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**Pro hac vice applications forthcoming*

MONTANA FIRST JUDICIAL DISTRICT COURT,
COUNTY OF LEWIS & CLARK

ALL FAMILIES HEALTHCARE; BLUE MOUNTAIN CLINIC; AND HELEN WEEMS MSN APRN-FNP, on behalf of themselves, their employees, and their patients Plaintiffs, vs. STATE OF MONTANA; MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; and CHARLIE BRERETON, in his official capacity as Director of the Department of Public Health and Human Services Defendants.	Cause No.: _____ Judge: _____ **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Plaintiffs All Families Healthcare ("All Families"); Blue Mountain Clinic ("Blue Mountain"); and Helen Weems, APRN-FNP (collectively, "Plaintiffs") bring this Complaint on

behalf of themselves and their patients against the State of Montana (the "State"); the Montana Department of Public Health and Human Services ("DPHHS"); and Charlie Brereton, in his official capacity as Director of DPHHS, and in support thereof state the following:

PRELIMINARY STATEMENT

1. House Bill 937, An Act Providing for the Licensure and Regulation of Abortion Clinics; Providing Definitions; Providing for Annual Licensure Fees; Providing Rulemaking Authority; and Amending § 50-5-101, MCA, was signed into law on May 16, 2023, and takes effect October 1, 2023 ("HB 937" or the "Act") (attached as Exhibit A). The Act directs DPHHS to license and regulate "abortion clinics," and to promulgate regulations for "abortion clinic" licensure.

2. All Families has been providing abortion care since it opened in 2018. Blue Mountain was the first abortion clinic in Montana when it opened in 1977 and has been providing abortion care for 46 years. Like other clinics, Plaintiffs are already subject to government licensure, oversight, and regulation. Montana does not mandate facility licensure for clinics that offer care that is identical or comparable to abortion, including miscarriage care. Indeed, Montana does not mandate facility licensure for the other care that Plaintiffs themselves provide, including identical miscarriage care and comparable gynecological care. Nor does Montana mandate facility licensure for other settings, such as private homes or birth centers, where people may labor and give birth, although labor and delivery carry greater risk than abortion care.

3. HB 937 adds "abortion clinic" to the definition of "health care facility," entities for which DPHHS provides licensure and regulation. However, it does not alter existing law, which permits clinics and clinicians' offices, like Plaintiffs, to provide care without additional facility licensure. DPHHS nonetheless has indicated that facility licensure is required for any facility that meets the definition of "abortion clinic," as Plaintiffs do. It is thus unclear whether the Act *requires*

clinics that provide abortion care be licensed by DPHHS, or whether facility licensure is optional, as it is for other clinics in Montana.

4. To the extent the Act requires abortion clinics to obtain facility licensure, it is yet another effort by Montana legislators to interfere with Montanans' fundamental right to access abortion care from their chosen provider by singling out abortion care for unique and additional regulation. And it has no health or safety purpose whatsoever.

5. Moreover, in the more than three months since Governor Greg Gianforte signed HB 937, DPHHS has yet to even propose regulations for licensure. As a result, Plaintiffs have no way to know what licensure requires of them, making it impossible to comply with the Act. Upon information and belief, every clinic that regularly provides abortion care in Montana is similarly impacted by the Act.

6. Without clarity as to whether Plaintiffs must become licensed, or a path to licensure for abortion clinics if licensure is required, HB 937 threatens to end or disrupt Plaintiffs' provision of abortion care and decimate access to abortion in Montana.

7. The Act is a clear violation of the Montana Constitution, and legal precedent of this Court and the Montana Supreme Court. *Armstrong v. State*, 1999 MT 261, 296 Mont. 361, 989 P.2d 364 (1999) (restrictions on abortion trigger strict scrutiny, and ban on physician assistants providing abortion care does not withstand strict scrutiny); *Weems v. State*, 2023 MT 82, 412 Mont. 132, 529 P.3d 798 (2023) ("*Weems II*") (affirming permanent injunction and holding unconstitutional law restricting provision of abortion to physicians and physician assistants only); *Planned Parenthood of Mont., et al. v. State*, No. DV-21-0999, 2021 WL 9038524 (1st Jud. Dist. Oct. 7, 2021) (granting preliminary injunction against laws imposing mandatory delay period and banning telehealth for abortion), *aff'd by Planned Parenthood of Mont. v. State*, 2022 MT 157,

409 Mont. 378, 515 P.3d 301 (2022); *Jeannette R. v. Ellery*, No. BDV-94-811, 1995 WL 17959705 (1st Jud. Dist. May 22, 1995) (holding that Medicaid may not exclude coverage for medically necessary abortion care).

8. Plaintiffs and undersigned counsel for Plaintiffs have made multiple requests to DPHHS and attorneys for the State, asking whether HB 937 requires abortion clinics to obtain facility licensure; whether DPHHS intends to engage in the rulemaking process before HB 937's effective date; and whether the State would consider delaying the effective date of the Act to 90 days after final regulations are publicized. Attorneys for the State did not reply to the undersigned's first request. In response to the second request, an attorney for the State indicated that HB 937 would go into effect October 1, 2023. DPHHS responded to Plaintiff Weems' request for additional information and confirmed that DPHHS is currently "engaged in the rulemaking processes for licensure of abortion clinics" as of August 18, 2023, but provided no further information about forthcoming requirements or timing.

PARTIES

9. Plaintiff All Families is a sexual and reproductive health clinic in Whitefish that provides gynecological exams, diagnosis and treatment of sexually transmitted infections, contraception, and abortion care, as well as 2S-LGBTQIA+care and gender-affirming care for transgender people. All Families has been serving the Flathead Valley and patients across Montana since it opened in 2018 and serves approximately 800 patients annually, accounting for nearly 1,000 patient visits per year. All Families provides medication abortion (in person and via telehealth) up to 11 weeks, as measured from the first day of the patient's last menstrual period

("LMP") and procedural abortion up to 12.6 weeks LMP. All Families is a member of the National Abortion Federation ("NAF") and meets the clinical standards set by NAF.

10. Plaintiff Helen Weems is a nurse practitioner licensed to practice in Montana with over 20 years of clinical experience. She owns All Families and is its sole clinician. Plaintiff Weems is also the sole abortion provider in the Flathead Valley.

11. Plaintiff Weems has offered abortion care in the same physical location for over five years. Her practice at Plaintiff All Families is subject to regulation by numerous State and federal authorities, including the Montana Board of Nursing, the Montana Board of Pharmacy, the U.S. Drug Enforcement Agency ("DEA"), and DPHHS, to the extent it administers the Clinic Laboratory Improvements Amendments ("CLIA") and enforces Montana's abortion-reporting laws.

12. Plaintiff Blue Mountain is a family practice in Missoula. Blue Mountain first opened in 1977 as the first and only abortion clinic in Montana. In 1991, Blue Mountain expanded its health services to include comprehensive family medical care to better serve its community. Blue Mountain has four full-time primary health care providers who are licensed to practice in Montana: two physicians and two physician assistants. For many of Blue Mountain's patients, Blue Mountain is their medical home; they turn to Blue Mountain whenever they need health care. Blue Mountain serves 3,500 patients annually, accounting for over 10,000 visits per year. It provides care across a patient's lifespan, from pediatric care to elder care, including wellness exams, contraception, abortion care, and gynecological care. Blue Mountain provides medication abortion (in person and via telehealth) up to 11 weeks LMP and procedural abortion up to 21.6 weeks LMP. Blue Mountain is a member of the NAF and meets the clinical standards set by NAF.

13. On March 29, 1993, anti-abortion activists firebombed Blue Mountain, destroying its original facility. In September 1995, Blue Mountain reopened at its current location and has been providing health services, including abortion care, in that same physical location for nearly 30 years. Blue Mountain's practice is subject to regulation by numerous State and federal authorities, including the Montana Board of Medical Examiners, the Montana Board of Nursing, and the Montana Board of Pharmacy; the U.S. DEA; and the DPHHS, to the extent it administers CLIA and enforces Montana's abortion-reporting laws.

14. Plaintiffs sue on their own behalf; on behalf of their current and future clinicians, servants, officers, and agents; and on behalf of their patients.

15. Defendant State of Montana is a governmental entity subject to suit for injuries to persons. Mont. Const. art. II, § 18.

16. Defendant DPHHS is a governmental entity subject to suit for injuries to persons. Mont. Const. art. II, § 18. DPHHS has been authorized to set minimum standards for health care facilities, including abortion clinics, and to license those facilities.

17. Defendant Charlie Brereton is the Director of DPHHS. He oversees DPHHS's role in proposing and promulgating rules relating to health care facilities, including abortion clinics, and will be responsible for enforcing any relevant rules unless restrained by this Court. Director Brereton is sued in his official capacity.

JURISDICTION AND VENUE

18. Jurisdiction is conferred on this Court by article VII, section 4 of the Montana Constitution and § 3-5-302, MCA.

19. Plaintiffs' claims for declaratory and injunctive relief are authorized by § 27-8-101 *et seq.*, MCA, as well as the general equitable powers of this Court.

20. Plaintiffs' claims for judicial review are authorized by MAPA, §§ 2-4-101 *et seq*., MCA.

21. Venue is appropriate pursuant to §§ 25-2-126, 25-2-117, MCA, because the State of Montana is a Defendant, and the County of Lewis and Clark is the proper venue for actions against the State and political subdivisions.

STANDING

22. Plaintiffs have standing to bring the claims asserted in this Complaint because the challenged laws infringe on the rights of Plaintiffs and their patients under the Montana Constitution and State law.

23. "[W]hen 'governmental regulation directed at health care providers impacts the constitutional rights of women patients,' the providers have standing to challenge the alleged infringement of such rights." *Weems v. State*, 2019 MT 98, ¶ 12, 395 Mont. 350, 440 P.3d 4 (2019) ("*Weems I*") (quoting *Armstrong*, ¶¶ 8–13).

24. Plaintiffs also have standing to bring their own claims because the challenged provisions directly infringe on Plaintiffs' rights under the Montana Constitution. *See id.* ¶ 14 (holding that abortion provider plaintiffs who "are impacted by the statute" have standing to challenge it).

FACTUAL ALLEGATIONS

A. Abortion Access in Montana

25. Abortion, by medication or procedure, is common and safe. Abortion is safer than carrying a pregnancy to term; the risk of death associated with childbirth is approximately 13 times higher than that associated with abortion. Pregnancy-related complications are also more common among people having a live birth than those who obtain an abortion.

26. Abortion is safe throughout pregnancy, but the risk increases incrementally as a pregnancy progresses, as pregnant patients continue to experience the risks of pregnancy.

27. Access to safe and legal abortion is critical to gender equality and to each individual's ability to participate in economic and social life. People denied a wanted abortion are more likely to experience economic insecurity and raise their existing children in poverty.

28. Abortion care provided by medical professionals in the United States is either through the use of medications ("medication abortion") or via an outpatient procedure ("procedural abortion").

29. Procedural abortion involves a two-step process in which the provider first partially dilates the patient's cervix and then evacuates the uterus using suction aspiration, instruments, or some combination. Dilation is done either the same day or begins the day before, and the procedural abortion typically takes less than 30 minutes. While sometimes referred to as "surgical abortions," there is no surgery involved in procedural abortions, and they involve minimal recovery.

30. Procedural abortion, including at Plaintiffs' clinics, commonly involves administration of a local anesthetic to numb the cervix. All Families occasionally prescribes anti-anxiety medication to relax the patient. Blue Mountain also offers moderate sedation, where the patient remains awake but relaxed, for procedural abortions. These medications are similar to ones prescribed for other in-office non-abortion procedures that the Plaintiffs offer to their patients.

31. A procedural abortion is identical to the procedure providers perform to manage a patient's spontaneous miscarriage or following a fetal demise. Procedural abortion is comparable in risk, skill, and technique to other gynecological procedures offered by the Plaintiffs, including insertion and removal of intrauterine devices (known as "IUDs"), a long-acting, reversible method

of birth control and loop electrosurgical excision procedures ("LEEPs"), for diagnosis and treatment of abnormal cervical tissue. It carries less risk than other common outpatient procedures like wisdom tooth removal and adult tonsillectomy, and carries a similar level of risk to vasectomy, a minor surgical procedure that has an overall low risk of complications.

32. Medication abortion is typically provided via a two-drug regimen, which consists of mifepristone taken in tandem with misoprostol; it can also be provided using misoprostol alone. A medication abortion will cause the patient to pass the pregnancy in a process similar to a miscarriage. In fact, mifepristone and misoprostol are the *same* medications that providers use to manage a patient's spontaneous miscarriage. Both mifepristone and misoprostol are substantially safe, and are safer than aspirin, Tylenol, and Viagra. Medication abortion involves no anesthesia. Plaintiffs' patients are counseled to take ibuprofen and may also be prescribed a prescription medication for pain management.

33. Plaintiffs provide medication abortion in person or via telehealth. Both clinics provide direct-to-patient telehealth medication abortion, in which a provider consults with a patient remotely, confirms that the patient is eligible for medication abortion, provides relevant counseling, and obtains informed consent. The medications are then mailed to the patient at a Montana address. As with other telehealth services, a patient who obtains medication abortion via telehealth does not need to visit Plaintiffs' physical facilities.

34. Plaintiff Weems provided approximately 260 abortions in 2022, and over 200 abortions in 2023, as of July 2023. Medication abortion makes up the vast majority of abortion care that Plaintiff Weems provides.

35. Both physician assistants at Plaintiff Blue Mountain provide medication abortion in-person and via telehealth, four days a week. Blue Mountain physicians offer abortion care up to

21.6 weeks LMP. Because Blue Mountain's physician assistants provide medication abortion, Blue Mountain prioritizes scheduling physicians to care for patients in need of procedural abortions. In 2022, Blue Mountain provided about 400 abortions.

36. Plaintiffs' patients seek abortion services for a variety of reasons: some lack the financial means to raise a child; others are not ready to become a parent; many have physical and emotional health issues that would be exacerbated by continuing a pregnancy; and some have become pregnant as a result of incest or rape.

37. The availability of abortion care enables patients to pursue educational and economic opportunities rather than forego them due to unplanned childbirth, to provide care to existing family members, to avoid raising children with an absent, unwilling, or abusive partner, and to prevent health harms, pain, and suffering that can arise from carrying pregnancies to term and giving birth. Over the years, Plaintiffs' patients have raised all of these concerns as reasons why they have made the decision to end a pregnancy.

38. Abortion is legal in Montana and protected as a fundamental right under the Montana Constitution. *Armstrong*, ¶ 2. Yet over the last few years, abortion has been subject to numerous efforts to restrict it. Montana courts have blocked every one of these recent efforts to interfere with an individual's fundamental right to abortion, and to access that care from their chosen provider.

B. Regulation of Health Care Providers, Including Providers of Abortion Care, in Montana

39. Health care providers in Montana are subject to state, federal, and professional regulation. These generally applicable licensure and regulatory requirements apply equally to providers of abortion care, identical miscarriage care, and a range of outpatient health services available in the state.

40. Title 37 governs provider-based licensure and other regulation for physicians, physician assistants, and nurses, among other licensed providers. *See* §§ 37-3-101 *et seq*., 37-8-101 *et seq*., 37-20-101 *et seq*., 37-27-101 *et seq*., MCA. These providers are licensed not by DPHHS, but by the providers' respective boards (e.g., Board of Medical Examiners, Board of Nursing). Plaintiffs are subject to licensure, oversight, and regulation under Title 37 of the Montana Code, like other clinicians' practices.

41. The State, through the Board of Nursing, licenses and regulates nurses. § 37-8-101, MCA. With State licensure, advanced practice registered nurses, including nurse practitioners and nurse midwives, may practice independently and provide health services consistent with their education, training, and experience. Admin. R. M. 24-159.1405 (Advanced Practice Registered Nurses ("APRN") practice). The Board grants prescriptive authority to APRNs, permitting them to prescribe medications. The Board may investigate and discipline nurses who violate nursing statutes or regulations. § 37-8-202(f), MCA.

42. Plaintiff Weems' practice at All Families, and the nurses at Blue Mountain are subject to oversight and regulation by the Montana Board of Nursing.

43. The Board of Medical Examiners licenses physicians and physician assistants and regulates medical assistants. §§ 37-3-101, -102(12), -104, MCA. With a license, physicians, and physician assistants (with more than 8,000 post-graduate practice hours) may practice independently consistent with their education, training, and experience, and prescribe medications. § 37-3-102(12), -20-203, -20-404, MCA. The Board does not issue licenses to medical assistants; per Board regulation, a health care provider may delegate certain tasks to medical assistants. Admin. R. M. 24.156.401.

44. The physicians and physician assistants at Blue Mountain are licensed and subject to oversight and regulation by the Board of Medical Examiners. Its medical assistants are also subject to Board of Medical Examiners regulation.

45. Providers may additionally register with the DEA, which permits providers with prescriptive authority to prescribe potentially dangerous and addictive controlled substances.

46. Plaintiffs Weems and Blue Mountain clinicians are registered with the DEA.

47. Montana health care providers, including physicians, physician assistants, and APRNs, may also register with the Montana Board of Pharmacy as a "medical practitioner dispenser." The registration permits providers to *dispense* prescription medications within their scope of practices directly to their patients, rather than having their patients fill the prescription at a pharmacy. § 37-2-104, MCA; Admin. R. M. 24.174.1801–1803. Registration subjects the provider to generally applicable patient counseling, prescription drug labeling, recordkeeping, and storage requirements, and inspection by the Board. Admin. R. M. 24.174.1802, 1803.

48. Plaintiff Weems is registered with the Montana Board of Pharmacy as a medical practitioner dispenser and is thus subject to relevant State oversight and regulation.

49. Additionally, health care clinics licensed with the Montana Board of Pharmacy as limited-service pharmacies may "provid[e] pharmaceutical care under the review of a consulting pharmacist and dispensing legend drugs." Admin. R. M. 24.174.830(1). The Montana Board of Pharmacy may annually inspect limited-service pharmacies, or more often for cause. These inspections assess the facility's compliance with drug labeling; counseling materials for patients; contact information of a knowledgeable individual at the clinic in the event of an adverse reaction; records maintenance and retention; and drug storage and security. Admin. R. M. 24.174.830(7).

50. Blue Mountain is licensed and subject to regulation as a limited-service pharmacy by the Montana Board of Pharmacy.

51. The Montana Department of Labor and Industry and the professional and occupational licensing boards are charged with investigating complaints about licensees and imposing discipline. *See How to File a Complaint*, Montana Dep't of Labor & Indus., https://bsd.dli.mt.gov/filing-complaint (last visited Aug. 17, 2023).

52. NAF provides clinical standards and guidelines for quality assurance for abortion providers, and trained NAF quality assurance clinicians conduct Quality Assurance and Improvement site visits on NAF members to assist providers in adhering to the standards set forth in NAF's Clinical Policy Guidelines for Abortion Care.

53. Plaintiffs Blue Mountain and All Families are NAF members and are certified by NAF as complying with its Clinical Policy Guidelines for Abortion Care.

54. Plaintiffs are subject to DPHHS oversight and regulation through CLIA and Montana abortion-reporting requirements. Plaintiffs are further subject to other generally applicable State and local laws, like zoning laws.

55. Montana also authorizes the DPHHS to set minimum standards for "health care facilities" and to license such facilities. *See* §§ 50-5-103(1), 50-5-204(3), MCA. "Health care facilities" licensed by DPHHS include hospitals, outpatient centers for surgical services, outpatient centers for primary care, long-term care facilities, and mental health centers, among others.

56. "Health care facility" *does not* include "offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37 [of the Montana Code]." § 50-5-101(26)(b), MCA.

57. DPHHS has previously made clear that facility licensure is optional for clinicians' offices, i.e., that facility licensure does not alter the ability of clinicians licensed under Title 37 to practice without licensing the facilities in which they practice. For example, in 2011, the Montana Nurses Association and Council on Advanced Practice expressed concern that facility licensure for outpatient facilities for primary care would require all nurse-managed centers and private nurse practitioner run clinics to be licensed as facilities and comply with regulations requiring a physician to supervise the facility. *See* 37-526 Mont. Admin. Reg. 7 (Apr. 14, 2011) (Comment #1). DPHHS dismissed that concern, stating:

> [T]he department does not agree. Title 37, MCA is the chapter under which the Department of Labor and Industry provides for occupational/professional licensing. The Department of Public Health and Human Services considers advanced practice registered nurses (APRNs) and any other practitioners licensed under Title 37, MCA as exempt from health care facility licensure. In other words, if a practitioner is already licensed to practice medicine they may open a private practice or clinic without having to license as a health care facility. Any licensed practitioner can sign up and bill Medicare/Medicaid for professional services rendered.
>
> If a licensed healthcare practitioner *additionally* wants to bill for a facility fee (such as for a birthing center) a health care facility license must be acquired; hence the rule for licensing 'outpatient facilities for primary care.' The health care facility standards are only applicable to those healthcare professionals who would seek and qualify for a healthcare facility license, in addition to their professional credentials.

Id. (Response #1) (emphasis added).

58. DPHHS had earlier explained that its prior facility licensure regulations were spurred by providers' interest in charging insurance programs a facility fee. In 2010, DPHHS proposed regulations for outpatient facilities for primary care to include birth centers, stating:

> Currently, birth centers can operate under the independent scope of practice of the health care professional and these professionals are seeking facility licensure under the existing outpatient center for primary care authority. Birth centers have sought a facility license for purposes of Medicaid reimbursement.

37-526 Mont. Admin. Reg. 22 (Nov. 26, 2010). Accordingly, Montana does not require birth centers—where pregnant patients may labor and give birth to a child—to obtain facility licensure.

C. HB 937 and Requirement for Regulations

59. Rep. Lola Sheldon-Galloway introduced HB 937 on March 27, 2023.

60. The House Judiciary Committee held a public hearing on HB 937 two days later, on March 29, and the Senate Judiciary Committee held a public hearing on April 13, 2023.

61. Proponents of HB 937 cited no health and safety incidents concerning any Montana clinicians who provide abortion care or at any Montana facility that provides abortion care.

62. Opponents testified that providers of abortion care are already subject to regulation in Montana and that HB 937 singled out abortion providers without justification. They raised concerns that DPHHS licensure and regulations could impede access to and disrupt the provision of care, undermining, rather than furthering, any health and safety goal. Opponents also testified that HB 937 conflicted with the Montana Constitution's protection for the right of every individual to access abortion care, including from their chosen provider.

63. HB 937 adds "abortion clinic" to the definition of "health care facility," and makes it unlawful to operate or advertise an "abortion clinic" in the State without a valid license issued by DPHHS pursuant to the Act. HB 937 § 1, 2. "Abortion clinic" means a facility that performs any "surgical abortion procedures" or prescribes, administers, or dispenses an "abortion-inducing drug" to five or more patients per year. *Id.* § 1, 1(a), (2)(a).

64. "Abortion clinic" does not include a facility that provides an "abortion-inducing drug" for a purpose other than abortion. *Id.* § 1 (2)(c). "Abortion clinic" also does not include facilities licensed as hospitals, critical access hospitals, or outpatient centers for surgical services. *Id.* § 1(b).

65. HB 937 does not alter existing law, which provides that "health care facility" "*does not* include offices of private physicians, dentists, or other physical or mental health workers regulated under Title 37." § 50-5-101(26)(b), MCA) (emphasis added).

66. Thus, on its face, HB 937 is unclear as to whether private clinicians' offices, like Plaintiffs, must obtain health care facility licenses as "abortion clinics," or whether they may continue to provide abortion care as private clinicians' offices, as they have for years.

67. If HB 937 is interpreted to require Plaintiffs to become licensed, Section 2(2) provides than an applicant for licensure must apply for a license on a form prescribed by DPHHS. DPHHS has not made that form available.

68. Section 3 provides that DPHHS will adopt regulations, and license and regulate "abortion clinics" consistent with those regulations, setting out numerous categories in which DPHHS must promulgate regulations, including:

- minimum license qualifications;
- requirements for
    - sanitation,
    - staff qualifications,
    - necessary emergency equipment,
    - providing emergency care,
    - monitoring patients after administration of anesthesia,
    - providing follow-up care for patient complications,
    - quality assurance,
    - infection control,
    - the architecture or layout of the "abortion clinic,"

    - providing patients with a hotline number to assist "women who are coerced into an abortion or who are victims of sex trafficking,"
    - annual training by law enforcement on "identifying and assisting women who are coerced into an abortion or who are victims of sex trafficking;"
- operating policies for maintaining medical records;
- procedures for the issuance, renewal, denial, and revocation of licenses, including: an annual $450 fee;
- procedures and standards for inspections; and
- procedures for addressing any violations.

69. HB 937 Section 4 requires that DPHHS inspect each licensed "abortion clinic" at least once each calendar year. DPHHS may conduct additional investigations "as needed" in response to any complaints.

70. It is unlawful to operate a "health care facility" without a license or to violate any licensure regulation. § 50-5-111, MCA. The penalty for a violation may be, at most, $1,000 per day of violation.

71. Governor Gianforte signed HB 937 on May 16, 2023.

72. As of September 1, 2023—more than three months later and just one month before the law is to take effect—DPHHS has not proposed any regulations for "abortion clinics."

73. Plaintiffs and their undersigned counsel have made multiple requests, asking whether DPHHS intends to engage in the rulemaking process before HB 937's effective date, whether the State would consider delaying the effective date of the HB 937 to 90 days after final regulations are published, and whether HB 937 requires abortion clinics to obtain a license. Attorneys for the State did not reply to the undersigned's first request. In response to the second request, an attorney for the State indicated only that HB 937 would go into effect October 1.

74. Plaintiff Weems contacted DPHHS on August 8, 2023, on behalf of All Families and Blue Mountain, asking whether DPHHS intended to issue regulations pursuant to HB 937, and whether DPHHS understands HB 937 to require facility licensure for abortion clinics which operate pursuant to Title 37 of the Montana Annotated Code. DPHHS responded on August 18, 2023, that "if a facility meets the definition in [HB 937 Section 1(a)] and is not excluded in the criteria listed in (b), then the facility will need to be licensed as an Abortion Clinic." DPHHS also responded that it is engaged in the rulemaking process and that "[d]eadlines, and variances from them if needed, will be reviewed internally among DPHHS agencies."

D. Impact of H.B. 937 on Abortion Providers and Their Patients

75. While HB 937 adds "abortion clinic" to the definition of "health care facility," it does not disturb a separate applicable section of Montana law, § 50-5-101(26)(b), MCA, which provides that the term "health care facility" does not include offices of private clinicians regulated under Title 37, including Plaintiffs. As such, it is not clear as to whether Plaintiffs *must* become licensed as "abortion clinics" under HB 937 or whether they may continue to provide abortion care subject to § 50-5-101(26)(b), MCA, as well as other applicable State, federal, and professional oversight and regulation to which they are currently subject. Consistent with the text of § 50-5-101(26)(b), MCA, DPHHS has, in the past, made clear that licensed clinicians operating health care practices need not obtain separate facility licensure. Here, however, DPHHS has indicated that HB 937 requires licensure for "abortion clinics."

76. Plaintiffs' facilities meet the definition of "abortion clinic" in HB 937 Section 1(a); are not currently licensed by DPHHS; and, according to DPHHS's understanding of HB 937, must become licensed to continue providing abortion care. Yet, DPHHS has not yet proposed or promulgated the relevant regulations or rules. Absent even proposed regulations about the process

and requirements for licensure before HB 937's October 1 effective date, compliance with the Act is impossible.

77. Even if DPHHS is somehow able to propose, hold a public comment period for, and finalize rules under HB 937 before October 1, 2023, HB 937 provides for numerous and various categories of requirements for licensure, which will undoubtedly take time to assemble into an application. And it will take time for DPHHS to review and approve the same. Even under the most ideal circumstances, assuming that there will be no delays or issues with an application, there will necessarily be a period during which HB 937 prohibits abortion services without a license through no fault on the part of All Families or Blue Mountain.

78. This confusion and uncertainty regarding whether and how Plaintiffs must obtain licensure is not how any small health care practice should be forced to operate. Not only does this uncertainty impact Plaintiffs, it also will have a detrimental effect on their patients.

79. DPHHS's vague reference to deadlines or variances does not resolve this uncertainty. Licenses or variances are not guaranteed and are not likely to be obtained before HB 937 takes effect. A lapse in Plaintiffs' ability to provide abortion care is all but guaranteed.

80. Any disruption in Plaintiffs' ability to provide abortion care to its patients will interfere with patients' access to abortion, delaying some and denying others access to this time-sensitive care. Delaying or denying access to abortion care will have life-altering health and financial consequences for Montanans who have made the decision to end a pregnancy.

81. Moreover, absent relief from this Court, HB 937 may force All Families to close, as abortion care makes up a substantial part of its practice. The Flathead Valley would once again be without any abortion provider, and the community would also lose critical access to safe and confidential contraception, STI testing, and 2S-LGBTQIA+ care.

82. Absent relief from this court, Blue Mountain, too, may need to make the devastating decision to stop providing the abortion care it has offered for more than four decades to continue its family practice, which includes provision of care that is identical or comparable to abortion care.

83. Plaintiffs are already subject to licensure, regulation, and oversight by numerous federal, State, local, and professional agencies. HB 937 and the additional requirement for a clinic that provides abortion to obtain licensure from DPHHS serves no health and safety purpose.

84. HB 937 is also irrational. It subjects clinicians' offices that provide abortion care to unique and additional regulation simply because they provide abortion care. Montana law does not otherwise require licensure of clinicians' offices that provide identical care to manage a patient's miscarriage, whether by medication or procedure. To the extent HB 937 requires licensure of abortion clinics, it imposes no similar requirement on facilities that prescribe identical medications for miscarriage care.

85. HB 937 also subjects clinicians' offices, from which a provider prescribes medication abortion via telehealth, to unique and additional regulation simply because that medication is prescribed with the intent to terminate a pregnancy. To the extent HB 937 requires licensure for abortion clinics, it requires licensure of facilities from which a provider prescribes medication for medication abortion even when a patient will never visit that facility.

86. To the extent HB 937 requires licensure of abortion clinics, it mandates facility licensure for exceedingly safe and common outpatient care, while not requiring licensure for care that carries a higher risk of complications, such as childbirth.

87. Absent a temporary restraining order or preliminary injunction, All Families and Blue Mountain will be forced to cease providing abortion care to Montanans and patients travelling

from surrounding states. As abortion care is time-sensitive, any disruption or delays in being able to provide such care will prevent some patients from getting abortion care at all.

CLAIMS FOR RELIEF

First Claim
Violation of the Right to Privacy
Article II, Section 10 of the Montana Constitution

88. Plaintiffs hereby reaffirm and re-allege each and every allegation made in the preceding paragraphs as if set forth fully herein.

89. Article II, Section 10 of the Montana Constitution provides that "[t]he right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest." This right includes the fundamental "right to seek and to obtain a specific lawful medical procedure, a pre-viability abortion, from a health care provider of her choice." *Armstrong*, ¶ 14; Mont. Const., art. II, § 10.

90. Violations of these rights are subject to strict scrutiny by the Court. The State must show "a compelling interest in and obligation to legislate or regulate to preserve the safety, health and welfare of a particular class of patients or the general public from a medically acknowledged, *bona fide* health risk." *Armstrong*, ¶ 59.

91. HB 937 interferes with the rights of individuals seeking abortion care in Montana by targeting abortion care for unique and additional regulation. It has no bona fide health justification and is not narrowly tailored to effectuate a compelling State interest, in violation of Article II, Section 10 of the Montana Constitution.

Second Claim
Violation of the Right to Equal Protection of the Laws
Article II, Section 4 of the Montana Constitution

92. Plaintiffs hereby reaffirm and reallege each and every allegation made in the preceding paragraphs as if set forth fully herein.

93. The Montana Constitution provides: "No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas." Mont. Const., art. II, § 4.

94. HB 937 violates Article II, Section 4 in numerous ways.

95. First, HB 937 violates equal protection because it creates classifications that burden the fundamental right to abortion without being narrowly tailored to effectuate a compelling interest. *See Snetsinger v. Mont. Univ. Sys.*, 2004 MT 390, ¶ 17, 325 Mont. 148, 104 P.3d 445 (2004) (strict scrutiny applies if distinctions drawn by a law affect fundamental rights). HB 937 discriminates against pregnant Montanans seeking to exercise their fundamental right to abortion, as compared to pregnant Montanans not seeking abortion care—including those who decide to continue their pregnancies and give birth. HB 937 also discriminates against pregnant Montanans who seek abortion care from Plaintiffs as their chosen provider, as compared to providers at facilities licensed by DPHHS. HB 937 additionally discriminates against pregnant Montanans seeking to exercise their fundamental right to abortion, as compared to pregnant Montanans seeking miscarriage management, which involves nearly identical care, but which is not subject to mandatory facility licensure requirements, or care for continued pregnancy and childbirth.

96. Second, HB 937 discriminates against Montanans based on suspect classes, including based on sex. Because sex is an expressly protected class recognized in Article II, Section 4, HB 937 interferes with a suspect class and must be subject to strict scrutiny. *See, e.g.*, *McDermott v. Mont. Dep't of Corrs.*, 2001 MT 134, ¶ 31, 305 Mont. 462, 29 P.3d 992 (2001) ("Strict scrutiny applies when a classification affects a suspect class.").

97. Third, HB 937 discriminates against providers who provide abortion care in private clinicians' offices, as compared to other private clinician offices not required to be licensed under HB 937, including those who provide nearly identical care but are not subject to facility licensure per §§ 50-5-101(26)(b), 50-5-103, MCA.

Third Claim
Due Process of Law – Void-for-Vagueness
Article II, Section 17 of the Montana Constitution

98. Plaintiffs hereby reaffirm and reallege each and every allegation made in the preceding paragraphs as if set forth fully herein.

99. Under Article II, Section 17 of the Montana Constitution, "[n]o person shall be deprived of life, liberty, or property without due process of law." Vague statutes violate the due process clause of the Montana Constitution. "[A] statute is void on its face if it fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden." *State v. Woods* (1983), 716 P.2d 624, 627; Mont. Const., art. II, § 17.

100. HB 937 is unconstitutional because it is too vague for the average person to understand, and thus violates the due process clause of the Montana Constitution. It is unclear, for instance, whether HB 937 *requires* abortion clinics to obtain facility licensure or whether private clinicians' offices that provide abortion care may continue to provide that care under current law left undisturbed by HB 937.

101. Additionally, for example, HB 937 requires that a person operating an abortion clinic provide an attestation that the applicant is "of reputable and responsible character" but does not provide any guidance on what this would entail or any objective criteria on which to base a decision. HB 937 also leaves the majority of the licensure and operation of abortion clinics to the discretion of DPHHS through rulemaking authority.

102. Further, to date, DPHHS has failed to propose or promulgate any rules regarding the process or requirements for licensure and operation of abortion clinics. Plaintiffs have no way to apply for licensure or to know the requirements necessary to maintain their ability to provide abortion care.

Fourth Claim
Violation of the Inalienable Right to Seek Safety, Health, and Happiness
Article II, Section 3 of the Montana Constitution

103. Plaintiffs hereby reaffirm and reallege each and every allegation made in the preceding paragraphs as if set forth fully herein.

104. Article II, Section 3 of the Montana Constitution provides that all Montanans have the "[i]nalienable rights" to "seek[] their safety, health and happiness in all lawful ways."

105. In the context of this case, Article II, Section 3 guarantees "the right to seek and obtain medical care from a chosen health care provider and to make personal judgments affecting one's own health and bodily integrity without government interference." *See Armstrong*, ¶ 72. Article II, Section 3 "does not permit the government's infringement of personal and procreative autonomy in the name of political ideology." *Id*. ¶ 73.

106. By causing uncertainty and threatening to restrict the provision of abortion care to licensed abortion clinics, without due justification, HB 937 jeopardizes Plaintiffs' continued provision of abortion care and their patients access to that time-sensitive care.

107. The Act interferes with the right of Plaintiffs' patients to obtain abortion care from their chosen providers and make personal decisions about their own health and bodily integrity, in violation of Article II, Section 3 of the Montana Constitution.

Fifth Claim
Violation of the Right to Individual Dignity
Of Article II, Section 4 of the Montana Constitution

108. Plaintiffs hereby reaffirm and reallege each and every allegation made in the preceding paragraphs as if set forth fully herein.

109. Article II, section 4 of the Montana Constitution provides that all Montanans have the right to individual dignity.

110. The right to individual dignity demands that Plaintiffs and Plaintiffs' patients "have for themselves the moral right and moral responsibility to confront the most fundamental questions about the meaning and value of their own lives and the intrinsic value of life in general, answering to their own consciences and convictions." *Armstrong*, ¶ 72; *see also Baxter v. State*, 2009 MT 449, ¶ 84, 354 Mont. 235, 224 P.3d 234 (2009) (Nelson, J. concurring) ("[D]ignity is indirectly violated by denying a person the opportunity to direct or control [her] own life in such a way that [her] worth is questioned or dishonored."). The decision to seek or provide pre-viability abortion care falls squarely within this right.

111. The right to individual dignity is inviolable and carries an absolute prohibition. *See Armstrong*, ¶ 83.

112. HB 937 threatens to interfere with individuals' access to abortion care and to stigmatize or discourage patients from obtaining abortion care in Montana, thus infringing on the right to individual dignity.

113. The Act violates the right to individual dignity of Plaintiffs and their patients in violation of Article II, Section 4 of the Montana Constitution.

INJUNCTIVE RELIEF

114. The Act subjects Plaintiffs' patients to irreparable harm and violates fundamental rights guaranteed by the Montana Constitution. Plaintiffs are entitled to a permanent injunction. § 27-19-101, MCA.

115. Plaintiffs are entitled to preliminary injunctive relief under §§ 27-19-201(1), (2), MCA, because they have established that they are likely to succeed on the merits of their claims under the Montana Constitution, that they and their patients will suffer irreparable injury if HB 937 is enforced during the pendency of the litigation, and that the public interest and balance of the equities weigh in favor of granting preliminary relief.

116. Plaintiffs are entitled to a temporary restraining order enjoining the enforcement of the Act until such time as this Court can set argument and consider Plaintiffs' application for a preliminary injunction, filed concurrently herewith. On these pleadings, the concurrently filed brief in support of application for preliminary injunction and temporary restraining order, and accompanying affidavits, "it clearly appears . . . that a delay would cause immediate and irreparable injury to the applicant before the adverse party or the party's attorney could be heard in opposition." § 27-19-315(1), MCA. Absent a temporary restraining order, an unconstitutional law would go into effect on Sunday, October 1, 2023.

117. Further, Plaintiffs, through the undersigned counsel, "certif[y] to the court in writing the efforts . . . that have been made to give notice and the reasons supporting the [Plaintiffs'] claim that notice should not be required." § 27-19-315(2), MCA. As described above, undersigned counsel twice asked the State whether DPHHS would engage in the rulemaking process prior to the effective date of HB 937, and asked whether the State would agree to delay the effective date until 90 days after publication of final regulations. The attorneys for the State failed to respond to the undersigned's first email. *Id*. In response to the second email, an attorney

for the State stated that the Montana Department of Justice was not involved with DPHHS regarding rulemaking, and that HB 937 will take effect on October 1, as the Legislature intended. *Id*. Undersigned counsel also provided a copy of these filings to the Attorney General's Office simultaneous with their filing with the Court and will serve the Director of DPHHS with conformed copies of the filings and a summons as soon as possible. Plaintiff Weems likewise contacted DPHHS for clarification regarding the applicability of HB 937 and the anticipated timeline for issuance of the regulations. In response, DPHHS responded only that it is currently "engaged in the rulemaking processes for licensure of abortion clinics."

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court issue:

118. A declaration that HB 937 violates Plaintiffs' and/or their patients' constitutional rights to privacy, equal protection, and dignity, and their right to seek safety, health, and happiness;

119. A temporary restraining order prohibiting Defendants, their agents, employees, appointees, or successors from enforcing, threatening to enforce, or otherwise applying HB 937 until such time as the Court can conduct a hearing and rule on the merits of Plaintiffs' application for a preliminary injunction;

120. A preliminary injunction prohibiting Defendants, their agents, employees, appointees, or successors from enforcing, threatening to enforce, or otherwise applying HB 937;

121. A permanent injunction prohibiting Defendants and their agents, employees, appointees, and successors from enforcing, threatening to enforce, or otherwise applying HB 937;

122. An order awarding Plaintiffs attorney's fees and costs pursuant to the Declaratory Judgment Act and the Private Attorney General Doctrine; and

123. Such further relief as may be just and proper.

Respectfully submitted this 1st day of September, 2023.

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** Application for admission pro hac vice forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document was served via the electronic filing system on:

Office of the Attorney General
Justice Building, Third Floor
215 North Sanders Street
PO Box 201401
Helena, MT 59620-1401

Department of Public Health & Human Services
111 North Sanders Street
PO Box 4210
Helena MT 59604-4210

Electronically signed by Krystel Pickens on behalf of Alex Rate
Dated: September 1, 2023

EXHIBIT A

AN ACT PROVIDING FOR THE LICENSURE AND REGULATION OF ABORTION CLINICS; PROVIDING DEFINITIONS; PROVIDING FOR ANNUAL LICENSURE FEES; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 50-5-101, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) (a) "Abortion clinic" means a facility that:

(i) performs surgical abortion procedures; or

(ii) provides an abortion-inducing drug.

(b) The term does not include:

(i) a hospital as defined in 50-5-101;

(ii) a critical access hospital as defined in 50-5-101;

(iii) an outpatient center for surgical services as defined in 50-5-101; or

(iv) a facility that provides, prescribes, administers, or dispenses an abortion-inducing drug to fewer than five patients each year.

(2) (a) "Abortion-inducing drug" means a medicine, drug, or other substance provided with the intent of terminating the clinically diagnosable pregnancy of a woman.

(b) The term includes the off-label use of drugs known to have abortion-inducing properties that are prescribed specifically with the intent of causing an abortion.

(c) The term does not include the use of drugs that may be known to cause an abortion if the drugs are prescribed for a medical indication other than abortion.

(3) "Affiliate" means an organization that directly or indirectly:

(a) owns or controls another organization;

(b) is owned or controlled, in whole or in part, by another organization;

(c) is related by shareholdings or other means of control to another organization;

(d) is a parent or subsidiary of another organization; or

(e) is under common control with another organization.

(4) "Medical practitioner" means a person authorized under 50-20-109 to perform an abortion in this state.

Section 2. Licensure of abortion clinics -- application -- fee. (1) A person may not operate or advertise the operation of an abortion clinic unless the person is licensed by the department.

(2) An applicant for licensure as an abortion clinic shall apply on a form prescribed by the department containing information requested by the department pursuant to [section 3], including:

(a) an attestation that the applicant is of reputable and responsible character and is able to comply with rules adopted under [section 3];

(b) the name of the applicant;

(c) the location of the abortion clinic and the name of the person in charge of the abortion clinic;

(d) the qualifications of the applicant or of the medical practitioners employed by or to be employed by the abortion clinic to perform surgical abortion procedures or to prescribe, administer, or provide abortion-inducing drugs; and

(e) disclosures regarding:

(i) whether the applicant or an owner or affiliate of the applicant operated an abortion clinic that was closed as a direct result of patient health and safety;

(ii) whether an owner or clinic staff member has been convicted of a felony offense; and

(iii) whether an owner or clinic staff member was ever employed by a facility owned or operated by the applicant that closed because of administrative or legal action.

(3) An applicant for licensure shall include with the application copies of:

(a) administrative and legal documentation relating to information required under subsections (2)(e)(i) and (2)(e)(ii);

(b) inspection reports, if any; and

(c) violation remediation contracts, if any.

Section 3. Department regulation of abortion clinics -- rulemaking. (1) In accordance with Title 50, chapter 5, the department shall license and regulate abortion clinics as provided in [sections 1 through 4] and shall enforce the provisions of [sections 1 through 4].

(2) The department shall adopt administrative rules for the licensure and operation of abortion clinics, including rules:

(a) establishing minimum license qualifications;

(b) establishing requirements for:

(i) sanitation standards;

(ii) staff qualifications;

(iii) necessary emergency equipment;

(iv) providing emergency care;

(v) monitoring patients after the administration of anesthesia;

(vi) providing follow-up care for patient complications;

(vii) quality assurance;

(viii) infection control;

(ix) the architecture or layout of an abortion clinic;

(x) providing to patients a hotline telephone number to assist women who are coerced into an abortion or who are victims of sex trafficking; and

(xi) obtaining annual training by law enforcement on identifying and assisting women who are coerced into an abortion or who are victims of sex trafficking;

(c) establishing operating policies for maintaining medical records, including the requirement that forms requiring a patient signature be stored in the patient's medical record;

(d) establishing procedures for the issuance, renewal, denial, and revocation of licenses, including:

(i) the form and content of the license; and

(ii) the collection of an annual license fee of $450, payable to the department for deposit in the general fund;

(e) establishing procedures and standards for inspections; and

(f) establishing procedures for addressing any violations of this section or rules adopted pursuant to this section.

Section 4. Inspections. In accordance with Title 50, chapter 5, the department shall inspect an abortion clinic at least once each calendar year. If the department receives a complaint involving an abortion clinic, the department may conduct additional investigations as needed.

Section 5. Section 50-5-101, MCA, is amended to read:

"**50-5-101. Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys outpatient centers for surgical services upon their requests and grants accreditation status to the outpatient centers for surgical services that it finds meet its standards and requirements.

(3) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

(4) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (5), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or

disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.

(B) The term does not include the administration of prescriptive medications.

(6) "Affected person" means an applicant for a certificate of need, a long-term care facility located in the geographic area affected by the application, an agency that establishes rates for long-term care facilities, or a third-party payer who reimburses long-term care facilities in the area affected by the proposal.

(7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a long-term care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or

treatment of a disease or assessment of a medical condition.

(12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.

(16) "Construction" means the physical erection of a new health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of:

(a) an existing health care facility; or

(b) a long-term care facility as defined in 50-5-301.

(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.

(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

(19) "Department" means the department of public health and human services provided for in 2-15-2201.

(20) "DNV healthcare, inc." means the company nationally recognized by that name that surveys hospitals upon their requests and grants accreditation status to a hospital that it finds meets its standards and requirements.

(21) "Eating disorder center" means a facility that specializes in the treatment of eating disorders.

(22) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(23) "Federal acts" means federal statutes for the construction of health care facilities.

(24) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(25) "Healthcare facilities accreditation program" means the program nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(26) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes abortion clinics as defined in [section 1], chemical dependency facilities, critical access hospitals, eating disorder centers, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.

(27) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(28) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(29) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence.

The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(30) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(31) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Except as otherwise provided by law, services provided must include medical personnel available to provide emergency care onsite 24 hours a day and may include any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes:

(i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients; and

(ii) specialty hospitals.

(b) The term does not include critical access hospitals.

(c) The emergency care requirement for a hospital that specializes in providing health services for psychiatric, developmentally disabled, or tubercular patients is satisfied if the emergency care is provided within the scope of the specialized services provided by the hospital and by providing 24-hour nursing care by licensed registered nurses.

(32) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary--A" provides outpatient and inpatient care;

(b) an "infirmary--B" provides outpatient care only.

(33) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.

(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.

(34) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.

(35) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(36) "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.

(37) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or correctional facilities operating under the authority of the department of corrections.

(38) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction

retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(39) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(40) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(41) "Offer" means the representation by a health care facility that it can provide specific health services.

(42) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:

(i) serves either adjudicated or nonadjudicated youth;

(ii) charges a fee for its services; and

(iii) provides all or part of its services in the outdoors.

(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.

(43) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

(44) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

(45) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(46) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(47) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(48) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.

(49) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

(50) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(51) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(52) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.

(53) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(54) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(55) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(56) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(57) (a) "Specialty hospital" means a subclass of hospital that is exclusively engaged in the diagnosis, care, or treatment of one or more of the following categories:

(i) patients with a cardiac condition;

(ii) patients with an orthopedic condition;

(iii) patients undergoing a surgical procedure; or

(iv) patients treated for cancer-related diseases and receiving oncology services.

(b) For purposes of this subsection (57), a specialty hospital may provide other services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals as otherwise provided by law if the care encompasses 35% or less of the hospital services.

(c) The term "specialty hospital" does not include:

(i) psychiatric hospitals;

(ii) rehabilitation hospitals;

(iii) children's hospitals;

(iv) long-term care hospitals; or

(v) critical access hospitals.

(58) "State long-term care facilities plan" means the plan prepared by the department to project the need for long-term care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

(59) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient.

(60) "The joint commission" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements."

Section 6. Codification instruction. [Sections 1 through 4] are intended to be codified as a new part in Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [sections 1 through 4].

- END -

I hereby certify that the within bill,

HB 937, originated in the House.

_____

Chief Clerk of the House

_____

Speaker of the House

Signed this _____day

of_____, 2023.

_____

President of the Senate

Signed this _____day

of_____, 2023.

HOUSE BILL NO. 937

INTRODUCED BY L. SHELDON-GALLOWAY, S. GALLOWAY

AN ACT PROVIDING FOR THE LICENSURE AND REGULATION OF ABORTION CLINICS; PROVIDING DEFINITIONS; PROVIDING FOR ANNUAL LICENSURE FEES; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 50-5-101, MCA.

CERTIFICATE OF SERVICE

I, Alexander H. Rate, hereby certify that I have served true and accurate copies of the foregoing Complaint - Complaint to the following on 09-01-2023:

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena MT 59620
Service Method: eService
E-mail Address: dojsupremecourtefilings@mt.gov

Electronically signed by Krystel Pickens on behalf of Alexander H. Rate
Dated: 09-01-2023