

# BPCLC

New York State  
Bipartisan Pro-Choice Legislative Caucus

July 30, 2018

## VIA ELECTRONIC TRANSMISSION

Alex Azar, Secretary of Health and Human Services  
Attention: Family Planning  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building, Room 716G  
200 Independence Avenue SW  
Washington, DC 20201

Valerie Huber, Senior Policy Advisor, Assistant Secretary  
for Health  
Attention: Family Planning  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building, Room 716G  
200 Independence Avenue SW  
Washington, DC 20201

Diane Foley, Deputy Assistant Secretary for Population  
Affairs  
Office of the Assistant Secretary for Health, Office of  
Population Affairs  
Attention: Family Planning  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building, Room 716G  
200 Independence Avenue SW  
Washington, DC 20201

## RE: HHS–OS–2018–0008, Proposed Rule for Compliance With Statutory Program Integrity Requirements

Dear Secretary Azar, Senior Advisor Huber, and Deputy Assistant Secretary Foley:

We, the undersigned members of the New York State Bipartisan Pro-Choice Legislative Caucus (BPCLC), write to declare our resounding opposition to the Department of Health and Human Services' (the Department's) proposed rule entitled *Compliance with Statutory Program Integrity Requirements*, which was published in the Federal Register on June 1, 2018.<sup>1</sup> For over 40 years, people in New York and nationwide have received quality, patient-centered, medically appropriate, and evidence-based family planning and reproductive health services from trusted Title X Family Planning Program (Title X) facilities. This proposed rule calls for unjustified policy changes that would place harmful restrictions on Title X recipients.

The BPCLC, with over 100 members in the New York State Senate and Assembly, works to protect access to quality reproductive health services, remove barriers to these services, ensure access to education about reproductive choices, and respond to any potential infringements on the legal right to reproductive healthcare throughout the State of New York. We are strong proponents of Title X, which each year provides funding for 187 service sites that provide care to more than 306,000 people in New York.<sup>2</sup> Title X plays a critical role in preventing unintended pregnancies, including teen pregnancies; saving lives and strengthening public health through early detection of cancer and preventive healthcare; reducing transmission of sexually transmitted diseases; and saving taxpayers' money.

As New York State legislators who support policies that further women's equality and reproductive rights, we cannot endorse policies that would counter these goals. Specifically, this proposed rule is unethical and would upend the integrity of Title X health care services, includes unwarranted restrictions that would make it impossible for specialized reproductive health providers to continue to participate in the Title X program, and detrimentally impacts health care services and outcomes.

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<sup>1</sup> Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. 25,502 (proposed Jun. 1, 2018) (to be codified at 42 C.F.R. pt. 59).

<sup>2</sup> The National Family Planning and Reproductive Health Association. The Title X Program in New York. Retrieved from: <https://www.nationalfamilyplanning.org/file/impact-maps-2017/NY.pdf>.

## **I. The Proposed Rule is unethical and would upend the integrity of Title X health care services.**

For over 40 years, women and men have trusted and relied on Title X facilities for their reproductive health care needs; patients receive health care services, counseling, education, and referrals that are comprehensive, nondirective, evidence-based, and medically accurate. This proposed rule calls for the following policy changes: 1) Nondirective pregnancy options counseling and abortion referrals would no longer be required; 2) Nondirective abortion counseling, the constraints of which are obscure and confusing, could only be provided by physicians; 3) Abortion referrals would be prohibited; 4) Pregnant patients would be given referrals for prenatal care and social services regardless of their interests; and 5) If a pregnant patient makes it clear that she has already decided to have an abortion, a doctor would be able to provide a list of medical service providers, some of which provide abortion services, but are not identified, while others provide prenatal services only.

According to the American Medical Association's Code of Medical Ethics, physicians are obligated to provide comprehensive, unbiased medical care as well as "to place patients' welfare above the physician's own self-interest or obligations to others, to use sound medical judgment on patients' behalf, and to advocate for their patients' welfare."<sup>3</sup> Patients have the right to: complete information, attention to their needs, discussion of their health status and treatment options, decision-making autonomy, confidentiality, knowledge of any conflicts of interest their doctor has, and "continuity of care."<sup>4</sup> Furthermore, the code states that providers must "present relevant information accurately and sensitively, in keeping with the patient's preferences"<sup>5</sup> and that "withholding information without the patient's knowledge or consent is ethically unacceptable."<sup>6</sup> The Nursing Code of Ethics specifies that nurses must give patients "accurate, complete, and understandable information in a manner that facilitates an informed decision."

As evidenced by these professional standards of ethical medical practice, this proposed rule would force Title X doctors and nurses to break their professional code of ethics, as well as violate patient rights. The implications for the patient-provider relationship and women's health are grave. When conscience protections and ideologically-defined healthcare take precedence over a patient's right to be fully informed and receive needed healthcare and referrals, this undermines trust in providers and health care facilities, and could place pregnant women in jeopardy. In cases where pregnancy threatens a woman's health or life, and abortion is not readily accessible, she faces the possibility of future infertility, severe health complications, or death.

Has the Department fully evaluated the following: 1) What percentage of doctors and nurses would provide services at Title X facilities nationwide if they are forced to break their professional code of ethics; and 2) How the abortion counseling stipulations will impact providing reproductive healthcare in accordance with professional standards and ethics? These ethical considerations are pertinent to ensuring that women's and men's family planning and reproductive health needs are met in states nationwide, particularly in rural areas where there may be a shortage of health care providers. When people do not have access to affordable healthcare, there is increased utilization of emergency rooms, which significantly drives up health care costs. Alternatively, people may go without preventive and reproductive healthcare, the implications of which are devastating to public health.

## **II. The Proposed Rule includes unwarranted restrictions that make it impossible for specialized reproductive health providers to continue to participate in the Title X program.**

In New York and throughout the United States, specialized reproductive health providers serve a significant portion of Title X patients, representing the sole source of health care services for many women and men. Specialized reproductive health facilities have been able to provide quality family planning, preventive healthcare, and reproductive health care services for Title X patients, while complying with regulations that prohibit the use of federal funds to cover abortion care. Robust reporting requirements are in place to demonstrate compliance. Despite there being overall compliance, as well as movement toward providing coordinated health care services and reducing health care expenses, this proposed rule would require physical and financial separation of Title X services and abortion-related activities, implementing a "facts and circumstances" test.

<sup>3</sup> American Medical Association, Code of Medical Ethics Opinion 1.1.1, Patient-Physician Relationships, available at: <https://www.ama-assn.org/delivering-care/patient-physician-relationships>.

<sup>4</sup> American Medical Association, Code of Medical Ethics Opinion 1.1.3, Patient Rights, available at: <https://www.ama-assn.org/delivering-care/patient-rights>.

<sup>5</sup> American Medical Association, Code of Medical Ethics Opinion 2.1.1, Informed Consent, available at <https://www.ama-assn.org/delivering-care/informed-consent>.

<sup>6</sup> American Medical Association, Code of Medical Ethics Opinion 2.1.3, Withholding Information from Patients, available at <https://www.ama-assn.org/delivering-care/withholding-information-patients>.

The Department previously provided the following guidance: “[i]f a Title X grantee can demonstrate [separation] by its financial records, counseling and service protocols, administrative procedures, and other means . . . , then it is hard to see what additional statutory protection is afforded by the imposition of a requirement for ‘physical’ separation.”<sup>7</sup> A notice issued by the Department further made clear that Title X service sites could use common waiting rooms, staff, and filing systems for abortion-related activities and Title X project activities.<sup>8</sup> Title X patients greatly benefit from this longstanding standard by having access to comprehensive family planning, preventive health care, and reproductive health care services that are medically accurate and evidence based.

This proposed rule calls for the Department to evaluate satisfactory compliance with this policy by considering whether Title X recipients implement the following to create physical separation of Title X and abortion-related services: 1) Separate accounting records; 2) Separation of facilities (e.g., treatment, consultation, examination and waiting rooms, office entrances and exits, phone numbers, email addresses, educational services, and websites); 3) Separate personnel, health care records, and workstations; and 4) Separate identification of services, signage, and materials.<sup>9</sup>

This policy would cause unnecessary increases in administrative and health care expenses for the Department, specialized reproductive health providers, the federal and state governments, and Title X patients. Yet, the Department has not presented any valid justification for this policy change. The Department asserts that if Title X and abortion-related services, materials, or referrals are provided in the same space, this will cause Title X patients to be confused. Frankly, this argument is shameful and unacceptable. The Department minimizes the intelligence and capability of women to make informed decisions about their reproductive health care needs, as well as the ability of doctors and nurses to provide competent counseling.

There is substantial evidence, on the other hand, of the great need for Title X specialized reproductive health care providers. Planned Parenthood health centers alone serve more than 40% of Title X patients nationwide and 52% of Title X patients in New York. Eliminating Planned Parenthood from the Title X program would leave many people without access to family planning, preventive testing and healthcare, STI/HIV testing, reproductive healthcare, and prenatal care. Evidence demonstrates that other providers, such as federally qualified health centers, would have to double the number of contraceptive patients that they serve in order to fill the gap. Eliminating Planned Parenthood health centers in New York would create a devastating dearth in services, particularly in the Northeastern region of the state. Women and men could be forced to drive for hours to obtain affordable care. Providers with less experience and capacity to provide a broad range of family planning care would be less likely to fill the gap.

As part of the rulemaking process, has the Department fully evaluated the impact of eliminating Planned Parenthood and other specialized reproductive health care centers from the Title X program on access to family planning, preventive health care, reproductive health care, and prenatal health care services, particularly in rural areas? In states that have eliminated Planned Parenthood from their family planning programs, the public health results have been disastrous. For instance, a recent study in the *New England Journal of Medicine* showed that blocking patients from going to Planned Parenthood in Texas had serious public health consequences.<sup>10</sup> The study found a 35% decline in women in publicly funded programs using the most effective methods of birth control. Further, denying women access to the contraceptive care that they needed led to a dramatic 27% increase in births among women who had previously accessed injectable contraception through those programs. Moreover, public health officials fear a domestic gag rule, “could cripple federal efforts to stop a dramatic increase in sexually transmitted diseases in the U.S.”<sup>11</sup>

### **III. The Proposed Rule would detrimentally impact health care services and outcomes.**

Title X specialized reproductive health care centers are an integral source of comprehensive, evidenced-based, and medically accurate care, providing needed health care services such as screening for diabetes, anemia, and high blood pressure; wellness exams; pelvic exams; STD screening; health education; screening for cervical and breast cancer; contraception and contraceptive counseling; HIV screening; pregnancy testing; and fertility services. These services help to strengthen public health through prevention and early detection of illness.

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<sup>7</sup> Standards of Compliance for Abortion Related Services in Family Planning Services Projects, 65 Fed. Reg. 41,270, 41,276 (Jul. 3, 2000).

<sup>8</sup> Provision of Abortion-Related Services in Family Planning Projects, 65 Fed. Reg. 41,281, 41,282 (Jul. 3, 2000).

<sup>9</sup> *Id.*

<sup>10</sup> Amanda J. Stevenson et al. “Effect of Removal of Planned Parenthood from the Texas Women’s Health Program,” *New England Journal of Medicine*, Vol. 374, available at <http://www.nejm.org/doi/full/10.1056/NEJMsa1511902#t=article>.

<sup>11</sup> Michelle Andrews, *Trump's Redirection Of Family Planning Funds Could Undercut STD Fight*, NPR (June 12, 2018), available at <https://www.npr.org/sections/health-shots/2018/06/12/618902785/trumps-redirection-of-family-planning-funds-could-undercut-std-fight>.

This proposed rule calls for the following policy changes that would undermine the standard of health care service delivery and outcomes: 1) Removal of the language "medically approved" from the requirement that projects provide "a broad range of acceptable and effective medically approved family planning methods;" and 2) The stipulation that Title X projects may include an organization that provides one method of family planning if the project as a whole offers a wide variety of family planning services would be replaced with the requirement that "projects are not required to provide every acceptable and effective family planning method or service."

These policy changes would, respectively, lower the standard of providing evidence-based and medically accurate methods of family planning, and limit the selection and accessibility of family planning methods and services. The Title X reproductive health care service model has included counseling on a spectrum of family planning methods, including natural family planning. However, these new stipulations would decrease the efficacy of family planning and health care services. It is critical that women have access to a wide range of family planning methods in order to identify those that are most suitable and medically appropriate. For example, hormonal contraceptives are used to treat certain health conditions and must be accessible.

The United States is currently experiencing a 30-year low in unintended pregnancy and an all-time low in teen pregnancy. These results have been achieved in large part due to access to affordable contraception - in particular the most effective methods of contraception - including through programs like Title X. This proposed rule threatens to reverse the progress that has been made.

Eliminating Planned Parenthood and other specialized reproductive health care centers would also be detrimental to health care outcomes, including: rates of unintended pregnancies, including teen pregnancy, and STI's; early detection of cervical and breast cancer, and HIV; and early diagnosis of health conditions such as high blood pressure, anemia, and diabetes. Early detection and prevention are crucial in helping to decrease rates of maternal morbidity, maternal mortality, and infant mortality. The current rate of maternal morbidity and mortality in the United States is significantly higher than in comparable countries, and would increase if this proposed rule is finalized. Has the Department fully assessed the impact this proposed rule would have on these public health outcomes?

The harmful impacts discussed above will fall most heavily on the people who are in most need of comprehensive, evidence-based, and medically accurate reproductive health care services. Due to systemic inequities, Title X patients are more likely to be people of color, face language barriers, and other barriers to care. For people who already face health disparities, this proposed rule will prevent access to the best possible care from experienced providers, as well as to comprehensive contraception options. With some of the most diversely populated communities, this issue is of paramount concern in New York.

In summary, this proposed rule is unethical, dangerous, and counterproductive to the goals of the Title X program. Lacking valid justification, the purpose of this proposed rule seems evident: to defund Planned Parenthood and other specialized reproductive health care centers that provide abortion, prioritize primary healthcare over reproductive healthcare, and create an ideologically-defined model of care for Title X services.

As State Legislators who stand for women's equality and reproductive rights, we support the Title X program, we assert that reproductive health care decisions should be between a woman and her doctor, and we trust that a woman, once fully informed of her family planning and reproductive health care options, will make the right decisions for herself.

We respectfully submit that this proposed rule would have dangerous implications for our health care system, the doctor-patient relationship, and women's health and well-being. We stand united in opposition to this harmful proposed rule.

Sincerely,



Senator Andrea Stewart-Cousins  
Caucus Co-Chair



Assembly Member Ellen Jaffee  
Caucus Co-Chair



Senator Liz Krueger  
Caucus Co-Chair



Assembly Member Thomas J. Abinanti



Senator Marisol Alcantara



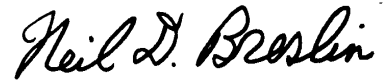
Senator Tony Avella



Senator Jamaal T. Bailey



Assembly Member Didi Barrett



Senator Neil D. Breslin



Assembly Member David Buchwald



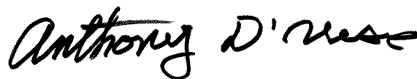
Assembly Member Kevin A. Cahill



Senator David Carlucci



Senator Leroy Comrie



Assembly Member Anthony D'Urso



Assembly Member Jeffrey Dinowitz



Assembly Member Harvey Epstein



Assembly Member Patricia Fahy



Assembly Member Sandy Galef



Senator Michael Gianaris



Assembly Member Deborah J. Glick



Assembly Member Richard N. Gottfried  
Chair, Assembly Committee on Health



Senator Jesse Hamilton



Assembly Member Andrew Hevesi



Senator Brad Hoylman

Assembly Member Pamela J. Hunter

Assembly Member Alicia Hyndman

Assembly Member Addie Jenne

Senator Brian Kavanagh

Senator Timothy M. Kennedy

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Assembly Member William B. Magnarelli

Senator Shelley Mayer

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Assembly Member Crystal D. Peoples-Stokes

Senator Jose Peralta

Senator Roxanne J. Persaud



Assembly Member Dan Quart



Senator Gustavo Rivera



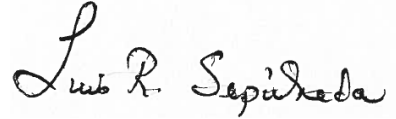
Assembly Member Linda B. Rosenthal



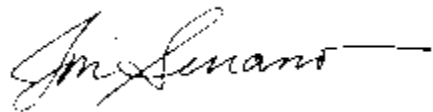
Assembly Member Nily Rozic



Assembly Member Rebecca A. Seawright



Senator Luis R. Sepulveda



Senator Jose M. Serrano



Assembly Member Jo Anne Simon



Assembly Member Aravella Simotas



Assembly Member James Skoufis



Senator Toby Ann Stavisky



Assembly Member Steve Stern



Assembly Member Al Stirpe



Assembly Member Fred W. Thiele, Jr.



Assembly Member David I. Weprin



Assembly Member Carrie Woerner