



**National Association of Social Workers**

**Comments on:**

**Proposed Rule for Compliance with Statutory Program Integrity Requirements**

July 31, 2018

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 Deputy Assistant Secretary Foley:

The National Association of Social Workers (NASW) is submitting its comments on behalf of more than 120,000 professional social workers across the United States 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.<sup>1</sup> The proposed rule would significantly and detrimentally alter 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.

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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).

According to the NASW (2017) *Code of Ethics*, “social workers respect and promote the right of patients/clients to self-determination and assist patients/clients in their efforts to identify and clarify their goals” (p.5). Self-determination related to reproductive health means that without government interference or reproductive coercion by an intimate partner, friend, family member, or professional, people need to make their own decisions about sexual activity and reproduction.

Therefore, our comments are meant to express NASW’s vehement opposition to this proposed rule. Specifically, the proposed rule would interfere with the doctor-patient relationship and deny Title X patients information they need to stay healthy. Secondly, it is clearly designed to make it impossible for reproductive health-focused providers, like Planned Parenthood health centers, to continue to serve people through the program. Equally important – especially to NASW- the proposed rule would undermine Title X’s goals of providing comprehensive reproductive health services to people with low incomes. Similarly, the rule would exacerbate existing racial and ethnic health disparities. The combined result of these changes would be disastrous for the public health of the people in the United States.

**I. The Proposed Rule Interferes with the doctor-patient relationship and deny patients information that they need to make the best decisions for themselves and their families.**

The proposed rule would ban Title X providers from giving women full information about their health care options. 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.<sup>2</sup> That requirement would be replaced with a complete ban on health care providers giving abortion referrals.<sup>3</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 undermines the patient-provider relationship.

Not only does the proposal conflict with NASW’s Code of Ethics, but it directly 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.<sup>4</sup> Similarly, the American Medical Association states in its Code of Medical Ethics that providers “present relevant information accurately and sensitively, in keeping with the patient’s preferences”<sup>5</sup> and that “withholding information without the patient’s knowledge or consent is

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<sup>2</sup> 42 C.F.R. § 59.5(a)(5).

<sup>3</sup> Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25,531.

<sup>4</sup> Kinsey Hasstedt, *Unbiased Information on and Referral for All Pregnancy Options Are Essential to Informed Consent in Reproductive Health Care*, Guttmacher Institute (Jan. 2018), available at <https://www.guttmacher.org/gpr/2018/01/unbiased-information-and-referral-all-pregnancy-options-are-essential-informed-consent>.

<sup>5</sup> American Medical Association, Code of Medical Ethics Opinion 2.1.1, Informed Consent, available at <https://www.ama-assn.org/delivering-care/informed-consent>.

ethically unacceptable.”<sup>6</sup> 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.” That is why both the American Medical Association<sup>7</sup> and the American Nurses Association,<sup>8</sup> among others, have publicly announced their strong objection to the gag rule.

In short, this rule conflicts with a fundamental principle that guides health care providers every day: patients’ needs are paramount, and providers have an ethical obligation to put the needs of patients first. Therefore, the prohibition on abortion referrals 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, thereby potentially leaving their patients without access to care at all.

In addition to the prohibition on abortion referral, the proposed rule also eliminates longstanding requirements guaranteeing patients in Title X information about all of their health care options. Title X regulations currently direct Title X projects to “[o]ffer pregnant women the opportunity to be provided information and counseling” on all pregnancy options.<sup>9</sup> All such counseling must be neutral, factual, and nondirective.<sup>10</sup> The proposed rule would eliminate the options counseling requirement in its entirety.

This is problematic for at least two reasons. First, the proposed rule contemplates that some providers would not provide this counseling for asserted religious or moral reasons, but it does not contain any requirement that those providers advise patients of their refusal. Therefore, patients will not even know if they are getting 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. On the one hand, the preamble includes language stating that doctors (and only doctors) could continue to offer nondirective counseling on abortion as a health care option, the operative language of the rule is completely silent on the subject. Particularly, combined with the prohibition on referrals, providers may not understand whether, or who, can provide abortion counseling to patients that request it.

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<sup>6</sup> American Medical Association, Code of Medicaid Ethics Opinion 2.1.3, Withholding Information from Patients, available at <https://www.ama-assn.org/delivering-care/withholding-information-patients>.

<sup>7</sup> American Medical Association, AMA Response to Administration's Attack on Family Planning Services (May 23, 2018), available at <https://www.ama-assn.org/ama-response-administrations-attack-family-planning-services>.

<sup>8</sup> American Nurses Association, ANA Condemns Title X Funding Cuts Proposed by the Trump Administration (May 22, 2018), available at <https://www.nursingworld.org/news/news-releases/2018/ANA-condemns-title-x-funding-cuts--proposed-by-the-trump-administration/>.

<sup>9</sup> 42 C.F.R. § 59.5(a)(5).

<sup>10</sup> *Id.*

**II. The Proposed Rule is clearly designed to make it impossible for specialized reproductive health providers to continue to participate in the Title X program, leaving thousands of people in many areas, particularly rural with nowhere to go for critical care.**

The proposed rule is clearly designed to make it impossible for reproductive health-focused providers, like Planned Parenthood health centers, to continue to serve patients in Title X. First, 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.<sup>11</sup> These provisions completely ignore that specialized providers have for decades played an important -- and irreplaceable role -- in the Title X program.

The 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.<sup>12</sup> In its analysis, the agency would be required to consider at least four factors:

1. The existence of separate, accurate accounting records;
2. The degree of separation from facilities (e.g., treatment, consultation, examination and waiting rooms, office entrances and exits, shared phone numbers, email addresses, educational services, and websites) in which prohibited activities occur and the extent of such prohibited activities;
3. The existence of separate personnel, electronic or paper-based health care records, and workstations; and
4. The extent to which signs and other forms of identification of the Title X project are present, and signs and material referencing or promoting abortion are absent.<sup>13</sup>

These factors reverse the Department's longstanding interpretation 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."<sup>14</sup> A notice issued by the Department further made clear that Title X service sites could use common waiting rooms, staff, and filing systems for abortion-related activities and Title X project activities.<sup>15</sup> The

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<sup>11</sup> Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25,532.

<sup>12</sup> Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25,532.

<sup>13</sup> *Id.*

<sup>14</sup> Standards of Compliance for Abortion Related Services in Family Planning Services Projects, 65 Fed. Reg. 41,270, 41,276 (Jul. 3, 2000).

<sup>15</sup> Provision of Abortion-Related Services in Family Planning Projects, 65 Fed. Reg. 41,281, 41,282 (Jul. 3, 2000).

Department fails to justify why this reversal is warranted. Moreover, these factors go even further than a 1988 rule issued by the Reagan administration. Even so, the Department states that the standard still may not go far enough in separating Title X services from abortion.

These provisions are clearly designed to remake the Title X network by pushing out reproductive health-focused providers out and bringing in providers that do not focus on reproductive health care. For example, Planned Parenthood plays a critical and outsized role in the Title X program. Nationwide, Planned Parenthood health centers serve more than 40 percent of Title X patients. Eliminating Planned Parenthood from the Title X program would leave many people without access to care. All evidence shows that other providers in the states, such as federally qualified health centers, would have to [double/triple] the number of contraceptive patients that they serve in order to fill the gap. Therefore, providers that have even less experience and capacity to provide a broad range of family planning care, will likely be even less able to fill this gap.

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>16</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>17</sup>

### **III. The Proposed Rule would radically change the Title X program, adversely impacting the health of the people in the United States.**

The proposed rule also seems to threaten Title X program protections that are designed to ensure access to the full range of contraceptive methods. Currently, Title X projects must, by statute and regulation, offer a broad range of acceptable and effective family planning methods and services.<sup>18</sup> Access to “the full range of FDA-approved contraceptive methods” has also 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

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<sup>16</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>17</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>18</sup> 42 U.S.C. § 300(a); 42 C.F.R. § 59.5(a)(1). While the entire project is held to the “broad range” standard under the current rules, each participating entity is not. So “[i]f an organization offers only a single method of family planning, it may participate as part of a project as long as the entire project offers a broad range of family planning services.”

authoritative clinical guidelines for quality care.<sup>19</sup> While HHS cannot alter the statutory requirement that Title X projects offer “a broad range of acceptable and effective family planning methods and services,”<sup>20</sup> the proposed rule goes out of its way to emphasize that “projects are not required to provide every acceptable and effective family planning method or service,” giving Title X projects authority to exclude methods or services of their choosing.<sup>21</sup> Moreover, the proposed rule would remove the requirement that family planning methods available from Title X projects must be “medically approved.”<sup>22</sup>

Collectively, these changes appear intended to allow Title X projects to deny patients access to the full complement of effective contraceptive methods. We are very concerned that this lowering of the threshold for participation in Title X will result in organizations with little or no experience providing sexual and reproductive health care participating in the program, which in turn would inevitably 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. Indeed, this was the very purpose of the Title X program in the first place. At the time, Congress stated that Title X’s purpose was “making *comprehensive* voluntary family planning services readily available to all persons desiring such services.”<sup>23</sup>

The United States is currently experiencing a 30-year low in unintended pregnancy and an all-time low in teen pregnancy. These results have been achieved in large part due to access to affordable contraception - in particular the most effective methods of contraception - including through programs like Title X. This rule threatens to turn back the progress that has been made.

The social work profession supports improvements in access to a full range of reproductive health services, including all methods of contraception with special interest in addressing underserved groups. Social workers seek to improve the quality of reproductive health care and services by identifying barriers to health care access, increasing the availability of health coverage, and advocating to improving socioeconomic conditions, thereby furthering healthy outcomes. On the other hand, the proposed rule changes to Title X in denying people access to the most effective methods of contraception is more likely to increase unintended pregnancy, increase infant mortality rates and undo preventative measures towards reducing the spread of sexually transmitted diseases. It is unclear if HHS has fully evaluated the public health and economic effects of the proposed changes, but the ramifications of these proposed changes to Title X will be everlasting, if enacted.

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<sup>19</sup> 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), available at <https://www.cdc.gov/mmwr/pdf/rr/rr6304.pdf>.

<sup>20</sup> cite.

<sup>21</sup> Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25,530.

<sup>22</sup> *Id.* at 25,530.

<sup>23</sup> Pub. L. No. 91-572, § 2(1); see S. Rep. No. 91-1004, at 2 (1970) (emphasis added)..

**IV. 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 sexually 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. This rule will deny people who already face health disparities access to the best possible care through experienced providers and to all methods of contraception.

The ethnic and racial groups currently experiencing poorer health status continue to significantly grow in proportion to the total U.S. population. Hence, the future health of America will be increasingly influenced by the success or failure of improving the health of the poor, particularly African American, Hispanic, Asian, Pacific Islander, American Indian and Alaska Native women.

In short, the proposed rule would gravely harm the people that we serve and would exacerbate existing public health issues and health disparities. NASW strongly urges you to not finalize the proposed rule.

**Thank you**



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