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January 11, 2016

Sally Bourget, Clerk
Cumberland County Superior Court
205 Newbury Street, Second Floor
Portland, ME 04101

Re: Mabel Wadsworth Women's Health Center, et al. v. Commissioner Mary
Mayhew, Maine Department of Health and Human Services
Docket No. CV-15-527

Dear Sally:

Enclosed please find the State of Maine Department of Health and Human Services' Answer and Affirmative Defenses to Plaintiffs' Complaint regarding the above captioned matter.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "W D Hagedorn".

William D. Hagedorn
Assistant Attorney General
Maine Bar Registration No. 4197
Augusta Office

Enclosure

cc: Zachary L. Heiden, 121 Middle St., Suite 303, Portland, ME 04103

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-15-527

MABEL WADSWORTH WOMEN’S,
HEALTH CENTER; FAMILY,
PLANNING ASSOCIATION OF
MAINE
d/b/a MAINE FAMILY PLANNING
AND PRIMARY CARE SERVICES; and
PLANNED PARENTHOOD OF
NORTHERN NEW ENGLAND

Plaintiffs,

v.

MARY MAYHEW, COMMISSIONER
OF THE MAINE DEPARTMENT OF
HEALTH AND HUMAN SERVICES, in
her official capacity,

Defendant.

DEFENDANT’S ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFFS’ COMPLAINT

Defendant, Mary Mayhew, in her official capacity as Commissioner of the Maine Department of Health and Human Services, (“Defendant,” or “the Department”), by her attorneys, answers the Plaintiffs’ Complaint (the “Complaint”) as follows:

INTRODUCTION

1. Defendant admits that 22 M.R.S. § 1598(1) provides, in part, that “[i]t is the public policy of the State that the State not restrict a woman’s exercise of her private decision to terminate a pregnancy before viability.” The remaining allegations of this paragraph state conclusions or arguments of law, and/or seek to characterize state statutes or regulations, and therefore no answer is required. To the extent that a response is required, Defendant denies the allegations.

2. Defendant admits that 22-A M.R.S. § 202(1) sets forth, in part, that “[t]he mission of the department is to provide health and human services to the people of Maine so that all persons may achieve and maintain their optimal level of health and their full potential for economic independence and personal development.” To the extent the allegations of this paragraph seek to characterize state statutes or regulations, no answer is required. If a further response is required, Defendant denies the allegations.

3. Defendant admits that Maine’s Medicaid program (known as “MaineCare”) is a cooperative federal-state program that provides medical assistance to the poor, elderly and disabled. Defendant further admits that the Maine Department of Health and Human Services’ Office of MaineCare Services is the single state agency responsible for the financing and administration of MaineCare.

4. Defendant admits that pursuant to Pub. L. No. 113-76, §§ 506-07, 128 Stat. 5, 409 (2014) and 10-144 C.M.R. ch. 101(II), § 90.05-2(A), MaineCare reimbursement for abortion services will be made only if necessary to save the life of the mother, or if the pregnancy is the result of an act of rape or incest, and denies the remaining allegations set forth in the first sentence of this paragraph. Defendant is without sufficient knowledge or information to form a belief as to the truth of the second sentence of this paragraph, and on that basis denies them.

5. Defendant is without sufficient knowledge or information to form a belief as to the truth of these allegations, and on that basis denies them.

6. Regarding the factual allegations set forth in this paragraph, Defendant is without sufficient knowledge or information to form a belief as to the truth of these allegations, and on that basis denies them. The remaining allegations of this paragraph state conclusions or arguments of

law, and/or seek to characterize state statutes or regulations, and therefore no answer is required.

To the extent that a response is required, Defendant denies the allegations.

7. This paragraph states a characterization and description of the Complaint, to which no response is required. To the extent that a response is required, Defendant denies the allegations.

JURISDICTION AND VENUE

8. Defendant admits that the Court has jurisdiction to review a Department rule pursuant to 5 M.R.S. § 8058, but denies the remaining allegations set forth in this paragraph.

9. Defendant admits that venue is proper in Cumberland County.

PARTIES

10. Defendant admits the allegations in this paragraph.

11. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations regarding services provided by Mabel Wadsworth Center, and on that basis denies them.

12. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations regarding abortion services provided by Mabel Wadsworth Center, and on that basis denies them.

13. Defendant admits that Mabel Wadsworth Center is an enrolled MaineCare provider. Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining factual allegations in this paragraph, and on that basis denies them.

14. This paragraph states a characterization and description of the Complaint, to which no response is required. To the extent that a response is required, Defendant denies the allegations.

15. Defendant admits the allegations in this paragraph.

16. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations regarding services provided by Maine Family Planning, and on that basis denies them.

17. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations regarding abortion services provided by Maine Family Planning, and on that basis denies them.

18. Defendant admits that Maine Family Planning is an enrolled MaineCare provider. Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining factual allegations in this paragraph, and on that basis denies them.

19. This paragraph states a characterization and description of the Complaint, to which no response is required. To the extent that a response is required, Defendant denies the allegations.

20. Defendant admits the allegations in this paragraph.

21. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations regarding services provided by Planned Parenthood of Northern New England (“PPNNE”), and on that basis denies them.

22. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations regarding abortion services provided by PPNNE, and on that basis denies them.

23. Defendant admits that PPNNE is an enrolled MaineCare provider. Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining factual allegations in this paragraph, and on that basis denies them.

24. This paragraph states a characterization and description of the Complaint, to which no response is required. To the extent that a response is required, Defendant denies the allegations.

25. Defendant admits that Mary Mayhew is the Commissioner of the Maine Department of Health and Human Services (“DHHS”) and that DHHS is principally located in Augusta, Maine. The remaining allegations in this paragraph state a characterization and description of the Complaint, to which no response is required. To the extent that a response is required, Defendant denies the allegations.

26. Defendant admits that DHHS is the Maine state agency responsible for the administration of MaineCare and that DHHS is under the control and supervision of Commissioner Mayhew.

27. Defendant admits that 22-A M.R.S. § 205 provides, in part, that the Commissioner “has all of the powers and duties necessary to carry out the mission and responsibilities of the department” and that the Commissioner must “administer the department in accordance with the requirements of this Title and shall fulfill the duties prescribed to the commissioner by state and federal law.” The remaining allegations of this paragraph state conclusions or arguments of law, and/or seek to characterize state statutes or regulations, and therefore no answer is required. To the extent that a response is required, Defendant denies the allegations.

28. Defendant admits that Commissioner Mayhew has acted in her official capacity and under state law during her tenure as DHHS Commissioner. Defendant otherwise denies the allegations in this paragraph.

STATUTORY AND REGULATORY FRAMEWORK

29. Defendant admits that 22 M.R.S. § 1598 provides, in part, that “[i]t is the public policy of the State that the State not restrict a woman's exercise of her private decision to terminate a pregnancy before viability except as provided in section 1597-A.”

30. Defendant admits that 22-A M.R.S. § 202(1) provides, in part, that DHHS' mission is to "provide health and human services to the people of Maine so that all persons may achieve and maintain their optimal level of health and their full potential for economic independence and personal development."

31. Defendant admits that 22-A M.R.S. § 202 provides, in part, that "[w]ithin available funds, the department shall provide supportive, preventive, protective, public health and intervention services to children, families and adults, including the elderly and adults with disabilities."

32. Defendant admits that Medicaid is a joint federal-state program providing medical services to individuals meeting certain financial and medical eligibility requirements and that it is jointly funded by federal and state dollars. Defendant otherwise denies the allegations in this paragraph.

33. Defendant admits the allegations in this paragraph.

34. Defendant admits the allegations in this paragraph.

35. Defendant admits that 10-144 C.M.R. ch. 101(II), § 90.04 of the MaineCare Benefits Manual, regarding Physician Services, provides, in part, that "[t]he Department covers those reasonably necessary medical and remedial services that are provided in an appropriate setting and recognized as standard medical care required for the prevention and/or treatment of illness, disability, infirmity or impairment and which are necessary for health and well-being."

36. Defendant admits that MaineCare covers a broad range of services, including, but not limited to, certain physician services, in-patient and out-patient hospital services, prescription drug coverage, x-ray and laboratory tests and mental health services. Defendant further admits that, in certain circumstances, MaineCare provides reimbursement for transportation costs and

travel expenses incurred in obtaining covered medical care. Defendant further admits that MaineCare will authorize payment for services provided out of state, under certain circumstances. The remaining allegations of this paragraph state conclusions or arguments of law, and/or seek to characterize state statutes or regulations, and therefore no answer is required. To the extent that a response is required, Defendant denies the allegations.

37. Defendant admits that the MaineCare Benefits Manual defines “family planning” as “the informed and voluntary determination by the member of desired family size and timing of child bearing and to reproductive health care both directly and indirectly related to child bearing.” Defendant further admits that MaineCare covers certain family planning services. The remaining allegations of this paragraph state conclusions or arguments of law, and/or seek to characterize state statutes or regulations, and therefore no answer is required. To the extent that a response is required, Defendant denies the allegations.

38. Defendant admits that MaineCare covers costs relating to certain male and female sterilization procedures, when the conditions set forth in the relevant federal regulations are met, but denies the remaining allegations in this paragraph.

39. Defendant admits that 10-144 C.M.R. ch. 332, pt. 3, § 4.3 provides, in part, that “[i]f a woman is eligible as a pregnant woman in the month of application, or the retroactive period, or due to a change in ongoing eligibility, she continues to be eligible for sixty days beyond the date her pregnancy ends and through the last day of the month in which the 60th day falls.” Defendant further admits that “[o]bstetrical care services include antepartum care, delivery, postpartum care, and other services normally provided in uncomplicated maternity care.” 10-144 C.M.R. ch. 101(II), § 90.04-4(B).

40. Defendant admits that “MaineCare covers treatment of medical complications of pregnancy (e.g., toxemia, cardiac problems, neurological problems, etc.) or other problems requiring additional or unusual services and requiring hospitalization.” 10-144 C.M.R. ch. 101(II), § 90.04-4(B).

41. Defendant admits that the regulations cited in this paragraph are accurately paraphrased, except that MaineCare will cover children and teenagers through age twenty, provided they meet certain family income eligibility requirements and provided that they meet certain living requirements. To the extent the allegations of this paragraph seek to characterize state statutes or regulations, no answer is required. If a further response is required, Defendant denies the allegations.

42. Defendant admits that the MaineCare Benefits Manual provides, in part, that “[i]n compliance with PL 103-112, the Health and Human Services Appropriations bill, reimbursement for abortion services will be made only if necessary to save the life of the mother, or if the pregnancy is the result of an act of rape or incest.” 10-144 C.M.R. ch. 101(II), § 90.05-2. The remaining allegations of this paragraph state conclusions or arguments of law, and/or seek to characterize state statutes or regulations, and therefore no answer is required. To the extent that a response is required, Defendant denies the allegations.

43. Defendant admits that both federal law and state rule prohibit the use of MaineCare funds to pay for abortions, except if necessary to save the life of the mother, or if the pregnancy is the result of an act of rape or incest. The remaining allegations in this paragraph state conclusions or arguments of law, and/or seek to characterize state statutes or regulations, and therefore no answer is required. To the extent that a response is required, Defendant denies the allegations.

44. The allegations in this paragraph state conclusions or arguments of law, and/or seek to characterize state statutes or regulations, and therefore no answer is required. To the extent that a response is required, Defendant denies the allegations.

45. Defendant admits the allegations in this paragraph.

HEALTH CONDITIONS RELATED TO CONTINUED PREGNANCY

46. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

47. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

48. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

49. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

50. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

51. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

52. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

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54. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

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56. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

57. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

58. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

59. Defendant admits the allegations in this paragraph.

WOMEN SEEKING ABORTIONS IN MAINE

60. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

61. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

62. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

63. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

64. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

65. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

66. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

67. Defendant admits that to qualify for MaineCare, a pregnant woman must be at or below 214% of the FPL. Defendant otherwise denies the allegations in this paragraph.

68. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

69. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

70. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

71. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

72. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

73. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

74. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

75. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

76. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

77. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

78. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

79. Defendant admits that PPNNE has a health center in Portland, which is in the southern portion of the State of Maine. Defendant denies the remaining factual allegations in this paragraph.

80. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

81. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

82. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

83. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

84. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

85. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

**IMPACT OF DENIAL OF COVERAGE FOR
ABORTIONS ON PLAINTIFFS' PATIENTS**

86. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

87. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

88. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

89. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

90. The allegations in this paragraph state conclusions or arguments of law, and therefore no answer is required. To the extent that a response is required, Defendant denies the allegations.

91. Defendant is without sufficient knowledge or information to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

92. The allegations in this paragraph state conclusions or arguments of law, and therefore no answer is required. To the extent that a response is required, Defendant denies the allegations.

FIRST CAUSE OF ACTION

93. Defendant repeats and realleges her responses to Paragraphs 1 through 92 of the Complaint as though fully set forth herein.

94. Defendant admits that 5 M.R.S. § 8058 provides, in part, that “[i]nsofar as the court finds that a rule exceeds the rule-making authority of the agency, or is void under section 8057, subsection 1 or 2, it shall declare the rule invalid.” To the extent the allegations of this paragraph seek to characterize state statutes or regulations, no answer is required. If a further response is required, Defendant denies the allegations.

95. Defendant admits that 5 M.R.S. § 8058 provides, in part, that “[i]f the court finds that the rule is not procedurally invalid and not in excess of the agency's rule-making authority, its substantive review of that rule shall be to determine whether the rule is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law. The phrase ‘otherwise not in accordance with law’ shall apply only to the review authorized in the preceding sentence and shall not be construed so as to limit or replace in any way section 8003.” To the extent the allegations of this paragraph seek to characterize state statutes or regulations, no answer is required. If a further response is required, Defendant denies the allegations.

96. Defendant denies the allegations in this paragraph.

SECOND CAUSE OF ACTION

97. Defendant repeats and realleges her responses to Paragraphs 1 through 96 of the Complaint as though fully set forth herein.

98. Defendant denies the allegations in this paragraph.

THIRD CAUSE OF ACTION

99. Defendant repeats and realleges her responses to Paragraphs 1 through 98 of the Complaint as though fully set forth herein.

100. Defendant denies the allegations in this paragraph.

101. Defendant denies the allegations in this paragraph.

FOURTH CAUSE OF ACTION

102. Defendant repeats and realleges her responses to Paragraphs 1 through 101 of the Complaint as though fully set forth herein.

103. Defendant denies the allegations in this paragraph.

PRAYER FOR RELIEF

Defendant denies that Plaintiffs are entitled to any relief. All other material allegations are denied.


AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.
2. Plaintiffs' claims are barred by the doctrine of laches.
3. Plaintiffs have failed to exhaust administrative remedies.
4. The Complaint fails to join indispensable parties.
5. Plaintiffs' claims are barred by the doctrine of separation of powers.
6. Plaintiffs lack standing to assert their claims due to the absence of particularized injury.
7. Plaintiffs' claims are barred by sovereign immunity.
8. Defendant's conduct did not violate any clearly established statutory or constitutional right of which a reasonable official would have known, and Defendant is thus entitled to qualified immunity.
9. Plaintiffs have an adequate remedy at law.

WHEREFORE, the Defendant demands judgment against the Plaintiffs and for its costs and such other and further relief as the Court deems just.

Dated: January 11, 2016

Respectfully submitted,
JANET T. MILLS
Attorney General




William D. Hagedorn
Susan P. Herman
Assistant Attorney General
Attorney for the Maine Department of
Health and Human Services
Office of Attorney General
6 State House Station
Augusta, ME 04333-0006
Tel. (207) 626-8540

CERTIFICATE OF SERVICE

I, William D. Hagedorn, hereby certify that the Defendant's Answer and Affirmative Defenses to Plaintiffs' Complaint, dated January 11, 2016, was sent by first-class-mail, postage prepaid and by electronic mail on January 11, 2016, to the following:

Zachary L. Heiden
American Civil Liberties Union of Maine Foundation
121 Middle Street, Suite 303
Portland, ME 04103

DATED: 1/11/16



William D. Hagedorn
Bar No. 004197