



September 15, 2015

TO: Members, Subcommittee on Health

FROM: Committee Majority Staff

RE: Hearing: “Protecting Infants: Ending Taxpayer Funding for Abortion Providers Who Violate the Law”

I. INTRODUCTION

On Thursday, September 17, 2015, at 3:00 p.m. in 2123 of the Rayburn House Office Building, the Subcommittee on Health will hold a hearing, “Protecting Infants: Ending Taxpayer Funding for Abortion Providers Who Violate the Law.” The Subcommittee will review two bills to strengthen enforcement against providers who violate the Born-Alive Infants Protection Act of 2002 and the Partial-Birth Abortion Ban Act of 2003.

II. WITNESSES

- Charmaine Yoest, Ph.D., President, Americans United for Life;
- Casey Mattox, Senior Counsel, Alliance Defending Freedom; and
- Judy Waxman, Attorney.

III. BACKGROUND

Created in 1965 as a joint Federal-State program to finance health care coverage for low-income Americans, Medicaid is now the world’s largest health insurance program. As of June 2015, Medicaid covered nearly 72 million individuals.¹ Eligibility for Medicaid is determined by both Federal and State law, whereby States set individual eligibility criteria within Federal standards. Individuals must meet both categorical (e.g., elderly, individuals with disabilities, children, pregnant women, parents, certain non-elderly childless adults) and financial (i.e., income and sometimes assets limits) criteria.

Federal law requires State Medicaid programs to cover a wide array of mandatory services, and permits States to cover additional services at their option. As a result, Medicaid generally covers a wide range of health care services, including services that are not typically covered by private health insurance. Medicaid covered services can be categorized into broad

¹ <http://www.medicaid.gov/medicaid-chip-program-information/program-information/downloads/june-2015-enrollment-report.pdf>

types of coverage, including hospital care; non-hospital acute care, such as physician, dental, laboratory, and preventive services; prescription drugs; and long term services and supports provided in institutions and in the community.

Today, Medicaid accounts for more than 15 percent of all health care spending in the United States and plays an increasingly large role in our nation's health care system. Medicaid spending accounts for roughly one in every four dollars in an average State budget. Medicaid spending also comprises nearly half of national spending on long-term services and supports, and roughly a quarter of all mental health and substance abuse treatment spending. At the same time, Medicaid, along with the Children's Health Insurance Program (CHIP), pays for roughly half of all births in the United States each year.

A Medicaid and CHIP State plan agreement (SPA) is an agreement between a State and the Federal government describing how a State administers its Medicaid and CHIP programs. The SPA sets out groups of individuals to be covered, services to be provided, methodologies for providers to be reimbursed and the administrative activities underway in the State.

The Federal government establishes specific parameters and minimum requirements for the program, while States administer their own Medicaid programs, thus effectively creating 56 different Medicaid programs — one for each State, territory, and the District of Columbia. Importantly, there are key waiver authorities that allow States, with CMS approval, to operate all or parts of their Medicaid program outside of statutory requirements:

- *Section 1115 Research & Demonstration Projects.* States may apply for program flexibility to test new or existing approaches to financing and delivering Medicaid and CHIP.
- *Section 1915(b) Managed Care Waivers.* States may apply for waivers to provide services through managed care delivery systems or otherwise limit people's choice of providers.
- *Section 1915(c) Home and Community-Based Services Waivers.* States may apply for waivers to provide long-term services and supports in home and community settings rather than institutional settings.²

IV. LEGISLATION

At this hearing, the Subcommittee will discuss policy aims pertaining to two bills that would further enhance existing State authorities governing provider relationships.

A. H.R. ____, Protecting Infants Born Alive Act, by Rep. Blackburn.

This bill would amend title XIX of the Social Security Act to provide greater clarity for States with respect to excluding providers whose actions a State suspects causes termination of infants born alive. The bill also would ensure that providers who

² <http://www.medicaid.gov/State-Resource-Center/Medicaid-State-Technical-Assistance/Health-Homes-Technical-Assistance/Downloads/At-a-glance-medicaid-Authorities.pdf>

terminate an infant born alive would be excluded from Federal health care programs, including Medicare, Medicaid, and CHIP.

B. H.R. ____, Protect Infants from Partial-Birth Abortion Act, by Rep. Ellmers.

This bill would amend title XIX of the Social Security Act to provide greater clarity for States with respect to providers who the State suspects conduct partial birth abortions. The bill also would ensure that providers who violate the law by conducting partial-birth abortions are excluded from Federal health care programs, including Medicare, Medicaid, and CHIP.

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Josh Trent of the Committee staff at (202) 225-2927.