

**IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
19TH JUDICIAL CIRCUIT**

PLANNED PARENTHOOD OF THE)
ST. LOUIS REGION)
4251 Forest Park Ave)
St. Louis, Missouri 63108)
(314/531-7526))

COMPREHENSIVE HEALTH OF)
PLANNED PARENTHOOD GREAT)
PLAINS)
4401 W. 109TH St., Ste. 100)
Overland Park, KS 66211)
(913/345-4605))

PLANNED PARENTHOOD GREAT)
PLAINS)
4401 W. 109TH St., Ste. 100)
Overland Park, KS 66211)
(913/345-4605))

Plaintiff,)

vs.)

Case No.:

ROBERT KNODELL, in his official)
capacity as Acting Director of the)
Missouri Department of Social Services)
Serve: Robert Knodell, Acting Director)
Missouri Department of Social Services)
221 W. High St., #230)
Jefferson City, MO 65101)
(573/751-4815))

MISSOURI DEPARTMENT OF)
SOCIAL SERVICES)
Serve: Missouri Department of Social Services)
221 W. High St., #230)
Jefferson City, MO 65101)
(573/751-4815))

TODD RICHARDSON, in his official)
capacity as Director of the)
MO HealthNet Division)
Serve: Todd Richardson, Director)
MO HealthNet Division)
615 Howerton Ct.)
Jefferson City, MO 65109)
(573/751-3425))
)
MO HEALTHNET DIVISION)
Serve: MO HealthNet Division)
615 Howerton Ct.)
Jefferson City, MO 65109)
(573/751-3425))
)
DALE CARR, in his official)
capacity as Director of the)
Missouri Medicaid Audit and Compliance Unit)
Serve: Dale Carr, Director)
Missouri Medicaid)
Audit and Compliance Unit)
615 Howerton Ct.)
Jefferson City, MO 65109)
(573/751-3399))
)
MISSOURI MEDICAID AUDIT)
AND COMPLIANCE UNIT)
Serve: Missouri Medicaid)
Audit and Compliance Unit)
615 Howerton Ct.)
Jefferson City, MO 65109)
(573/751-3399))
)
Defendants.)

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

The General Assembly once again has attempted to do through an appropriation bill what the Missouri Supreme Court has now twice declared cannot be done. In House Bill 3014, passed just last month, the legislature included language that purports to prohibit Planned Parenthood of the St. Louis Region, Reproductive Health Services of Planned Parenthood of St. Louis Region,

Planned Parenthood Great Plains, and Comprehensive Health of Planned Parenthood Great Plains (collectively “Planned Parenthood”) from being reimbursed for services provided in the MO HealthNet Program. But an appropriation bill cannot disqualify an otherwise eligible provider from participating in the MO HealthNet Program. Nor can an appropriation bill eliminate funding to a particular class of providers who are statutorily eligible to participate in that Program.

The Missouri Medicaid Audit and Compliance Unit notified Planned Parenthood on March 4, 2022, that as of end of business on March 11, 2022, Planned Parenthood would not receive payments for any claims as a result of language in House Bill 3014. So Planned Parenthood comes to this Court seeking a declaratory judgment that—just as the Missouri Supreme Court has already ruled in a virtually identical case—there are sufficient funds to reimburse Planned Parenthood for services provided to eligible MO HealthNet beneficiaries, and because Planned Parenthood is an eligible provider (with valid provider agreements), it should be reimbursed. Moreover, Planned Parenthood asks this Court to declare that the language in House Bill 3014 is unconstitutional to the extent it purports to exclude Planned Parenthood from the MO HealthNet Program. Planned Parenthood also seeks declarations that the State is in breach of the provider agreement, is violating MO HealthNet statutes, and denying equal opportunity under the law. Finally, Planned Parenthood requests injunctive relief—prohibiting the State from suspending it from the MO HealthNet program and requiring the State to pay valid claims.

PARTIES

1. Plaintiff Planned Parenthood of the St. Louis Region operates health centers in the St. Louis and Southwest Missouri regions that provide health care services.

2. Plaintiff Comprehensive Health of Planned Parenthood Great Plains operates a health center in the Kansas City area that provides health care services.

3. Plaintiff Planned Parenthood Great Plains operates health centers in the Kansas City area and Columbia, Missouri that provide health care services.

4. Plaintiffs are eligible Medicaid providers, with valid provider agreements with the Missouri Medicaid Program. **Exhibit A.**

5. Defendant Missouri Department of Social Services (“DSS”) is a state agency created by the Missouri Constitution “charged with promoting improved health and other social services to the citizens of the state as provided by law[.]” Mo. Const. art. IV, § 37; *see also* § 660.010, RSMo.

6. Defendant Robert Knodell is the Acting Director of the Department of Social Services. He is sued in his official capacity.

7. Defendant Missouri Medicaid Audit and Compliance Unit (“MMAC”) is a unit within DSS that manages provider enrollment and audit services for Missouri’s Medicaid Program.

8. Defendant Dale Carr is the Director of the Missouri Medicaid Audit and Compliance Unit. He is sued in his official capacity.

9. Defendant MO HealthNet Division is a division within DSS responsible for administering the MO HealthNet Program, Missouri’s Medicaid Program. *See* § 208.001, RSMo.

10. Missouri participates in and administers the federal Medicaid program through the MO HealthNet program.

11. Defendant Todd Richardson is the Director of the MO HealthNet Division. He is sued in his official capacity.

JURISDICTION AND VENUE

12. Venue is proper in this court. § 508.010, RSMo.
13. Plaintiffs seek a declaration of its rights, status, and other legal relations. § 537.010, RSMo.
14. Plaintiffs are not entitled to administrative review on the decision that the language in House Bill 3014 is constitutional. *See* § 536.150, RSMo.

FACTUAL ALLEGATIONS

15. MO HealthNet is a state health insurance program that provides access to health care for many of the State’s neediest residents. *See* § 208.001, RSMo.
16. MO HealthNet covers a wide range of services for MO HealthNet beneficiaries. *See* § 208.152, RSMo.
17. Eligible MO HealthNet beneficiaries are entitled to obtain services “from any provider of services with which an agreement is in effect...and which undertakes to provide the services, as authorized by the MO HealthNet division.” § 208.153.1, RSMo.
18. MO HealthNet does not fund abortion services. *See* § 208.152, RSMo.
19. Planned Parenthood’s provider agreements are currently in effect. *See* Ex. A.
20. The MO HealthNet program is funded by the General Assembly in the appropriation bill for DSS. *See, e.g.,* § 14.230 (appropriating more than \$84 million for MO HealthNet).
21. During the 2021 legislative session, the General Assembly passed House Bill 11 (“HB 11”) appropriating funds for DSS, including for the MO HealthNet program. **Exhibit B.**
22. In most years, the DSS appropriations bill does not include sufficient appropriation authority for the MO HealthNet program for the entire fiscal year.

23. This year, the General Assembly passed House Bill 3014 (“HB 3014”) to provide supplemental appropriations for DSS for Fiscal Year 2022. **Exhibit C.**

24. HB 3014 includes the following language in Section 14.277:

For medical and health related services performed by any clinic, physician’s office, or any other place or facility in which abortions are performed or induced other than a hospital, or any affiliate or associate of any such clinic, physician’s office, or place or facility in which abortions are performed or induced other than a hospital.

From General Revenue Fund (0101).....\$0

From Federal and Other Funds (Various).....\$0

Total.....\$0

25. Section 14.2030 of HB 3014 provides:

In reference to all sections, except 14.277, in Part 1 and Part 2 of this act:

No fund shall be expended to any clinic, physician’s office, or any other place or facility in which abortions are performed or induced other than a hospital, or any affiliate or associate of any such clinic, physician’s office, or place or facility in which abortions are performed or induced other than a hospital.

26. On March 4, 2022, each Plaintiff received a letter from DSS declaring its intention to suspend payment to the entity. **Exhibit D.**

a. Payment for claims submitted by Planned Parenthood “under the Missouri Medicaid program after 5:00 p.m. on Friday, March 11, 2022 will be suspended.” *Id.*

b. DSS claims this suspension “is necessary due to passage of House Bill 3014 during the 2022 legislative session.” *Id.*

c. “MMAC has determined that [Planned Parenthood] is ineligible for reimbursement by Missouri Medicaid in the Fiscal Year 2022 supplemental appropriations bill.” *Id.*

d. Because of HB 3014, “DSS does not have appropriation authority to pay for services provided by [Planned Parenthood].” *Id.*

e. MMAC, is therefore, notifying MHD that [Planned Parenthood’s] MO HealthNet provider number...is suspended effective March 12, 2022[.]” *Id.*

27. Requesting relief from the Administrative Hearing Commission would be futile because Administrative Hearing Commission cannot issue a declaratory judgment. *See State Tax Com’n v. Administrative Hearing Com’n*, 641 S.W.2d 69, 75-77 (Mo. banc 1982).

28. The Administrative Hearing Commission also cannot provide relief to Plaintiff because the “administrative hearing commission is not empowered to determine the constitutionality of statutes.” *See Tadrus v. Missouri Bd. of Pharmacy*, 849 S.W.2d 222, 225 (Mo. App. 1993).

Count I: The State’s decision to deny payment to Planned Parenthood is unlawful and violates the decision in *Doyle v. Tidball* because there is funding to pay Planned Parenthood in House Bill 3014.

29. Planned Parenthood incorporates by reference all preceding paragraphs.

30. Eligible MO HealthNet providers are entitled to payment for valid claims for covered services. *See* § § 208.152 and 208.153, RSMo.

31. Planned Parenthood is an eligible MO HealthNet provider. *See* Ex. A.

32. DSS intends to deny payments to Planned Parenthood based on its purported lack of appropriation due to language in HB 3014. *See* Ex. D.

33. HB 3014 includes an appropriation “[f]or physician services and related services...under the MO HealthNet fee-for-service program and for a comprehensive chronic care risk management program[.]” *See* Ex. C, Section 14.230.

34. HB 3014 also includes an appropriation “[f]or payment to comprehensive prepaid health care plans as provided by federal or state law[.]” *See* Ex. C, Section 14.255.

35. Because the General Assembly chose to appropriate funds for the MO HealthNet program, DSS is bound by Sections 208.152 and 208.153 concerning “which [providers] are eligible to [receive payment] when it spends appropriated funds.” *See Doyle v. Tidball*, 625 S.W.3d 459, 467 (Mo. banc 2021).

36. Planned Parenthood (and its patients) face imminent, irreparable harm if MO HealthNet reimbursement is suspended.

37. Without MO HealthNet reimbursement, Planned Parenthood will have to curtail its patient care, leaving patients without the critical care they need.

38. Defendants face no harm if required to provide reimbursement to Planned Parenthood because there are adequate funds to pay for services provided by Planned Parenthood.

39. The public interest favors an injunction prohibiting Defendants from suspending Planned Parenthood from the MO HealthNet program.

40. An injunction ensures the Constitution is properly enforced.

41. Plaintiff has no adequate remedy at law.

Count II: HB 3014 is unconstitutional because it unlawfully amends Sections 208.152 and 208.153, RSMo in violation of *Planned Parenthood v. Department of Social Services*.

42. Planned Parenthood incorporates by reference all preceding paragraphs.

43. “MO HealthNet payments shall be made on behalf of those eligible needy persons.” § 208.152.1, RSMo.

44. “Any person entitled to MO HealthNet benefits may obtain it from any provider of services with which an agreement is in effect...and which undertakes to provide the services, as authorized by the MO HealthNet division.” § 208.153.1, RSMo.

45. Section 14.2030 in HB 3014 attempts to limit which providers are eligible for reimbursement for providing covered services to MO HealthNet beneficiaries. Ex. C.

46. Section 14.277 also attempts to exclude a certain class of providers from receiving reimbursement for providing covered services to MO HealthNet beneficiaries. Ex. C.

47. “This is a clear and unmistakable violation of the proscription in article III, section 23 of the Missouri Constitution against bills with multiple subjects.” *Id.*

48. Appropriation language “seeking to disqualify certain authorized providers based on services they provide separately and apart from the MO HealthNet program—and for which no MO HealthNet payments can be made—is a naked attempt to use [an appropriation bill] both to appropriate funds for various purposes and to amend sections 208.153.1 and 208.152.1(6), (12).” *Planned Parenthood of St. Louis Region v. Department of Social Services*, 602 S.W. 3d 201, 209 (Mo. banc 2020).

49. Sections 14.277 and 14.2030 purport to disqualify Planned Parenthood from receiving payment despite that they are otherwise qualified to be reimbursed from the MO HealthNet program.

Count III: The State’s decision to deny payment to Planned Parenthood violates Section 208.152, RSMo.

50. Planned Parenthood incorporates by reference all preceding paragraph.

51. MO HealthNet payments “shall be made” on behalf of eligible persons for the services provided by Planned Parenthood. *See* § 208.152.1, RSMo.

52. House Bill 3014 does not change this statutory requirement.

53. Planned Parenthood is entitled to payments for the services provided to eligible MO HealthNet beneficiaries in accordance with § 208.152.1, RSMo.

Count IV: The State's decision to deny payment to Planned Parenthood violates Section 208.153, RSMo.

54. Planned Parenthood incorporates by reference all preceding paragraphs.

55. "Any person entitled to MO HealthNet benefits may obtain it from any provider of services with which an agreement is in effect...and which undertakes to provide the services, as authorized by the MO HealthNet division." § 208.153.1, RSMo.

56. Planned Parenthood has a valid provider agreement with the State. *See Ex. A.*

57. The State has not terminated Planned Parenthood's MO HealthNet provider agreement.

58. The State's decision to withhold payment from Planned Parenthood is unlawful.

Count V: The State's refusal to pay Planned Parenthood is a breach of Planned Parenthood's provider agreement.

59. Planned Parenthood incorporates by reference all preceding paragraphs.

60. Planned Parenthood has a valid provider agreement with the State. *See Ex. A.*

61. The MO HealthNet provider agreement guarantees reimbursement to providers for the provision of covered services. *Id.*

62. MO HealthNet provider agreements are contracts. *See Midwest Division-OPRMC, LLC v. Dept. of Social Services*, 241 S.W.3d 371 (Mo. App. W.D. 2007).

63. The State's refusal to pay Planned Parenthood for the provision of covered services is a breach of contract.

COUNT VI: The State unlawfully suspended Planned Parenthood’s provider number in violation of Section 208.164, RSMo and 13 CSR 70-3.030.

64. Planned Parenthood incorporates by reference all preceding paragraphs.

65. “The department or its divisions shall have the authority to suspend, revoke, or cancel any contract or provider agreement...with any provider where it is determined the provider has committed or allowed its agents, servants, or employees to commit acts defined as abuse or fraud[.]” § 208.164.2, RSMo.

66. In addition, “[p]ayments for services under any contract or provider agreement between the department or its divisions and a provider may be withheld by the department or its divisions from the provider for acts or omissions defined as abuse or fraud[.]”

67. State regulation provides 44 reasons the State can sanction (including suspension) a provider. *See* 13 CSR 70-3.030(3).

68. The state is not suspending payments for acts or omissions defined as abuse or fraud.

69. The state has not suspended payments for any of the 44 reasons listed in the regulation.

70. Neither statute nor regulation provides that a provider may be suspended from the MO HealthNet program due to a purported lack of appropriation authority.

COUNT VII: The State’s decision to deny Planned Parenthood funding is unconstitutional because it denies Planned Parenthood equal opportunity under Article I, Section 2 of the Missouri Constitution.

71. Planned Parenthood incorporates by reference all preceding paragraphs.

72. “All persons are created equal and are entitled to equal rights and opportunity under the law.” Mo. Const. art. I, § 2.

73. The State's decision denies Planned Parenthood equal opportunity under the law to receive MO HealthNet payments.

74. The MO HealthNet program reimburses other providers for the exact same services Planned Parenthood provides so long as they have a valid contract.

75. The MO HealthNet program reimburses hospitals that provide MO HealthNet services even if the hospital performs abortions.

76. HB 3014 explicitly excludes hospitals from the language in Sections 14.277 and 14.2030 even though hospitals perform abortions.

77. This differential treatment violates the Missouri Constitution's guarantee of equal opportunity under the law.

PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons, Plaintiffs pray for a judgment:

- a. that Sections 14.277 and 14.2030 of House Bill 3014 are unconstitutional;
- b. that Defendants's refusal to reimburse Planned Parenthood is unlawful;
- c. that there is sufficient appropriation authority in House Bill 3014 to reimburse Planned Parenthood;
- d. that Defendants are in breach of Planned Parenthood's provider agreements;
- e. that Defendants must reinstate Planned Parenthood as MO HealthNet providers;
- f. that Defendants must reimburse Planned Parenthood for valid claims; and
- g. such other and further relief that the Court deems just and appropriate under the circumstances.

Respectfully submitted,

STINSON LLP

By: /s/ Charles W. Hatfield

Charles W. Hatfield, No. 40363

Alixandra S. Cossette, No. 68114

230 W. McCarty Street

Jefferson City, Missouri 65101

Phone: (573) 636-6263

Fax: (573) 636-6231

chuck.hatfield@stinson.com

alixandra.cossette@stinson.com