July 31, 2018

VIA ELECTRONIC SUBMISSION

Alex Azar, Secretary of Health and Human Services
Attention: Family Planning
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW
Washington, D.C. 20201

RE: Notice of Proposed Rulemaking: Compliance with Statutory Program Integrity Requirements

Dear Secretary Azar:

The Women's Law Project respectfully submits the following comments on the proposed changes addressing Compliance with Statutory Program Integrity Requirements of Title X. We strongly oppose the proposed changes to existing regulation. The proposed changes would undermine the health and safety of millions of individuals—especially lower-income women and women of color—by denying them access to accurate and unbiased information about their reproductive healthcare options. As such, we submit the following information for your consideration.

The Women's Law Project is a non-profit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. Founded in 1974, the WLP is dedicated to creating a more just and equitable society by advancing the rights and status of all women through high-impact litigation, advocacy, and education. Throughout its history, the WLP has played a leading role in the struggle to eliminate discrimination against women based on pregnancy and reproductive capacity. The WLP believes that access to comprehensive reproductive healthcare is essential to achieving gender equality and societal advancement on both the state and national levels.

I. The Importance of Title X in Pennsylvania[1]

Pennsylvania has the third largest patient population that qualifies for Title X funding in the country, after California and New York.[2] In 2017, 191 healthcare providers used Title X funds to provide low-income Pennsylvanians with reproductive healthcare such as cancer screenings, sexually transmitted infections (STI) testing, and contraception.[3] While Title X providers have been instrumental in expanding access to services that reduce the number of unintended pregnancies, the rate in Pennsylvania still outpaces the national average.[4] Well-documented negative health outcomes associated with unintended pregnancies prove that lowering the rate of unintended pregnancy is a significant public health priority.[5]

In 2016, Pennsylvania received over $13 million in Title X funds and served nearly 200,000 patients with those funds.[6] In 2010, slightly over $9 million prevented 58,300 unintended pregnancies and over 3,500 STI cases.[7] Ultimately, the 2010 Title X funds saved the state and federal governments $383,908,000.[8] These figures illustrate an obvious need for Title X-funded services in Pennsylvania. Importantly, Title X services are utilized by low-income residents, which disproportionately include people of color.[9] The proposed changes to the Title X regulations will make vital resources unavailable to the most vulnerable populations in Pennsylvania, and, for that reason, they should not go into effect.

---

[1] *See* National Family Planning & Reproductive Health Association, Title X in Pennsylvania (Dec. 2016), https://www.nationalfamilyplanning.org/file/documents---policy--communication-tools/state-snapshots/Title-X-in-Pennsylvania.pdf.

[2] Office of Population Affairs, *Title X Family Planning Annual Report: 2016 National Summary*, app. at B-2 (Aug. 2017), https://www.hhs.gov/opa/sites/default/files/title-x-fpar-2016-national.pdf.

[3] National Family Planning & Reproductive Health Association, Title X Family Planning Program in Pennsylvania (Nov. 2017), https://www.nationalfamilyplanning.org/file/impact-maps-2017/PA.pdf.

[4] Guttmacher Institute, State Facts About Unintended Pregnancy: Pennsylvania (Aug. 2017) (reporting an unintended pregnancy rate of 53% of all pregnancies in Pennsylvania and 45% of all pregnancies in the United States), *available at* https://www.guttmacher.org/fact-sheet/state-facts-about-unintended-pregnancy-pennsylvania.

[5] *See* Jessica D. Gipson et al., *The Effects of Unintended Pregnancy on Infant, Child, and Parental Health: A Review of the Literature*, 39 Studies in Family Planning 18 (Mar. 2008), *available at* https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1728-4465.2008.00148.x.

[6] National Family Planning & Reproductive Health Association, *supra* note 3.

[7] *Id*.

[8] *Id*.

[9] *See* Angela Hanks et al., *Systematic Inequality: How America's Structural Racism Helped Create the Black-White Wealth Gap*, Center for American Progress (Feb. 21, 2018), https://www.americanprogress.org/issues/race/reports/2018/02/21/447051/systematic-inequality/.

II. The Proposed changes Defy Statutory Mandates to Provide Effective Reproductive Healthcare.

a. The Proposed changes Destroy Access to Comprehensive Family Planning Options.

In 2014, the CDC and OPA issued recommendations for a "client-centered" approach to family planning care as a vehicle to improve reproductive health.[10] Title X providers can be client-centered by:

> 1) highlighting that the client's primary purpose for visiting the service site must be respected, 2) noting the importance of confidential services and suggesting ways to provide them, 3) encouraging the availability of a broad range of contraceptive methods so that clients can make a selection based on their individual needs and preferences, and 4) reinforcing the need to deliver services in a culturally competent manner so as to meet the needs of all clients, including adolescents, those with limited English proficiency, those with disabilities, and those who are lesbian, gay, bisexual, transgender, or questioning their sexual identity (LGBTQ).[11]

The proposed changes actively undermine these recommendations in several ways. First, the restrictions on abortion referrals and counseling would limit the ability of healthcare providers to directly answer patient questions. Specifically, the proposed changes would prohibit Title X recipients from referring patients for abortion, unless the patient states that they have already decided to have an abortion and directly asks for a referral.[12] But even then, the provider is required to provide that patient with a list of health providers, "some, but not all of which also provide abortion, in addition to comprehensive prenatal care," without specifying which providers from the list perform abortion.[13]

Under the proposed changes, if the pregnant patient's primary purpose of the visit is to consider abortion against other pregnancy options, the provider cannot respect the patient's primary purpose for consultation under these rules. A policy such as this is often described as a

---

[10] Centers for Disease Control & Prevention, *Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs*, 63 Morbidity and Mortality Weekly Report, No. 4, 2 (April 25, 2014), *available at* https://www.cdc.gov/mmwr/pdf/rr/rr6304.pdf.

[11] *Id.*

[12] Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. 25502, 25518 (proposed June 1, 2018) (to be codified at 42 C.F.R. pt. 59).

[13] Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. 25502, 25531 (proposed June 1, 2018) (to be codified at 42 C.F.R. pt. 59); *see* Ariana Cha, *Is It A Gag Rule After All? A Closer Look at Changes to Title X Funding Regarding Abortion*, THE WASHINGTON POST (May 23, 2018), https://www.washingtonpost.com/news/to-your-health/wp/2018/05/23/is-it-a-gag-rule-what-changes-to-family-planning-funds-and-abortion-referrals-might-mean/?noredirect=on&utm_term=.e9345103ebe0.

"domestic gag rule" because it bars caregivers at facilities that receive family planning funds from providing any information to patients about abortion or where to receive one.[14] Under no circumstances should the government be able to limit the information that patients are entitled to receive about their sexual and reproductive health.[15]

These proposed changes to Title X defy medical ethics and erode the standard of care by interfering in the provider-patient relationship.[16] By limiting which healthcare options providers may discuss with their patients, the proposed changes would foreclose open communication between healthcare providers and patients.[17] Some providers may withhold complete and accurate information from patients for fear of losing Title X funding. Thus, the proposed changes eliminates the guarantee that you receive full and accurate information about your healthcare from your physician.[18] This puts lower-income people, especially women of color who have experienced a long history of reproductive coercion in healthcare settings, at greater risk of harm.[19]

Moreover, the proposed changes would likely cause patients to withhold information about their abortions out of fear of not being able to get post-abortion care in a Title X clinic.[20] As such, those patients' medical histories will be "missing a chunk of their medical data due to misunderstanding, stigma and Title X regulations."[21] This type of government interference in the exam room puts the health of patients at risk, and places reproductive healthcare further out of reach from individuals already without access to needed services.[22] Indeed, reproductive

---

[14] Julie Davis and Maggie Haberman, *Trump Administration to Tie Health Facilities' Funding to Abortion Restrictions*, N.Y. TIMES (May 17, 2018), https://www.nytimes.com/2018/05/17/us/politics/trump-funding-abortion-restrictions.html.
[15] *Id.*
[16] Molly Walker, *ACP, ACOG Fear Return of 'Domestic Gag Rule': Groups Believe Trump Administration will Soon Impose New Title X Restrictions*, MEDPAGE TODAY (May 4, 2018), https://www.medpagetoday.com/obgyn/generalobgyn/72714.
[17] Scott Simon, *Proposed Changes to Title X Funding Likely to Hurt Low-Income Women*, NATIONAL PUBLIC RADIO (May 19, 2018), https://www.npr.org/2018/05/19/612583884/proposed-changes-to-title-x-funding-likely-to-hurt-low-income-women.
[18] *Id.*
[19] Rachel Gold, *Guarding Against Coercion While Ensuring Access: A Delicate Balance*, 17 Guttmacher Policy Review 8, 9 (Sept. 2, 2014), *available at* https://www.guttmacher.org/sites/default/files/article_files/gpr170308.pdf.
[20] David S. Cohen & Carole Joffe, *Title X Facilities Are Already Over-Regulated*, THE HILL (June 12, 2018) http://thehill.com/blogs/congress-blog/healthcare/391712-title-x-facilities-are-already-over-regulated.
[21] *Id.*
[22] *Id.*

healthcare is sometimes the sole source of healthcare for a majority of patients seeking government-funded family planning services.[23]

Second, a single method or otherwise limited service facility may feel judgmental and unwelcoming to a patient seeking contraceptives or information on abortion.[24] Reproductive health advocates strongly object to these proposed changes because such proposals will narrow reproductive health into the "ideological vision of how people should live their lives: no sex until marriage, family participation at all ages, and natural family planning methods first and foremost."[25]

The proposed changes to Title X contradict the very premise of family planning: that people need access to full, accurate, non-biased medical information to help them decide if, when, and how to become pregnant and later form a family.[26] The proposed restrictions on abortion referrals and counseling removes the patient-centered approach from healthcare. Requiring healthcare providers to ignore the needs and preferences of their patients, many of whom experience multiple barriers to accessing healthcare, would worsen an existing public health crisis. As one healthcare provider stated:

> The communities that we serve are often low-income with few resources, childcare barriers, no paid leave. Many of them don't have access to internet in their homes.[27] They may be living in poverty, they may not have access to safe and stable housing, they may not have access to transportation; and so when we expect these clients to have to take that burden on themselves, to be given information that is not complete or direct or could potentially be misleading, we do a disservice to our client.[28]

The proposed changes will impact the quality of healthcare that is provided to lower-income families the most. By knowing that healthcare providers may withhold certain medical

---

[23] Julie Rovner, *At-Risk Federal Funds Cover Far More Than The Pill*, NPR (April1, 2011), https://www.npr.org/2011/04/01/135018313/at-risk-federal-funds-cover-far-more-than-the-pill; Guttmacher Institute, Publicly Funded Family Planning Services in the United States (Sept. 2016), https://www.guttmacher.org/fact-sheet/publicly-funded-family-planning-services-united-states.

[24] *See* Caroline Bollinger, *Access Denied*, Prevention (Nov. 3, 2011), https://www.prevention.com/life/a20463602/the-new-birth-control-ban/; *see also* Sabrina Rubin Erdely, *Doctors' beliefs can hinder patient care*, NBC News (June 22, 2007), http://www.nbcnews.com/id/19190916/ns/health-womens_health/t/doctors-beliefs-can-hinder-patient-care/#.WoMVTKinG02.

[25] *Planned Parenthood Sues To Bloc Trump's 'Radical Shift' In Family Planning Program*, NATIONAL PUBLIC RADIO (May 2, 2018), https://www.npr.org/2018/05/02/604153496/planned-parenthood-sues-to-block-trumps-radical-shift-in-family-planning-program.

[26] Amy Myrick & Rachana D. Martin, *The Attack on Title X: Free to Do What?*, AMERICAN CONSTITUTION SOCIETY FOR LAW AND POLICY (May 31, 2018), https://www.acslaw.org/acsblog/the-attack-on-title-x-free-to-do-what.

[27] Olga Khazan, *'More Than a Gag Rule'*, THE ATLANTIC (June 4, 2018), https://www.theatlantic.com/health/archive/2018/06/texas-trump-title-x/561905/.

[28] *Id.*

information, patients will have little reason to trust and rely on the medical information they receive from them. In states that already have a high percentage of unintended pregnancies, the burden on accessing reproductive health services will be exacerbated. A government program that pushes people toward a life-changing outcome they do not want, or have not freely chosen, is the opposite of liberty.[29]

In addition, the first listed Congressional purpose for Title X states: "to assist in making comprehensive voluntary family planning services readily available to all persons desiring such services."[30] Consistent with that purpose, current Title X regulations highlight the importance of a broad range of contraceptive methods. The proposed changes do nothing to ensure that comprehensive care will be provided to all that desire it. Sub-recipients of Title X funding are not required to provide a broad range of services, but projects do. This begs the question—how many providers in a program have to provide a broad range of services? Is just one provider sufficient to meet the Department's rules? The proposed changes certainly appear to be an open "invitation to single-method sites."[31]

Similarly, a patient seeking a broad range of reproductive healthcare may only come into contact with a provider solely offering either natural family planning, infertility treatment, or adolescent services.[32] The fact remains that the primary reason most patients seek care from Title X providers is to receive information about or prescriptions for contraceptives. While Title X requires the inclusion of natural family planning, when given the option, less than 0.5% of female patients choose fertility awareness methods.[33] Comprehensive family planning requires complete and accurate information of all preventative methods, and must be available to all that desire to obtain them in order to fulfill the primary purpose of the Title X statute.

---

[29] *See* Michael Roberts, *The Colorado Health Center Trump Abortion Gag Rule Would Hurt Most*, WESTWORD (June 1, 2018), http://www.westword.com/news/trump-title-x-abortion-gag-rule-proposal-and-colorado-impact-10373448 (regarding liberty issues in Colorado specifically); *Roe and Intersectional Liberty Doctrine*, CENTER FOR REPRODUCTIVE RIGHTS (Apr. 20, 2018), https://www.reproductiverights.org/document/report-roe-and-intersectional-liberty-doctrine.

[30] Family Planning Services and Population Research Act of 1970, Pub. L. No. 91–572 § 2, 84 Stat. 1504, 1504 (1970).

[31] Guttmacher Institute, *Four Big Threats To The Title X Family Planning Program: Examining The Administration's New Funding Opportunity Announcement* (Mar. 2018), https://www.guttmacher.org/article/2018/03/four-big-threats-title-x-family-planning-program-examining-administrations-new.

[32] Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. 25502, 25516 (proposed June 1, 2018) (to be codified at 42 C.F.R. pt. 59).

[33] Office of Population Affairs, *supra* note 2, at 31.

The proposed changes do not provide for culturally competent services. Just as the Department points out that some patients may prefer single method providers,[34] many patients wish to have access to a broad range of reproductive health services. In particular, fertility awareness methods offer little to no benefit to many LGBTQ patients. Rather, LGBTQ patients often cite the need for medical services that include consultation on STI prevention, methods of fertility treatment, and pregnancy prevention targeted to their specific needs.[35] The proposed changes would worsen access barriers that vulnerable communities like LGBTQ individuals already experience. As the Department's Healthy People 2020 initiative recognized, "LGBT individuals face health disparities linked to societal stigma, discrimination, and denial of their civil and human rights."[36] These health disparities have been linked, in part, to discrimination LGBTQ individuals experience in accessing healthcare, including reproductive health services.[37]

Title X provides that, in awarding funds, the Secretary must take into account a) the number of patients to be served, b) the extent to which family planning services are needed locally, c) the relative need of the applicant, and d) its capacity to make rapid and effective use of such assistance.[38] Among other things, the Quality Family Planning ("QFP") Guidelines provide that Title X clinicians "should offer contraceptive services," including the full range of FDA-approved contraceptive methods.[39] The Guidelines emphasize that contraceptive counseling, a "process that enables [patients] to make and follow through on decisions about their contraceptive use," is an "integral component" of providing healthcare so that patients "make informed decisions and obtain the information they need to use contraceptive methods

---

[34] 42 CFR 59, 25516 ("For example, natural family planning (NFP) services (and other fertility-awareness based methods) are a recognized form of family planning services under the statute, but many couples or families seeking these services may prefer specialized, single-method NFP service sites.").

[35] *See* American Medical Association, *Communicating With LGBTQ Patients* (last visited on Jul. 31, 2018), https://www.ama-assn.org/delivering-care/communicating-lgbtq-patients; National LGBT Health Education Center, *Understanding the Health Needs of LGBT People* (Mar. 2016), https://www.lgbthealtheducation.org/wp-content/uploads/LGBTHealthDisparitiesMar2016.pdf.

[36] *Healthy People 2020, Lesbian, Gay, Bisexual, and Transgender Health*, U.S. Dept. Health & Human Serv. (last updated on Jul. 29, 2018), https://www.healthypeople.gov/2020/topics-objectives/topic/lesbian-gay-bisexual-and-transgender-health.

[37] *Human Rights Watch, All We Want is Equality: Religious Exemptions and Discrimination Against LGBT People in the United States* (Feb. 2018), *available at* https://www.hrw.org/report/2018/02/19/all-we-want-equality/religious-exemptions-and-discrimination-against-lgbt-people.

[38] 42 U.S.C. § 300(b).

[39] Centers for Disease Control and Prevention, *Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs*, 63 Morbidity and Mortality Weekly Report, Report 4, 7 (April 25, 2014), *available at* https://www.cdc.gov/mmwr/pdf/rr/rr6304.pdf.

correctly."[40] Abrogating away from these Guidelines provided by the CDC and OPA, which the proposed changes seek to do, undermine the patient's ability to make informed decisions about their reproductive healthcare.

In total, then, the proposed changes neglect the recommendations endorsed by the CDC and OPA, as well as defy the purpose of Title X by denying underserved communities complete and accurate information about available reproductive healthcare services. In other words, the proposed changes would disallow Title X funds "to assist in making comprehensive voluntary family planning services readily available to all persons desiring such services."[41] Despite the Department's insistence otherwise, these rules do nothing to further statutory integrity.

b. The Proposed Rule Compromises the Reproductive Health of Adolescents.

By emphasizing single-method family planning and family interaction, the proposed changes undermine adolescent autonomy and threaten adolescent health. All patients, minors included, deserve comprehensive healthcare. Adolescents are particularly vulnerable to inaccurate or incomplete information because they are more likely to receive abstinence-only education and less likely to learn about contraceptive methods.[42] Single-method family planning misrepresents the variety of options available to adolescents, which is harmful because minors exposed to single-method counseling are less likely to engage in safe sex.[43]

The Department is correct that Title X "encourage[s] family participation," but the Department neglects to acknowledge that the statute conditions that requirement by saying, "[t]o the extent practical."[44] Moreover, the Department's emphasis on "family participation" fails to consider the reality that not all adolescents live in stable homes and not all parents have their child's best interest at heart.

---

[40] *Id.*
[41] Family Planning Services and Population Research Act of 1970, Pub. L. No. 91–572 § 2, 84 Stat. 1504, 1504 (1970).
[42] *See* Guttmacher Institute, American Adolescents' Sources of Sexual Health Information (Dec. 2017), https://www.guttmacher.org/fact-sheet/facts-american-teens-sources-information-about-sex.
[43] *See* Guttmacher Institute, *Four Big Threats To The Title X Family Planning Program: Examining The Administration's New Funding Opportunity Announcement* (Mar. 2018), https://www.guttmacher.org/article/2018/03/four-big-threats-title-x-family-planning-program-examining-administrations-new; John S. Santelli et al., *Abstinence-Only-Until-Marriage: An Updated Review of U.S. Policies and Programs and Their Impact*, 61 Journal of Adolescent Health 273, 278 (Sept. 2017), *available at* https://www.jahonline.org/article/S1054-139X%2817%2930260-4/fulltext#sec10.
[44] 42 U.S.C. § 300(a).

Confidentiality is the cornerstone of the physician-patient relationship, however, adolescents' express confidentiality concerns reduce their likelihood to receive contraception.[45] The active encouragement and documentation of family participation likely steers adolescents away from safe sexual practices.[46] Nationally, a third of adolescents do not seek reproductive healthcare because they do not want to tell their parents.[47] Unsurprisingly, then, Pennsylvania has responded to the privacy need of adolescents through a law protecting the confidentiality of adolescent patients and allows providers to render most services without family participation.[48] Healthcare providers should follow their patients' wishes in regard to family participation. Adolescents can be encouraged to speak with family, but control over the communication with family should remain with the patient.

In sum, the proposed changes would undermine adolescents' health by discouraging them from seeking reproductive health services. Therefore, the proposed changes do not maintain statutory integrity.

c. Conscience Exceptions for Healthcare Providers and Employers are Unnecessary and Harmful.

The proposed changes would broaden already existing (and excessive) exemptions for healthcare providers with moral or religious objections at the expensive of low-income individuals in need of essential reproductive healthcare. Indeed, there is an existing network of federal statutes that protect religious objections by healthcare providers.[49] Therefore, the proposed changes are redundant and unnecessary to protect provider rights.

A drastic power imbalance exists between patients and their healthcare providers. By exacerbating that imbalance through heightened conscience protections, the proposed changes

---

[45] Fuentes et al., *Adolescents' and Young Adults' Reports of Barriers to Confidential Health Care and Receipt of Contraceptive Services*, 62 J Adolesc Health, 36, 42 (May 15, 2018), *available at* https://www.jahonline.org/article/S1054-139X(17)30508-6/pdf.

[46] *See* Madeline Zavodny, *Fertility and Parental Consent for Minors to Receive Contraceptives*, 94 Am. J. Public Health 1347 (Aug. 2004), *available at* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448454/ (finding that parental consent for contraceptives increased the rate of pregnancy in young women).

[47] Abigail English & Carol Ford, *The HIPAA Privacy Rule and Adolescents: Legal Questions and Clinical Challenges*, 20 Perspectives on Sexual and Reproductive Health 80 (Apr. 15, 2004), *available at* https://doi.org/10.1363/3608004.

[48] *See* Guttmacher Institute, *An Overview of Minors' Consent Law* (Jul. 1, 2018), https://www.guttmacher.org/state-policy/explore/overview-minors-consent-law.

[49] Religious Freedom Restoration Act, 42 U.S.C. § 2000bb–1; U.S. Depart. of Health & Human Serv., Conscience Protections for Health Care Providers, https://www.hhs.gov/conscience/conscience-protections/index.html#federal (providing for cause of action for providers with religious objections to abortion care); Church Amendment, 42 U.S.C. § 300a–7 (excluding abortion and sterilization services from required procedures to receive federal funding).

devalue the health of marginalized and underserved communities. Healthcare providers literally hold their patients' lives in their hands. When healthcare professionals deny patients necessary care based on their own personal beliefs, patients are left stranded and at risk of serious health complications.[50]

d. The Separation of Mixed-Service is Exceptionally Burdensome and Hinders Access to Healthcare.

The proposed changes go far beyond separating abortion care from other reproductive healthcare and result in limiting reproductive healthcare as a whole. The Department estimates the cost of complete physical separation to be between $10,000 and $30,000 per site.[51] This estimate is hardly a realistic appraisal.[52] Complete separation of facilities requires all the costs of either building a new facility or renting and renovating a new facility. These costs would quickly add up to an amount far above the Department's estimate, and the cost of maintaining separate facilities exceed the cost of establishing a new facility.

The very facilities most affected by the proposed changes provide the largest range of Title X services. Therefore, the rules do not just foreclose abortion as an option to Title X patients but also eliminate Title X care completely. What will remain are Federally Qualified Health Center's ("FQHC"), health centers that do not specialize in reproductive health. Therefore, a patient's ability to access reproductive healthcare from a safety net provider will be severely burdened.[53] When specialized family planning providers are marginalized or systematically excluded from public programs, women will lose access to essential health services.[54]

---

[50] Sabrina Rubin Erdely, *supra* note 24.
[51] Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. 25502, 25525 (proposed June 1, 2018) (to be codified at 42 C.F.R. pt. 59).
[52] Our direct representation of free-standing abortion providers in PA to come into compliance with Act 122, which requires abortion providers to meet Ambulatory Surgical Facilities regulations, gives us firsthand knowledge of the financial burden associated with significant building modifications. To comply with Act 122, abortion providers needed to make expensive renovations or move to new facilities all together, costing them approximately $500,000 to $1 million.
[53] White et al., *The Impact of Reproductive Health Legislation on Family Planning Clinic Services in Texas*, GOVERNMENT, LAW AND PUBLIC HEALTH PRACTICE (May 2015), http://sites.utexas.edu/txpep/files/2017/04/White-et-al-Impact-of-Reproductive-Health-Legislation-AJPH-pre-print-2015.pdf.
[54] *Id.*

Planned Parenthood is the largest abortion provider in the country, but Planned Parenthood also serves over one-third of Title X patients.[55] In other words, should Title X services become unavailable through Planned Parenthood, over one-third of Title X patients would be forced to seek services elsewhere. In theory, those patients will simply seek services from another Title X provider. In reality, evidence shows that other providers cannot make up the care gap created by Planned Parenthood's absence.[56] This is likely due to the fact that many regions simply do not have other reproductive healthcare providers.[57] In Pennsylvania, "[d]ue to our rural makeup, for instance, half of Planned Parenthood health centers are in medically underserved areas of the state … So [under the proposed changes] those patients would no longer be able to seek preventative healthcare at Planned Parenthood health centers and many of them would have no other place to go."[58] Forcing out Title X providers that offer comprehensive reproductive healthcare, which includes abortion, will result in the eradication of the largest portion of Title X services in the state and nationwide. Therefore, the cost-prohibitive, proposed changes actually nullify the Title X program.

III. The Proposed Rule Is A Radical Shift in Title X Funding That Violates Medical Ethics.

The proposed changes also add a more competitive infrastructure for receiving Title X funding through extra participation criteria, essentially reversing the purpose of Title X. The effect will be to prioritize religious and abstinence only education and primary care services over comprehensive, evidence-based family planning. This new participation criteria would penalize a clinic for their commitment to Title X's core mission when it was established. When first enacted by then President Nixon, Title X's intended function was to provide comprehensive family planning. This shift from the core mission will result in irreparable harm to patients the fund is intended to serve. 42 CFR 59.5(a)(2) mandates that Title X recipients provide services to patients

---

[55] Sarah Kliff, *The new Trump plan to defund Planned Parenthood, explained*, Vox (May 18, 2018), https://www.vox.com/2018/5/18/17367964/trump-abortion-planned-parenthood-defund.

[56] Kinsey Hasstedt, *Beyond the Rhetoric: The Real-World Impact of Attacks on Planned Parenthood and Title X*, 20 Guttmacher Policy Review 86 (Aug. 3, 2017), *available at* https://www.guttmacher.org/sites/default/files/article_files/gpr2008617.pdf.

[57] NARAL Pro-Choice America, Who Decides? The Status of Women's Reproductive Rights in the United States (Jan. 2017), https://www.prochoiceamerica.org/wp-content/uploads/2017/01/WhoDecides2017-DigitalEdition3.pdf (majority of states have "restricted access" to reproductive healthcare).

[58] Lucy Perkins, *Trump Proposal Would Cut Funding For Title X Clinics In Pennsylvania*, WESA (May 23, 2018), http://wesa.fm/post/trump-proposal-would-cut-funding-title-x-clinics-pennsylvania#stream/0 (quoting Sari Stevens, executive director for Planned Parenthood Pennsylvania Advocates).

without subjecting them to "any coercion to accept services or to employ or not employ any particular methods of family planning." The purpose was to ensure the patient's dignity was protected and that it remain confidential. This has been unchanged for decades. The priorities and key issues in the proposed rule violate the following provisions of the statute: coercion, dignity, marital status, and confidentiality.[59] Refusing contraception or strong-arming a patient into unwanted family planning violates this very statute.[60]

The proposed changes endorsing natural family planning as the primary method violates the statutory mandate to access reproductive health voluntarily without coercion. One size fits all directives in family planning run contrary to voluntariness, respect for dignity, and non-discrimination that Title X explicitly requires. A patient has a recognized right to make a selection for their family planning based on their individual needs and preferences.[61] Equitable and evidence based care, which has been abrogated from in the proposed rule, evidenced by the administration's refusal to adopt the QFP, is necessary to make sure care doesn't vary due to personal characteristics of patients. This is a big variation that would alter the best practice approach accepted by doctors today.

IV. The Proposed Changes Are Arbitrary and Capricious.

On all levels, the proposed changes undermine the purposes of Title X, and the Department would act in contravention of the legislature by enforcing them. The Department's proposed regulations do not stem from the statutory mandates despite the Department's espoused interest in statutory integrity.

As explained above, restrictions on abortion referrals and counseling, the reliance on single-method providers, inaccessibility by minors, separation of facilities, and enhanced conscience protections contravene the goals of Title X. With the proposed changes, the Department flouts the statutory mandates and far exceeds the contours of the statute. Even worse, the Department's assertions are not based in fact or any reliable authorities. Voluminous statistics, health authorities, and legal scholars dispute the claims made in the proposed changes.

[59] *See* 42 CFR 59.5(a)(2) (2018).
[60] *Id.*
[61] *Id.*

As an agency, the Department is bound by the statute and must fulfill the statute's purpose using effective and evidence-based methods. By shirking its statutory duties without any factual basis, the Department renders the proposed changes arbitrary and capricious.

Respectfully,
Women's Law Project