

Raphael Graybill\*  
 Graybill Law Firm, PC  
 300 4th Street North  
 PO Box 3586  
 Great Falls, MT 59403  
 (406) 452-8566  
 rgraybill@silverstatelaw.net

Tanis M. Holm  
 Edmiston & Colton Law Firm  
 310 Grand Ave.  
 Billings, Montana 59101  
 (406) 259-9986  
 tholm@yellowstonelaw.com

Peter Im\*\*  
 Planned Parenthood Federation of America, Inc.  
 1110 Vermont Ave., N.W., Suite 300  
 Washington, D.C. 20005  
 (202) 803-4096  
 peter.im@ppfa.org

Dylan Cowit\*\*  
 Planned Parenthood Federation of America, Inc.  
 123 William St., 9th Floor  
 New York, NY 10038  
 (212) 541-7800  
 dylan.cowit@ppfa.org

*Attorneys for Plaintiffs Planned Parenthood of  
 Montana and Samuel Dickman, M.D.  
 \*Additional Counsel Listed on Next Page*

**FILED**

APR 28 2023

By ANGIE SPANIS, Clerk of District Court  
 Deputy Clerk

**MONTANA FIRST JUDICIAL DISTRICT COURT,  
 COUNTY OF LEWIS AND CLARK**

PLANNED PARENTHOOD OF MONTANA; )  
 ALL FAMILIES HEALTHCARE; BLUE )  
 MOUNTAIN CLINIC; SAMUEL DICKMAN, )  
 M.D.; and HELEN WEEMS, APRN-FNP, on )  
 behalf of themselves and their patients )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 STATE OF MONTANA; MONTANA )  
 DEPARTMENT OF PUBLIC HEALTH )  
 AND HUMAN SERVICES; and CHARLIE )  
 BRERETON, in his official capacity as Director )  
 of the Department of Public Health and )  
 Human Services )  
 )  
 Defendants. )

Cause No.: CDV -23 -299  
 Judge: Seedy

**AFFIDAVIT OF  
 MARTHA FULLER  
 IN SUPPORT OF PLAINTIFFS'  
 APPLICATION FOR A  
 TEMPORARY RESTRAINING  
 ORDER, PRELIMINARY  
 INJUNCTION, AND WRIT OF  
 PROHIBITION**

Erin M. Erickson  
Bohyer, Erickson, Beaudette,  
and Tranel P.C.  
283 West Front St., Suite 201  
Missoula, MT 59802  
(406) 532-7800  
erickson@bebtlaw.com

Akilah Deernose  
Alex Rate  
ACLU of Montana  
PO Box 1986  
Missoula, MT 59806  
(406) 203-3375  
deernosea@aclumontana.org  
ratea@aclumontana.org

Hillary Schneller\*\*  
Jen Samantha D. Rasay\*\*  
Adria Bonillas\*\*  
Center for Reproductive Rights  
199 Water Street, 22nd Floor  
New York, NY 10038  
(917) 637-3777  
hschneller@reprorights.org  
jrasay@reprorights.org  
abonillas@reprorights.org

*Attorneys for Plaintiffs All Families Healthcare,  
Blue Mountain Clinic, and Helen Weems*

\*\*Applications for admission pro hac vice  
forthcoming

STATE OF MONTANA        )  
  )ss.  
County of Yellowstone    )

I, Martha Fuller, being first duly sworn upon oath, state as follows:

1. I am the President and Chief Executive Officer of Planned Parenthood of Montana (“PPMT”). I have served in this capacity since July 2013.
2. My responsibilities at PPMT involve program development and administration; human resources and workforce development; patient experience, safety, and quality efforts; regulatory compliance; advocacy and community engagement; and fundraising.
3. This affidavit is based upon my personal knowledge, my review of PPMT’s business records, and the knowledge I have acquired in the course of my duties with PPMT. If called and sworn as a witness, I could and would testify competently thereto.
4. I submit this affidavit in support of Plaintiffs’ motion for temporary restraining order, preliminary injunction, and application for writ of prohibition.

### PPMT's Services

5. PPMT is a not-for-profit corporation organized under the laws of the State of Montana. PPMT provides high-quality health care and operates five health centers across Montana. It operates one health center in Helena, Missoula, and Great Falls, respectively, and two in Billings (Planned Parenthood Heights and Planned Parenthood West). The Planned Parenthood Heights health center is temporarily closed because of flooding damage.
6. PPMT is the largest provider of reproductive health care in Montana. It delivers high-quality, affordable, and non-judgmental health care to more than 11,000 people annually. The services that PPMT provides include: pregnancy diagnosis and counseling; contraceptive counseling; provision of all methods of contraception; HIV/AIDS testing and counseling; testing, diagnosis, and treatment of sexually transmitted infections; screenings for cervical and breast cancer; integrated behavioral health services; gender affirming care; miscarriage management; and abortions.
7. PPMT health centers are staffed with experienced practitioners who provide exemplary medical care. In addition to in-person visits, PPMT also offers telehealth appointments, conducted through a private and secure video-conferencing platform.
8. All five of PPMT's health centers provide abortion services. Four of the five—all but Great Falls—provide in-person medication abortion (“MAB”), and all five provide site-to-site MAB, in which a patient at one PPMT health center connects through a telehealth visit with an abortion provider at another PPMT health center. In addition, the Helena health center provides procedural abortion, as does the Billings Heights health center when it is open. PPMT also provides direct-to-patient MAB to Montanans, in which a

PPMT provider meets with a patient in Montana through a telehealth visit, then a pharmacist at the Missoula health center mails the patient the medications for the MAB.

9. There are few abortion providers in Montana, and PPMT is not able to staff abortion providers at each PPMT health center every day. Site-to-site MABs allow PPMT to bridge potential gaps in care by offering MABs at PPMT health centers where a provider is not physically present. Site-to-site MABs decrease the amount of travel and expense required for patients, who can travel to the nearest PPMT health center, rather than to a health center where an abortion provider is physically present, which may be hours away. Direct-to-patient MABs eliminate the need to travel to a PPMT health center in person and provide a safe and effective way to overcome barriers to abortion access in Montana.
10. In 2022, Medicaid patients who used PPMT's direct-to-patient services lived an average of 82 miles away from a health center. At our health centers, it is not unusual for patients to drive upwards of five hours to access care.
11. PPMT provides MAB through 77 days (11 weeks) as dated from the first day of the patient's last menstrual period ("LMP"). Medicaid reimburses for MAB with mifepristone through 10 weeks LMP. PPMT provides, and Medicaid reimburses, procedural abortion up to 21.6 weeks LMP.
12. In 2022, PPMT provided 931 MABs and 132 procedural abortions, for a total of 1063 abortions.
13. In 2022, about 86% of the abortions provided by PPMT were provided by advanced practice clinicians ("APCs"), including physician assistants and nurse practitioners. About 98% of the MABs were provided by APCs.

14. For as long as I have served as CEO, PPMT has accepted Montana Medicaid as payment from eligible patients. Serving patients with low incomes who are eligible for Medicaid is a critical part of PPMT's mission. In 2022, 45% of abortions at PPMT were covered by Medicaid. 85% of the abortions covered by Medicaid that year were performed by APCs.
15. In 2022, about 28% of the 410 MABs PPMT provided that were covered by Medicaid were provided via telehealth.
16. I have reviewed the regulation proposed by the Montana Department of Public Health and Human Services on December 23, 2022, in Montana Administrative Register ("MAR") No. 37-1024 ("the Rule").
17. I understand that the final version of the rule, which will be adopted in the April 28, 2023, edition of the MAR and that will take effect on May 1, is the same as the proposed version. DPHHS's decision to make it effective the next business day after it is published makes it impossible for us to prepare to comply with it.
18. The Rule severely restricts Medicaid eligible patients' ability to use Medicaid coverage for their abortions.

**Impact on PPMT of Challenged Regulation**

19. The Rule would require that, in order to be covered by Medicaid, abortions must be provided by a physician. PPMT currently only employs one full-time physician: PPMT's Chief Medical Officer, Dr. Samuel Dickman. Although the majority of Dr. Dickman's work is non-clinical, he provides abortions in-person in Helena twice per month, for one day at a time, adding a second day if a patient requires a two-day procedure, for a total of up to four days per month. He is our only provider who provides abortions up to 21.6 weeks LMP. He also provides in-person MABs in Missoula as needed. PPMT also

employs one contract physician, who provides in-person abortions in Helena one day each month.

20. The vast majority of abortions at PPMT are provided by APCs. It would be logistically and financially impossible for PPMT to provide appointments with physicians to all of its Medicaid patients, who make up nearly half of its abortion patients.
21. DPHHS has designated 52 of Montana's 56 counties as health professional shortage areas.<sup>1</sup> Given the shortage of abortion providers in the state, it would be logistically and financially infeasible for PPMT to hire more full-time physicians to meet the increased need for physicians if the Rule were to take effect. It took over six months to hire Dr. Dickman.
22. It would be logistically and financially infeasible for PPMT to rely on contract physicians who fly in from out of state to meet the increased need because of, among other reasons, the difficulty of scheduling around flights into and out of Helena, scheduling abortions for one day without impacting the availability of the other services PPMT provides, space and staffing constraints, and the administrative burden of scheduling contract physicians with varying schedules.
23. I understand that the Rule also narrows the definition of "medically necessary" for abortion services and includes a requirement that Medicaid patients obtain prior authorization from DPHHS for abortions.
24. I understand that the Rule's prior authorization provisions require that each patient submit to a physical examination. I also understand that DPHHS has stated that it requires its contractor to complete the prior authorization process in three business days.

---

<sup>1</sup> *Montana Health Professional Shortage Area (HPSA) Designations*, Mont. Dep't of Pub. Health & Hum. Servs., <https://dphhs.mt.gov/ecfsd/primarycare/shortageareadesignations>.

Because the process will not be completed on the same day as the initial appointment, the physical examination requirement would force Medicaid patients seeking abortions to make an extra visit to a health center. For our patients who currently obtain abortions through direct-to-patient telehealth, they would have to make a trip to our health center that they currently can avoid. And patients who would now receive an in-person abortion in one visit would be forced to visit the health center in-person another time beforehand to complete the required physical examination and other prior authorization requirements. This would be burdensome logistically and financially for patients, who often need to arrange for childcare, transportation, and sometimes lodging expenses. This is especially true for Medicaid patients who have low incomes and who would be forced to expend costs to travel long distances to reach a clinic.

25. The physical examination requirement would effectively ban telehealth for abortion patients who are Medicaid-eligible.
26. If the Rule were to go into effect and PPMT had to schedule an additional appointment for every Medicaid patient seeking an abortion (over 40% of its abortion patients), PPMT would be forced to reduce the availability of appointments for everyone—including for people seeking non-abortion services such as birth control and screenings for sexually transmitted infections, HIV/AIDS, and cancer.
27. Currently, patients seeking medication abortions are often able to obtain care on the same day that they initially call. This would be impossible for Medicaid patients under the Rule.

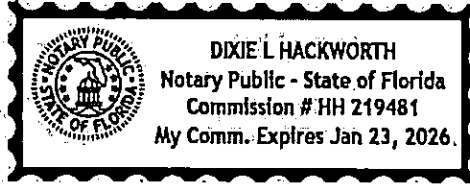
I declare under penalty of perjury that the foregoing is true and correct.

Dated: 04/27/2023

State of Florida  
County of Highlands

Subscribed and sworn to before me this 27th day of April, 2023.

(NOTARIAL SEAL)



*Martha Fuller*

Martha Fuller

*Dixie L. Hackworth*

Printed Name: Dixie L. Hackworth, Online Notary

Signer Martha Fuller produced Montana DL, as identification along with multi-factor KBA authentication and audio/video recording to be notarized online.