



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

July 31, 2018

The Honorable Alex M. Azar II
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
Attention: Family Planning
U.S. Department of Health and Human
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Washington, DC 20201

SUBMITTED VIA ELECTRONIC TRANSMISSION

Re: Docket No. HHS–OS–2018–0008, Compliance With Statutory Program Integrity Requirements

Dear Secretary Azar, Senior Advisor Huber, and Deputy Assistant Secretary Foley:

I respectfully submit the following comments in response to the U.S. Department of Health and Human Services' (the Department's) proposed rule, Compliance with Statutory Program Integrity Requirements, published in the Federal Register on June 1, 2018. As Comptroller of New York City, it is my duty to safeguard the fiscal health of the City; root out fraud, waste, and abuse in government; and promote the economic security and wellbeing of all New Yorkers. That is why I write today in strong opposition to the proposed rule.

Title X supports patients in every borough of our city. Based on my office's analysis of public reports and data obtained from the New York State Department of Health and Public Health



Solutions, the two direct Title X grantees in New York, nearly 150,000 New York City residents receive care supported by Title X on average each year.¹ That makes the population served through Title X in New York City larger than the populations served in 46 states and the District of Columbia; only California, Pennsylvania and Texas reach more.² As you know, Title X is the only dedicated source of federal funding for family planning services, and the program plays an outsized role in the provision of care to New Yorkers with few resources and health care options. Patients served here are disproportionately those with low incomes and who lack health insurance. Many of the uninsured women who utilize services at Title X-funded clinics consider these providers to be their primary sources of health care and would go without needed medical care if not for them.³

The proposed rule, if finalized, would harm tens of thousands of these New Yorkers, and the providers who serve them. In addition to undermining the doctor-patient relationship, the new regulations would exclude longstanding, trusted providers from the program and make it far more challenging for low-income New Yorkers, disproportionately women of color, to access comprehensive reproductive health services. Below I expand on three specific areas that I believe will have especially devastating consequences and that I urge the Department to reexamine before promulgating a final rule: (1) the prohibition on referrals for abortion or presenting abortion as a health care option; (2) the requirement that Title X activities and abortion-related services be physically separated; and (3) the weakening of program requirements, specifically that providers do not have to provide access to a broad range of medically-proven contraceptive methods.

1. Prohibiting referrals for abortion undermines a patient's right to self-determination and would decrease Title X patients' access to quality care.

The proposed rule would require that Title X grantees and subgrantees “[n]ot provide, promote, refer for, support, or present abortion as a method of family planning.”⁴ Only if a woman who has stated that she has decided to have an abortion requests a referral to a provider who performs abortions may a doctor give her a list of such providers. However, the operative language of the rule explicitly mandates that this list include providers who do *not* perform abortions and that the list not distinguish between the two types. Leaving women to guess where they can access the

¹ New York City Comptroller Scott M. Stringer, *Title X Funding in NYC: A Critical Resource That Must Be Protected* (August 2017), https://comptroller.nyc.gov/wp-content/uploads/documents/Title_X_Funding_in_NYC.pdf.

² Office of Population Affairs, U.S. Department of Health and Human Services, *Title X Family Planning Annual Report 2016 National Summary* (August 2017), <https://www.hhs.gov/opa/sites/default/files/title-x-fpar-2016-national.pdf>.

³ Guttmacher Institute, *U.S. Women's Use of Sexual and Reproductive Health Services: Trends, Sources of Care and Factors Associated with Use, 1995-2010* (May 2013), https://www.guttmacher.org/sites/default/files/report_pdf/sources-of-care-2013.pdf; National Family Planning & Reproductive Health Association, “Title X” (February 2017), <https://www.nationalfamilyplanning.org/file/Title-X-101-February-2017-final.pdf>.

⁴ Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25530.

health care services they are actively seeking, as described in the examples given by the Department, is cruel, deliberately misleading, and unethical.

This all-encompassing prohibition on referrals for abortion services and the elimination of the requirement that patients be counseled on all pregnancy options undermine the responsibility that doctors have to provide complete and accurate medical information to patients. Ironically, the Department contends that the rule would foster more open and honest communication between doctors and patients, facilitating better care overall.⁵ Such a gag order, by definition, would do the exact opposite. Indeed, the American Medical Association (AMA) and the American Nurses Association (ANA) have both strongly condemned this radical change to the program.⁶ AMA's Code of Medical Ethics states that "withholding information without the patient's knowledge or consent is ethically unacceptable."⁷ Likewise, ANA's Code of Ethics for Nurses states that "[p]atients have the moral and legal right to determine what will be done with and to their own person" and "to be given accurate, complete, and understandable information in a manner that facilitates an informed decision."⁸ Under no circumstance can a patient make an informed decision about her health without the opportunity to weigh all options.

That the Department would seek to promote—and fund—this deception is cause for alarm enough, but the prohibition is also medically unsafe, posing a threat to the health of New Yorkers served by Title X. The decision to terminate a pregnancy should be left to individual patients and their doctors, but it is worth stating here that this decision can be the result of extreme circumstances, wherein a fetus is not viable and/or a woman's health or life is at risk. Even so, the preamble to the rule makes clear that providers would not be allowed to "determine the appropriateness of abortion" in any case.⁹ This could result in delayed access to care, which could do lasting harm to women's health and safety. If the Department truly aims to enable those served by Title X to have the freedom to control the number and spacing of their children, as claimed, funding cannot be targeted to providers who do not present safe, legal abortion as a health care option. The prohibition should be omitted from the final rule, as should the proposed expansion of reporting and compliance requirements to referral agencies that provide information to patients served through Title X.

⁵ Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25526.

⁶ American Medical Association, "AMA Response to Administration's Attack on Family Planning Services" (May 23, 2018), <https://www.ama-assn.org/ama-response-administrations-attack-family-planning-services>. American Nurses Association, "ANA Condemns Title X Funding Cuts Proposed by the Trump Administration" (May 22, 2018), <https://www.nursingworld.org/news/news-releases/2018/ANA-condemns-title-x-funding-cuts--proposed-by-the-trump-administration/>.

⁷ American Medical Association, "Withholding Information from Patients, Code of Medical Ethics Opinion 2.1.3," <https://www.ama-assn.org/delivering-care/withholding-information-patients>.

⁸ American Nurses Association, "Code of Ethics for Nurses With Interpretive Statements," <https://www.nursingworld.org/practice-policy/nursing-excellence/ethics/code-of-ethics-for-nurses/coe-view-only/>.

⁹ Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25518.

2. Separation requirements would divert resources away from trusted reproductive health care providers and create needless bureaucracy.

The requirement that Title X services be not only financially but also physically separated from “abortion-related operations” is deeply troubling.¹⁰ In New York City, such a requirement would exclude current Title X subgrantees who are trusted providers of reproductive health care in their communities, including Planned Parenthood of New York City. Physicians at Planned Parenthood are dedicated to providing comprehensive and compassionate health care to patients, regardless of income. Shifting funding away from such providers, who are a lifeline to thousands of New Yorkers, would only disrupt and limit access to needed services, not bolster compliance.

The Department seeks to impose a test on Title X projects that goes beyond any imposed by previous administrations and even suggests that organizational separation could be added in the final rule. Per the preamble, the Department states that it “intend[s] to take a case-by-case approach in order to ensure program integrity, with sensitivity to individual projects and providers, and without imposing unnecessary requirements.”¹¹ With nearly 4,000 Title X service sites across the country, including more than 50 in New York City, such an approach would be highly resource- and time-intensive.¹² Given that the Department does not cite a single concrete instance of noncompliance that justifies maintenance of physical and financial separation, it is hard to see how these requirements are necessary.

The requirements would be costly, too. The total cost of the reporting requirements set forth in the rule is estimated at nearly \$6 million, which is nearly the total amount of Title X funds granted to New York City annually.¹³ The Department estimates the cost of coming into compliance with the physical separation requirement at over \$24 million. A rough estimate of the cost that could be borne in New York City, then, based on the proportion of service sites located here, is \$300,000. In addition to not justifying why “bookkeeping separation of Title X funds... is not sufficient,” the Department fails to explain how this would not be prohibitive or to offer a thoughtful, provider- and patient-informed evaluation of the anticipated impact on access to care.¹⁴

Title X funding is limited, as are resources dedicated to reproductive health care generally. Taxpayer dollars should be spent *expanding* access to care, not restricting it. For this reason, and

¹⁰ Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25519.

¹¹ Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25519.

¹² Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25523; New York City Comptroller Scott M. Stringer, *Title X Funding in NYC: A Critical Resource That Must Be Protected* (August 2017), https://comptroller.nyc.gov/wp-content/uploads/documents/Title_X_Funding_in_NYC.pdf.

¹³ New York City Comptroller Scott M. Stringer, *Title X Funding in NYC: A Critical Resource That Must Be Protected* (August 2017), https://comptroller.nyc.gov/wp-content/uploads/documents/Title_X_Funding_in_NYC.pdf.

¹⁴ Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25532.

those noted above, I urge you to omit the proposed physical separation requirement from the final rule. Organizational separation should not be added.

3. Loosening of required family planning methods would decrease access to effective contraception and embolden fake clinics.

Although Title X of the Public Health Service Act requires that grantees “offer a broad range of acceptable and effective family planning methods and services,” the Department proposes in this rule to make grants available to entities offering only a single method.¹⁵ This raises the question of whether the Department would be failing to meet its statutory obligation in implementing Title X. Moreover, the proposed rule removes the requirement that family planning methods and services offered by Title X projects be “medically approved.”¹⁶ This change seems to open the door to funding applicants who do not provide medical services, such as so-called crisis pregnancy centers. These fake clinics purport to offer medical care but in fact provide willfully incomplete and misleading counseling to pregnant women. For years in New York City, we have heard from women who have visited these types of organizations, mistaking them for women’s health clinics, and have subsequently been denied needed services.¹⁷ Not a dime of Title X funding should be spent on such coercive practices, but the rule leaves this possibility wide open.

All New Yorkers, regardless of income, should have access to the full range of proven contraceptive methods. Period. Only then can patients make informed decisions about their health. The final rule should therefore reinstate language specifying that services be medically approved and remove language allowing programs to offer only one method of family planning.

Beyond these concerns, which have been echoed by numerous medical associations and professionals since the publication of the proposed rule, the simple truth is that the Department has not been able to articulate any actual benefits to patients served through Title X. The Department does note that one advantage of the new regulations would be increased competition for funding, as a number of entities would be newly eligible and interested in applying for Title X funds.¹⁸ However, I believe the radical changes to Title X enumerated in the proposed rule will only change the types of entities applying for these funds—namely, organizations that have no interest in fulfilling the statutory mandate of the program to provide a broad range of effective family planning services.

¹⁵ Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25502; 25530.

¹⁶ Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25515.

¹⁷ The New York City Council, Committee Report 3/1/11, Hearing Testimony 3/1/11, Hearing Transcript 3/1/11, and other materials, <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=777861&GUID=F7F0B7D7-2FE7-456D-A7A7-1633C9880D92&Options=ID|Text|&Search=contraception>.

¹⁸ Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25525.

A thorough review of this proposed rule, particularly in light of the long legislative and regulatory history of the Title X program, suggests that this Department of Health and Human Services is far more concerned with limiting access to health care services than it is about health. As the chief financial officer of the largest city in the country, I have a deep appreciation for work to enhance compliance and integrity in the use of taxpayer funds. This rule, however, has co-opted the language of compliance and attempted to employ it as a tool to restrict access to comprehensive, safe, and accurate medical information—information that could be lifesaving and that every single person deserves. On behalf of the nearly 150,000 New Yorkers served by Title X each year, and the thousands more New Yorkers who love and depend on them, I urge the Department to reverse course.

Thank you for your attention and responses to the matters addressed here.

Sincerely,



Scott M. Stringer
New York City Comptroller