



March 22, 2013

VIA Electronic Mail

Rep. Justin Olson
1700 West Washington, Room 306
Phoenix, AZ 85007-2890
jolson@azleg.gov

Re: Proposed Expansion of Arizona Medicaid and Subsidization of Abortions

Dear Representative Olson:

You have requested our opinion on the impact of the proposed expansion of Arizona's Medicaid program on funding for abortion providers. In our judgment, expanding Medicaid pursuant to the Patient Protection and Affordable Care Act (PPACA), would necessarily result in increased funding of abortion providers in Arizona and would subsidize abortions.

Arizona's Medicaid program presently covers adults with incomes up to 100% of the Federal Poverty Level and in some cases adults with higher incomes. PPACA provides for the expansion of adult Medicaid eligibility to 133% of the Federal Poverty Level. 42 U.S.C. §1396a(a)(10)(A)(i)(VIII). It is estimated that the increased coverage would amount to over \$1.5 billion in additional funds paid to Arizona Medicaid providers, including some matching funds from Arizona taxpayers. Another provision of PPACA, 42 U.S.C. §1396c, authorized the Secretary of Health and Human Services to penalize states by withdrawing their Medicaid funding altogether if they refused to expand Medicaid coverage as required by PPACA. However, the Supreme Court has held that this provision is unconstitutional, and thus Arizona is not obligated to expand Medicaid under PPACA. *Nat'l Federation of Indep. Business v. Sebelius*, 132 S.Ct. 2566, 2606 (2012).

Several abortion providers in Arizona participate in Medicaid. While taxpayer funds are prohibited from directly paying for most abortions, experts have confirmed that Arizona taxpayer Medicaid funds are nevertheless subsidizing elective abortions. A Declaration of Forensic Accounting expert Joe Epps is attached here for your convenience. Mr. Epps reviewed the Deposition of Bryan Howard, CEO of Planned Parenthood Arizona (relevant portions also attached) and financial documents produced by Planned Parenthood Arizona and concluded that

"monies received from Medicaid are used to cover the general administrative expenses which support all medical services provided by [Planned Parenthood Arizona], including abortion services." Epps Declaration ¶10.

In 2012, Arizona taxpayers, acting through their elected officials in the legislature, enacted Arizona House Bill 2800, A.R.S. §35-196.05. This law provides in part:

[T]his State or any political subdivision of this State may not enter into a contract with or make a grant to any person that performs nonfederally qualified abortions [defined as an abortion that is ineligible for federal Medicaid reimbursement] or maintains or operates a facility where nonfederally qualified abortions are performed for the provision of family planning services.

A.R.S. §35-196.05. If enforced, this law would prevent subsidization of abortions by Arizona taxpayers.

Unfortunately, in *Planned Parenthood Arizona v. Bellach*, 2013 WL 495555 (D. Ariz. Feb. 8, 2013), a federal court enjoined enforcement of this law. Although that decision is on appeal, Arizona is presently required to continue to contract with abortion providers to provide Medicaid services to its citizens and Arizona taxpayer dollars are necessarily continuing to subsidize abortions.

Because of this decision, any expansion of Arizona's Medicaid program to new recipients resulting in more than \$1.5 billion in additional Medicaid payments to Arizona Medicaid providers, would necessarily result in an increase in taxpayer funding to abortion providers that participate in Medicaid. These payments to abortion providers would inevitably subsidize abortions in contravention of the expressed will of Arizona taxpayers.

Sincerely,



M. Casey Mattox
Senior Counsel