

**IN THE U.S. DISTRICT COURT FOR THE
MIDDLE DISTRICT OF LOUISIANA**

PLANNED PARENTHOOD GULF COAST,
INC.; JANE DOE #1; JANE DOE #2; and
JANE DOE #3, on their own behalf and on
behalf of all others similarly situated,

Plaintiffs,

v.

KATHY KLIEBERT, Secretary, Louisiana
Department of Health and Hospitals,

Defendant.

No. 3:15-cv-00565-JWD-SCR

**FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY
RELIEF—CLASS ACTION**

Plaintiffs, by and through their attorneys, bring this First Amended Complaint against the above-named Defendant, her employees, agents, delegates, and successors in office, and in support thereof state the following:

INTRODUCTORY STATEMENT

1. This civil action is brought pursuant to 42 U.S.C. § 1983 to vindicate rights secured by the federal Medicaid statutes, as well as the U.S. Constitution.
2. Plaintiff Planned Parenthood Gulf Coast, Inc. (“PPGC”) provides critically needed family planning and preventive health services to thousands of women and men in underserved Orleans and East Baton Rouge Parishes through the Medicaid program. As is required by federal law, Medicaid enrollees may seek services from a participating provider of their choice and have those services covered by Medicaid. Plaintiffs Jane Doe #1, Jane Doe #2,

and Jane Doe #3 are such women – patients of PPGC who are enrolled in Medicaid and who prefer PPGC to other Medicaid providers. Louisiana Medicaid does not pay for abortions except in extremely narrow circumstances, and PPGC does not provide abortions in Louisiana.

3. On August 3, 2015, without giving any warning or expressing any previous concerns about PPGC’s participation in the Medicaid program, Defendant Kathy Kliebert, Secretary of the Louisiana Department of Health and Hospitals (“DHH”) notified PPGC that DHH was terminating PPGC’s Medicaid provider agreements, effective 30 days after the date of the notice (“first termination”). While the notice gave no reason for the termination, Governor Jindal referred in a press release that same day to heavily edited and misleading videos that opponents of Planned Parenthood have recently released on YouTube with regard to Planned Parenthood’s abortion practice in other states, and stated that he terminated the agreements because “Planned Parenthood does not represent the values of the State of Louisiana in regards to respecting human life.” Press Release, Office of La. Governor Bobby Jindal, Governor Jindal Announces the Termination of Medicaid Contract with Planned Parenthood (Aug. 3, 2015), <http://gov.louisiana.gov/index.cfm?md=newsroom&tmp=detail&articleID=5061>. Notably, nothing in Governor Jindal’s press release relates to the quality of Medicaid services provided by PPGC.

4. After this action was commenced and after Plaintiffs’ Motion for Temporary Restraining Order was argued and briefed, Defendant changed tactics and rescinded the first termination, and on September 15, replaced it with a second termination, also effective 30 days after the notice, in which she put forth several alleged grounds for the termination (“second termination”). Each ground is baseless and unsupported as a matter of fact and law, and not one relates to PPGC’s competence to provide services in Louisiana’s Medicaid program.

5. Plaintiffs seek declaratory and injunctive relief to protect PPGC's patients' access to – and PPGC's own ability to provide – these critical medical services. Defendant's actions violate Section 1396a(a)(23) of Title 42 of the United States Code (“Medicaid freedom of choice provision”) because, by barring PPGC from the Medicaid program, it prevents PPGC's patients, including Plaintiffs Jane Doe #1, Jane Doe #2, and Jane Doe #3, from receiving services from the qualified, willing provider of their choice. Defendant's actions further impermissibly single out Plaintiffs for unfavorable treatment and penalize them for the exercise of constitutional rights without adequate justification, in violation of the First and Fourteenth Amendments.

6. Unless enjoined, the termination of PPGC's Medicaid provider agreements will take effect on October 17 and 18, immediately disqualifying PPGC from providing basic and preventive health care services to over 5200 Louisiana women and men who depend on PPGC annually for that care. Defendant's actions will cause significant and irreparable harm to PPGC and to its Medicaid patients, including Plaintiffs Jane Doe #1, Jane Doe #2, and Jane Doe #3, who will lose their provider of choice, will find their family planning services interrupted, and will be left with few or no alternative providers.

JURISDICTION AND VENUE

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

8. 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.

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

THE PARTIES

A. Plaintiffs

10. Plaintiff PPGC is a not-for-profit corporation organized under the laws of Texas and licensed to do business in Louisiana. PPGC brings this action on behalf of itself and its Louisiana patients.

11. PPGC (or predecessor organizations) have provided high quality reproductive health care for more than 30 years in Louisiana. PPGC operates two health centers in Louisiana, one in New Orleans and one in Baton Rouge, and participates in the Medicaid program, providing medical services to low-income enrollees in both underserved communities. The family planning and other preventive health services provided by PPGC at these and its other health centers include physical exams, contraception and contraceptive counseling, screening for breast cancer, screening and treatment for cervical cancer, testing and treatment for certain sexually transmitted infections (“STIs”), pregnancy testing and counseling, and certain procedures including colposcopy.

12. PPGC does not provide abortions. (An organization affiliated with PPGC, Planned Parenthood Center for Choice, provides abortions only in Texas.)

13. In fiscal year (FY) 2014, PPGC provided more than 15,000 health care visits to over 10,000 women, men and teens in New Orleans and Baton Rouge, over 5200 of whom have coverage under the Medicaid program. Nearly 75% of those visits in Baton Rouge were for patients enrolled in Medicaid, and nearly 40% of the visits in New Orleans were for Medicaid patients. Those numbers have only increased in the last year—over 60% of PPGC’s Louisiana visits are currently for patients enrolled in the Medicaid program.

14. During the FY 2014 visits, PPGC provided over 2100 well women exams, over 1200 pap smears, over 11,000 tests for STIs, and over 4100 long acting reversible contraceptives, implant contraceptives, and injectable contraceptives to its Medicaid patients.

15. PPGC has been an excellent Medicaid provider. Prior to DHH's recent actions, DHH has never expressed any concerns about PPGC's performance in that program. Indeed, PPGC was audited by the State Legislative Auditor in 2014, pursuant to a politically motivated request from the legislature, and he concluded that PPGC's Medicaid billings were appropriate and supported. Letter from Daryl Purpera, La. Legis. Auditor, to Daniel Martiny, La. State Senator, and Frank Hoffman, La. State Representative (Feb. 19, 2014), [http://app.la.state.la.us/PublicReports.nsf/5256EC014378E02E86257D57005363A0/\\$FILE/00037C6C.pdf](http://app.la.state.la.us/PublicReports.nsf/5256EC014378E02E86257D57005363A0/$FILE/00037C6C.pdf).

16. Plaintiff Jane Doe #1, a Louisiana resident and Medicaid patient, obtains her reproductive health care at PPGC's Baton Rouge health center and desires to continue to do so. She sues on behalf of herself and as a representative of a class of Louisiana Medicaid beneficiaries who obtain, or who seek to obtain, covered health care services at PPGC.

17. Plaintiff Jane Doe #2, a Louisiana resident and Medicaid patient, obtains her reproductive health care at PPGC's New Orleans health center and desires to continue to do so. She sues on behalf of herself and as a representative of a class of Louisiana Medicaid beneficiaries who obtain, or who seek to obtain, covered health care services at PPGC.

18. Plaintiff Jane Doe #3, a Louisiana resident and Medicaid patient, obtains her reproductive health care at PPGC's Baton Rouge health center and desires to continue to do so. She sues on behalf of herself and as a representative of a class of Louisiana Medicaid beneficiaries who obtain, or who seek to obtain, covered health care services at PPGC.

19. Plaintiffs Jane Doe #1, Jane Doe #2, and Jane Doe #3 appear pseudonymously because of the private and personal nature of the medical care that they receive at PPGC, and their desire not to have that information become public in order for them to assert their legal rights.

B. Defendant

20. Defendant Kathy Kliebert is the Secretary of DHH. DHH is the agency that administers Louisiana's state Medicaid program and has notified PPGC that it intends to terminate its provider agreements. Defendant Kliebert is sued in her official capacity, as are her employees, agents, and successors in office.

THE MEDICAID PROGRAM

A. The Medicaid Statute

21. 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).

22. 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).

23. 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).

24. 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).

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

B. Implementation of the Medicaid Act

26. For decades, the Centers for Medicare & Medicaid Services (“CMS”), the agency within HHS that administers Medicaid (and its predecessor organization), has repeatedly interpreted the “qualified” language in Section 1396a(a)(23) to prohibit states from denying access to a provider for reasons unrelated to the ability of that provider to perform Medicaid-covered services or to properly bill for those services, including reasons such as the scope of the medical services that the provider chooses to offer.

27. CMS has explained that “[t]he purpose of the free choice provision is to allow [Medicaid] recipients the same opportunities to choose among available providers of covered health care and services as are normally offered to the general population.” Ctrs. For Medicare & Medicaid Servs., CMS Manuals Publication #45, State Medicaid Manual § 2100.

28. Consistent with this understanding, CMS has a long history of rejecting state plans that seek to limit the type of provider that can provide particular services. *See, e.g.*, 53 Fed. Reg. 8699 (Mar. 16, 1988) (noting rejection of a state plan that would limit providers to “private

nonprofit” organizations); 67 Fed. Reg. 79121 (Dec. 27, 2002) (noting disapproval of a state plan amendment that would have limited “beneficiary choice . . . by imposing standards that are not reasonably related to the qualifications of providers”).

29. More recently, CMS rejected an Indiana plan that barred state agencies from contracting with or making grants to any entities that perform abortion because it violated the Medicaid freedom of choice provision. Letter from Donald M. Berwick, Adm’r., CMS, to Patricia Casanova, Dir., Ind. Office of Medicaid Policy and Planning (June 1, 2011), http://www.politico.com/static/PPM169_110601_indiana_letter.html.

30. Moreover, even though CMS is permitted to waive § 1396a(a)(23) in demonstration projects approved under Social Security Act § 1115, CMS repeatedly rejects state requests to do so for family planning services, including twice in the last year: first in Pennsylvania, *see* Letter from Marilyn Tavenner, Adm’r, CMS, to Beverly Mackereth, Sec’y, Pa. Dep’t of Public Welfare (Aug. 28, 2014), <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/pa/pa-healthy-ca.pdf> (“No waiver of freedom of choice is authorized for family planning providers.”); and more recently in Iowa, *see* Letter from Manning Pellanda, Dir., CMS Div. of State Demonstrations and Waivers, to Julie Lovelady, Interim Medicaid Dir., Iowa Dep’t of Human Servs. (Feb. 2, 2015), <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ia/ia-marketplace-choice-plan-ca.pdf> (“No waiver of freedom of choice is authorized for family planning providers.”).

JINDAL ADMINISTRATION’S EFFORTS TO EXCLUDE PPGC

31. On August 3, 2015, without prior notice, Defendant notified PPGC that it was terminating PPGC’s provider agreements, effective in 30 days (“first termination”).

32. Defendant's letters provided no reason for the first termination of the agreements. However, that same day, Governor Jindal referred in a press release to heavily edited and misleading videos that opponents of Planned Parenthood have recently released on YouTube with regard to Planned Parenthood's abortion practice in other states. Press Release, Office of Bobby Jindal.

33. Governor Jindal further stated that he and DHH "decided to . . . terminate the Planned Parenthood Medicaid provider contract because Planned Parenthood does not represent the values of the State of Louisiana in regards to respecting human life." *Id.*

34. On September 2, 2015, after the commencement of this action, Defendant through counsel maintained that she had no "reason" for the termination (while admitting that the videos were the "motive" for it). In fact, Defendant conceded that as of that date, there was no question about the competency of PPGC to provide Medicaid services.

35. CMS advised Defendant that her actions to terminate PPGC's provider agreements likely violate the Medicaid freedom of choice provision, and filed a Statement of Interest in this action reiterating that position.

36. Soon after, however, Defendant rescinded the first termination, and replaced it with a second attempt to terminate PPGC's provider agreements in letters dated September 15, 2015 ("second termination").

37. Defendant's second termination letters seem to rely on three alleged "reasons" for the termination, but each of them is baseless and unsupported in both fact and law:

- a) First, Defendant states that it was a "violation" of "Louisiana Administration Code, Title 50," without identifying a specific section of that title, to settle a federal False Claims Act case, *Reynolds v. Planned*

Parenthood Gulf Coast, Inc., No. 9:09-cv-124 (E.D. Tex. 2013) over two years ago. Not only is it *not* a violation of state law for a Medicaid provider to settle a case with a “Qui-Tam plaintiff,” La. Admin. Code tit. 50, § 4147(A)(12)(c), but PPGC settled that case (which was brought by a former employee) without any admission of wrongdoing and for practical reasons. Defendant’s second termination letter also informs PPGC that it was required to notify DHH of the *Reynolds* settlement, but nothing in Louisiana law requires that and, moreover, Defendant knew about the settlement as soon as it was filed.

b) Second, Defendant states that “[a]lso under consideration . . . are provider audits and federal false claims cases against Planned Parenthood of America (PPFA) affiliates.” Defendant claims that “PPGC and its parent organization PPFA” failed both “to ensure that all their agents and affiliates are in compliance with all federal and state law as well as rules, policies and procedures of the Medicaid program” and “to notify DHH of violations and misconduct by affiliates and providers-in-fact.” Defendant is wrong on many levels:

i. Planned Parenthood Federation of America (“PPFA”) is not PPGC’s parent organization, nor are other Planned Parenthood affiliates elsewhere in the country, which are completely separate corporations, PPGC’s “agents,” “affiliates” or “providers-in-fact.”

- ii. Defendant, moreover, does not identify any laws or regulations relating to the Louisiana Medicaid program (as is required by La. Admin. Code tit. 50, § 4147(A)(1), a provision of law within the Title that Defendant cites), that PPGC (or other Planned Parenthood entities for that matter) have supposedly violated.
 - iii. The only “provider audit” or “federal false claims case” listed by Defendant is another False Claims Act case against PPGC initiated by a qui tam plaintiff in Texas. Defendant cites misleadingly from the Texas district court’s denial of PPGC’s motion to dismiss to suggest that PPGC has knowingly filed false claims, but PPGC vigorously disputes that contention, and the matter is currently in discovery. DHH, moreover, has never sought any information from PPGC about that case.
- c) Finally, Defendant refers to its “review” of two letters (dated July 24 and August 4, 2015) provided by PPGC in response to questions posed by DHH following the release of the misleading YouTube videos. DHH states that: “After said review, DHH believes that PPGC misrepresented its actions therein and had contradictions within the body of the letter and with the statements and admissions made in the . . . videos.” Defendant further states that: “DHH believes PPGC’s responses to inquiries, when

compared to clear representations in various videos, rises to the level of misrepresentation.”

- i. Defendant does not specify the alleged “misrepresentations” or “contradictions” she contends PPGC made in those letters, nor does she contend that the “misrepresentations” relate to the Louisiana Medicaid program, even though that is required by the state law provision cited by Defendant. La. Stat. Ann. § 46:437.14(A)(1).
- ii. Moreover, the allegations suggested within the misleading YouTube videos, that Planned Parenthood abortion providers are violating the law regarding the use of fetal tissue in scientific research, are false. Defendant, moreover, did not request additional information from PPGC after receiving the letters, did not seek to conduct any investigation to determine whether her belief was correct, did not give PPGC the opportunity to clarify or correct any alleged misrepresentations, and did not make any additional findings.

38. None of the grounds asserted by Defendant relate at all to PPGC’s competence to provide care in the Louisiana Medicaid program.

39. Defendant’s letters further state that she reserves the right to terminate the provider agreements “immediately and without written notice” based on the “further findings of

the pending investigations by any department of Louisiana, any other State or state agency, or the pending investigations in the congressional committees.”

40. On information and belief, the procedures used by Defendant in terminating PPGC’s provider agreements are highly irregular and have not been applied to any other Medicaid provider. Defendant first tried to terminate PPGC without any reason at all and without providing PPGC the opportunity for a pre-deprivation hearing as state law requires. Defendant thereafter invented baseless allegations of “cause” and threatened PPGC with further terminations in her continued efforts to remove PPGC from Medicaid. The effort amounts to nothing more than a witch-hunt against an entity that DHH has never previously suggested provides anything other than excellent Medicaid care.

41. Defendant’s action is part and parcel of Governor Jindal’s campaign against abortion and to punish abortion providers, even though the only services PPGC provides in Louisiana are family planning and other preventive health services to women, men and teens who need them.

42. Absent an injunction from the Court, Defendant will terminate one of PPGC’s provider agreements on October 17 and the remaining three on October 18, 2015.

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

43. The need for publicly supported family planning services is great in Louisiana, which regularly ranks among the worst states for reproductive care. In 2010, 60% of pregnancies in Louisiana were unintended. Guttmacher Inst., State Facts About Unintended Pregnancy: Louisiana (2014), <https://www.guttmacher.org/statecenter/unintended-pregnancy/pdf/LA.pdf> (hereafter “State Facts: Louisiana”). The state ranks fifth highest among 50 states in teen pregnancy rates. Kathryn Kost & Stanley Henshaw, Guttmacher Inst., U.S. Teenage Pregnancies,

Births and Abortions, 2010: National and State Trends by Age, Race and Ethnicity 4 (2014), <http://www.guttmacher.org/pubs/USTPtrends10.pdf>. Nearly 80% of Louisiana's unplanned births are publicly funded, higher than the national average of 68%. State Facts: Louisiana. Moreover, Louisiana has high rates of STIs: the state ranks first in congenital syphilis and gonorrhea, second in chlamydia, and third in primary and secondary syphilis. Ctrs. for Disease Control and Prevention, 2013 Sexually Transmitted Diseases Surveillance, Table 41. Congenital Syphilis - Reported Cases and Rates of Reported Cases in Infants, by State, Ranked by Rates (2013) <http://www.cdc.gov/std/stats13/tables/41.htm>; Table 13. Gonorrhea - Reported Cases and Rates of Reported Cases by State, Ranked by Rates (2013) <http://www.cdc.gov/std/stats13/tables/13.htm>; Table 2. Chlamydia - Reported Cases and Rates of Reported Cases by State, Ranked by Rates (2013) <http://www.cdc.gov/std/stats13/tables/2.htm>; Table 26. Primary and Secondary Syphilis - Reported Cases and Rates of Reported Cases by State, Ranked by Rates (2013).

44. As DHH has recognized, “[i]n Louisiana, for 2002, there were an estimated 515,960 women, ages 13 to 44 years, needing contraceptive services and supplies. Of those, 59 percent needed publicly supported services.” DHH, East Baton Rouge Parish Health Profile 30 (2005), <http://new.dhh.louisiana.gov/assets/docs/SurveillanceReports/php/PHP2005/PDF/EastBatonRouge/PHPEastBatonRouge.pdf> (hereinafter “DHH, East Baton Rouge Parish Health Profile”). In East Baton Rouge Parish alone, DHH estimated in 2005 that of the 54,980 women needing contraceptive services and supplies, 31,770 (58%) were in need of publicly supported services and supplies. *Id.*

45. In spite of the great needs, there are simply not enough providers of the critical care PPGC provides. PPGC's New Orleans health center is in an area that the federal government has classified as "medically underserved" based on four variables: 1) the ratio of primary medical care physicians per 1,000 population, 2) the infant mortality rate, 3) the percentage of the population with incomes below the poverty level, and 4) the percentage of the population age 65 or over. Both of PPGC's health centers are in areas classified as a "Primary Care Health Professional Shortage Area," a designation for areas with a population to full-time primary care physician ratio of 3500:1 – or a ratio between 3000-3500:1 in areas with unusually high demand for primary care services – and in which primary care professionals in contiguous areas are practically inaccessible. See U.S. Dep't of Health and Human Servs., *Find Shortage Areas*, Health Resources and Services Administration, <http://datawarehouse.hrsa.gov/GeoAdvisor/ShortageDesignationAdvisor.aspx> (enter each clinic address and click "submit") (last accessed Aug. 21, 2015); U.S. Dep't of Health and Human Servs., *Guidelines for MUA and MUP Designation*, Health Resources and Services Administration, <http://bhpr.hrsa.gov/shortage/muaps/index.html> (last accessed Aug. 21, 2015); U.S. Dep't of Health and Human Servs., *Primary Medical Care HPSA Designation Overview*, Health Resources and Services Administration, <http://bhpr.hrsa.gov/shortage/hpsas/designationcriteria/primarycarehpsaoverview.html> (last accessed Aug. 21, 2015).

46. With these significant provider shortages, PPGC plays a key role in providing needed care to Louisiana's low-income population, treating over 5200 Louisiana Medicaid patients annually. In East Baton Rouge Parish alone, 5460 female contraceptive clients were served by publicly funded health clinics in 2010, the latest year that data is available; Planned

Parenthood—by far the largest provider—served over half (3130) of these women. Guttmacher Inst., *Contraceptive Needs and Services*, 2010 (2013)

<http://www.guttmacher.org/pubs/win/2010/WIN-2010-Louisiana.pdf>.

47. Many of PPGC’s patients come only to PPGC for their health care. As DHH has itself recognized, “[w]ith the high rate of people living without health insurance in Louisiana, a family planning visit may be the only time that a woman ever has a preventive health clinic visit.” DHH, *East Baton Rouge Parish Health Profile 28*.

48. If Defendant’s actions take effect, many of PPGC’s Medicaid patients in Baton Rouge and New Orleans, who already have few or no alternative options, will find it difficult or impossible to access the reproductive health care services they need. Those who are able to find other providers will often have to wait unacceptable periods of time for an appointment. Those who are unable to find an adequate alternative will not receive the medical services they need, which will lead to higher rates of unintended pregnancies, STIs, and undiagnosed cancers.

49. Other Medicaid providers in Baton Rouge and New Orleans are already stretched to the breaking point, even with PPGC providing care. It is virtually impossible to locate a private ob/gyn who will take a Medicaid patient who is not pregnant. At community health clinics, it is often difficult for low-income patients to connect with a scheduler to make an appointment. Even if a patient can obtain an appointment, she may be unable to obtain (either at all, or without significant delays) the services she seeks, such as long acting reversible contraceptives (“LARCs”), which are the most effective forms of birth control, or lifesaving cancer screening procedures, such as colposcopies. Some other clinics abide by the Catholic health directives and do not provide birth control at all. Indeed, other Medicaid providers sometimes refer their patients to PPGC’s health center for those services. Other clinics are

difficult for PPGC's low-income patients to travel to. And, with cuts and closures at local public hospitals and clinics, it is difficult for low-income patients in need of medical care to obtain it.

50. If PPGC is forced to stop providing care in the Medicaid program, a dire situation will become critical. The remaining providers will be simply unable to absorb PPGC's patients, leaving those patients without access to critical medical services.

51. Even if other providers were available, patients insured through Medicaid choose PPGC based on a number of factors that are generally not available at other providers. With its evidence-based practices and up-to-date technology, PPGC is known as a provider of high-quality medical care. Many individuals who receive other health care through community care providers or other Medicaid providers choose to have a separate provider such as PPGC for their reproductive health care because they are concerned about their privacy and because they fear being judged by other providers.

52. 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, PPGC offers extended hours. In addition, PPGC spaces patient appointments so as to minimize wait times. PPGC 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 PPGC health center to obtain their contraceptive method of choice. PPGC has either a full-time Spanish speaker on staff or translator services available to non-English speaking patients at all times.

53. Defendant's actions will deprive all of PPGC's Medicaid patients, including Plaintiffs Jane Doe #1, #2, and #3, of access to the high-quality, specialized care that PPGC provides.

54. All three individual Plaintiffs rely on PPGC as the place they can turn to for critical medical care and for prompt, efficient, and compassionate services. If PPGC is eliminated from Medicaid, they will be prevented from receiving services from their provider of choice, will have their health care interrupted, and may encounter difficulties finding alternative care.

55. In FY 2014, PPGC's reimbursements for providing these critical health services to low-income patients totaled nearly \$690,000. Without this revenue, PPGC may be unable to continue to provide services in the same manner, and may be forced to lay off staff members, reduce hours, or close the Baton Rouge health center, as Medicaid reimbursements amount to over 60% of the revenue at that health center. If PPGC closes its Baton Rouge health center, it would be very expensive – if not impossible – for PPGC to resume operations as they are today should PPGC ever be allowed back as a Medicaid provider. Further, if PPGC closes its Baton Rouge health center, this will affect not only the Medicaid patients at the health center, but all of the patients who seek reproductive health care at that health center.

CLASS ALLEGATIONS

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

57. The class consists of all Louisiana Medicaid beneficiaries who obtain, or who seek to obtain, covered health care services at PPGC.

58. Although the size of the class is unknowable, as alleged in paragraph 13 above, PPGC provided covered health care services to over 5200 Medicaid patients in FY 2014. Therefore the approximate size of the class is over 5200 individuals.

59. Plaintiffs Jane Doe #1, Jane Doe #2, and Jane Doe #3 are adequate class representatives because they, like other members of the class, are Louisiana residents and Medicaid patients who obtain their reproductive health care at PPGC health centers and desire to continue to do so. Unless Defendant is enjoined, class representatives and 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, PPGC. As a result, many of PPGC's Medicaid patients, including Plaintiffs Jane Doe #1, Jane Doe #2, and Jane Doe #3 and other class members, who already have few or no alternative options, will find it difficult or impossible to access the reproductive and other health care services they need.

60. Defendant's action – terminating PPGC from the Medicaid program – applies generally to the class, such that both declaratory and injunctive relief is appropriate for all members of the class.

61. Class members raise the same questions of law, including whether Defendant's termination of PPH Medicaid provider agreements violates the Medicaid freedom-of-choice provision, 42 U.S.C. § 1396a(a)(23), 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)

62. Plaintiffs hereby incorporate Paragraphs 1 through 61 above.

63. Defendant's action violates Section 1396a(a)(23) of Title 42 of the United States Code by denying PPGC's patients, including the Plaintiffs Jane Doe #1, Jane Doe #2, and Jane Doe #3, the right to choose any willing, qualified healthcare provider in the Medicaid program.

CLAIM II – FOURTEENTH AMENDMENT EQUAL PROTECTION

64. Plaintiffs hereby incorporate Paragraphs 1 through 61 above.

65. Defendant's action violates Plaintiffs' rights by singling them out for unfavorable treatment without adequate justification.

CLAIM III – FIRST AND FOURTEENTH AMENDMENTS – PENALIZING CONSTITUTIONALLY PROTECTED ACTIVITY

66. Plaintiffs hereby incorporate Paragraphs 1 through 61 above.

67. Defendant's action penalizes Plaintiffs for their constitutionally protected association with Planned Parenthood and/or abortion, without adequate justification.

RELIEF REQUESTED

WHEREFORE, Plaintiffs request that this Court:

68. 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);

69. Issue a declaratory judgment that Defendant's action violates the Medicaid Act;

70. Issue a declaratory judgment that Defendant's action violates the First and Fourteenth Amendments;

71. Issue temporary, preliminary and permanent injunctive relief, without bond, enjoining Defendant, her agents, employees, appointees, delegates, or successors from terminating, or threatening to terminate PPGC's Medicaid provider agreements;

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

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

Dated: October 7, 2015

/s/ William E. Rittenberg

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