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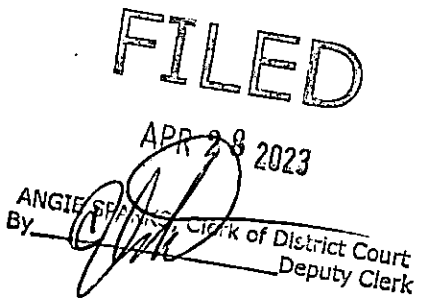

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MONTANA FIRST JUDICIAL DISTRICT COURT,
COUNTY OF LEWIS AND CLARK

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: Seeley **AFFIDAVIT OF HELEN WEEMS, MSN, APRN-FNP, IN SUPPORT OF PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND APPLICATION FOR WRIT OF PROHIBITION**

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**Applications for admission pro hac vice forthcoming

I, Helen Weems, MSN, APRN-FNP, affirm that:

1. I submit this affidavit in support of Plaintiffs' Application for a Temporary Restraining Order, Preliminary Injunction, and Application for a Writ of Prohibition.

Background and Experience

2. I am a Medicaid-enrolled clinician and certified nurse practitioner licensed to practice in Montana, and one of the plaintiffs in this case. I own and am the sole clinician at All Families Healthcare ("All Families"), a sexual and reproductive health clinic in Whitefish, Montana, which I opened in 2018.

3. I have a master's degree of science in nursing, family practice, from Vanderbilt University in Nashville, Tennessee. I am an advanced practice registered nurse, and I have been board certified in family practice since 1999. I also have prescriptive authority from the Board of Nursing, and a U.S. Drug Enforcement Authority ("DEA") license, which permits me to prescribe schedule II through V controlled substances.

4. For 22 years, I have provided health care services as a certified nurse practitioner, including to low-income patients. I have always provided patient-centered care based on trust and respect for my patients' decisions, regardless of their income level or insurance provider, and use that same approach at All Families.

5. All Families serves approximately 600 patients per year, with 2,000 patient visits, and provides comprehensive sexual and reproductive health care services, including LGBTQ+ care and gender-affirming care; gynecological exams; same-day access to the full spectrum of contraceptive options, including insertion of IUDs and implants; diagnosis and treatment of sexually transmitted infections; miscarriage management; and abortion services.

6. I am the sole clinician at All Families, and the sole clinician providing abortion care in Northwest Montana. Before All Families opened in 2018, the Northwest region had been without an abortion provider since 2014.

7. I reviewed the proposed rule concerning Medicaid coverage of abortion services and submitted oral comments in opposition on January 12, 2023, and written comments in opposition on January 20, 2023.

8. I understand that the final rule will be published publicly on April 28 and is set to take effect May 1. Although the Department has not yet published the final rule publicly, my understanding is that the Department will finalize the rule as proposed. The fact that the rule is set to take effect just one business day after the Department publishes it causes unnecessary and completely avoidable disruption for me, my clinic, and my patients. It is part and parcel of the chaos into which I, like other abortion providers, have been thrust simply because we provide this safe, effective, and high-quality care. Time and again, we are expected to alter our practices overnight. No other health care is practiced this way, and my patients and I need and deserve, at

a minimum, the certainty that the rules governing our practice will not change at a moment's notice.

9. The rule dramatically changes Medicaid coverage for abortion. It will end Medicaid coverage of abortion care that I provide because I am a nurse practitioner, which will have devastating consequences for my patients seeking abortion care. Without Medicaid coverage for abortion care, the rule puts my entire practice under threat, and will likely force it to close, which would be a loss for people seeking abortion care across Montana (whether or not on Medicaid) as well as for the community to whom I provide comprehensive sexual and reproductive health care.

10. The rule also ends telehealth—a term I use interchangeably with telemedicine—for abortion care for Medicaid members. And, for those Medicaid members who are ultimately able to make it to one of the few physicians in the state whom Medicaid will reimburse for abortion care, and make it in person, coverage for their care is not guaranteed. The narrow definition of "medically necessary," plus the various prior authorization and supporting documentation requirements, will mean Medicaid will not cover many patients' abortion care. And for many Medicaid members, who are by definition low-income, a coverage denial will mean denied access.

11. Implementation of the rule will mean many Medicaid members will not be able to access abortion care, and will be forced to continue their pregnancies, give birth, and parent. The rule not only takes away individuals' decisions about their bodies and their futures, but also threatens to keep or push them, their children, and their families into poverty.

All Families and Our Patients

12. At All Families, I provide medication abortion up to 11 weeks as measured from the first day of the person's last menstrual period ("LMP") and aspiration abortions up to 12 weeks and 6 days LMP. In 2022, I provided approximately 260 abortions. Medication abortion makes up the vast majority of abortion care I provide. More than half of my patients seeking abortion services are insured by Medicaid.

13. I also provide medication abortion via telehealth, which lets my patients access care without having to visit All Families in person. During a telehealth visit, I consult with a patient remotely about available options, review prior history, and confirm the patient is eligible for medication abortion. I then write a prescription for medication abortion, and the medications are mailed to the patient in Montana. There are multiple safe and effective medication abortion regimens, including a mifepristone and misoprostol regimen and misoprostol-only regimen.

14. Of the medication abortion care I provide, more than half of it is provided via telehealth, and this option has been critical to many of my Medicaid patients. It provides flexibility and discretion, particularly for those who cannot take time from work, find childcare, or whose privacy would be jeopardized by making an in-person visit. It is also ideal for my many patients who live in the remote, rural regions of the state which can be hours from All Families or the nearest clinic. Some live in the northeastern part of the state, about 9-10 hours away, and would otherwise have to travel through treacherous mountain passes and inclement weather to access abortion care. Patients may not have gas money or cars that can reliably and safely make it on these roads.

15. My patients seek abortion services for a variety of reasons: some lack the financial means to raise a child; others are not ready to become a parent; many have physical and emotional health issues that would be exacerbated by continuing a pregnancy. In every

circumstance, forcing my patient to continue a pregnancy would cause needless pain and suffering, and can have long-term consequences for my patient and their family. Abortion is a medical intervention that ends a pregnancy and addresses that suffering. That makes every abortion I provide medically necessary.

The Physician-Only Restriction Will Have Devastating Consequences for Medicaid Members, and All Families' Entire Practice and the Community We Serve

16. One provision of the rule will ban Medicaid from covering abortion when provided by advanced practice clinicians, including nurse practitioners like me (the "physician-only provision").

17. The rule goes against overwhelming evidence and experience, including here in Montana, which demonstrate that advanced practice clinicians provide safe and effective abortion care on par with our physician counterparts. A consensus in the medical community agrees.[1] I have been providing abortion care at All Families since 2018. And, before me, a physician assistant was the primary abortion provider at a clinic in Kalispell, also called All Families. When my clinic opened, I had to sue the State to block a criminal law that prevented me from providing abortion care, similar to what the rule does now. In the course of that case, in 2019, the Montana Board of Nursing confirmed that advanced practice registered nurses, including nurse practitioners like me, can provide abortion care consistent with our licenses and under the Board's rules.

18. Just as there is no reason to single out abortion care from the other care I provide, there is no reason to single out and bar my Medicaid patients from accessing abortion care from

[1] *E.g.*, Nat'l Academies of Sciences, Engineering, and Medicine, Committee on Reproductive Health Services, *The Safety and Quality of Abortion Care in the United States* (2018); Tracy A. Weitz, et. al., *Safety of Abortion Performed by Nurse Practitioners, Certified Nurse Midwives, and Physician Assistants Under a California Legal Waiver*, 103 Am J. Pub. Health 454-461 (2013).

me. For example, the rule makes clear that it does not apply to miscarriage care, which I provide and which is identical to abortion care. There is no reason to prohibit me from being reimbursed by Medicaid for abortion care, but not for miscarriage care.

19. Singling out advanced practice clinicians and denying Medicaid coverage for abortion care patients seek from us, does not improve health outcomes for patients. It instead poses significant health and safety risks, worsens financial outcomes for those already struggling financially, and strips patients of their ability to seek care from their trusted and chosen provider.

20. Myriad harms would result from this rule. First, it would end Medicaid coverage for abortions I provide, and have a devastating impact on Medicaid patients' ability to obtain abortion care. As the *sole* clinician at All Families and the *only* abortion provider in Northwest Montana, the rule would leave Medicaid patients in the region without any abortion provider. Advanced practice clinicians have been critical to maintaining or restoring access to abortion in this region; this rule would once again cut off access—at a minimum, for Medicaid members.

21. Second, the rule would deny Medicaid members access to their *chosen* provider if that provider is me—or another nurse practitioner, nurse midwife, or physician assistant. I have developed trusting relationships with my patients who come to me seeking intimate care. For 5 years I have provided that care with respect and compassion, free of judgment. This has made All Families a staple in Whitefish, beloved by the community. But preventing Medicaid patients from obtaining abortion care from me forces patients to seek out a different provider, for no other reason than an arbitrary distinction based on my credentials, not my experience or expertise. This is unnecessary, disruptive for the patient, and strips them of their right to see a provider they trust.

22. Third, ending All Families' abortion practice will impact people from across Montana who seek out abortion care from All Families. Under the rule, those patients, too, will be forced to seek care elsewhere—at one of the few physicians who provide abortion services in this state.

23. Together with the physical exam requirement, which will end access to telehealth abortion for Medicaid members, the rule will impose significant travel and financial constraints on Medicaid members, who by definition are low-income, and are often already struggling to make ends meet.

24. For a patient traveling from Whitefish, the next closest abortion provider to All Families is in Missoula, about 3 hours away (one way). Other patients in the Flathead and beyond would be forced to travel even further to reach Missoula. Patients from all over Montana, often from isolated, rural areas, who currently access abortion via telehealth from All Families, would have to seek that care from—and go in person to—a clinic with a physician several hours away. That travel requires time off work, money for gas and reliable transportation, childcare, and possibly an overnight stay, among other costs. Medicaid patients may also have to save up money for the cost of the abortion itself, if Medicaid ultimately denies coverage under the rule.

25. Gathering funds for any one of these logistical arrangements takes time, which will delay access to time-sensitive abortion care, and will force people to stay pregnant, and experience the symptoms and risks that come along with pregnancy. Abortion is safe throughout pregnancy, but the risks increase incrementally as pregnancy progresses, so delay can increase risks. Delay can also mean people are no longer eligible for medication abortion. For many Medicaid members, who are already bound by financial constraints, these increased financial, childcare, or transportation challenges will be insurmountable. Making the logistical

arrangements, for childcare, missed work, or for an appointment that can be kept confidential from an abusive family member, brings another set of challenges and stressors. Even after all of that, Medicaid members will have only a handful of physicians from whom to try to seek abortion care. And, even if someone is able to navigate all of these obstacles, and make an in-person appointment with a physician, Medicaid may ultimately not cover the abortion because it does not fit within the new narrow definition of "medically necessary."

26. Ultimately, many Medicaid members will be forced to remain pregnant for longer, with many inevitably carrying pregnancies to term against their will. Evidence demonstrates that people denied an abortion they seek are more likely to face health and economic hardship, and that there are long-term economic consequences for their children as well. Imposing that future on Medicaid members is unconscionably cruel.

27. Finally, the rule would seriously threaten my ability to keep All Families open at all. Abortion care makes up most of the care I provide, and about half of those services are covered by Medicaid. Without Medicaid reimbursement for abortion care, I will likely not be able to keep All Families open—which would have devastating consequences for both my Medicaid patients and my patients on private insurance, and patients who seek abortion and those for whom I provide birth control, miscarriage care, and gender-affirming care. All Families has become a critical resource for young people and families, where patients know they can get confidential and safe care from a trusted provider. Losing All Families would be a tremendous loss for me, and for the community.

Eliminating Telehealth and Redefining "Medically Necessary" Harms Medicaid Members

28. The rule will also require Medicaid patients to submit to a physical exam as part of the documentation required to support medical necessity.

29. Requiring a medically unnecessary physical exam, as the rule does, would eliminate telehealth and propel abortion access backward—eliminating the flexibility and privacy from which patients benefit.[2] The increased uptake in medication abortion by mail (telehealth) highlights the difficulty patients have in accessing care in the clinic.

30. Before launching the telehealth abortion program, patients would cancel or not show up to in-person appointments. During follow-up calls, patients would say that something came up that made making the appointment impossible: they could not take off from work, a family member did not show up to take care of the kids, their car had broken down or could not handle the weather, they could not afford gas to travel to the clinic, or they could not discretely attend the appointment for fear of someone finding out. Since starting our telehealth program, cancellations or no-shows are far more rare.

31. The rule would propel abortion care backward for Medicaid members, who will miss appointments, and be delayed or denied time-sensitive abortion care. And, not only will the rule require patients to make an in-person visit, but it will also mean they have to make that visit to one of the handful of physicians in the state who provide abortion care.

32. I am also concerned that the physical exam requirement, together with the prior authorization and supporting documentation necessary to try to meet the new narrow definition of "medically necessary," will mean patients have to make multiple trips to a clinic if all of this—and the abortion itself, if approved—may not be completed in one visit.

33. With every in-person visit a patient must make, the risk increases that the patient will face some obstacle that will prevent them from making the appointment. As a result,

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[2] *E.g.*, Ushma D. Upadhyay, et. al., *Safety and Efficacy of Telehealth Medication Abortions in the U.S. During the Covid-19 Pandemic*, JAMA Network Open (2021), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2783451.

Medicaid members will likely miss appointments—with the devastating consequences of delay or forced pregnancy and childbirth, as set out above.

34. And, ultimately, even if a patient overcomes these obstacles, they may be denied Medicaid coverage because Medicaid does not deem their abortion "medically necessary" under the new and abortion-specific definition in the rule.

35. Abortion is essential and is medically necessary care. That need does not change just because a patient is on Medicaid. At a time when abortion access is being restricted across the country, Montana should be finding ways to increase abortion access, not take it away from the State's most vulnerable.

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

Dated: 4/27/23

Helen E. Weems

Helen Weems, MSN, APRN-FNP

State of Montana)

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County of Flathead)

Signed and affirmed to me this April 27th, 2023.

Cennecka McGoldrick

Notary Public

CENNECKA MCGOLDRICK NOTARIAL SEAL STATE OF MONTANA

CENNECKA MCGOLDRICK
NOTARY PUBLIC for the
State of Montana
Residing at Kalispell, MT
My Commission Expires
December 1, 2026