able to get the IUD I know works for me.

11. After two hospitalizations related to blood sugar levels, I was finally able to turn back to trying to get my IUD replaced earlier this summer and decided to go to Planned Parenthood in Columbia. I had previously been to a Planned Parenthood in a different city over a decade ago, during college, for STI testing after a sexual assault. Based on that experience, I felt that if I went to Planned Parenthood, the health care providers there would treat me without judgment, which is important to me. For this reason I went to Planned Parenthood, even though it is 70 minutes away and time-consuming to get to.

12. My appointment at Planned Parenthood was above and beyond my expectations. I have anxiety and get nervous easily for gynecological appointments, but someone literally held my hand while I got my IUD. I have had IUDs inserted twice before, and this was the most pain-free experience I have ever had. The appointment was quick and judgment-free. I liked how the clinic staff spoke with me; they treated me respectfully and kindly, which has not always been my experience at other doctors' offices.

13. They also told me that my blood pressure was very high. This is a dangerous condition for people with Type 1 diabetes, so when I saw my endocrinologist shortly after my Planned Parenthood appointment and my blood pressure was still elevated, my endocrinologist immediately put me back on a blood pressure medication that my general practitioner had previously taken me off. Blood pressure spikes and sustained periods of high blood pressure are dangerous for people with diabetes, and

without my appointment at Planned Parenthood I would not have known that I was having a problem.

14. I also appreciate how Planned Parenthood works hard to make it easy to access care. I loved that I could schedule the appointment online, which is not something you find at other providers in my area, and that I could get an appointment without any delay. And when circumstances forced me to reschedule that appointment, I was able to reschedule for just one week later.

15. Before I heard that Planned Parenthood was being terminated from Medicaid, I planned to shift all my gynecological and reproductive health care there, such as my annual well woman exam, because my recent visit was such a positive, affirming experience. But I will not be able to continue going there if the services are not covered and I have to pay out of pocket.

16. I do not have a back-up plan if I cannot go to Planned Parenthood, which is very stressful for me. When I think about how I will take care of my birth control and other gynecological needs in the future, I feel bleak.

17. Though I am currently disabled, it is important for me to be able to get better and go back to work, and this one of the reasons I want to be able to continue getting care at Planned Parenthood.

18. I know there are other people out there who do not feel comfortable sharing their stories, but who, like me, will face tangible damage if Planned Parenthood is no longer part of the state's Medicaid program. Sharing my story is hard and it has taken

me years to feel comfortable doing so, but I want to participate in this lawsuit to speak on behalf of others across the state who choose Planned Parenthood as their provider.

19. I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 23, 2018

/s/ Julie Edwards
Julie Edwards

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

PLANNED PARENTHOOD)	
SOUTH ATLANTIC and)	
JULIE EDWARDS, on Her	)	Civil Action No:
behalf and on behalf of others	)	2:18-cv-2078-
similarly Situated,	)	BHH
)	
Plaintiffs,)	
)	
vs.)	
)	
JOSHUA BAKER, in his)	
official capacity As Director,)	
South Carolina Department of)	
Health and Human Services,)	
)	
Defendant.)	

AFFIDAVIT OF NANCY SHARPE

Personally appeared before me, Nancy Sharpe, who, first being duly sworn, deposes and states the following:

1. I am over the age of eighteen, a citizen and resident of the State of South Carolina and I make this Affidavit based upon personal knowledge.
2. I currently hold the position of Program Manager for Medicaid Operations with the South Carolina Department of Health and Human Services (“SCDHHS”).

3. As part of my position with SCDHHS, I am responsible for compiling information on South Carolina's Medicaid Program (the "Medicaid Program"), including information on providers enrolled in the Medicaid Program.
4. Before SCDHHS deemed Planned Parenthood South Atlantic ("PPSAT") unqualified to be enrolled in the Medicaid Program and terminated PPSAT's enrollment agreements with the Medicaid Program on July 13, 2018, PPSAT had been enrolled in the Medicaid Program as a Medicaid provider of both pharmacy and physician services at PPSAT's Columbia location – the only location to which PPSAT was registered as a Medicaid Program provider.
5. No individual Medicaid Program providers that provide services for PPSAT, including those providers whose NPI numbers are 1740591452 (Medicaid Provider No. 400952) and 1124116017 (Medicaid Provider No. 125894), have been terminated from the Medicaid Program pursuant to South Carolina Governor Henry McMaster's Executive Order 2018-21.
6. Individual Medicaid Program providers that provide services for PPSAT remain qualified, unless terminated for reasons unrelated to Executive Order 2018-21, and are free to see patients individually and bill the Medicaid Program individually for those patients.

FURTHER AFFIANT SAYETH NOT.

37

/s/ Nancy Sharpe
Nancy Sharpe

SWORN to before me this

13th day of August, 2018

Constance Hoely

Notary Public for South Carolina

My Commission expires: 4-9-2028

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

PLANNED PARENTHOOD)	
SOUTH ATLANTIC and)	
JULIE EDWARDS, on Her	)	Civil Action No:
behalf and on behalf of others	)	2:18-cv-2078-
similarly Situated,	)	BHH
)	
Plaintiffs,)	
)	
vs.)	
)	
JOSHUA BAKER, in his)	
official capacity As Director,)	
South Carolina Department of)	
Health and Human Services,)	
)	
Defendant.)	

AFFIDAVIT OF ERIN BOYCE

Personally, appeared before me, Erin Boyce, who, first being duly sworn, deposes and states the following:

1. I am over the age of eighteen, a citizen and resident of the State of South Carolina and I make this Affidavit based upon personal knowledge.
2. I currently hold the positions of Deputy Director for Finance and Chief Financial Officer with the South Carolina Department of Health and Human Services (“SCDHHS”).

3. As part of my position with SCDHHS, I am responsible for compiling information on South Carolina's Medicaid Program (the "Medicaid Program") and all reimbursements issued under the Medicaid Program.
4. I am responsible for compiling reimbursement information for Planned Parenthood South Atlantic ("PPSAT"), and I compiled such information from fiscal year 2016 until roughly May of fiscal year 2018.
5. Before SCDHHS deemed PPSAT unqualified to be enrolled in the Medicaid Program and terminated PPSAT's enrollment agreements with the Medicaid Program on July 13, 2018, PPSAT had been enrolled in the Medicaid Program as a Medicaid provider of both pharmacy and physician services at PPSAT's Columbia location – the only location to which PPSAT was registered as a Medicaid Program provider.
6. As part of my required compilation of data for Medicaid Program providers, I have available to me Medicaid Program enrollee claims for reimbursement for Fee-For-Service ("FFS") Expenditures and Managed Care Organization ("MCO") Encounters.
7. FFS Expenditures represent amounts claimed by a Medicaid Program provider for the provision of both pharmacy and physician services.
8. MCO Encounters represent amounts claimed by a Medicaid Program provider for the

provision of both pharmacy and physician services.

9. For fiscal year 2016, PPSAT's FFS Expenditures totaled \$47,458.98, their MCO Encounters totaled \$25,442.04, and they provided pharmacy and/or physician services to a total of 289 patients covered by the Medicaid Program. The total amount of PPSAT's FFS Expenditures and MCO Encounters for fiscal year 2016 is \$72,901.02.
10. For fiscal year 2017, PPSAT's FFS Expenditures totaled \$49,678.29, their MCO Encounters totaled \$32,600.65, and they provided pharmacy and/or physician services to a total of 257 patients covered by the Medicaid Program. The total amount of PPSAT's FFS Expenditures and MCO Encounters for fiscal year 2017 is \$82,278.94.
11. For the period beginning with fiscal year 2018 through roughly the end of May 2018, PPSAT's FFS Expenditures totaled \$37,212.24, their MCO Encounters totaled \$45,478.37, and they provided pharmacy and/or physician services to a total of 343 patients covered by the Medicaid Program. The total amount of PPSAT's FFS Expenditures and MCO Encounters from the beginning of fiscal year 2018 through roughly the end of May 2018 is \$82,690.61.
12. Approximately 56,917 South Carolina providers participate in the Medicaid Program as of August 6, 2018.

13. More than 97% of South Carolina pharmacies are enrolled with Medicaid.

14. In fiscal year 2017, the Medicaid Program expended a total of \$7,103,931,095 in state and federal funding.

15. In fiscal year 2017, approximately 1,200,000 individuals were enrollees in the Medicaid Program.

FURTHER AFFIANT SAYETH NOT.

Erin Boyce
Erin Boyce

SWORN to before me this
13th day of August, 2018
Constance Hoely

Notary Public for South Carolina
My Commission expires: 4-9-2028

BURNETTE SHUTT & MCDANIEL

Moving law forward.

BURNETTE SHUTT & MCDANIEL, PA
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Kathleen McDaniel – Partner

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August 13, 2018

VIA Hand Delivery

And VIA U.S. Mail

Appeals and Hearings

Department of Health and Human Services

3220 Two Notch Road

Columbia, South Carolina 29203

Post Office Box 8206

Columbia, South Carolina 29202-8206

**Re: Notice of Appeal from Termination of
Planned Parenthood South Atlantic
Pharmacy Medicaid Id. #: 715572
NPI #: 1497049555
Physician Group Medicaid Id. #: 143724
NPI #: 1851438147**

Dear Sir or Ma'am:

Planned Parenthood South Atlantic (“PPSAT”) submits this Notice of Appeal from the immediate

termination of its status as a Medicaid provider on July 13, 2018.

The jurisdictional basis for this appeal is S.C. Code Ann. 44-6-190 and S.C. Code Ann. Regs. 126-152.

The issue in contest stems from Governor Henry McMaster's directive to South Carolina Department of Health and Human Services ("SCDHHS") to terminate PPSAT as a Medicaid provider. The history of that directive and subsequent termination is as follows. On July 5, 2018, "to prevent taxpayer dollars from directly or indirectly subsidizing abortion providers like Planned Parenthood," the Governor vetoed over 15 million dollars in family planning Medicaid funds, none of it directed to abortion. (**Attachment 1**, Letter from Henry McMaster, Governor, State of S.C., to S.C. General Assembly (July 5, 2018).)

A week later, on July 13, Governor McMaster issued Executive Order 2018-21, which directed SCDHHS to "deem" all abortion clinics and any affiliated physicians "unqualified" and to "immediately terminate them upon due notice and deny any future such provider enrollment applications for the same." (**Attachment 2**, S.C. Exec. Order No. 2018-21 (July 13, 2018).) On that same day, SCDHHS notified PPSAT that "[t]he Governor's actions result in Planned Parenthood no longer being qualified to provide services to Medicaid beneficiaries" and that it was terminating PPSAT effective immediately. (**Attachment 3**, Termination Letter from Amanda Q. Williams, Health Servs. Acting Program Dir., SCDHHS Divs. of Health

Servs.) It is from this Termination Letter that PPSAT takes this appeal.

This termination is without any basis in law. *See, e.g.*, S.C. Code Ann. Regs. 126-400 *et seq.* (setting forth grounds for sanctions, including termination); S.C. Code Ann. Regs. 126-300 (providing that services are subject to procedural requirements described in the provider manuals); SCDHHS Healthy Connections Provider Enrollment Manual 2-3 to 2-5 (March 1, 2018) (setting forth grounds for provider termination). Moreover, the immediate effective date of the termination violated the terms of SCDHHS's agreement with PPSAT. Participation and Payment Agreement, <https://www.scdhhs.gov/sites/default/files/Participation%20%26%20Payment%20Agreement%20July%202017.pdf> (requiring 30 days written notice of termination).

Thank you for your consideration of this matter. If you need further information, please contact me at your convenience.

With kind regards, I am

Sincerely,

Kathleen M. McDaniel

Kathleen McDaniel

[KMM/gbl]

Enclosures: Attachments 1-3

cc: Amanda Q. Williams, SCDHHS, Office of Health Programs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

PLANNED PARENTHOOD	}	
SOUTH ATLANTIC, et al.,	}	
	}	
Plaintiffs,	}	Case No. 2:18-
	}	cv-2078-MGL
vs	}	
	}	
JOSHUA BAKER,	}	
	}	
Defendant.	}	

**SUPPLEMENTAL DECLARATION OF JENNY
BLACK IN FURTHER SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY
INJUNCTION**

Jenny Black declares the following:

1. I am President and CEO of Planned Parenthood South Atlantic (PPSAT). I am responsible for the management of this organization and therefore am familiar with our operations and finances, including the services we provide and the communities we serve. I submit this supplemental declaration in further support of Plaintiffs' Motion for Preliminary Injunction.

2. Defendant's assertion that my initial declaration somehow shows that PPSAT uses South Carolina Medicaid funds to subsidize its provision of abortions is simply wrong. Medicaid is an insurance program and reimburses medical providers on a fee-for-service basis for specific services that are covered

by the program. Any Medicaid funds provided to PPSAT are therefore reimbursements for specific family planning, cancer screening, and other services that have already been rendered. These reimbursements are the same amounts that all Medicaid providers receive for those services.

3. Furthermore, Medicaid reimbursement rates in South Carolina are low, and do not fully cover the cost of the Medicaid services we provide at PPSAT. For this reason they could not possibly be subsidizing abortion services.

4. When I stated in my initial declaration that PPSAT might need to reduce hours or otherwise alter its staffing or services if it is unable to participate in the Medicaid program, I was referring to our ability to continue to offer the level of access to family planning services that we currently offer. As a not-for-profit healthcare provider with a mission of serving underserved patients, including patients living in or near poverty, our ability to maintain the flexible hours and other services our patients rely on is dependent on the volume of patients we see. For this reason, being foreclosed from treating patients insured through the Medicaid program threatens our ability to fully serve all our patients.

5. Defendant's suggestion that even if PPSAT remains unable to provide services through the Medicaid program, the individual physicians who work for us could somehow continue to provide care to PPSAT's patients, billing under their own individual NPI numbers and not providing any Medicaid reimbursements to PPSAT, is not workable (even if it were permissible under the Executive Order—which

it does not appear to be, as that Order directs DHHS to deem unqualified abortion clinics and any “affiliated physicians”; see Black Decl. Ex. C, July 30, 2018, ECF No. 5-2).

6. To the extent Defendant is suggesting that our physicians could continue to treat patients in PPSAT’s facilities, and that PPSAT should continue to cover all of the associated overhead, including physician salaries, malpractice insurance, rent, supplies, support staff salaries, medical devices such as IUDs and other long-acting contraceptive devices, among many other items, but not receive any reimbursement for the care of Medicaid patients, it simply is not feasible for us as a not-for-profit provider to do this for the many months (or more) it could take for this legal challenge to be resolved.

7. Even if PPSAT were willing and able to take on this financial burden on an indefinite and ongoing basis—which we are not—it would also raise a host of operational and regulatory questions. It is not clear whether these could ever be navigated in a way that would not expose us, our physicians, and our patients to risk. But certainly, this could not be done quickly, as would be required to protect our patients in light of Defendant’s decision to terminate us from the Medicaid program effective *immediately*. To give one example, it is unclear how, if at all, our physicians could go about billing Medicaid in this scenario, as the electronic billing system is set up through PPSAT’s Medicaid enrollment and linked to our patients’ electronic health records. In addition, it is unclear how, if at all, our various insurance policies would cover services or healthcare visits in this unorthodox arrangement.

8. To the extent Defendant is suggesting our physicians could treat PPSAT's patients independently of PPSAT, this also is not feasible. Our physicians work for PPSAT, and do not have their own practices near PPSAT's health centers to which PPSAT's patients could go for care.¹ In order to open independent practices near the PPSAT health centers they would have to find office space, establish malpractice insurance, establish corporations and corporate bank accounts into which Medicaid money could flow, obtain required Drug Enforcement Agency licenses, hire staff, obtain supplies and medical devices such as long-acting contraceptives, among many other necessary steps. This is not something that could be done quickly and in fact would likely take many months, if the physicians were even interested in doing so.

9. In any event, even if the physicians could open separate offices at which PPSAT's patients could get care, or if PPSAT's patients could get care from other Medicaid providers in the state, as Defendant also suggests, that would not solve the problem that PPSAT's patients specifically choose Planned Parenthood as their provider for all of the reasons I outlined

¹ For example, one of Planned Parenthood's physicians who practices at the Charleston health center has an independent practice in Greenville, a three-hour drive from Charleston and an hour and a half drive from Columbia; another has a hospital practice, but does not practice in an outpatient clinic setting to which PPSAT's patients could go to seek family planning services. In addition, PPSAT has advanced practice clinicians, including nurse practitioners, who provide family planning services through the Medicaid program, and these clinicians do not have practices outside of PPSAT.

in my initial declaration, including that PPSAT provides nonjudgmental care, offers a full range of contraceptive options, and offers flexible and extended hours and other accommodations that make it easier for low-income patients to access the medical care they need. That some patients may be able to attempt to seek care at another Medicaid provider is therefore beside the point.

10. Defendant's reliance on the fact that 56,917 providers may be enrolled in the South Carolina Medicaid program is highly misleading, as a review of listed specialties reflects that this figure includes (among many other irrelevant specialties) dental practitioners, ophthalmologists, podiatrists, and chiropractors. Such providers have nothing to do with the family planning and other reproductive healthcare PPSAT provides. This figure also encompasses providers statewide, rather than only in Charleston or Columbia.

11. Finally, the figures Defendant provides for Medicaid patients treated at PPSAT are not consistent with the figures we show, which reflect approximately 25% more unduplicated patients seen through the Medicaid program in fiscal years 2015 and 2016 than the numbers quoted by the state. At any rate, the precise numbers are beside the point, as the harms of being deprived of access to care at their chosen provider are unacceptable for *any* patients.

12. I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 20, 2018

Jenny Black
Jenny Black

WASHINGTON, DC 20005
PRO HAC VICE

MARY M. BURNETTE, ESQ.
KATHLEEN M. MCDANIEL, ESQ.
BURNETT SHUTT AND
MCDANIEL PA
PO BOX 1929
COLUMBIA, SC 29202

FOR THE DEFENDANT:

KELLY M. JOLLEY, ESQ.
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COURT REPORTER:

KATHLEEN RICHARDSON, RMR,
CRR
UNITED STATES COURT
REPORTER
901 RICHLAND STREET
COLUMBIA, SC 29201

STENOTYPE / COMPUTER-AIDED
TRANSCRIPTION

* * * * *

[11-14]

MS. JOLLEY: THANK YOU, YOUR HONOR. KELLY JOLLEY AND ARIAIL KIRK ON BEHALF OF DIRECTOR JOSHUA BAKER. THE PLAINTIFFS WANT TO MAKE THIS CASE EASY FOR THE COURT. GOVERNMENT MCMASTER SPOKE OUT ABOUT PLANNED PARENTHOOD. HE ISSUED EXECUTIVE ORDER 2018-21.

SOUTH CAROLINA DEPARTMENT OF HEALTH HUMAN SERVICES IMMEDIATELY THEREFORE TERMINATED PLANNED PARENTHOOD'S ENROLLMENT AGREEMENTS WITH THE DEPARTMENT ON THE GROUNDS THAT EXECUTIVE ORDER FOUND THAT ANY ABORTION CLINIC WAS DEEMED UNQUALIFIED--

THE COURT: OKAY. SO, IF SOMEONE WERE TO COME THROUGH YOUR ADMINISTRATIVE PROCEDURES, YOU REALLY WOULDN'T BE ABLE TO DO ANYTHING ABOUT THAT BECAUSE YOU HAVE A DIRECTIVE FROM THE GOVERNOR TO DEEM MEDICAID AN UNQUALIFIED PROVIDER; CORRECT? SO THERE'S NO ADMINISTRATIVE RELIEF THAT YOU COULD PROVIDE?

MS. JOLLEY: WELL, YOUR HONOR, I THINK THEY ARE ENTITLED TO A HEARING TO DETERMINE WHETHER OR NOT--

THE COURT: I MEAN, WHAT'S TO DETERMINE? THERE'S NOTHING BUT A MATTER OF LAW. I MEAN, WHAT WOULD YOU DETERMINE? I'M GOING TO NOT FOLLOW THE

GOVERNOR'S DIRECTIVE? I MEAN, I DON'T THINK YOU CAN DO THAT; ARE YOU?

MS. JOLLEY: NO, YOUR HONOR. I THINK YOU'RE RIGHT--

THE COURT: SO YOU WILL AGREE WITH ME THAT THERE IS NO RELIEF THAT YOU COULD GRANT GIVEN THE DIRECTIVE OF THE GOVERNOR.

MS. JOLLEY: I WOULD AGREE THAT A HEARING OFFICER SHOULD FIND THAT THE DEPARTMENT ACTED APPROPRIATELY.

THE COURT: YOU THINK THAT WE SHOULD GO THROUGH A FUTILE HEARING SO THAT YOU CAN PRONOUNCE THAT?

MS. JOLLEY: YOUR HONOR, I DON'T BELIEF IT'S UP TO ME. I BELIEVE--

THE COURT: NO, BUT I'M JUST SAYING YOU ARE HERE ON BEHALF OF JOSHUA BAKER IN HIS OFFICIAL CAPACITY AS THE DIRECTOR OF THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES AND YOU'RE TELLING ME THAT YOU WANT PEOPLE TO GO THROUGH AN ADMINISTRATIVE PROCEDURE WHICH COULD TAKE TIME SO THAT YOU CAN PRONOUNCE WHAT WE ALL KNOW WILL BE PRONOUNCED; THAT THE GOVERNOR HAS DIRECTED THAT MEDICAID BE DEEMED UNQUALIFIED UNDER THE MEDICAID STATUTE; RIGHT?

MS. JOLLEY: YES, YOUR HONOR.

THE COURT: OKAY. ALL RIGHT. I JUST WANT TO MAKE SURE BECAUSE I -- SOMEWHERE IN HERE PERCOLATING AROUND IS SOME SORT OF SUGGESTION THAT THERE MIGHT NEED TO BE SOME ADMINISTRATIVE ACTION TAKEN, AND I JUST WANTED TO, YOU KNOW, TRY TO CLEAR THAT UP BECAUSE I DO THINK THAT WOULD BE -- THERE'S NO RELIEF THAT CAN BE GRANTED AND THERE IS -- IF THERE WERE, JUST HYPOTHETICALLY, THE FACT THAT THE GOVERNOR HAS DIRECTED THIS WOULD MAKE THAT PROCEDURE TOTALLY FUTILE. I MEAN, WOULDN'T YOU AGREE?

THERE'S NO CHANCE THAT YOU'RE GOING TO RULE THE OTHER WAY.

MS. JOLLEY: WELL, YOUR HONOR. THE HEARING OFFICERS ARE GOING TO RULE THE WAY THEY DECIDE.

THE COURT: BUT THEY HAVE TO DECIDE IN AGREEMENT WITH THE GOVERNOR; CORRECT? I MEAN, THEY'RE A PART HIS ADMINISTRATION.

MS. JOLLEY: THEY ARE -- THEY ARE IN -- HEARING OFFICERS, YES. THEY ARE EMPLOYED --

THE COURT: BUT THEY'VE ALREADY WRITTEN A LETTER TERMINATING MEDICAID BASED ON THAT.

MS. JOLLEY: NO, YOUR HONOR. THAT WASN'T A HEARING OFFICER. THE HEARING OFFICERS --

THE COURT: NO, I'M TALKING ABOUT THE AGENCY.

MS. JOLLEY: YES, THE AGENCIES MADE THAT DETERMINATION, BUT THE HEARING IS NOT HELD BEFORE THE --

THE COURT: OKAY. SO YOU REALLY BELIEVE THAT -- ARE YOU TELLING THIS COURT THAT THERE IS A HEARING OFFICER IN YOUR AGENCY THAT WOULD IN SOME WAY CONCEIVABLY GRANT RELIEF TO THE PLAINTIFFS?

MS. JOLLEY: YES, YOUR HONOR. I THINK THAT'S CERTAINLY CONCEIVABLE.

THE COURT: IN SPITE OF THE GOVERNOR'S DIRECTIVE?

MS. JOLLEY: YOUR HONOR --

THE COURT: BASED ON WHAT? I MEAN, THERE'S NO FACT TO BE DEVELOPED HERE. THERE ARE NO FACTS, NOTHING TO BE PRESENTED TO THE OFFICER OTHER THAN THEY ARE MEDICAID, THEY PROVIDE MEDICAID SERVICES, THEY HAVE BEEN DEEMED UNQUALIFIED BY THE GOVERNOR. AND SO, WHAT ELSE IS THERE TO DECIDE?

MS. JOLLEY: YOUR HONOR --

THE COURT: AS A MATTER OF LAW.

MS. JOLLEY: AS A MATTER OF LAW I THINK YOU'RE CORRECT.

THE COURT: OKAY. ALL RIGHT. WELL, LET'S JUST --

MS. JOLLEY: I THINK THERE'S AS A MATTER OF LAW THE HEARING OFFICER SHOULD DECIDE THE WAY YOU'VE STATED.

THE COURT: ALL RIGHT. YEAH. AND THE HEARING OFFICER CERTAINLY WOULD NOT HAVE MUCH OF AN OPTION THERE.

MS. JOLLEY: YES, YOUR HONOR.

* * * * *

[28-29]

MS. JOLLEY: BUT THERE ARE OTHER REMEDIES THAT ARE AVAILABLE. AND FOR THAT REASON, TOO, THERE IS -- IT'S ALSO OUTLAID HOW -- HOW PLANNED PARENTHOOD SHOULD GO FORWARD AND CAN GO FORWARD AND HOW THE PLAINTIFF CAN.

THE COURT: ALL RIGHT. WHAT OTHER REMEDIES ARE YOU REFERRING TO?

MS. JOLLEY: I'M VAGUELY REFERRING TO THE ADMINISTRATIVE PROCEDURES AND THE STATE. AND I GET YOUR POINT, YOUR HONOR, THAT IT MAY BE FUTILE. BUT THE FACT THAT AN APPELLATE -- THAT THE PLAINTIFFS MIGHT NOT WIN DOES NOT MEAN THEY DON'T HAVE AN OPTION, THEY DON'T HAVE THE OPPORTUNITY.

THE COURT: I DON'T THINK, THOUGH, WITH THE GOVERNOR'S -- I MEAN, CORRECT ME IF I'M WRONG, BUT WITH THE GOVERNOR'S DIRECTIVE THAT WITHOUT CONSIDERATION OF ANYTHING PLANNED PARENTHOOD IS TO BE DEEMED UNQUALIFIED EFFECTIVE

IMMEDIATELY. I MEAN, I THINK THAT'S WHAT -- I MEAN, HE MADE IT PRETTY CLEAR THAT HE DOESN'T THINK THAT THEY SHOULD BE A MEDICAID PROVIDER IN THE STRONGEST TERMS.

SO, I -- I JUST DON'T THINK THAT AN ADMINISTRATIVE PROCEDURE AND GOING THROUGH, HAVING A HEARING OFFICER SIT DOWN, SCHEDULE A HEARING -- THERE IS NO EVIDENCE TO BE DISCUSSED. THERE IS ONLY THE FACT THIS PERSON CAN'T USE PLANNED PARENTHOOD ANY MORE AND THE GOVERNOR HAS SAID THAT'S BECAUSE THEY ARE UNQUALIFIED WITHOUT -- YOU KNOW, THE HEARING OFFICER IS NOT GOING TO LEGALLY ANALYZE THAT. THE HEARING OFFICER IS GOING TO BE BOUND BY THAT.

AND SO I JUST, AGAIN, I'M NOT SEEING A REASON WHY THAT'S REALLY AN OPTION FOR THE PLAINTIFF. OKAY. I MEAN, I THINK I -- I THINK YOU'VE EXPLAINED TO ME WHY YOU DON'T AGREE WITH THAT, BUT --

MS. JOLLEY: YES, YOUR HONOR.

THE COURT: -- SO UNLESS THERE'S SOMETHING ELSE . . .

MS. JOLLEY: NO, YOUR HONOR.

* * * * *

[31]

I CERTIFY THAT THE FOREGOING IS A
CORRECT TRANSCRIPT FROM THE RECORD OF
PROCEEDINGS IN THE ABOVE-ENTITLED
MATTER.

S/KATHLEEN RICHARDSON

----- OCTOBER 15, 2018

KATHLEEN RICHARDSON, RMR, CRR



SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF APPEALS AND HEARINGS

May 28, 2019

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Columbia, SC 29202
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Ariail Kirk Jolley Law Group
P.O. Box 22230
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RE: Fair Hearing of Planned Parenthood South
Atlantic v. SCDHHS
Case No. 18-1523 Provider Termination/Scope
Reduction
Pharmacy Medicaid ID#715572
NPI#1497049555
Physician Group Medicaid ID#143724
NPI#1851438147.

Dear Ms.McDaniel & Ms. Kirk:

Enclosed is a Scheduling Order. Please read carefully and reply with the requested hearing dates.

I may be contacted at 843-340-7683 or Phillip.Hughes@scdhhs.gov if you have any questions. While I cannot discuss the underlying issues of the case with you unless all parties are included, I can answer general questions about the hearing

procedure and requirements. Please note that communication by email may not be secure.

Sincerely,



Phillip Hughes
Hearing Officer

Enclosure

cc: Amanda Q. Williams, SCDHHS via Email
Marie Brown, SCDHHS via Email

1801 MAIN STREET • P.O. Box 8206 • COLUMBIA SC 29202
TOLL FREE 800 763 9087 • PHONE 803 898 2600 • FAX 803 255 8206 • WWW.SCDHHS.GOV/APPEALS

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si habla español, tiene a su disposición servicios gratuitos de asistencia lingüística. Llame al 1-888-549-0820 (TTY: 1-888-842-3620).

خدمات المساعدة اللغوية تتوافر لك بالمجان. اتصل برقم 888-549-0820 (رقم هاتف الصم والبكم: 888-842-3620).
إذا كنت تتحدث اذك اللغة، فإن

STATE OF SOUTH	)	BEFORE THE
CAROLINA	)	DIVISION OF
	)	APPEALS AND
COUNTY OF	)	HEARINGS OF THE
RICHLAND	)	SOUTH CAROLINA
	)	DEPARTMENT OF
Planned Parenthood	)	HEALTH AND
South Atlantic,	)	HUMAN SERVICES
)	
Petitioner,	)	SCHEDULING
	)	ORDER
v.)	
)	
South Carolina	)	Case No. 18-1523
Department of Health	)	Provider
and Human Services,	)	Termination/Scope
	)	Reduction
Respondent.	)	NPI#1497049555
	)	NPI#1851438147

INTRODUCTION

Planned Parenthood South Atlantic (Petitioner) has appealed Provider Termination/Scope Reduction action from Respondent South Carolina Department of Health and Human Services (SCDHHS).

JURISDICTION & AUTHORITY

This appeal is adjudicated under the authority granted by the South Carolina General Assembly to SCDHHS to administer various programs and grants. *See, e.g.*, S.C. Code Ann. § 44-6-10. The appeal has been conducted pursuant to the SCDHHS Appeals and Hearings regulations, S.C. Code Ann. Regs. 126-150 *et seq.*, and the South Carolina Administrative Procedures Act, S.C. Code Ann. § 1 23-310 *et seq.* The

Hearing Officer may direct procedural and evidentiary issues for the most expeditious resolution of these proceedings. S.C. Code Ann. Regs. 126-154.

SCHEDULING

A Scheduling Order may be helpful to prepare this case for hearing and to outline the limits of discovery. Therefore, I Order the following:

1. Discovery shall be limited as follows:
 - a. Each party is limited to 10 interrogatories, including subparts;
 - b. Each party is limited to 20 requests for production, including subparts; and
 - c. Each party may take no more than 3 depositions.

2. To allow the parties to utilize the full discovery period, the parties shall preliminarily identify proposed witnesses no later than **July 26, 2019**. If information gained during discovery leads a party to believe it needs to identify additional or different witnesses after the July 26, 2019 deadline, the witness list may be amended (a) by consent of all parties or (b) by order of the Hearing Officer. Any witness identified after the **Friday, July 26, 2019** deadline and added or substituted as a witness, whether by consent of the parties or order of the Hearing Officer, may be deposed by any party, without regard for the deposition limitation set forth in Paragraph 1 and without regard to the discovery deadline set forth in Paragraph 3. This Paragraph applies to both expert and fact witnesses.

3. The parties shall complete all discovery in this matter by **September 27, 2019**.
4. The parties shall exchange final witness and exhibit lists no later than **October 25, 2019**.
5. The parties shall file and serve prehearing motions, if any, no later than **November 29, 2019**.
6. Petitioner shall file a brief by **Friday, November 29, 2019**
7. Respondent shall file a brief within **30 days** of Petitioner's brief.
8. Petitioner is permitted to file a reply within **5 days** of Respondent's brief, if desired.
9. The parties are encouraged to file any stipulations by **Friday, January 17, 2020**.
10. The parties are to communicate by **Friday, January 17, 2020** to the Hearing Officer a mutually agreeable hearing date that occurs between **Monday, February 03, 2020** and **Friday, March 27, 2020**

AND IT IS SO ORDERED.



Phillip Hughes
Hearing Officer

COLUMBIA, South Carolina
May 28, 2019

SUPPLEMENTAL DECLARATION OF JULIE EDWARDS

Julie Edwards declares the following:

1. I am a 34-year-old resident of Lexington County, South Carolina, and a patient at Planned Parenthood South Atlantic's Columbia location.

2. I am insured through Medicaid.

3. I plan to receive regular gynecological and reproductive health care, including annual wellness exams, at Planned Parenthood South Atlantic. Since visiting Planned Parenthood South Atlantic in 2018, I have not seen other providers for those medical needs.

4. Because I have been carefully socially distancing during the COVID-19 pandemic, I have significantly scaled back visits to doctors. Besides visits to specialists who have treated my Type 1 diabetes and related complications, I did not visit a doctor's office from March 2020 until April 2021.

5. After getting vaccinated in April 2021 to protect against COVID-19, I finally felt that it was safe enough to start making additional health care appointments again.

6. In early July 2021, I contacted Planned Parenthood South Atlantic and scheduled an appointment.

7. After I scheduled the appointment with Planned Parenthood South Atlantic, my attorneys updated me on the lawsuit challenging South Carolina's termination of Planned Parenthood South Atlantic from participation in the state Medicaid

program. They told me that South Carolina was questioning whether I still plan to receive health care at Planned Parenthood South Atlantic, and had looked through my personal health records. I was distressed to learn that South Carolina investigated and disclosed my health information without permission because that felt like an invasion of my privacy.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 30, 2021.

/s/ Julie Edwards
Julie Edwards