

July 30, 2018

Alex Azar, Secretary of Health and Human Services
Diane Foley, Deputy Assistant Secretary for Population Affairs
U.S. Department of Health and Human Services

Re: Family Planning: Compliance With Statutory Program Integrity Requirements (HHS-OS-2018-0008/RIN 0937-ZA00)

The Jacobs Institute of Women's Health appreciates the opportunity to comment on the proposed rule "Protecting Statutory Conscience Rights in Health Care; Delegations of Authority." The Jacobs Institute of Women's Health's mission is to identify and study aspects of healthcare and public health, including legal and policy issues, that affect women's health at different life stages; to foster awareness of and facilitate dialogue around issues that affect women's health; and to promote interdisciplinary research, coordination, and information dissemination, including publishing the peer-reviewed journal *Women's Health Issues*.

We urge you to withdraw the rule "Compliance With Statutory Program Integrity Requirements" due to the detrimental impacts it will have on the Title X program and public health. For nearly five decades, the Title X program has enabled millions of people with low incomes to receive high-quality reproductive healthcare, including cancer screenings, STI testing, and family-planning services. It has played an important role in the declining rates of teen and unintended pregnancies. Implementing this proposed rule will imperil those achievements and widen disparities in health and economic opportunity.

The NPRM does not demonstrate a need for this rule, and its cost estimate is woefully inadequate. HHS has not presented compelling evidence that the current Title X program is providing inadequate care or that grantees are confused about requirements. It asserts that this rule will improve quality of care, despite substantial evidence to the contrary. It claims the rule's economic impact would fall below \$100 million, but fails to consider the substantial costs of the increase in unintended pregnancies that will inevitably result from the loss of access to high-quality family-planning care.

To effectively prevent unintended pregnancies, quality of care matters. The Centers for Disease Control and Prevention (CDC) and Office of Population Affairs (OPA) in 2014 published the *Providing Quality Family Planning Services* (QFP) recommendations, which advise a client-centered approach and emphasize "offering a full range of contraceptive methods for persons seeking to prevent pregnancy."¹ To achieve high quality, family-planning services should be consistent with these recommendations.

¹ Gavin L, Moskosky S, Carter M, Curtis K, Glass E, Godfrey E, Marcell A, Mautone-Smith N, Pazol K, Tepper N, & Zapata L. (2014). [Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs.](#) Morbidity and Mortality Weekly Report, 63(RR04);1-29.

The rule would reduce provider capacity

Current Title X regulations require that pregnant patients have the opportunity to receive neutral, factual information about the full range of options – prenatal care and delivery; infant care, foster care, or adoption; and abortions – in a non-directive manner, and referrals upon request.² The proposed rule’s restrictions on how providers can communicate about abortion is contrary to Title X requirements as well as medical ethics and guidelines for patient-centered care. These restrictions, combined with onerous physical separation requirements, will result in established providers exiting the program – which will leave many of today’s clients without a trusted local source of reproductive healthcare. In 2015, Planned Parenthood health centers alone served more than 40% of Title X contraceptive clients,³ and in one-fifth of the counties where they are located, Planned Parenthood sites are the sole safety-net family planning center.⁴ Adopting a rule that effectively bars them from the Title X program will severely hamper Planned Parenthood sites’ provision of services and leave many low-income women without access to high-quality family-planning care.

We have evidence of how abrupt elimination of established providers from a publicly funded family-planning program harms women’s access to contraception. Beginning in 2013, Texas excluded clinics affiliated with abortion providers from its publicly funded family-planning program. An analysis of claims data compared the two-year periods before and after the change took effect and found relative reductions of 36% in claims for long-acting reversible contraceptives and 31% in claims for injectable contraceptives.⁵ Among women using injectable contraceptives, the authors also found that counties with Planned Parenthood affiliates (i.e., counties affected by the policy change) experienced a 27% relative increase from baseline in Medicaid-covered births.⁶ The program saw a 24% decline in enrollment and a 41% drop in the number of women accessing contraceptives.⁷ Texas directed approximately one-tenth of program funds to a provider network without a record of providing high-quality family-planning care, but that grantee had to return most of the money after being unable to deliver the required services to tens of thousands of women.⁸

As the Texas experience demonstrates, replacing providers that had extensive family-planning expertise and capacity is neither quick nor simple. A 2017 analysis calculated that in order to serve all female contraceptive clients currently served by Planned Parenthood centers, other types of safety-net centers would need to

² 42 C.F.R. § 59.5(a)(5)

³ Frost JJ, Frohwirth LF, Blades N, Zolna MR, & Douglas-Hall A. (2017). Publicly Funded Contraceptive Services at U.S. Clinics, 2015. Guttmacher Institute.

⁴ Frost J & Hasstedt K. (2015). Quantifying Planned Parenthood’s Critical Role In Meeting The Need For Publicly Supported Contraceptive Care. Health Affairs blog. Accessed July 28, 2018 at

<https://www.healthaffairs.org/doi/10.1377/hblog20150908.050394/full/>

⁵ Stevenson AJ, Flores-Vazquez IM, Allgeyer RL, Schenkkan P, & Potter JE. (2016). [Effect of Removal of Planned Parenthood from the Texas Women’s Health Program](#). *New England Journal of Medicine*, 374:853-860.

⁶ Ibid.

⁷ Center for Public Policy Priorities. (2017). Excluding Planned Parenthood has been Terrible for Texas Women. Accessed July 28, 2018 at https://forabettertexas.org/images/HW_2017_08_PlannedParenthoodExclusion.pdf

⁸ Rayasam R. (2017). Texas effort to replace Planned Parenthood falls short of goal. POLITICO, August 21, 2017. Accessed July 18, 2018 at <https://www.politico.com/story/2017/08/21/texas-planned-parenthood-replace-241869>

increase their client caseload by 47% on average.⁹ Because community health centers are located in low-income and medically underserved communities, they would be especially likely to experience a major increase in demand;¹⁰ however, a recent survey of health centers found that only approximately half reported that they could increase their patient capacity – and they could only do so by 10-24%.¹¹

HHS suggests that community health centers will be able to replace the providers that this rule effectively forces out of the Title X program, but it is more likely that health centers currently participating would exit. The rule would require health-center providers to give incomplete and inaccurate information and prevent them from making referrals. This would violate the requirements of §330 of the Public Health Services Act (which defines the health center program) and, because providers would be violating the standard of care, create a liability risk.¹² The National Association of Community Health Centers stated: “Should this proposed rule be adopted, health centers would have to choose between allowing federal regulations to dictate what they can and must discuss with their patients, and losing a critical source of revenue to support patient care.”¹³

The rule would reduce program quality

High-quality care is client-centered,^{14,15} but this rule would result in care that is less client-centered for those who seek to avoid or end a pregnancy. Restricting providers from offering pregnant clients complete information and referral opportunities, as this rule would do, is unethical and not client-centered. Creating additional barriers to abortion services for those who desire them can result in delayed care, and leave some women needing more costly and complicated procedures – or being ineligible for procedures at all, depending on their states’ gestational limits.

The proposed rule states the Title X projects need not provide every acceptable and effective family planning method or service, as long as they offer a “broad range” of them; however, it also indicates that “broad range” does not mean all FDA-approved methods. This is contrary to the QFP recommendations, which HHS previously required Title X sites to follow, and to Congress’s stated intention that Title X’s purpose is “making

⁹ Frost JJ & Zolna MR. (2017) Response to inquiry concerning the impact on other safety-net family planning providers of “defunding” Planned Parenthood, memo to Senator Patty Murray, Senate Health, Education, Labor and Pensions Committee. Accessed July 28, 2018 at <https://www.guttmacher.org/article/2017/06/guttmacher-murray-memo-june-2017>

¹⁰ Rosenbaum S, Wood S, Strasser J, Sharac J, Wylie J, & Tran T. (2018). The Title X Family Planning Proposed Rule: What’s At Stake For Community Health Centers? Health Affairs blog. Accessed July 18, 2018 at <https://www.healthaffairs.org/doi/10.1377/hblog20180621.675764/full/>

¹¹ Wood SF, Strasser J, Sharac J, Wylie J, Tran T, Rosenbaum S, Rosenzweig C, Sobel L, & Salganicoff A. (2018). [Community Health Centers and Family Planning in an Era of Policy Uncertainty](#). Kaiser Family Foundation.

¹² Rosenbaum S, Wood S, Strasser J, Sharac J, Wylie J, & Tran T. (2018). The Title X Family Planning Proposed Rule: What’s At Stake For Community Health Centers? Health Affairs blog. Accessed July 18, 2018 at <https://www.healthaffairs.org/doi/10.1377/hblog20180621.675764/full/>

¹³ National Association of Community Health Centers. (2018). NACHC Statement Regarding the Proposed Rule for Title X Funding. Accessed July 28, 2018 at <http://www.nachc.org/news/new-nachc-statement-regarding-the-proposed-rule-for-title-x-funding/>

¹⁴ Gavin L, Moskosky S, Carter M, Curtis K, Glass E, Godfrey E, Marcell A, Mautone-Smith N, Pazol K, Tepper N, & Zapata L. (2014). [Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs](#). Morbidity and Mortality Weekly Report, 63(RR04);1-29.

¹⁵ Institute of Medicine, Committee on Quality of Health Care in America. (2001). [Crossing the quality chasm: a new health system for the 21st century](#). National Academies of Science.

comprehensive voluntary family planning services readily available to all persons desiring such services.”¹⁶ Evidence indicates that access to all available contraceptive methods leads to better health outcomes,¹⁷ and research from Colorado suggests that increasing access to the full range of contraceptive methods at Title X sites led to a drop in preterm births.¹⁸ Healthy People 2020 set a goal of increasing the proportion of publicly funded family-planning clinics offering the full range of contraceptive options onsite, but this rule would likely reduce the proportion.¹⁹

The rule would exacerbate disparities

The populations who would be most negatively affected by the reduced number of providers and diminished quality of care in the Title X program are those who already face disproportionate barriers to care. Clients in underserved areas who lose a current Title X provider will have to travel farther, which will be hardest on those with the lowest incomes, least job flexibility, fewest transportation options, and most challenging family situations. Because of systemic inequities, those with the lowest incomes are more likely to be people of color. Women experiencing intimate partner violence and adolescents may find it harder to travel for services. This rule will deny people who already face health disparities access to the best possible care through experienced providers and to all methods of contraception.

The rule would increase costs to women and public programs

Reducing the number of experienced Title X providers and access to the full range of FDA-approved contraceptive methods will lead to an increase in unintended pregnancies. Some of these pregnancies will end in abortions, and others in births. Some of those who seek abortions will be unable to obtain them due to the growing number of barriers.²⁰ Those who have unintended pregnancies that result in births are more likely than those who intend pregnancies to have preterm births.²¹

Research from the landmark Turnaway Study, in which researchers from the University of California San Francisco followed women who received abortions shortly before the gestational limit and those who were turned away because their pregnancies were too advanced, found that women who gave birth after being denied an abortion were significantly more likely (compared to those who received abortions) to live below the poverty level four years later.²² In the 2.5 years following attempts to obtain abortions, physical violence from

¹⁶ Pub. L. No. 91-572, § 2(1); see S. Rep. No. 91-1004, at 2 (1970) (emphasis added).

¹⁷ Sonfield A. (2017). [Why Family Planning Policy and Practice Must Guarantee a True Choice of Contraceptive Methods](#). *Guttmacher Policy Review*, 20: 103-107.

¹⁸ Goldthwaite LM, Duca L, Johnson RK, Ostendorf D, & Sheeder J. (2015). [Adverse Birth Outcomes in Colorado: Assessing the Impact of a Statewide Initiative to Prevent Unintended Pregnancy](#). *American Journal of Public Health*, 105(9): e60-e66.

¹⁹ Office of Disease Prevention and Health Promotion. (no date). Healthy People 2020 Topics & Objectives: Family Planning. Accessed July 18, 2018 at <https://www.healthypeople.gov/2020/topics-objectives/topic/family-planning/objectives>.

²⁰ Llamas A, Borkowski L, & Wood SF. (2018) *Public Health Impacts of State-Level Abortion Restrictions: Overview of Research & Policy in the United States*. Jacobs Institute of Women's Health. Accessed July 29, 2018 at https://publichealth.gwu.edu/sites/default/files/downloads/projects/JIWH/Impacts_of_State_Abortion_Restrictions.pdf

²¹ Orr ST, Miller CA, James SA, & Babones S. (2000). Unintended pregnancy and preterm birth. *Pediatric and Perinatal Epidemiology*, 14(4):309-13.

²² Foster DG, Biggs MA, Ralph L, Gerdtz C, Roberts S, & Glymour MM. (2018). [Socioeconomic outcomes of women who receive and women who are denied wanted abortions in the United States](#). *American Journal of Public Health*, 108, 407–413.

the man involved in the pregnancy dropped for women who received abortions but not for those who gave birth.²³ Requiring women to carry unwanted pregnancies to term exacts costs that persist years into the future.

Because Medicaid covers nearly half of U.S. births,²⁴ an increase in births due to more unintended pregnancies among those eligible for Title X services will substantially increase costs to the Medicaid program. If those raising children from unwanted pregnancies experience more poverty years into the future, as findings from the Turnaway Study suggest, we can also expect costs to other public assistance programs to increase.

The rule would have a range of detrimental impacts not captured in the NPRM

The NPRM for this proposed rule gave a cost estimate that seems improbably low. HHS should have consulted with current Title X grantees and used evidence from Texas and high-quality studies to conduct a more thorough cost-benefit analysis: one that calculates the full costs to Title X grantees and clients, as well as long-term costs to families, communities, and public programs of an increase in unintended pregnancies that result from reduced access to high-quality family-planning care for those eligible for services under the diminished Title X program that would result from this proposed rule.

A strong Title X program helped the U.S. achieve a 2011 unintended pregnancy rate that was at the lowest level seen in at least three decades.²⁵ This rule would reverse decades of progress and lead to severe consequences for individuals, families, and public health. The Jacobs Institute of Women's Health urges HHS to withdraw this rule.

Thank you for this opportunity to comment in response to the proposed rule "Compliance With Statutory Program Integrity Requirements." If you have any questions, please contact Jacobs Institute managing director Liz Borkowski at 202-994-0034 or borkowsk@gwu.edu.

²³ Roberts SCM, Biggs MA, Chibber KS, Gould H, Rocca CH, & Foster DG. (2014). [Risk of violence from the man involved in the pregnancy after receiving or being denied an abortion](#). *BMC Medicine*, 12(1), 144.

²⁴ Markus AR, Andres E, West KD, Garro N, Pellegrini C. (2013). Medicaid Covered Births, 2008 Through 2010, in the Context of the Implementation of Health Reform. *Women's Health Issues*, 23(5):e273-e280.

²⁵ Finer LB & Zolna MR. (2016). Declines in Unintended Pregnancy in the United States, 2008–2011. *New England Journal of Medicine*, 374:843-852.