



July 27, 2018

Valerie Huber, Senior Policy Advisor
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 Rm 716G
200 Independence Ave SW
Washington, DC 20201

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

Dear Ms. Huber:

I am writing on behalf of People For the American Way (PFAW) to offer comments on the Title X family planning proposed rule. Founded in 1981 by a group of civic, educational, and religious leaders, PFAW is a progressive advocacy organization grounded in the nation's ideals of freedom, equity, opportunity, and justice. Over its history, PFAW has conducted extensive education, outreach, legislative and regulatory advocacy, and other activities to make these values a reality in the lives of all people.

PFAW and its hundreds of thousands of members nationwide strongly support the principle that standing up for gender equity is critical to achieving our vision of a vibrant democratic society that works for all of us. PFAW is thus concerned about proposed revisions to the Title X family planning program that have the potential to limit critical health care access for low-income women and the entire universe of Title X patients. We urge the Department of Health and Human Services (Department) to not finalize the proposed rule.

The proposed family planning rule interferes with the doctor-patient relationship and denies Title X patients the information they need to make sound health decisions by eliminating the existing requirement that patients who request pregnancy care *referrals* be provided with them, including prenatal care and delivery, infant care, foster care or adoption, and abortion.¹ That requirement would be replaced with a complete ban on abortion referrals.² This is effectively a gag rule that restricts providers from speaking freely with their patients—thus, violating core ethical standards. The American Medical Association, which has announced its strong objection to this proposal,³ provides in its Code of Medical Ethics that providers “present relevant information accurately and sensitively, in keeping with the patient’s preferences”⁴ and that “withholding information without the patient’s knowledge or consent is ethically

¹ <https://www.law.cornell.edu/cfr/text/42/59.5> at (a)(5)

² <https://www.gpo.gov/fdsys/pkg/FR-2018-06-01/pdf/2018-11673.pdf> at 25,531

³ <https://www.ama-assn.org/ama-response-administrations-attack-family-planning-services>

⁴ <https://www.ama-assn.org/delivering-care/informed-consent>

unacceptable.”⁵ The proposed rule also undermines current neutral, factual, and nondirective pregnancy options *counseling* protections.⁶ It does not contain any requirement that providers advise patients of their refusal to counsel. Therefore, patients will not even know if they are getting complete information.

The proposed family planning rule is also clearly designed to force reproductive health care specialists to end their Title X participation by requiring them to physically and financially separate Title X project activities from abortion-related activities.⁷ The Department’s longstanding interpretation is that “[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.”⁸ A notice issued by the Department further made clear that Title X service sites could use common waiting rooms, staff, and filing systems for Title X project activities and abortion-related activities.⁹ Now the Department proposes a sharp reversal, going even further than it did in 1988 under President Ronald Reagan¹⁰ to consider such factors as the degree of separation from facilities in which prohibited abortion activities occur and the extent of such prohibited activities, separation of personnel and workstations, and the presence of Title X signage versus the absence of abortion services signage.¹¹

Specialized providers have played an important and irreplaceable role in Title X. Nationwide, Planned Parenthood health centers, for example, serve more than 40 percent of Title X patients. Eliminating them would leave many people without access to care. Texas’s current Planned Parenthood ban has had serious public health consequences. A recent study published in the *New England Journal of Medicine*¹² found a 35 percent decline in women in publicly funded programs using the most effective methods of birth control and a 27 percent increase in births among women who had previously accessed injectable contraception through those programs. Public health officials also fear a domestic gag rule “could cripple federal efforts to stop a dramatic increase in sexually transmitted diseases in the U.S.”¹³

The proposed family planning rule undermines the fundamental Title X goal of providing comprehensive reproductive health care services to low-income people¹⁴ by going out of its way to emphasize that “projects are not required to provide every acceptable and effective family planning method or service” and thus have the authority to exclude methods or services of their choosing.¹⁵ Moreover, this proposal removes the requirement that family planning methods must be “medically approved.”¹⁶ We are very concerned that this lowering of the threshold for Title X participation will result in organizations with little or no sexual and reproductive health care

⁵ <https://www.ama-assn.org/delivering-care/withholding-information-patients>

⁶ <https://www.law.cornell.edu/cfr/text/42/59.5> at (a)(5)

⁷ <https://www.gpo.gov/fdsys/pkg/FR-2018-06-01/pdf/2018-11673.pdf> at 25,532

⁸ <https://www.gpo.gov/fdsys/pkg/FR-2000-07-03/pdf/00-16758.pdf> at 41,276

⁹ <https://www.gpo.gov/fdsys/pkg/FR-2000-07-03/pdf/00-16759.pdf> at 41,282

¹⁰ <https://www.gpo.gov/fdsys/pkg/FR-2000-07-03/pdf/00-16758.pdf> at 41,270

¹¹ <https://www.gpo.gov/fdsys/pkg/FR-2018-06-01/pdf/2018-11673.pdf> at 25,532

¹² <http://www.nejm.org/doi/full/10.1056/NEJMsa1511902#t=article>

¹³ <https://www.npr.org/sections/health-shots/2018/06/12/618902785/trumps-redirection-of-family-planning-funds-could-undercut-std-fight>

¹⁴ <http://uscode.house.gov/statutes/pl/91/572.pdf> at 2(1); see also S. Rep. No. 91-1004, at 2 (1970)

¹⁵ <https://www.gpo.gov/fdsys/pkg/FR-2018-06-01/pdf/2018-11673.pdf> at 25,530

¹⁶ <https://www.gpo.gov/fdsys/pkg/FR-2018-06-01/pdf/2018-11673.pdf> at 25,515

experience participating in the program, which would inevitably lead to *reduced* access to a broad range of family planning methods. All people seeking care through Title X are entitled to access the contraceptive method that works best for their individual circumstances, and that requires access to all methods of contraception. We are also concerned about a number of unsupported Department contentions about the rule's benefits, astonishingly including that it would actually *improve* access to and quality of care.¹⁷

The proposed family planning rule significantly underestimates the costs imposed on patients, providers, and society as a whole by confining its discussion¹⁸ to include only the costs borne by entities that would have to comply with the rule, but not calculating the considerable additional costs, including those for Title X patients who are no longer able to receive the health care services that they need, and the costs to state and local health systems. Even the Department's compliance calculations are insufficient and do not seem to be based on reasoned analysis. Remarkably, because of these failures, the Department has determined that its rulemaking falls short of a \$100 million threshold and is thus not "economically significant."¹⁹

The proposed family planning rule would exacerbate existing health disparities by leaving communities that already experience worse health outcomes with even less access to care. All of the harmful impacts laid out above will fall most heavily on the people who are most in need of comprehensive and affordable family planning care. Because of systemic inequities, the people served by Title X today are more likely to be people of color and people who face language and other barriers to care. This rule will further deny them access to the best possible care through experienced providers and to comprehensive contraceptive methods.

The proposed family planning rule is clearly a disaster for public health. We strongly urge you to not finalize it.

Sincerely,



Jen Herrick
Senior Policy Analyst

¹⁷ See, e.g., <https://www.gpo.gov/fdsys/pkg/FR-2018-06-01/pdf/2018-11673.pdf> at 25,505 ("If finalized and implemented as proposed, the new regulations would contribute to more clients being served, gaps in service being closed, and improved client care that better focuses on the family planning mission of the Title X program"); <https://www.gpo.gov/fdsys/pkg/FR-2018-06-01/pdf/2018-11673.pdf> at 25,522 (HHS cites as expected benefits of the proposed rule "Enhanced patient service and care" and also states at 25,525 that the rule "is also expected to increase the number of entities interested in participating in Title X as grantees or subrecipient service providers and, thereby, to increase patient access to family planning services focused on optimal health outcomes for every Title X client")

¹⁸ <https://www.gpo.gov/fdsys/pkg/FR-2018-06-01/pdf/2018-11673.pdf> at 25,521-26

¹⁹ <https://www.gpo.gov/fdsys/pkg/FR-2018-06-01/pdf/2018-11673.pdf> at 25,521