

**Congress of the United States**  
**Washington, DC 20515**

May 17, 2021

Office of Population Affairs  
Office of the Assistant Secretary for Health  
US Department of Health and Human Services  
200 Independence Avenue SW  
Washington, DC 20201

**ATTN: Title X Rulemaking**

Dear Secretary Becerra:

As U.S. Representatives, we are pleased to provide comments to the US Department of Health and Human Services' (HHS) notice of proposed rulemaking (NPRM), "Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services," RIN 0937-AA11. We appreciate HHS's prompt efforts to revoke the 2019 Title X regulations. Once finalized, this proposed rule would return Title X to its proper focus on "making comprehensive voluntary family planning services readily available to all persons desiring such services."<sup>[1]</sup> As such, we urge you to finalize the proposed rule as quickly as possible.

We agree with HHS's statement in the NPRM that "the 2019 rule was a solution in search of a problem, a solution whose severe public health consequences caused much greater problems."<sup>[2]</sup> When the rule went into effect in July 2019, one-quarter of the service sites in the Title X network withdrew from the program, leaving at least 1.5 million Americans without access to Title X-supported services at the health center they relied on in 2018.<sup>[3]</sup> Thousands of health centers made an equally painful choice, attempting to comply with an unlawful, harmful rule in order to maintain some access to care in their communities.

As HHS highlights in the proposed rule, federal data bore out the damage of this rule: compared to 2018, when close to 4 million Americans received family planning and sexual health services from Title-X funded providers, 844,083 fewer patients were seen in 2019. This decrease meant that providers were able to offer 280,000 fewer cancer screenings, 1.3 million fewer sexually transmitted disease screenings, and 278,000 fewer confidential HIV tests.<sup>[4]</sup> Additionally, hundreds of thousands of people lost access to contraceptive care due to the rule.<sup>[5]</sup> The preliminary numbers for 2020, as shared in the proposed rule, are even worse –only an estimated 1.5 million people received Title X-supported services in 2020, a loss of 2.5 million people from the network in just two years.<sup>[6]</sup> Perhaps most alarmingly, six states have had no Title X funded providers for almost two years, leaving nearly 19 million people without access to these critical services in their state.<sup>[7]</sup>

The network cannot begin to recover from the harm of the 2019 rule without a return to the previous standards for the program, as you have proposed. And, given the urgency of this situation, we urge that return to happen as swiftly as possible, with an implementation period of no more than 30 days.

We recognized the severity of this crisis and sought to block the 2019 rule, including language to do so in appropriations bills that passed the House in 2019 and 2020.<sup>[8]</sup> Regrettably, Senate leadership at the time did not consider these proposals, and the rule continues to stand. We applaud the Biden administration for taking action to right this wrong. This year, we included \$50 million in supplemental funding for the Title X family planning program in the American Rescue Plan, given the critical importance of family planning access during a global pandemic.<sup>[9]</sup> HHS can make best use of these funds by quickly finalizing this NPRM and then allowing funds to flow to communities with the greatest need, especially areas of the country that now have no Title X providers.

\*\*\*\*

Our recent work builds on the bipartisan work of the Congress that enacted the Title X program in 1970 in order to make “comprehensive voluntary family planning services readily available to all persons desiring such services.”<sup>[10]</sup> Over its 50-year history, Title X has been invaluable in the provision of high-quality family planning and preventive health care to millions of individuals, most of whom are low-income and have extremely limited access to health care. For example, a 2018 study found that 60 percent of the women who received contraceptive care from Title X-funded health centers had seen no other medical provider in the previous year.<sup>[11]</sup> In 2019, 41 percent of Title X patients were uninsured, and 38 percent had Medicaid or other public health insurance.<sup>[12]</sup>

The 2019 rule drastically undermined this critical program, to the significant detriment of the public’s health. We therefore support the NPRM’s revocation of the 2019 rule and its readoption of the regulations that successfully governed the Title X program for decades, with some important modifications.

\*\*\*\*

On the whole, we are very supportive of the NPRM as written. For emphasis, we have detailed below several parts of the NPRM that are especially important, as well as a few opportunities for even greater progress toward Title X’s congressionally supported mandate to make family planning accessible to all who need it, regardless of their ability to pay.

#### *Promoting Health Equity*

We are especially pleased to see the Department’s focus on health equity in this NPRM. As evinced by our recent experience with COVID-19, people in the United States continue to have different health outcomes based on their race, ethnicity, income, ability status, age, gender, and many other factors.<sup>[13]</sup> We are particularly encouraged by this prioritization with regards to these important health services. We believe, as you do, that all people deserve access to client-centered, culturally competent, linguistically appropriate, and equitable health care.<sup>[14]</sup> As a part

of this important goal, we are pleased to see the Department return their focus to the statutory mandate of the Title X program to prioritize people with low incomes.<sup>[15]</sup> We support the Department's stance that patients be allowed to self-report their income, removing an unnecessary potential barrier to care.

#### *Increasing Access to Highly Qualified Providers*

We welcome the opportunity to comment on the harm caused when state governments bar qualified providers from participating in the Title X program. Specialized reproductive and sexual health care providers, including Planned Parenthood affiliates, play an important role in the nation's health care safety net, and we agree that state restrictions on subrecipient eligibility unrelated to a subrecipient's ability to deliver Title X services undermines the mission of the program.

To further strengthen the proposed rule, we urge you to include explicit language that will ensure their ability to participate in this important program, regardless of whether they offer abortion or other services outside of Title X. This change will make it possible for more providers to serve more patients in communities across the country, helping to fulfill Title X's core mission.

#### *Ensuring Confidential Care*

We are pleased to see that the proposed rule would allow providers to return to the high standard of confidentiality that all patients, including adolescents, deserve when accessing health care services, especially ones as potentially sensitive as family planning and sexual health. We were dismayed to see the Trump administration's requirements that providers push adolescents to disclose more information than needed for appropriate medical care and to demand family participation in almost all cases.<sup>[16]</sup> We encourage you to take all possible steps when finalizing the rule to ensure that adolescents are treated with the same client-centered approach as all other patients at Title X-funded health centers and that the confidentiality protections that have been a hallmark of the Title X program are restored, clearly and plainly.



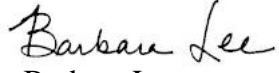

#### *Upholding Evidence-Based Standards of Care*

Finally, we are grateful for your leadership in ensuring access to all services in as many communities as possible across the country. We are deeply concerned by the ways in which the Trump administration's rule opened the door for Title X projects that do not support the full range of contraceptive methods and explicitly welcomed providers to refuse to provide full pregnancy options counseling, a particularly important and time-sensitive health care service.<sup>[17]</sup> This NPRM appropriately restores the focus of Title X on providing a broad range of FDA-approved contraceptive methods and access to complete and accurate medical information, keeping the focus on the needs and wishes of the patient. The NPRM restores confidence in the Title X program by ensuring that clients receive the counseling, including referrals, that they want, rather than only those a provider wants to give. We are further heartened by your reliance on nationally recognized, evidence-based clinical standards, such as the Quality Family Planning guidelines.

\*\*\*\*\*

For 50 years, the Title X family planning program has been a critical underpinning of the public health safety-net infrastructure that serves millions of low-income people each year. We appreciate the opportunity to comment on this important matter.

Sincerely,

 Judy Chu Member of Congress	 Diana DeGette Member of Congress	 Barbara Lee Member of Congress	 Lizzie Fletcher Member of Congress
---	--	---	--

/s/

Alma Adams  
Member of Congress

Pete Aguilar  
Member of Congress

Colin Allred  
Member of Congress

Jake Auchincloss  
Member of Congress

Cindy Axne  
Member of Congress

Nanette Diaz Barragán  
Member of Congress

Joyce Beatty  
Member of Congress

Ami Bera, M.D.  
Member of Congress

Earl Blumenauer  
Member of Congress

Lisa Blunt Rochester  
Member of Congress

Suzanne Bonamici  
Member of Congress

Brendan F. Boyle  
Member of Congress

Anthony G. Brown  
Member of Congress

Julia Brownley  
Member of Congress

Salud Carbajal  
Member of Congress

Matt Cartwright  
Member of Congress

Sean Casten  
Member of Congress

Kathy Castor  
Member of Congress

David N. Cicilline  
Member of Congress

Steve Cohen  
Member of Congress

Gerald E. Connolly  
Member of Congress

Jim Cooper  
Member of Congress

Jason Crow  
Member of Congress

Danny K. Davis  
Member of Congress

Peter A. DeFazio  
Member of Congress

Suzan DelBene  
Member of Congress

Mark DeSaulnier  
Member of Congress

Debbie Dingell  
Member of Congress

Veronica Escobar  
Member of Congress

Adriano Espaillat  
Member of Congress

Lois Frankel  
Member of Congress

Sylvia R. Garcia  
Member of Congress

Josh Gottheimer  
Member of Congress

Jahana Hayes  
Member of Congress

Steven Horsford  
Member of Congress

Sheila Jackson Lee  
Member of Congress

Pramila Jayapal  
Member of Congress

Sharice L. Davids  
Member of Congress

Madeleine Dean  
Member of Congress

Rosa L. DeLauro  
Member of Congress

Antonio Delgado  
Member of Congress

Ted Deutch  
Member of Congress

Mike Doyle  
Member of Congress

Anna G. Eshoo  
Member of Congress

Bill Foster  
Member of Congress

Ruben Gallego  
Member of Congress

Jimmy Gomez  
Member of Congress

Raúl M. Grijalva  
Member of Congress

Brian Higgins  
Member of Congress

Jared Huffman  
Member of Congress

Sara Jacobs  
Member of Congress

Henry C. "Hank" Johnson, Jr.  
Member of Congress

Mondaire Jones  
Member of Congress

Robin L. Kelly  
Member of Congress

Daniel T. Kildee  
Member of Congress

Raja Krishnamoorthi  
Member of Congress

Brenda Lawrence  
Member of Congress

Teresa Leger Fernandez  
Member of Congress

Mike Levin  
Member of Congress

Alan Lowenthal  
Member of Congress

Carolyn B. Maloney  
Member of Congress

A. Donald McEachin  
Member of Congress

Jerry McNerney  
Member of Congress

Gwen Moore  
Member of Congress

Grace F. Napolitano  
Member of Congress

Eleanor Holmes Norton  
Member of Congress

Alexandria Ocasio-Cortez  
Member of Congress

William R. Keating  
Member of Congress

Ro Khanna  
Member of Congress

Derek Kilmer  
Member of Congress

Ann McLane Kuster  
Member of Congress

Al Lawson  
Member of Congress

Andy Levin  
Member of Congress

Ted W. Lieu  
Member of Congress

Tom Malinowski  
Member of Congress

Doris Matsui  
Member of Congress

James P. McGovern  
Member of Congress

Grace Meng  
Member of Congress

Jerrold Nadler  
Member of Congress

Marie Newman  
Member of Congress

Tom O'Halleran  
Member of Congress

Ilhan Omar  
Member of Congress

Jimmy Panetta  
Member of Congress

Bill Pascrell, Jr.  
Member of Congress

Ed Perlmutter  
Member of Congress

Chellie Pingree  
Member of Congress

Katie Porter  
Member of Congress

David E. Price  
Member of Congress

Jamie Raskin  
Member of Congress

Deborah K. Ross  
Member of Congress

Raul Ruiz  
Member of Congress

Linda T. Sánchez  
Member of Congress

Mary Gay Scanlon  
Member of Congress

Kim Schrier, M.D.  
Member of Congress

Brad Sherman  
Member of Congress

Adam Smith  
Member of Congress

Greg Stanton  
Member of Congress

Chris Pappas  
Member of Congress

Donald M. Payne, Jr.  
Member of Congress

Scott Peters  
Member of Congress

Mark Pocan  
Member of Congress

Ayanna Pressley  
Member of Congress

Mike Quigley  
Member of Congress

Kathleen M. Rice  
Member of Congress

Lucille Roybal-Allard  
Member of Congress

Tim Ryan  
Member of Congress

John P. Sarbanes  
Member of Congress

Jan Schakowsky  
Member of Congress

Terri A. Sewell  
Member of Congress

Albio Sires  
Member of Congress

Jackie Speier  
Member of Congress

Haley Stevens  
Member of Congress

Marilyn Strickland  
Member of Congress

Mark Takano  
Member of Congress

Dina Titus  
Member of Congress

Paul D. Tonko  
Member of Congress

Norma J. Torres  
Member of Congress

Ritchie Torres  
Member of Congress

Lori Trahan  
Member of Congress

David Trone  
Member of Congress

Lauren Underwood  
Member of Congress

Juan Vargas  
Member of Congress

Marc Veasey  
Member of Congress

Nydia M. Velázquez  
Member of Congress

Debbie Wasserman Schultz  
Member of Congress

Bonnie Watson Coleman  
Member of Congress

Peter Welch  
Member of Congress

Susan Wild  
Member of Congress

Nikema Williams  
Member of Congress

John Yarmuth  
Member of Congress

Robert C. “Bobby” Scott  
Member of Congress

---

<sup>[1]</sup> *The Family Planning Services and Population Research Act of 1970*, Public Law 91-572, *U.S. Statutes at Large* 84 (1971): 1504.

<sup>[2]</sup> Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services, 86 *Federal Register* 19812 (proposed April 15, 2021) (to be codified at 42 CFR 59).

<sup>[3]</sup> Ruth Dawson, “Trump Administration’s Domestic Gag Rule Has Slashed the Title X Network’s Capacity by Half,” Guttmacher Institute (February 5, 2020). [www.guttmacher.org](http://www.guttmacher.org).

<sup>[4]</sup> Christina Fowler et al, “Family Planning Annual Report: 2019 National Summary,” Office of Population Affairs (September 2020). <https://opa.hhs.gov/>.

<sup>[5]</sup> Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services, 86 *Federal Register* 19812 (proposed April 15, 2021) (to be codified at 42 CFR 59).

<sup>[6]</sup> *Ibid.*

<sup>[7]</sup> “2020 Census Apportionment Results,” U.S. Census Bureau (April 26, 2021). [www.census.gov](http://www.census.gov).

<sup>[8]</sup> U.S. Congress, House, *Labor, Health and Human Services, Education, Defense, State, Foreign Operations, and Energy and Water Development Appropriations Act, 2020* HR 2740, 116<sup>th</sup> Congress, 1<sup>st</sup> Session, Introduced May 15, 2019. [www.gpo.gov](http://www.gpo.gov); U.S., Congress, House, *Defense, Commerce, Justice, Science, Energy and Water Development, Financial Services and General Government, Labor, Health and Human Services, Education, Transportation, Housing, and Urban Development Appropriations Act, 2021*, HR 7617, 116<sup>th</sup> Congress, 2<sup>nd</sup> Session, Introduced July 16, 2020. [www.gpo.gov](http://www.gpo.gov).

<sup>[9]</sup> *American Rescue Plan Act of 2021*, Public Law 117-2.



<sup>[10]</sup> *The Family Planning Services and Population Research Act of 1970*, Public Law 91-572, *U.S. Statutes at Large* 84 (1971): 1504.

<sup>[11]</sup> Megan L. Kavanaugh et al., *Use of Health Insurance Among Clients Seeking Contraceptive Services at Title X-Funded Facilities in 2016*, 50 *Perspectives on Sexual & Reproductive Health* 101, 105 (Sept. 2018), <https://onlinelibrary.wiley.com/doi/epdf/10.1363/psrh.12061>.

<sup>[12]</sup> Christina Fowler et al, “Family Planning Annual Report: 2019 National Summary,” Office of Population Affairs (September 2020). <https://opa.hhs.gov/>.

<sup>[13]</sup> Centers for Disease Control and Prevention, “COVID-19: Health Equity Considerations and Racial and Ethnic Minority Groups,” U.S. Department of Health and Human Services (April 19, 2021). [www.cdc.gov](http://www.cdc.gov).

<sup>[14]</sup> Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services, 86 *Federal Register* 19812 (proposed April 15, 2021) (to be codified at 42 CFR 59).

<sup>[15]</sup> *The Family Planning Services and Population Research Act of 1970*, Public Law 91-572, *U.S. Statutes at Large* 84 (1971): 1504.

<sup>[16]</sup> Office of the Assistant Secretary for Health, Office of Secretary, US Department of Health and Human Services, “Compliance with Statutory Program Integrity Requirements,” *Federal Register* 84 (March 4, 2019): 7714-7791.

<sup>[17]</sup> Office of the Assistant Secretary for Health, Office of Secretary, US Department of Health and Human Services, “Compliance with Statutory Program Integrity Requirements,” *Federal Register* 84 (March 4, 2019): 7714-7791.