

EXHIBIT 1

2. On June 10, 2019, Governor Janet Mills signed into law a bill entitled “An Act to Authorize Certain Health Care Professionals to Perform Abortions” (the “New Law”), which goes into effect on September 19, 2019. I understand that this bill permits licensed physicians, physician assistants, and advanced practice registered nurses (“APRNs”) to perform abortions in the State of Maine. This includes both medication abortions and surgical abortions.

3. On July 15, 2019, I received notification from Diane Foley, a Defendant in this litigation, that the Department of Health and Human Services is requiring immediate compliance as of July 15 with all portions of the regulations set forth in *Compliance with Statutory Program Integrity Requirements*, 84 Fed. Reg. 7714-01 (March 4, 2019) (the “Rule”) other than the physical separation requirements. The physical separation requirements will go into effect on their originally scheduled date of March 4, 2020.

4. The purposes of this supplemental declaration are: (1) to address the impact of the New Law on the points made in my prior declaration on the effect of *Compliance with Statutory Program Integrity Requirements*, 84 Fed. Reg. 7714-01 (March 4, 2019) (the “Rule”) on MFP’s operations; and (2) to provide updated information on MFP’s status as a Title X grantee. First, the New Law would not affect MFP’s need, if it implemented the Rule, to stop providing abortion services at its 17 directly operated clinics. Second, now that the Rule has gone into effect, MFP has been forced to announce it is leaving the Title X program, which will ultimately require closure of a minimum of 11 MFP clinics entirely in the absence of an alternative long-term funding source.

The New Law Does Not Affect the Burdens that Would Result from MFP Implementing the Rule

5. As a threshold matter, the New Law in no way alleviates the burdens associated with the Gag provisions of the Rule, which restrict how APRNs and other health care professionals at MFP's clinics can speak to their patients about abortion.

6. In addition, and for the following reasons, the New Law also does not change the fact that MFP would be forced to stop providing abortion at 17 of its 18 locations if it were to implement the Rule.

7. Six of MFP's advanced practice registered nurses ("APRNs") are currently trained to perform medication abortions. These APRNs work at each of MFP's directly-controlled sites with the exception of those located in Houlton, Calais, and Dexter. Under the New Law, they would be able to travel to Houlton, Calais, and Dexter as well if necessary to provide medication abortions at those sites. Accordingly, MFP anticipates that medication abortions performed by APRNs would, over the next year, be able to replace those currently performed at MFP by physicians through telehealth.

8. MFP's APRNs are not currently trained to provide surgical abortions in Maine. MFP anticipates that it will begin training APRNs to provide surgical abortions but that such training will initially be limited to a subset of its clinical employees, and it will not be completed by the time that the New Law takes effect.

9. If MFP's APRNs could provide abortion services at the physical sites where they currently provide Title X services, the New Law would improve access for women seeking medication abortions outside of Augusta by providing more days on which such women can be scheduled for abortions. This would reduce the number of women forced to travel to Augusta or

Bangor to receive abortion care, and some women who otherwise would not have received abortions could now be able to receive them.

10. However, if MFP were to implement the Rule such that abortions could not be performed at facilities that also provide Title X services, as required, the benefits of the New Law would be hindered by the fact that MFP will still be unable to create separate abortion facilities at or near MFP's satellite clinics. The New Law does not affect the willingness of landlords to rent to organizations that provide abortion care or the expense of creating the new physical facility, as set forth in my prior declaration. Moreover, as also noted in my previous declaration, many of MFP's clinics outside of Augusta are located in sparsely populated regions where MFP does not anticipate that there will ever be more than a few patients seeking abortion care in these locations during any given week. While MFP has projected an increase in its ability to provide abortion care to women at its remote clinics under the New Law, the overall numbers of abortion procedures provided outside of Augusta would remain insufficient to make financially viable the creation of separate buildings at MFP's 17 directly-operated sites outside of Augusta.

11. Based on my over-thirty years of experience working with reproductive health centers, I am confident that a standalone abortion care facility needs to see at least 500 patients per year, but possibly more, in order to break even in Maine. MFP's satellite clinics have each provided 26 or fewer abortions per year to date, and now provide approximately 120 per year in total across all 17 locations. And MFP currently provides abortion care to 500 patients per year in total across *all* of its sites combined. It is thus not reasonably likely that the New Law will increase the number of patients seeking abortion care at MFP to a degree that would render

standalone facilities outside Augusta financially viable—much less by a factor of 17, which is what would be required in order for such standalone sites to break even.

The Rule is Forcing MFP to Leave the Title X Program

12. As set forth in my prior declaration, the Rule imposes intolerable ethical and financial restrictions on MFP. It requires MFP's healthcare providers to withhold crucial information from the low-income population that relies on MFP's family planning services and it conditions the provision of abortion services on MFP adopting a physical structure that is both irrational and impossible for the organization to sustain. Accordingly, MFP has determined that it will leave the Title X program. This means that MFP will lose approximately \$2 million it receives annually in Title X funding, which constitutes 39% of MFP's family planning budget.

13. Upon withdrawal from the Title X program and absent an alternative funding source, MFP will need to close at least 11 and possibly as many as 15 clinics in the near future, in addition to discontinuing funding to its subgrantees. No such alternative funding source currently exists. In the short term, while the organization prepares for its next steps, it will attempt to fill the gap using its own financial reserves to support the network of family planning clinics it directly operates, as well as the various health care providers with which it subcontracts to provide Title X services. However, because MFP's reserve funds, which were acquired through donations largely intended for major capital projects and which took many years to raise, are limited and cannot be readily replenished, this will be only a short-term fix. Without Title X funds, MFP currently has no way to maintain its current level of services in the long term.

14. To be clear, MFP's need to shutter many of its clinics, which operate almost exclusively as sources of family planning services, is the result of its being forced to lose 39% of

its family planning budget.¹ That result has nothing to do with who can provide abortion services in Maine and is in no way impacted by the New Law.

15. My original declaration set forth the numerous challenges that MFP faces in continuing to provide abortion care in Maine under the Rule, which at the time included as only one component the Physician-Only Law. The restrictions placed on the manner in which MFP can provide abortion care by the Rule are so stringent as to virtually eliminate the additional freedoms and improved access to abortion care that would otherwise result from the New Law. When MFP closes many of its satellite clinics, abortion access will be lost in those areas despite the New Law's changes for providers.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of July, 2019.

/s George Hill
George Hill

¹ MFP will realize an eventual savings of less than \$50,000 per year based on reduced payments to physicians under the New Law. That savings does not offset the loss caused by the Rule.