Testimony of Planned Parenthood Empire State Acts

Submitted to the Joint Legislative Budget Hearing on Health and Medicaid

January 24, 2024

Planned Parenthood Empire State Acts (PPESA) values the opportunity to submit testimony on the proposed FY2025 Executive Budget. PPESA proudly represents the five Planned Parenthood affiliates who provide primary and preventive sexual and reproductive health care services to more than 200,000 individuals each year.

Since the Supreme Court ended our federal constitutional right to abortion, stripping millions of their reproductive freedom, one third of people with the capacity for pregnancy are now living in states where abortion is banned or severely restricted. Newly enacted restrictions have forced many abortion facilities to stop offering abortion services or close their doors entirely. A recent report from the Abortion Care Network showed 23 independent abortion clinics closed in 2023 in addition to the 42 independent clinics that closed in 2022, leaving 14 states without a single brick-and-mortar abortion clinic .[1] Those in need of abortion living in states that have banned or severely restricted this essential care face significant access barriers - such as the need to travel hundreds of miles or pay hundreds of dollars out-of-pocket - that for many pushes care out of reach. The consequences of being denied care are well documented and far reaching,[2] and fall hardest on those who are already struggling under the weight of systems and policies that perpetuate racial and economic injustice. [3]

While we contend with the devastating impact of losing *Roe*, we must also grapple with the reality that the right to abortion has never ensured access. *Roe* created a vital floor – affirming a basic fundamental right to bodily autonomy and self-determination, but for far too many it was a hollow promise. Decades of tenacious efforts by anti-abortion policy makers led to the enactment of over 1,330 abortion restrictions since the landmark decision in 1973.[4] The *Dobbs* decision opened the door for state legislatures to further restrict or ban access to abortion, and by December 2023 fourteen states had enacted total abortion bans, and seven more placed restrictions on abortion access which would have been unconstitutional under *Roe*.[5]

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[1] Abortion Care Network. (2023) *Communities Need Clinics: The Abortion Care Ecosystem Depends on Independent Clinics.* Retrieved January 18, 2024, from https://abortioncarenetwork.org/wp-content/uploads/2023/12/cnc23-v5-WEB.pdf.

[2] *The harms of denying a woman a wanted abortion - ANSIRH*. (n.d.). Retrieved February 17, 2023, from https://www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf

[3] Fuentes, L., & Guttmacher Institute. (2023, January 25). *Inequity in US abortion rights and access: The end of roe is deepening existing divides*. Guttmacher Institute. Retrieved February 17, 2023, from https://www.guttmacher.org/2023/01/inequity-us-abortion-rights-and-access-end-roe-deepening-existing-divides

[4] Nash, E., & Guttmacher Institute. (2023, February 8). *State policy trends 2021: The Worst Year for abortion rights in almost half a century*. Guttmacher Institute. Retrieved February 17, 2023, from https://www.guttmacher.org/article/2021/12/state-policy-trends-2021-worst-year-abortion-rights-almost-half-century#:~:text=Abortion%20Bans%20and%20Restrictions,in%20the%20past%20decade%20alone.

[5] Forouzan, K., Guanieri, I & Guttmacher Institute, (December 2023) *State Policy Trends 2023: In the First Full Year Since Roe Fell, a Tumultuous Year for Abortion and Other Reproductive Health Care.* Guttmacher Institute.

These restrictions effectively deter, delay and deny many from exercising that constitutional right and are built upon and operating within our country's legacy of racism and discrimination, and thus disproportionately impact Black, Latino, Indigenous and other people of color, young people, disabled people, and low-income people.

Even in states like New York - where the right to abortion is protected – individuals face challenges accessing the care they need and have a right to obtain. And the threats to access are unrelenting. Anti-abortion advocates and politicians continue to call for a nationwide ban on abortion, even in the face of widespread opposition. A lawsuit attempting to eliminate access to one of the two medications used in medication abortion has wound its way through federal court and will be heard by the Supreme Court this year, which could result in access to a drug with a proven safety and efficacy record becoming limited nationwide – even in states where abortion is protected.

New York has a proud legacy of forging ahead when others are trying to take us backwards. We legalized abortion prior to the *Roe* decision, and in the wake of that action have continued to advance critical measures that further protect and advance access to care. In this pivotal moment in the fight for reproductive freedom we must continue to respond in bold and innovative ways, building a system of policies and care that is anchored in equity – where everyone who needs an abortion can truly access it. While last years' Enacted Budget included much-needed investments in sexual and reproductive health care providers, more must be done to shore up safety-net providers in the wake of continued attacks on reproductive health care and ensure that all those who need care are able to access it.

It is through that framework that we urge the Legislature and Executive to center the following in the FY25 Enacted Budget:

Request: Increase Medicaid Reimbursement for the Office Visit Associated with the Provision of Medication Abortion.

The FY24 Budget made critical investments in reproductive and sexual health care services but it failed to include a significant component of abortion care – medication abortion. Investment in medication abortion services remains critically important to shore up New York's State's reproductive health care network; medication abortion comprises an overwhelming majority of abortion care provided by the five Planned Parenthood affiliates in New York State. Statewide, our providers report that 64% of abortions provided annually are medication abortions and three affiliates report rates over 70%. However, medication abortion is reimbursed far below what it costs providers to render the service.

The New York State Medicaid program currently reimburses diagnostic and treatment centers ("D&TCs") for medication abortion (MAB) using an evaluation and management ("E/M") visit, as well as the medication, which is reimbursed at cost, and any ancillary services rendered, such as ultrasounds, separately. Providers are currently reimbursed $170.71 in the Downstate region and $143.06 in the Upstate region for the E/M codes associated with MAB. Ultrasounds are reimbursed at $118.75 in the Downstate region and $99.51 in Upstate. These rates are hundreds of dollars below what it costs to deliver the care.

Over the past several years, many states have raised Medicaid rates for abortion services, recognizing the need for intentional investment in the face of sustained attacks on abortion access. As a result, New York's reimbursement levels are out of alignment with other access states. For example, Illinois,

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Retrieved January 11, 2024 from https://www.guttmacher.org/2023/12/state-policy-trends-2023-first-full-year-roe-fell-tumultuous-year-abortion-and-other.

California, Connecticut, Vermont, and Oregon all reimburse MAB services at the following rates[6]:

	MAB Medicaid Reimbursement[7]
Illinois	$558 *(estimated rate based on a recently announced 20% rate increase)*[8],[9]
California	$536.00[10]
Connecticut	$469.55[11]
Vermont	$543.00[12]
Oregon	$1,019.00 (includes a supplemental payment for abortion services)[13]

The current reimbursement rates are insufficient to cover provider costs. The average cost of an office visit for a MAB across several affiliates operating in Upstate was $371.35 and the average cost of an ultrasound was $159.67— nearly $300 above the current level of reimbursement paid to Upstate providers by the Medicaid program.

Providers continue to face significant challenges in delivering care—both as a result of rising costs and because of continued attacks on abortion access. The ongoing litigation over the FDA's approval of mifepristone has only increased the cost of delivering care, as providers have needed to consult with attorneys and implement backup plans to ensure that they can deliver this critically needed care in the face of court orders attempting to limit access. An investment in Medicaid rates for MAB are necessary to ensure that providers can continue to deliver this essential health care service. *As a result, we are requesting that the Legislature and Executive act to increase reimbursement for the office visit component of a MAB to no less than $550 is included in the FY25 Enacted Budget.*

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[6] We note that these states all reimburse MAB using a bundled payment that includes the provider visit and any ancillary services, such as an ultrasound.
[7] Please note, listed are publicly available rates that may slightly vary from the exact rates issued to providers.
[8] Illinois Department of Healthcare and Family Services. (Updated August 25, 2022). *Practitioner Fee Schedule.* Retrieved February 17, 2023, from https://www2.illinois.gov/hfs/SiteCollectionDocuments/08252022PractitionerFeeScheduleEffective07012022Final.pdf
[9] Office of Governor JB Pritzker. (August 4, 2022). *Gov. Pritzker Announces Medicaid Reimbursement Increases and Expanded Title X Funds for Reproductive Health Care Providers.* Retrieved February 17, 2023, from https://www2.illinois.gov/hfs/SiteCollectionDocuments/GovernorPritzkerAnnouncesMedicaidReimbursementIncreasesForReproductiveHealthCareProviders.pdf
[10] California Department of Health Care Services. Medi-Cal Providers. (February 15, 2023). *Medi-Cal Rates Information.* Retrieved February 17, 2023, from https://files.medi-cal.ca.gov/Rates/rates_information.aspx?num=25&first=L6905&last=V2300
[11] Connecticut Department of Social Services. *Provider Fee Schedule.* Retrieved February 17, 2023, from https://www.ctdssmap.com/CTPortal/Provider/Provider-Fee-Schedule-Download
[12] Vermont Medicaid Portal. (Updated 2023, February 10). *Fee Schedule – HCPCS Codes.* Retrieved February 17, 2023, from http://www.vtmedicaid.com/#/feeSchedule/hcpcs
[13] Oregon Health Authority, *Establishment of facility fee for outpatient abortion clinics effective July 1, 2021.* https://www.oregon.gov/oha/HSD/OHP/Announcements/99070-Billing0322.pdf (March 2, 2022)

Request: Ensure $35M in Grant Funding for Abortion Providers and $1M for Abortion Funds to Increase Access.

In the shadow of the Dobbs decision the Governor announced a historic investment of $35M in grant funding for abortion providers. This was the first time; grant funding was specifically dedicated to increasing abortion access. This reality coupled with insufficient Medicaid reimbursement and rising costs of delivering care, has throttled the ability of providers to grow their capacity to meet present need, and invest in their infrastructure to enhance their delivery of care. As we face the mounting pressures of access to abortion care drastically dwindling across the country and threats to medication abortion access, continued grant investment is paramount to addressing the challenges of uncompensated care, provider training and capacity, facility and equipment enhancements, enhanced security, and the need for practical support to ensure access to care for all. Unfortunately, the stark reality of millions losing access to abortion care is not just a crisis of today but will be a crisis we are facing for years to come. *The FY25 Budget must continue the $35 million dollar investment contained in the proposed Executive Budget to continue these critical grant funds.*

Moreover, the FY25 Budget should include the Reproductive Freedom and Equity Fund to address the logistical needs of patients to ensure access to abortion in New York for all without financial barriers. The Reproductive Freedom and Equity Fund would establish a sustained funding mechanism through the Department of Health to provide grants to abortion providers and abortion funds across New York State. Importantly, the Reproductive Freedom and Equity Fund would provide a mechanism to support abortion funds and practical support organizations that help individuals access care by assisting with travel, lodging and childcare. It is imperative the state commits a long-term investment in abortion access to ensure anyone who needs this critical care can receive the resources and support to make decisions about their futures without financial barriers. Further, the State can use the $35M appropriated by the Executive Budget to seed this program.

Request: Continue the Legislative Add for the Family Planning Grant.

The Family Planning Grant facilitates access to a range of critical primary preventative and reproductive health care services, such as affordable birth control, testing and treatment for sexually transmitted diseases, and counseling that is essential to reproductive health. This grant is an essential component to addressing the financial barriers to accessing care across New York.

In 2022 and 2023, the Legislature took action to provide an additional $1 million to the Family Planning Grant, a continuation of its longstanding commitment to the program. We are deeply grateful for this important investment in supporting providers to meet the needs of uninsured and underinsured New Yorkers. However, it is vital the legislature renews this investment in order to keep this program funded at FY24 levels. *We respectfully request the Legislature once again include an additional $1 million appropriation to the Family Planning Grant.*

Request: Reform Pregnancy Loss Reporting in New York State.

The current process for pregnancy loss reporting is outdated and extremely onerous. Providers are required to report all types of pregnancy loss—miscarriage, stillbirth and abortion—on a triplicate form that must be retrieved from the local registrar, often a city or county clerk. Portions of the form must be submitted to both the local registrar and the Department of Health. This process is administratively burdensome for providers and presents concerns about patient privacy and data integrity.

The Executive Budget takes an important first step toward fixing these issues by making an investment necessary to modernize pregnancy loss reporting and transition it to an electronic process. However, more must be done to support this transition. The Public Health Law that governs pregnancy loss reporting must be updated to allow for electronic reporting, modernize language and decrease the administrative burden on providers. *We respectfully request that the FY25 budget include an investment in the modernization of pregnancy loss reporting and that the relevant statutes be amended to facilitate these changes and reduce the administrative burden on providers.*

Request: Clarify Minors' Ability to Consent to Reproductive Health Care.

While the Reproductive Health Act of 2019 states that all individuals have the fundamental right to reproductive health care, steps can be taken to further clarify minors' ability to consent to reproductive health care. Following the release of the opinion in June 2022, Commissioner Basset affirmed that "pursuant to Article 25-A of the PHL (the Reproductive Health Act) and PHL § 2504, any pregnant person, regardless of age, may consent to an abortion without parental consent" in a letter to providers. However, statutory changes could further strengthen the existing right of a pregnant minor to consent to abortion care and contraception in statute. *We respectfully request that the FY25 budget include statutory changes that further clarify a minors' right to consent to reproductive health care.*

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