



May 17, 2021

The Honorable Xavier Becerra
Secretary of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Re: Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services [CMS-5528-IFC]

Dear Secretary Becerra,

On behalf of the American College of Physicians, I am pleased to share our comments on the Department of Health and Human Services' (HHS) proposed rule on Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services through the Title X program. The College is the largest medical specialty organization and the second-largest physician group in the United States. ACP members include 163,000 internal medicine physicians (internists), related subspecialists, and medical students. Internal medicine physicians are specialists who apply scientific knowledge and clinical expertise to the diagnosis, treatment, and compassionate care of adults across the spectrum from health to complex illness.

The College applauds the Administration's swift efforts to rescind harmful requirements that were imposed on family planning clinics that receive federal funding through the Title X program that interfere with the patient-physician relationship and reduce access to medically appropriate care. As funding for family planning services and access to comprehensive reproductive health care are regularly disputed by state and federal legislatures, resulting in uncertainties and potential disparities around access to reproductive care, bold policy actions are needed to restore and stabilize this access. **ACP strongly urges HHS to promptly finalize new Title X regulations that ensure unencumbered access to affordable, comprehensive, evidence-based reproductive health care; eliminates medically unnecessary restrictions and inappropriate political interference in the patient-physician relationship; and protects funding for and ensures consistent treatment of qualified service sites.**

In 1970, Congress enacted the Title X statute that authorized the HHS Secretary to make grants to public or nonprofit private entities to establish and operate "voluntary family planning projects." The earliest Title X regulations made clear that under Congress' directive, Title X

projects are required to provide “medical services related to family planning including physician’s consultation, examination, prescription, continuing supervision, laboratory examination, contraceptive supplies” and “for use of a broad range of medically approved methods of family planning.”¹ Current federal law does prohibit the use of Title X funds in programs where abortion is a method of family planning—a grantee’s abortion activities must be “separate and distinct” from the Title X project activities. In recent history, Title X-funded programs were required to provide nondirective counseling (e.g., via shared decision-making) to pregnant women on prenatal care and delivery, infant or foster care, adoption, and abortion. Pregnant individuals seeking an abortion were to be provided a referral to those services, but abortion services could not be promoted or scheduled by the Title X-funded provider. Participating programs were also required to offer a broad range of FDA (Food and Drug Administration)-approved contraceptive methods and follow U.S. Centers for Disease Control (CDC) and Office of Population Affairs (OPA) guidelines for provision of their family planning services.² Title X-funded clinics are open to all and especially provide care to the most vulnerable, those living in a nonmetropolitan area, who may be Black or Latinx, who live below the poverty level, and/or are uninsured. In 2019, 31% of Title X clients were people of color, 41% were uninsured, and 64% had incomes below poverty level.³ The Title X program funds clinics that keep families well by providing a number of preventive health services, such as patient education and counseling; breast and pelvic examinations; screenings for cervical cancer and sexually transmitted diseases.

The College has extensive policy supporting programs that provide access to essential family planning services, such as Title X, and that also addresses other issues around access to reproductive health care and women’s health.⁴ **ACP believes individuals should have sufficient access to evidence-based family planning and sexual health information and the full range of medically accepted forms of contraception.** ACP also believes in respect for the principle of patient autonomy on matters affecting patients’ individual health and reproductive decision-making rights, including types of contraceptive methods they use and whether or not to continue a pregnancy as defined by existing constitutional law. Accordingly, ACP opposes government restrictions that would erode or abrogate one’s right to continue or discontinue a pregnancy. Further, ACP opposes any legislation or regulations that limits access to comprehensive reproductive health care by putting medically unnecessary restrictions on health care professionals or facilities. This includes legislative or regulatory restrictions that would deny or result in discrimination in the awarding of federal funds to clinics that are qualified under existing federal law for the provision of evidence-based services including, but not limited to, provision of contraception, preventive health screenings, sexually transmitted infection testing and treatment, vaccines, counseling, rehabilitation, and referrals.

In 2019, [HHS implemented drastic changes](#) to the way the Title X program operated that placed operational restrictions on Title X sites. The definition of family planning services was modified to remove “medically approved” from the longstanding requirement that projects provide “a

¹ “Part 59—Grants for Family Planning Services,” 36 Federal Register 179 (September 15, 1971), p. 18465, § 59.5.

² <https://www.cdc.gov/mmwr/pdf/rr/rr6304.pdf>

³ <https://opa.hhs.gov/sites/default/files/2020-09/title-x-fpar-2019-national-summary.pdf>

⁴ <https://www.acpjournals.org/doi/10.7326/M17-3344>

broad range of acceptable and effective medically approved family planning methods,” opening the door for the support of alternative methods not approved by the FDA, such as abstinence, while also not requiring sites to provide or make referrals for a broad range of family planning methods. Grantees are no longer required to provide nondirective counselling and information regarding prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination. Comprehensive primary health services are required to be onsite, or sites must have a robust referral linkage with primary health providers who are in close physical proximity. Participating sites are prohibited from providing, promoting, referring to, supporting, or presenting abortion services to patients. Sites that engage in the provision, promotion, or referral of abortion services were required to maintain physical and financial separation from these activities in order to be eligible to receive federal funding under the Title X program. In other words, organizations offering these services must have separate accounting records; separate facilities in which activities occur (including waiting room, consultation, treatment); separate records/electronic health records (EHRs) and workstations; and separate signage and informational materials.

ACP [submitted comments rejecting the proposed rule](#) and expressing concern about the impact the changes made by the new rule would have on access to reproductive health care, particularly for minority, low-income, rural, and other underserved communities. Reproductive decision-making rights should be based on the ethical principle of respect for patient autonomy. Individuals should have access to the health care services they may need in their lifetimes, including reproductive health care and contraception. Limiting access to evidence-based medicine greatly affects a one’s ability to make their own health care choices. Reproductive care is a key component of one’s health, and limiting access can have lasting repercussions on a one’s physical and mental health, economic well-being, and social mobility. It is critically important to note that Title X is the only federal program exclusively dedicated to providing low-income and adolescent patients with essential family planning and preventive health services and information. Additionally, the College is also concerned about the inappropriate administrative burden and increased costs that the medically unnecessary physical and financial separation requirements impose on physicians and practices. In line with ACP’s “Patients Before Paperwork” initiative,⁵ the College calls on HHS to analyze the financial, time, and quality-of-care impacts these new administrative tasks will have and eliminate or streamline any that will increase costs, decrease the quality of patient care, or unnecessarily question a physician’s or clinician’s judgment.

Unfortunately, many of the College’s fears around diminished access to reproductive services under Title X have come to pass since the final rule was adopted and the changes were implemented. Between 2018 and 2019, the number of clients served by the Title X program dropped by 21% from 3,939,749 clients to 3,095,666 clients. Exacerbated by the impact of COVID-19, Title X service utilization continued to decline by 60% from 2018 numbers to 1,536,744 clients in 2020. During the same time period, roughly 26% of grantees lost their Title X funding, resulting in the loss of 1,272 clinic sites; HHS has been unable to find new grantees to replace most of this capacity. As a result, six states (HI, ME, OR, UT, VT, WA) are without any

⁵ <https://www.acpjournals.org/doi/10.7326/m16-2697>

Title X services while an additional eight states (AK, CT, IL, MA, MD, MN, NY, NH) have lost more than half of their Title X network.⁶ These reductions have had a tangible impact on reduced access to important health services beyond family planning services: 90,386 fewer Papanicolaou (Pap) tests, 188,920 fewer clinical breast exams, 276,109 fewer human immunodeficiency virus (HIV) tests, and more than one million fewer sexually transmitted infection (STI) tests occurred between 2018 and 2019.

Low-income individuals, uninsured individuals, and people of color have been particularly impacted by the Title X network disruptions induced by the program changes. One survey found that roughly 25% of women without access to preferred family planning services attributed their lack of access to costs, with uninsured women, low-income women, and women of color less likely to report use of preferred contraceptives than their counterparts.⁷ Between 2018 and 2019, 573,650 fewer clients under 100 percent of the federal poverty level (FPL); 139,801 fewer between 101-150% FPL; 65,735 fewer between 151-200% FPL; and, 30,194 fewer between 201-250% FPL received Title X services. During this same time, 128,882 fewer African Americans; 50,039 fewer Asians; 6,724 fewer American Indians/Alaska Natives; 7,218 fewer Native Hawaiians/Pacific Islanders; and, 269,569 fewer Hispanics/Latinos received Title X services.⁸

The College is pleased by the Administration’s proposal to reverse these recent changes and restore the Title X program as it existed prior to 2019. Specifically, HHS proposes eliminating the “physical and financial separation” requirement for sites that also offer abortion services, once again permitting organizations that offer co-located abortion services to participate in the Title X program and receive federal funding. The CDC and OPA Providing Quality Family Planning Services (QFP) guidelines and recommendations would be reincorporated into Title X program standards of care. Participating sites would also be required to provide, upon request, nondirective counseling and referral regarding prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination. The definition of “family planning services” offered by the program would revert back to prior standards that required them to include “a broad range of medically approved contraceptive services, including FDA-approved contraceptive services and natural family planning methods.” Those sites that do not offer a broad range services or the client’s preferred choice on-site are required to make a referral to a site that does offer that service. **ACP believes these changes will reduce unnecessary burden that is currently limiting the number of otherwise qualified grantees from participating in the program and ensure adequate access to crucial family planning services for low-income individuals, uninsured individuals, and people of color.** ACP recommends that HHS clarify that referrals from sites that do not provide a broad range of services or the client’s preferred service must be to another site that participates in the Title X program in order to ensure the client is able to afford the desired service.

⁶ <https://www.kff.org/womens-health-policy/issue-brief/key-elements-of-the-biden-administrations-proposed-title-x-regulation/>

⁷ <https://www.kff.org/womens-health-policy/issue-brief/womens-sexual-and-reproductive-health-services-key-findings-from-the-2020-kff-womens-health-survey/>

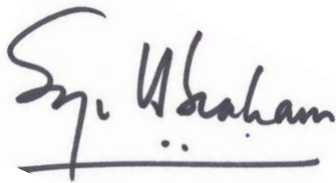
⁸ <https://opa.hhs.gov/sites/default/files/2020-09/title-x-fpar-2019-national-summary.pdf>

In addition to reinstating prior policy, HHS also proposes several new changes that go beyond the pre-2019 Title X regulations to provide more equitable family planning services. HHS proposes requiring sites provide family planning services in a manner that is “client-centered, culturally and linguistically appropriate, inclusive, trauma-informed, and ensure equitable and quality service delivery consistent with nationally recognized standards of care.” Further, in the awarding of grants under the Title X program, HHS proposes allowing the Department to consider the applicants ability to advance health equity. **ACP strongly supports public policies that center health equity and address disparities in health and health care on the basis of a person's race, ethnicity, religion, and cultural identity. The College believes that physicians and other clinicians must make it a priority to meet the cultural, informational, and linguistic needs of their patients, with support from policymakers and payers.** Efforts to support the delivery of services in a culturally appropriate and patient-centered manner are necessary for ensuring access to health care services and promoting health equity, especially given the long history of coercive care and discrimination experienced by low-income individuals and people of color.

Changes are also proposed to the program’s income verification requirement. Title X clients pay for services based on a sliding scale: those with incomes below 100% FPL receive services free of charge while those between 101-250% FPL receive discounted services based on ability to pay. Sites are required to attempt to bill third party payers for those clients who have insurance coverage. HHS proposes allowing sites to charge based on the client’s self-reported income if verifying their income is too burdensome. Additionally, HHS proposes revising billing practices to ensure that those who are eligible for discounted services (incomes under 250% FPL) and have insurance coverage are not required to pay more than those without insurance coverage after accounting for copayments and other fees. **ACP believes it is essential that individuals have access to affordable, comprehensive, nondiscriminatory public or private health care coverage that includes evidence-based care over the course of their lifespan. The College supports efforts to ensure that all people within the United States have equitable access to appropriate health care without unreasonable financial barriers.**

We appreciate the opportunity to provide comments on this proposed rule. The policy changes outlined in this proposed rule would significantly increase access to care for millions of individuals, particularly for low-income individuals, uninsured individuals, and people of color who are seeking access to contraception and reproductive health care, as well as general preventive services. Please contact Josh Serchen, Associate, Health Policy at jserchen@acponline.org if you have any questions or need any additional information.

Sincerely,

A handwritten signature in black ink that reads "George M. Abraham". The signature is written in a cursive style with a horizontal line underneath the name.

George M. Abraham, MD, MPH, FACP, FIDSA
President