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Make the Road New York & Medicare Rights Center & Metro New York Health Care for All Campaign  
New Yorkers for Accessible Health Coverage & New York Immigration Coalition & Project CHARGE  
Public Policy and Education Fund of New York/Citizen Action of New York  
Raising Women's Voices-New York & Schuyler Center for Analysis and Advocacy & Small Business Majority  
Young Invincibles

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:

Health Care For All New York (HCFANY) respectfully submits these comments in response to the Department of Health and Human Services' (the Department's) notice of proposed rulemaking (NPRM) entitled, Compliance with Statutory Program Integrity Requirements, which was published in the Federal Register on June 1, 2018.<sup>1</sup> The proposed rule would significantly alter and undermine the Title X Family Planning Program (Title X), which has provided vital sexual and reproductive health services to people across the country for more than 40 years. Each year Title X provides family planning services, cancer screenings, wellness

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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).



exams, and additional care, to 306,070 people in New York State, of which 61 percent are below 101 percent of the Federal Poverty Line (less than \$11,800 for an individual).<sup>2</sup>

HCFANY is a statewide coalition comprised of over 170 organizations dedicated to achieving quality, affordable health coverage for all New Yorkers. We strive to bring consumer voices to the policy conversation, ensuring that the concerns of real New Yorkers are heard and reflected. For more information on HCFANY, visit us at [www.hcfany.org](http://www.hcfany.org). **HCFANY strongly opposes the proposed rule. The proposed rule would make changes to Title X that would undermine the program's goal of providing comprehensive reproductive health services to low-income individuals, and would exacerbate existing health disparities nationally and here in New York. The public health consequences in New York of the proposed changes would be disastrous.**

The proposed rule would impose restrictions and administrative burdens that would interfere with the doctor-patient relationship and compromise the quality and scope of family planning care that can be delivered by Title X clinics. As a result, the rule would likely significantly shrink the existing network of participating high-quality family planning providers. At the same time, the rule would allow Title X funding for programs that exclusively promote less effective “natural” family planning methods, while failing to offer patients highly-effective, medically-approved contraceptive options.

The proposed rule would deny patients who rely on Title X providers the full and complete medical information they need to make informed decisions about their health. It would exacerbate the challenges that many patients already face in getting timely and affordable reproductive health care. The proposed changes would disproportionately affect low-income women, women of color, young women and LGBTQ individuals, thereby increasing health disparities. **HCFANY strongly urges the administration to withdraw the proposed rule because of the serious harm it would do to patients in New York and across the country, as discussed in more detail below.**

- 1. The proposed rule appears to permit Title X providers to refuse to offer a broad range of contraceptive methods, thus compromising the high-quality family planning care that has been a core part of Title X-funded services since the program's inception.**

The proposed rule weakens long-standing requirements that Title X grantees provide “a broad range of acceptable and effective medically approved family planning methods.”<sup>3</sup> All people seeking care in Title X programs are entitled to the contraceptive method that works best for their individual circumstances, and that requires access to all methods of contraception.

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<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>.

<sup>3</sup> 42 C.F.R. § 59.5



Indeed, this was the very purpose of the Title X program. Congress stated that Title X's purpose was "making *comprehensive* voluntary family planning services readily available to all persons desiring such services."<sup>4</sup>

The new proposed definition of "family planning" appears to promote less effective forms of contraception — namely natural family planning methods and other fertility awareness-based methods — and explicitly excludes post-conception care and abortion. The rule also eliminates the requirement for "medically approved" family planning methods, lowering the program's standard to "acceptable and effective" methods, such as abstinence.<sup>5</sup> Extensive research has shown that abstinence-only approaches are ineffective in preventing pregnancy and sexually transmitted infections.<sup>6</sup>

In addition, the proposed rule permits Title X providers to offer only "a single method or a limited number of methods of family planning."<sup>7</sup> So, a program could meet these new Title X requirements by providing only natural family planning, along with abstinence-only-until-marriage education for adolescents and adoption services.

The proposed rule thus would allow Title X providers to give biased and misleading counseling and to withhold information about all reproductive health care options, including medically approved contraceptive methods. These changes undermine current standards set by the Office of Population Affairs (OPA) and the Centers for Disease Control and Prevention (CDC) that "providers should inform clients about all contraceptive methods that can be used safely" and that "information should be tailored and presented to ensure a client-centered approach."<sup>8</sup> Biased and misleading counseling would make it impossible for patients to make an informed decision about their reproductive health care.

Women who use birth control to prevent pregnancy report that contraceptive services have allowed them to take better care of themselves or their families, support themselves financially, complete their education or keep or get a job.<sup>9</sup>

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<sup>4</sup> Pub. L. No. 91-572, § 2(1); see S. Rep. No. 91-1004, at 2 (1970) (emphasis added).

<sup>5</sup> 83 *Federal Register* 106 (June 1, 2018), p. 25513

<sup>6</sup> Donovan, M. K. (2017). The looming threat to sex education: A resurgence of federal funding for abstinence-only programs? *Guttmacher Policy Review*, 20. Retrieved from [https://www.guttmacher.org/sites/default/files/article\\_files/gpr2004417.pdf](https://www.guttmacher.org/sites/default/files/article_files/gpr2004417.pdf)

<sup>7</sup> 83 *Federal Register* 106 (June 1, 2018), p. 25516

<sup>8</sup> 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(4). Retrieved from <https://www.cdc.gov/mmwr/pdf/rr/rr6304.pdf>

<sup>9</sup> Frost, J. J., & Lindberg, L. D. (2013). Reasons for using contraception: Perspectives of US women seeking care at specialized family planning clinics. *Contraception*, 87(4), 465–472.

<https://doi.org/10.1016/j.contraception.2012.08.012>



**2. The proposed rule would interfere with the doctor-patient relationship and deny pregnant patients the medical information they need to make the best decisions for themselves and their families.**

The proposed rule would deny pregnant patients complete and accurate information about all their options, compromising their ability to make the best decision for their health and their unique circumstances. 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, adoption and abortion.<sup>10</sup> That requirement would be replaced with a complete ban on health care providers giving abortion referrals.<sup>11</sup> Many experts call this provision a gag rule, since it would restrict providers from speaking freely with their patients. The gag rule violates core ethical standards and the requirements of medical professional associations,<sup>12</sup> while undermining the doctor-patient relationship.

If a patient requests a referral to an abortion provider, the proposed rule would require a Title X provider to offer intentionally confusing information. The rule states that a “medical doctor may provide a list of licensed, qualified, comprehensive health service providers” that do *and* do not provide abortion.<sup>13</sup> The Title X program can decide whether or not to actually include an abortion provider in the list it provides to patients. If abortion providers are included, the rule prohibits doctors from identifying those abortion providers in any way, leaving the patient to figure out where to go. Requiring Title X programs to create referral lists in this manner would greatly hamper the ability of a pregnant patient to find an abortion provider.

We are concerned that these requirements would exacerbate the impact of existing state- and federal-level abortion laws that have created substantial obstacles for pregnant women — especially young women, low-income women, and women of color — to access abortion care. The “gag rule” and the deliberately confusing health care provider list would create another hoop for women to jump through to exercise their constitutional right to a safe and legal abortion. Such obstacles and delays will jeopardize their health, well-being and economic security.

**3. The proposed rule imposes burdensome and unnecessary requirements on already financially stressed Title X clinics, prohibiting them from providing abortions on site (even with separate funding) and potentially leaving low-income New Yorkers without access to critical reproductive health care and education.**

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<sup>10</sup> 42 C.F.R. § 59.5(a)(5).

<sup>11</sup> Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25,531.

<sup>12</sup> For example, the American Medical Association states in its Code of Ethics that “withholding information without the patient’s knowledge or consent is ethically unacceptable” and the Code of Ethics for Nursing stipulates that patients must be given “accurate, complete and understandable information in a manner that facilitates an informed decision.”

<sup>13</sup> 83 Federal Register 106 (June 1, 2018), p. 25531



Title X already prohibits clinics from using federal funds to provide abortions, and requires that funds used for abortion care be kept separately. The rule attempts to expand this restriction by imposing burdensome and unnecessary requirements for physical and financial separation between the Title X-funded services of the clinic and any abortion services it may also provide. Specifically, Title X clinics that want to continue to provide abortion care would have to maintain for those services separate accounting records, waiting and exam rooms, phone numbers, email addresses, staff, patient health records, educational programs and signs. We are concerned that authorizing the HHS Secretary to decide whether the degree of separation is sufficient would effectively allow unchecked discrimination against clinics that offer abortion. The administration appears to be relentless in its pursuit to exclude these clinics from Title X eligibility, asking for public comments on whether these requirements go far enough or if additional considerations should be added.

Establishing the required level of physical separation between abortion services and Title X-funded family planning services may be more than many programs can afford. HHS estimates that it would cost Title X clinics \$20,000 to comply with the physical separation requirements. This analysis very likely grossly underestimates the funding necessary to set up an entirely separate physical space with new staff, a different health record system and new educational programs.

These expensive and unnecessary requirements are clearly designed to push reproductive health-focused providers, such as Planned Parenthood, out of the Title X network. Nationwide, Planned Parenthood health centers serve more than 40 percent of Title X patients. In New York, Planned Parenthood's 58 health centers serve 52 percent of the state's Title X patients. Eliminating these providers from the program would leave many people, and particularly women of color, without access to reproductive health care. Women of color in underserved areas are at high risk for negative sexual and reproductive health outcomes, due to poverty, geographic and social isolation, and limited access to care. For example, human papillomavirus (HPV), which is one cause of cervical cancer, is more prevalent and deadly among Black and Latina women. In fact, women of color experience higher rates of cervical cancer than white women, and Black women are more likely to die of breast and cervical cancer, compared to women in any other racial or ethnic group.<sup>14,15</sup> The proposed rule would likely result in women of color losing access to their only source of affordable health care.

Other providers, such as federally-qualified health centers, do not have the current capacity to fill the gap. The impact of the rule will vary by state. One analysis predicted that if

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<sup>14</sup> Hoffman, J. (2017, January 23). *Wider Racial Gap Found in Cervical Cancer Deaths*. The New York Times. Retrieved July 13, 2018 from <https://www.nytimes.com/2017/01/23/health/cervical-cancer-united-states-death-toll.html>

<sup>15</sup> American College of Obstetricians and Gynecologists. (2012). Health Care Systems for Underserved Women. *Committee Opinion*, 516. Retrieved from <https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Health-Care-Systems-for-Underserved-Women>



Planned Parenthood health centers in 27 states were denied future Title X funding, other Title X clinics would have to double their contraceptive client caseloads to maintain the program's current reach in their states.<sup>16</sup> Here in New York, we would see patient loads double for the remaining Title X programs, especially in the North Country.

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>17</sup> The study found a 35 percent 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 percent 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>18</sup> In facilities that do have the means to create the mandated physical separation, patients would be required to go to a different location or use a different entrance for abortion care. Today, at many Federally Qualified Health Centers around the country that receive Title X funds, abortion is provided as a regular part of care in the same exam rooms and by the same providers, but with separate funds. We are concerned that this mandated physical separation would reinforce the notion that abortion is not a normal part of health care and increase stigma.

We are also concerned that these separation requirements would restrict the provision of comprehensive sex education. If a Title X clinic distributes information “that includes abortion as a method of family planning,” it would be in violation of Title X requirements.<sup>19</sup> This requirement would curb the dissemination of medically accurate information.

#### **4. The proposed rule would destroy the trust between patients – particularly minors – and their providers in ways that could cause many patients to avoid seeking necessary reproductive health care.**

“Ensuring privacy and confidentiality” is a key strategy recommended by OPA and the CDC for providers to establish and maintain rapport with their clients seeking contraceptive

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<sup>16</sup> Hasstedt, K. (2017). Beyond the rhetoric: The real-world impact of attacks on Planned Parenthood and Title X. *Guttmacher Policy Review*, 20. Retrieved from

[https://www.guttmacher.org/sites/default/files/article\\_files/gpr2008617.pdf](https://www.guttmacher.org/sites/default/files/article_files/gpr2008617.pdf)

<sup>17</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>18</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>

<sup>19</sup> 83 Federal Register 106 (June 1, 2018), p. 25532



services.<sup>20</sup> Confidentiality is critical, particularly for minors, and can strongly influence their willingness to seek out contraceptive services.<sup>21</sup>

The proposed rule would require family planning providers to try to involve a teenager's family members in decision-making about the minor's reproductive health care. This requirement could escalate existing problems of parental abuse, violence and incest, or subject young people to shame, judgment or even abandonment by their families.

Forcing Title X providers to pressure for family participation when minors are seeking reproductive health care will destroy the trust between providers and patients, particularly those who are victims of family abuse or violence. The unfortunate result could be that young people will avoid seeking reproductive health care all together due to mistrust and lack of confidentiality.

The Title X confidentiality regulations are among the strongest in current law, and these confidentiality protections are one of the reasons individuals choose to seek care from Title X-funded providers.<sup>22,23</sup> These new requirements could stigmatize minors who are sexually active and other vulnerable populations and discourage them from seeking the reproductive health care that they need.

##### **5. The proposed rule would allow the use of Title X funding to pay for contraceptive care for women whose employers refuse to provide employee contraceptive coverage on religious or moral grounds.**

The proposed rule seeks to redefine "low-income" for purposes of determining an individual's eligibility for Title X services. The new definition of low-income would include "women who are unable to obtain certain family planning services under their employer-sponsored insurance due to their employers' religious beliefs or moral convictions."<sup>24</sup> This provision essentially creates a channel for employers to claim a religious or moral objection in

<sup>20</sup> 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(4). Retrieved from <https://www.cdc.gov/mmwr/pdf/rr/rr6304.pdf>

<sup>21</sup> 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(4). Retrieved from <https://www.cdc.gov/mmwr/pdf/rr/rr6304.pdf>

<sup>22</sup> 42 C.F.R. § 59.11

<sup>23</sup> Gold, R. B. (2013). A new frontier in the era of health reform: Protecting confidentiality for individuals insured as dependents. *Guttmacher Policy Review*, 16(4). Retrieved from <https://www.guttmacher.org/pubs/gpr/16/4/gpr160402.pdf>

<sup>24</sup> 83 Federal Register 106 (June 1, 2018), p. 25530



order to avoid providing reproductive health coverage. The inclusion of this additional population in Title X eligibility is not accompanied by any evidence of a plan to increase funding for Title X. The result would be additional financial burden for an already underfunded program.

**6. While making it more difficult for stand-alone family planning clinics to qualify for Title X funding, the proposed rule could allow such funding for fake women's health centers.**

The proposed rule makes sweeping revisions to the criteria and selection of Title X grantees by requiring grantees to “offer either comprehensive primary health services onsite or have a robust referral linkage with primary health providers who are in close physical proximity.” Some stand-alone family planning clinics, particularly in rural communities, may not be in “close physical proximity” to other primary health providers, and therefore may not qualify for funding. Excluding these specialty clinics could make it more difficult for women in these underserved areas to access the full range of family planning services.

At the same time, the rule could open funding to programs that previously were deemed ineligible under current regulations, such as so-called “crisis pregnancy centers.” These fake women’s health centers prey on women at vulnerable moments in their lives by pushing false, incomplete or inaccurate medical information, often from untrained individuals posing as medical professionals. Together, these changes would severely reduce access to timely and affordable reproductive health care.

**7. The proposed rule would harm people in the LGBTQ community who already encounter significant barriers to obtaining care that meets their needs.**

The impact of the proposed rule would be particularly detrimental to LGBTQ individuals, especially LGBTQ people of color, who already struggle to access vital health services. Discrimination and stigma against the LGBTQ community remain pervasive and continue to impede LGBTQ individuals from accessing health care. Transgender people are more likely to live in poverty and less likely to have health insurance than the general population.<sup>25 26</sup> Many in the LGBTQ community -- including cisgender women, transgender men, intersex and gender-nonconforming people -- need affordable access to birth control to prevent pregnancy, regulate menstruation and treat such medical conditions as fibroids and endometriosis. The proposed rule would prevent LGBTQ individuals from accessing specialty services from Title X providers that meet their health needs. For example, cutting people off from care at Planned Parenthood could restrict transgender individuals from receiving quality, compassionate, and affordable

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<sup>25</sup> Kates, J., Ranji, U., Salganicoff, A., & Dawson, L. (2018). *Health and Access to Care and Coverage for Lesbian, Gay, Bisexual, and Transgender (LGBT) Individuals in the U.S.* Retrieved from <https://www.kff.org/report-section/health-and-access-to-care-and-coverage-lgbt-individuals-in-the-us-health-challenges/>

<sup>26</sup> Kates, J., Ranji, U., Salganicoff, A., & Dawson, L. (2018). *Health and Access to Care and Coverage for Lesbian, Gay, Bisexual, and Transgender (LGBT) Individuals in the U.S.* Retrieved from <https://www.kff.org/report-section/health-and-access-to-care-and-coverage-lgbt-individuals-in-the-us-health-challenges/>

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transgender-specific care. Planned Parenthood offers hormone replacement therapy at over 100 of its health centers across 17 states, making it one of the largest providers of transition-related care in the United States.<sup>27</sup>

#### **8. The proposed rule would worsen existing health disparities, leaving communities that already experience worse health outcomes with 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, affordable reproductive and sexual health care services. Because of systemic inequities, Title X serves a racially and ethnically diverse patient base, with women of color comprising a large proportion of the Title X population. Of the four million family planning patients served in 2016, 21 percent identified as Black or African American and 32 percent identified as Hispanic or Latino (including both Latinos who identify as white and those who identify as people of color).<sup>28</sup> This proposed rule will deny people who already face health disparities access to the best possible care through experienced providers and to all methods of contraception.

### **Conclusion**

The proposed rule would seriously undermine the Title X program by interfering with the doctor-patient relationship, denying comprehensive medical information to patients, violating patient confidentiality and imposing costly and unnecessary burdens on existing high-quality family planning clinics. As the administration continues to sabotage coverage expansions made possible by the Affordable Care Act and more women become uninsured, the quality and scope of Title X providers will be even more essential to women. The proposed rule would exacerbate existing health disparities by denying comprehensive, affordable care to those patients who most need it – low-income women, women of color, young women and LGBTQ people. For all of these reasons, HCFANY calls on the administration to withdraw the proposed rule in its entirety.

Respectfully submitted,

Ann Danforth  
Senior State Advocacy Manager  
Raising Women's Voices-New York, Health Care For All New York Steering Committee Member

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<sup>27</sup> Branstetter, G. (2018, May 25). *Why an Attack on Planned Parenthood is an Attack on Transgender People*. Medium. Retrieved July 13, 2018 from <https://medium.com/transequalitynow/why-an-attack-on-planned-parenthood-is-an-attack-on-transgender-people-385125994a47>

<sup>28</sup> Office of Population Affairs, RTI International. (2017). *Family Planning Annual Report: 2016 National Summary*. Retrieved from <https://www.hhs.gov/opa/sites/default/files/title-x-fpar-2016-national.pdf>