



The American College of
Obstetricians and Gynecologists
WOMEN'S HEALTH CARE PHYSICIANS

July 31, 2018

The Honorable Alex Azar
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Re: HHS-OS-2018-0008; Compliance with Statutory Program Integrity Requirements

Dear Secretary Azar:

On behalf of the Colorado Section of the American College of Obstetricians and Gynecologists (ACOG), we write in opposition to the Proposed Rule,¹ which, if allowed to go into effect, would fundamentally alter the Title X Family Planning Program (Title X) setting back nearly 50 years of progress in public health, from which our state has benefitted.

Colorado ACOG advocates for policies that ensure access to health care for all women, including low-income women, throughout their lives. We must ensure all women in our state have unfettered access to a full array of clinical services without costly delays or other barriers.

The Proposed Rule runs counter to these principles. In our state, it would undermine the patient-provider relationship, jeopardize access to family planning and preventive health care, threaten the progress made over several decades in lowering teen and unintended pregnancy rates, and put at risk access to high-quality health care. Therefore, and for the following reasons, Colorado ACOG calls for the Proposed Rule's immediate and complete withdrawal.

I. The Proposed Rule would undermine the critical role Title X plays in Colorado's public health safety net.

Title X is the only federal grant program dedicated exclusively to providing low-income patients with essential family planning and preventive health services and information. As health-care providers, we know this program is vital to improving the health and lives of women, girls and families in our state.

For many patients, a Title X service site is their primary—or even only—source of care, offering basic preventive services that are fundamental to their health and well-being. In 2016, our state's Title X-funded sites delivered essential health care to 49,163 patients.² Additionally, our teen pregnancy rate

¹ HHS-OS-2018-0008, "Compliance with Statutory Program Integrity Requirements" (Proposed Rule), published in the Federal Register on June 1, 2018 by the Department of Health and Human Services (HHS).

² National Family Planning and Reproductive Health Association, "The Title X Family Planning Program in Colorado." Available at <https://www.nationalfamilyplanning.org/file/impact-maps-2017/CO.pdf>. Retrieved July 25, 2018.

was reduced by 64 percent³, a public health victory due in large part to the good work of the Title X program.

Title X does not only improve the lives of women and their families and enable them to achieve greater educational, financial, and professional success and stability. It also saves taxpayer dollars. Taxpayers save an estimated \$7.09 for every dollar invested in the Title X program.⁴

Undermining Title X services, as this rule would, will harm some of Colorado's most vulnerable citizens, increasing rates of unplanned pregnancy and other adverse reproductive health outcomes. These are the women who are already struggling to make ends meet and have the least resources and the biggest barriers to health care.

II. The Proposed Rule would interfere with the patient-provider relationship and restrict the information available to patients.

The Proposed Rule limits information available to women.

- The Proposed Rule removes the requirement that providers offer the opportunity for pregnant women to receive nondirective counseling and information about their full range of pregnancy options. It would permit providers to withhold information from patients and allow providers to give counseling, information, and referrals for services that the patient has clearly stated she does not wish to receive.
- Further, the requirements surrounding what information *is* permissible to be shared during nondirective counseling are vague and confusing.⁵ Without additional guidance, grantees may interpret this language as a complete prohibition on any conversation with their patients that references abortion.

The Proposed Rule dictates how physicians treat their patients and denies the ability of physicians to refer for abortion care.

- Title X funds have never been used for abortion. However, the Proposed Rule further restricts access to abortion care outside of the Title X program. Under the Proposed Rule, when a patient who is currently pregnant "clearly states that she has already decided to have an abortion," a physician is permitted to share a list of "licensed, qualified, comprehensive health service providers (some, but not all, of which also provide abortion, in addition to comprehensive prenatal care)"⁶ and states that "The list shall not identify the providers who perform abortion as such."⁷ This would restrict the ability to provide clear, direct information to patients, and actively requires physicians to withhold full and accurate information.
- The requirement that the list of referral providers be restricted only to those who provide comprehensive prenatal care would further limit the care options offered to patients by excluding physicians who specialize in the provision of abortion and contraception.

³ Power to Decide, "Colorado Data." Available at <https://powertodecide.org/what-we-do/information/national-state-data/colorado>. Retrieved July 25, 2018.

⁴ Frost JJ et al., Return on investment: a fuller assessment of the benefits and cost savings of the US publicly funded family planning program, *Milbank Quarterly*, 92(4):696–749.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4266172/>

⁵ Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25530.

⁶ Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25531.

⁷ Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25531.

- These restrictions on counseling and referrals would violate the patient-provider relationship, undermine the quality of care provided to patients, and may even put providers at increased risk of medical liability. They should not be implemented.

III. The Proposed Rule undermines access to evidence-based family planning methods.

The Proposed Rule lowers the standards for what family planning services must be offered.

- The Proposed Rule removes the requirement that methods of family planning be “medically approved,” instead placing increased emphasis on the provision of natural family planning and “other fertility-awareness based methods.”⁸ Limiting access to the full range of FDA-approved contraceptive methods would dilute long-standing Title X program requirements, lowering the standards governing the services that must be offered.
- ACOG believes women must have unhindered access to the information, education, and health services, including the full range of contraceptive methods, in order to make the best decision for herself and her family.⁹

The Proposed Rule permits Title X projects to refuse to provide the broad range of contraceptive methods that have been a core part of the program since its inception.

- The Proposed Rule encourages the inclusion of more providers within a Title X project that only offer a single method or very limited methods. This puts at risk access to the most effective – and often most desired and expensive – forms of contraception, such as long-acting reversible contraception (LARC).¹⁰

The Proposed Rule appears to give preference to Title X projects that provide only limited contraception options, risking access to comprehensive contraceptive care for large parts of the traditional Title X population.

- By lowering the threshold for participation in the Title X program, we are concerned that HHS will prioritize organizations with little or no experience providing sexual and reproductive health care.

IV. The Proposed Rule creates substantial burdens on qualified providers and puts at risk access to quality family planning services for low-income women and adolescents.

Eliminating specialized reproductive health-focused providers will result in a significant gap in access that the health care system is not equipped to handle.

- The Proposed Rule seeks to exclude qualified health providers like Planned Parenthood from the Title X program, putting at risk access to critical primary and preventive care services for more than 40 percent—nearly two million—Title X patients.¹¹ Politicians have no role in picking and choosing among qualified providers.

⁸ Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25530.

⁹ Access to contraception. Committee Opinion No. 615. American College of Obstetricians and Gynecologists. *Obstet Gynecol* 2015;125:250–5.

¹⁰ Secura G et al., The Contraceptive CHOICE Project: Reducing Barriers to Long-Acting Reversible Contraception. *Am J Obstet Gynecol.* 2010 Aug; 203(2): 115.e1–115.e7. <http://doi.org/10.1016/j.ajog.2010.04.017>

¹¹ Frost J, Frohwirth L, Blades N, Zolna M, Douglas-Hall, A, Bearak, J. Publicly Funded Contraceptive Services at U.S. Clinics, 2015. Guttmacher Institute. April 2017. Available at https://www.guttmacher.org/sites/default/files/report_pdf/publicly_funded_contraceptive_services_2015_3.pdf

- Experience shows that when qualified providers are excluded from publicly funded programs serving low-income patients, other providers are unable to adequately fill the gap, creating barriers to care.¹²
- We are also concerned by the requirement that grantees provide comprehensive primary care on site. This is outside the scope of the Title X program and will further limit eligible entities, cutting specialized reproductive health providers from the program and excluding older ob-gyns who have retired their obstetric practice but continue to provide gynecologic care. According to ACOG's 2015 Survey on Professional Liability, the average age at which surveyed physicians stopped practicing obstetrics was 48 years, which is considered the near-midpoint of a physician's career.¹³

V. The Proposed Rule undermines confidentiality protections for minors.

- ACOG recommends that adolescents receive confidential, comprehensive contraceptive care and access to contraceptive methods without mandated parental notification or consent.¹⁴ Without these protections, adolescents, especially those without adult support systems, may be more likely to delay or not receive needed, sometimes lifesaving care.

VI. The Proposed Rule puts at risk low-income patients' access to Title X services by expanding eligibility for services.

- The Proposed Rule redefines "low-income family" to include women whose employer-based health insurance coverage does not cover contraception due to the employer's religious or moral objections.^{15,16}
- Increasing the number of women who qualify for Title X-funded services, without providing any additional funding or support to ensure the program can support this patient increase, would result in even fewer resources to serve low-income patients.

Policy decisions about public health must be firmly rooted in science, and increase access to safe, effective and timely care. The Proposed Rule would interfere with the patient-physician relationship, exacerbate disparities for low-income and minority women, men, and adolescents, and harm patient health. We call for the Proposed Rule's immediate and complete withdrawal.

We also respectfully ask that you give full consideration to the extensive comments submitted on behalf of ob-gyns nationwide by the American College of Obstetricians and Gynecologists, which the Colorado Section supports.

¹² Stevenson AJ, Flores-Vazquez IM, Allgeyer RL, Schenkkan P, Potter JE. Effect of removal of Planned Parenthood from the Texas Women's Health Program. *N Engl J Med*. 2016 Mar 3;374(9):853-60. DOI: 10.1056/NEJMsa1511902.

¹³ Carpentieri AM, Lumalcuri JL, Shaw J, Joseph GF. Overview of the 2015 American Congress of Obstetricians and Gynecologists' Survey on Professional Liability. American College of Obstetricians and Gynecologists. Washington, DC: American College of Obstetricians and Gynecologists; 2015. Available at <https://www.acog.org/-/media/Departments/Professional-Liability/2015PLSurveyNationalSummary11315.pdf?dmc=1&ts=20180718T1957354993>.

¹⁴ Access to contraception. Committee Opinion No. 615. American College of Obstetricians and Gynecologists. *Obstet Gynecol* 2015;125:250-5.

¹⁵ Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25508.

¹⁶ Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. at 25530.

Sincerely,

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