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VIA EMAIL AND U.S. MAIL

Felicia Norwood, Director  
Illinois Department of Healthcare and Family Services  
201 South Grand Avenue East  
Springfield IL 62763  
Felicia.Norwood@illinois.gov

Dear Director Norwood:

I write regarding the December 29, 2017 Department of Healthcare and Family Services (HFS) provider notice concerning abortion coverage (“the Provider Notice”). The Provider Notice marks an important step forward, confirming that, as of January 1, 2018, the state is reimbursing for all legal abortion services for all eligible persons in the state’s medical assistance programs. However, we have significant concerns about the billing instructions set out in the Provider Notice, and we urge you to amend them.

The Provider Notice states that to be reimbursed for an abortion performed for reasons other than those allowed by federal law (i.e., rape, incest, or life endangerment), the provider must indicate *either* that an abortion was “necessary to protect the woman’s health,” *or* that the abortion was performed “for any other reason.”<sup>1</sup> This instruction puts medical providers in an impossible situation. Since Medicaid only reimburses for care that is medically necessary,<sup>2</sup> the instruction suggests that HFS is drawing some sort of distinction between abortions that are medically necessary and those necessary to protect the patient’s health.

But such a distinction is unwarranted as all abortions are both medically indicated and serve to protect women’s health. The risk of death associated with carrying a pregnancy to term and giving birth is approximately 14 times higher than with abortion, and abortion is also associated with substantially less pregnancy-related morbidity than giving birth.<sup>3</sup> Women who choose abortion decide for a myriad of reasons based on physical, emotional, psychological, familial, or personal

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<sup>1</sup> This requirement is also reflected in the instruction to bill the appropriate MCO for the former and HFS on a fee-for-service basis for the latter.

<sup>2</sup> See 89 Ill. Adm. Code 140.2 and 140.6.

<sup>3</sup> Elizabeth Raymond and David Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 *Obstetrics and Gynecology* (2012).

factors not to take on these risks.<sup>4</sup> Their abortions are therefore, both medically indicated and serve to protect their health.

We urge you to act swiftly to amend the Provider Notice and related materials to recognize that all legal abortions, regardless of the reason, are medically necessary health care. However, in the meantime, in order to adhere as closely as possible to the Provider Notice HFS has issued, we are advising providers to make the following (unwarranted) distinction when billing for abortions that are not reimbursable under federal law:

- (1) When a pregnancy exacerbates a preexisting condition or creates a new serious medical complication for the woman, providers will indicate on Form 2390 that the “the abortion was necessary to protect the woman’s health,” and will bill the MCO.
- (2) For all other procedures, the provider will state on Form 2390 that the “abortion was otherwise medically necessary pursuant to Public Act 100-538,” and will bill HFS on a fee-for-service basis accordingly.

Please do not hesitate to reach out to me if you wish to discuss this further. Thank you for your attention to this matter.

Sincerely,



Lorie Chaiten  
Director, Women’s and Reproductive Rights Project

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<sup>4</sup> See, e.g., *Doe v. Bolton*, 410 U.S. 179, 192 (1973) (holding that the physician’s clinical judgment as to what constitutes a “necessary” abortion procedure may be exercised in light of all factors: physical, emotional, psychological, familial and the woman’s age relevant to her well-being); World Health Organization (WHO), Preamble to the Constitution of WHO as adopted by the International Health Conference, New York, July 22, 1946 (defining health as “a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.”).