



July 31, 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:

On behalf of the more than 170,000 bipartisan members and supporters of the American Association of University Women (AAUW), we submit these comments in response 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 (proposed rule).¹

As an organization that has long supported women's reproductive rights,² AAUW opposes this proposed rule and requests the Department withdraw it. The proposed rule would significantly and harmfully alter the Title X Family Planning Program (Title X), which has provided vital reproductive and preventative health services to people across the country for more than 40 years. AAUW supports the right of every woman to access safe, accessible, affordable, and comprehensive family planning and reproductive health services.³ We believe that all women should be able to make their own decisions with advice and support from those they trust the most. We know that women look to doctors, family members, and other trusted individuals, not politicians, to make important medical decisions about their health.

¹ 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).

² AAUW, *Women's Reproductive Rights from "B" to "B"* (August 14, 2013). www.aauw.org/2013/08/14/reproductive-rights

³ AAUW, *AAUW Public Policy Program, 2017-2019*, (June 2017). www.aauw.org/resource/principles-and-priorities/

Specifically, the proposed rule would interfere with the relationship between doctors and patients and it would deny Title X patients important information they need to stay healthy. In addition, as discussed below, the proposed rule is designed to make it impossible for reproductive health-focused providers, like Planned Parenthood health centers, to continue to serve people through the program. The proposed rule would also undermine Title X's goals of providing comprehensive reproductive health services to people with low incomes and exacerbate existing health disparities. Finally, the proposed rule underestimates the likely costs it will impose on patients, on health care providers, and on society. These changes would be disastrous for public health and for the economic security of people across the country, including AAUW's members and supporters.

I. The proposed rule interferes with the relationship between doctors and patients, preventing individuals seeking care from receiving the information they need to make informed decisions for themselves and their families.

The proposed rule would ban Title X providers from giving women full information about their health care options. This is unacceptable and AAUW opposes such a provision. Specifically, the proposed rule would eliminate the existing requirement that patients be provided with referrals upon request for the full range of pregnancy options, including prenatal care and delivery; infant care, foster care, or adoption; and abortion.⁴ That requirement would be replaced with a complete ban on health care providers giving abortion referrals.⁵ This would restrict providers from speaking freely with their patients and act as a gag rule, which violates ethical standards and undermines the relationship between patients and their health care providers.

Such a restriction as the one present in the proposed rule conflicts with the requirements of medical professional associations, including the American College of Obstetricians and Gynecologists and the American College of Physicians, which assert that patients should receive complete and accurate information to inform their health care decisions.⁶ Providers understand that they have an ethical obligation to put the needs of patients first. The prohibition on abortion referrals present in the proposed rule contravenes medical ethics and leaves providers in the position of not providing the best level of medical care or no longer participating in the Title X program. This potentially leaves patients without access to care.

In addition to the prohibition on abortion referral, the proposed rule also eliminates longstanding requirements guaranteeing patients in the Title X program information about all of their health care options. Title X regulations currently direct its Title X projects to offer pregnant women information and counseling on all pregnancy options.⁷ All such counseling must be neutral, factual, and nondirective.⁸ The proposed rule would eliminate this counseling requirement. This elimination presents several problems. First, the proposed rule suggests that some providers could choose not to provide this counseling because of religious or moral reasons, but the proposed rule does not contain any requirement that those providers advise patients of their refusal. In such cases, patients would not know if they are receiving complete information. Second, even for providers who want to offer their patients information about all of their health care options, the proposed rule creates confusion. The preamble of the proposed rule includes language stating that doctors (and only doctors) could continue to offer nondirective counseling on abortion as a health care option, but the

⁴ 42 C.F.R. § 59.5(a)(5).

⁵ Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25,531.

⁶ Kinsey Hasstedt, *Unbiased Information on and Referral for All Pregnancy Options Are Essential to Informed Consent in Reproductive Health Care*, Guttmacher Institute (Jan. 2018). www.guttmacher.org/gpr/2018/01/unbiased-information-and-referral-all-pregnancy-options-are-essential-informed-consent.

⁷ 42 C.F.R. § 59.5(a)(5).

⁸ *Id.*

language of the rule is silent on the subject. Ultimately, and when combined with the prohibition on referrals, providers may not understand whether, or who, can provide abortion counseling to patients that request it.

II. The proposed rule would make it impossible for many reproductive health providers to continue to participate in the Title X program. This would result in people having nowhere to go for critical care.

The proposed rule is clearly designed to make it impossible for providers who focus on providing reproductive health care, like Planned Parenthood health centers, to continue to serve patients through the Title X program. The proposed rule would require Title X recipients to physically and financially separate Title X project activities from any of their abortion-related activities, including abortion referrals.⁹ The proposed rule would grant broad discretion to the Department to evaluate an individual Title X recipient's compliance with the new physical and financial separation standard by instructing HHS to employ a "facts and circumstances" test in order to determine whether a Title X project has achieved "objective integrity and independence" from abortion-related activities.¹⁰ This approach would reverse the Department's current, longstanding interpretation of what demonstrates separation. In the proposed rule, the Department fails to justify why this reversal is warranted and completely ignores the critical role providers, who would be essentially forced out of the Title X network, play in providing care. These provisions are clearly designed to remake the Title X network by pushing out reproductive health-focused providers.

These provisions specifically target providers like Planned Parenthood health centers, which play an important and outsized role in the Title X program. Nationwide, Planned Parenthood health centers serve more than 40 percent of Title X patients.¹¹ Requiring unnecessary and unduly onerous requirements under Title X runs the risk of pushing healthcare providers like Planned Parenthood out of the Title X program, leaving many people without access to care. 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. The study found a 35 percent decline in women in publicly funded programs using the most effective methods of birth control.¹² Further, denying women access to the contraceptive care that they needed led to a dramatic 27 percent increase in births among women who had previously accessed injectable contraception through those programs. We know from this research that pushing Planned Parenthood and other reproductive health providers out of the Title X program, like this proposed rule would do, has a negative impact on public health which the Department must fully evaluate and take under serious consideration.

III. The proposed rule would change the Title X program, altering the care people receive and potentially worsening existing health disparities.

The proposed rule also seems to limit the health care options that patients can receive at Title X providers. Currently, Title X projects must, by statute and regulation, offer a broad range of acceptable and effective family planning methods and services.¹³ This includes access to "the full

⁹ Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25,532.

¹⁰ *Id.*

¹¹ Jennifer J. Frost, et al., Publicly Funded Contraceptive Services At U.S. Clinics, 2015, Guttmacher Institute (Apr. 2017). www.guttmacher.org/sites/default/files/report_pdf/publicly_funded_contraceptive_services_2015_3.pdf

¹² 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. www.nejm.org/doi/full/10.1056/NEJMsa1511902#t=article.

¹³ 42 U.S.C. § 300(a); 42 C.F.R. § 59.5(a)(1).

range of FDA-approved contraceptive methods” which been deemed an essential feature of quality family planning by the U.S. Office of Population Affairs, which administers Title X, and the Centers for Disease Control and Prevention, in their authoritative clinical guidelines for quality care.¹⁴ While the Department cannot alter the statutory requirement that Title X projects offer a broad range of acceptable and effective family planning methods and services, the proposed rule emphasizes that “projects are not required to provide every acceptable and effective family planning method or service,” which means that Title X projects would now be able to exclude methods or services of their choosing.¹⁵ Moreover, the proposed rule would remove the requirement that family planning methods available from Title X projects must be “medically approved.”¹⁶

Taken together these changes appear to allow Title X projects to deny patients access to the full range of effective contraceptive methods. This has the combined effect of potentially allowing organizations to participate in Title X without providing reproductive health care and could lead to reduced access to a broad range of methods for patients. All people seeking care in Title X programs are entitled to access the contraceptive method that works best for their individual circumstances, and that requires access to all methods of contraception.

The harmful impacts noted throughout these comments would inevitably fall most heavily on the people who are most in need of comprehensive and affordable reproductive health care services. Because of systemic inequities, the people served by the Title X program are more likely to be people of color and to face language barriers and other barriers to care. The proposed rule will deny people who already face health disparities the best possible care they need from experienced providers and access to all methods of contraception.

IV. The proposed rule does not account for the costs that will be imposed on women, health care providers, and society as a whole if it is finalized and implemented.

The Department fails to take into account most of the costs that will accrue under this rule. The Department acknowledges that the proposed rule has no quantifiable benefits.¹⁷ At the same time, by confining its discussion of the rule’s costs to include only the costs borne by entities that would have to comply with the rule it is not accounting for its full cost. By not calculating the considerable additional costs, including for Title X patients who are no longer able to receive the health care services that they need, as well as the resultant health care costs to state and local health systems, and to the economic security of women and families impacted, the Department underestimates the overall projected costs of the proposed rule. Moreover, even the Department’s calculations of the logistical and structural costs of compliance are insufficient and do not seem to be based on a reasoned analysis. Remarkably, because of that failure, the Department has determined that its rulemaking is not “economically significant” because it believes the rule’s economic effects would fall short of a \$100 million threshold.

Access to safe and legal reproductive health care and information, fosters self-sufficiency, promotes preventive health care, and protects individuals and their families from the spread of sexually transmitted infections. But control over one’s reproductive life is also part and parcel to achieving economic autonomy; without reproductive choice, women cannot attain equal pay or opportunity in the workforce. Research shows that the typical woman working full-time brings home a paycheck

¹⁴ Department of Health and Human Services and Centers for Disease Control and Prevention, *Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs*, 2, (Apr. 2014). www.cdc.gov/mmwr/pdf/rr/rr6304.pdf.

¹⁵ Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25,530.

¹⁶ *Id.* at 25,530.

¹⁷ *Id.* at 25,522.

that is 20 percent smaller than the typical man, and women of color tend to face larger gaps.¹⁸ Lack of access to a full range of reproductive health services is one factor that contributes to those alarming statistics. Studies have found that the widespread availability and use of birth control pills in the 1980s and 1990s was partially responsible for narrowing the pay gap to where it is today.¹⁹ Expanding access to reproductive services and information increases the prospect of economic security in adulthood for women.²⁰ As costs of both health care and child care skyrocket, it is paramount that women are able to control their own decisions about when, if, and how to start a family. The existing pay gap already hurts women, their families, and the economy. Limiting reproductive choices and access, as the proposed rule would do, only compounds these issues. The Department must assess both the public health impacts and the economic security impacts that could result from this rule.

For these reasons, AAUW opposes 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, and requests that the Department withdraw it.²¹ The proposed rule would significantly and harmfully alter the Title X Family Planning Program (Title X) and lead to harm for the individuals who access care through the program every year.

Please do not hesitate to contact me at 202/785-7720 or Anne Hedgepeth, director of federal policy, at 202/785-7724, if you have any questions.

Sincerely,



Deborah J. Vagins
Senior Vice President, Public Policy and Research

¹⁸ AAUW, *The Simple Truth About the Gender Pay Gap* (2018). www.aauw.org/research/the-simple-truth-about-the-gender-pay-gap

¹⁹ Huffington Post. *Birth-Control Pill Helped Boost Women's Wages, New Study Shows* (March 29, 2012). www.huffingtonpost.com/2012/03/29/birth-control-pill-womens-wages-pay_n_1388064.html

²⁰ Institute for Women's Policy Research, *Reproductive Health and Women's Educational Attainment: Women's Funds' Strategies to Improve Outcomes for Women* (October 7, 2015). iwpr.org/publications/reproductive-health-and-womens-educational-attainment-womens-funds-strategies-to-improve-outcomes-for-women

²¹ 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).