



ALAMEDA HEALTH
CONSORTIUM

Working Together for the Health of Our Communities

Asian Health Services | Axis Community Health | Bay Area Community Health | La Clínica
LifeLong Medical Care | Native American Health Center | Tiburcio Vasquez Health Center
West Oakland Health

May 13, 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

Alameda Health Consortium (AHC) is committed to ensuring that all individuals have timely access to equitable, affordable, client-centered, and high-quality family planning and related services. We appreciate the opportunity to submit comments in response to the Department of Health and Human Services' (HHS) Notice of Proposed Rulemaking (NPRM) related to the Title X federal family planning program, Docket ID No. HHS-OS-2021-07762 (RIN: 0937-AA11).

AHC is the regional association of eight community health centers that work to achieve comprehensive, accessible health care and improved outcomes for everyone in Alameda County. Together, our eight member health centers provide primary medical, behavioral health, dental care and supportive services to over 270,000 patients, regardless of their insurance status or ability to pay for services. Ninety-five percent of our patients are at or below 200% of the federal poverty level (FPL), 67% are Medi-Cal beneficiaries, and 83% identify as people of color.

AHC applauds the release of the NPRM and reinstating the 2000 regulations that successfully governed the program for nearly 20 years, with important updates and enhancements to advance equitable access to comprehensive, evidence-based family planning services. The Proposed Rule is a critical step toward revoking the harmful 2019 Title X regulations and ensuring that Title X family planning patients nationwide can once again access the health information and care they want – when they need it - with dignity and respect. Every day the regulations remain in effect, the federal government is dictating a lower standard of care for low-income patients – disproportionately impacting rural regions and Black, Indigenous, and other People of Color (BIPOC). This can no longer be tolerated. Relief from the 2019 regulations is needed without any unnecessary delays. HHS must move quickly to restore Title X's mandate to provide comprehensive family planning services for all and rebuild our nation's Title X network of qualified family planning providers. The current public health emergency has made the need to rebuild and strengthen our family planning safety-net even more now.

We urge HHS to release the Final Rule, and rescind and replace the 2019 regulations as soon as possible in alignment with the administration's stated priorities related to health access and equity.

The Current Regulations Have Decimated the Title X Network in California & Nationwide

Although the Trump Administration asserted that the new regulations would cause new applicants to apply for Title X funding and result in "more clients being served,"¹ the stark reality

¹ Compliance with Statutory Program Integrity Requirements, 84 Fed. Reg. 7,714, 7,723 (Mar. 4, 2019).

is that the number of Title X grantees, service sites, and patients served by the program has dropped dramatically. As a result of the 2019 rule, more than 1,200 family planning providers in 34 states left the program.² Numerous states were left either with no Title X-funded programs with programs unable to serve the entirety of the service areas they were funded to serve.³ According to the 2019 Title X Family Planning Annual Report (FPAR), after implementation of the 2019 Title X Final Rule, the number of patients served by Title X declined from 4,000,000 to 1,500,000.

In California, Essential Access Health has led the statewide Title X federal family planning program since the program was established in 1970. Before the 2019 regulations took effect, Essential Access Health's statewide Title X provider network included 63 health centers collectively serving nearly 1,000,000 patients at 366 service sites in 38 California counties. After the regulations were fully implemented, providers across the state were forced to make the difficult decision to exit the program and leave behind critical resources. The state's Title X provider network has been drastically reduced to 238 clinic sites in 20 counties, and the number of patients served by the program has dropped by more than 80%. In 2020, fewer than 200,000 patients were served by Title X in California. Despite the decimation of California's statewide provider network, Essential Access Health continues to administer the largest Title X project in the country. It is anticipated that once the Proposed Rule is finalized, Essential Access Health will immediately be able to rebuild the Title X provider network across California, and bring Title X-funded services back to counties that were left without a Title X provider as result of the 2019 regulations. Health care organizations across the state have indicated a strong interest in rejoining the program when the 2019 rules are rescinded and replaced. Essential Access Health is prepared to onboard returning providers and enhance their capacity to provide quality family planning services in their communities as soon as possible.

The Current Regulations Disproportionately Impact Low-Income Individuals, Rural Regions & BIPOC Communities

The Trump-era regulations have had a disproportionate impact on low-income, uninsured, and BIPOC communities, and individuals living in rural regions that already face structural and systemic barriers to accessing essential health services. According to the 2019 Title X Family Planning Annual Report (FPAR), 573,650 fewer Title X patients living under 100% of the federal poverty level (FPL) were served in 2019, compared with FPAR data for the same patient population in 2018. FPAR data also demonstrates that 324,776 fewer uninsured patients were served by the program. The number of BIPOC patients served dramatically decreased as well including nearly 270,000 fewer Latinos and 130,000 fewer Black Title X patients served. Based on Essential Access Health's Family Planning Annual Reports submitted to OPA, in California alone, the number of patients living at or below 100% of FPL fell by 568,202 between 2018 and 2020, and the number of uninsured Californians served by Title X was cut by 422,986. During the same time period, the number of Latino patients served dropped by 389,692 and the number of Black patients served by Title X in the state was reduced by 74,748. In addition,

² Forty Title X programs projects across 34 states had service sites withdraw or have withdrawn completely from the Title X program due to the Trump Rule. *State of the Title X Network*, Nat'l Family Planning & Reproductive Health Assn (July 2020), <https://www.nationalfamilyplanning.org/file/2020-state-one-pagers-new/Impact-of-the-Title-X-Rule-in-California.pdf>.

³ Mia Zolna et al., *Estimating the impact of changes in the Title X network on patient capacity*, Guttmacher Inst., 2 (Feb. 5, 2020), https://www.guttmacher.org/sites/default/files/article_files/estimating_the_impact_of_changes_in_the_title_x_network_on_patient_capacity_2.pdf; see also *Title X Family Planning Directory*, *supra* n.5.

71,212 fewer patients with Limited English Proficiency received Title X-funded services statewide.

The California counties that lost a Title X provider as a result of the 2019 regulations are home to large populations of low-income communities and BIPOC individuals that already face provider shortages and structural and systemic barriers to essential health services. Counties without a Title X-funded provider are also in regions with disproportionately high rates of unintended pregnancy and STIs, including the Central Valley and Inland Empire.

The Proposed Rule Advances Health Access & Equity

AHC strongly supports the administration's emphasis on health equity in the Proposed Rule, including the updates the Proposed Rule makes to the definitions section of the 2000 Title X regulations that name and prioritize health equity and inclusion. The added definition for health equity underscores the goal of ensuring that all Title X patients have the opportunity to attain their full health potential. The new inclusion definition affirms that everyone in need should be able to actively participate in and benefit from Title X-funded services.

The transition from using the word "women" to "client" is a positive and practical step toward making the program more inclusive. Gender identity and an individual's sexual orientation should never be a barrier to receiving essential health care. The Proposed Rule's definitions also help illustrate key aspects of quality care including the importance of client-centeredness; cultural and linguistic appropriateness; and recognition of all family types

New definitions for quality and client-centered care will help ensure that all patients served by Title X receive family planning services that are respectful of, and responsive to, their personal preferences and needs - including those that have traditionally faced systemic and structural challenges accessing care such as BIPOC communities, lesbian, gay, bisexual, transgender and queer patients, and people living in rural areas.

The Proposed Rule also addresses and advances health equity by removing the 2019 rule's misguided definition of "low-income". The 2019 rule wrongfully diverts limited and critical resources away from the low-income individuals that Title X was designed and mandated by statute to serve, by opening the program to employees who are denied contraceptive coverage in their employer based health plans – regardless of their income level.

To advance health equity, HHS must also ensure that the "health care provider" definition in the Final Rule is not limited to the examples cited by HHS in the Proposed Rule. In 2019, 23% - or more than 1.07 million – of family planning encounters fell under the primary responsibility of service providers such as Registered Nurses, Licensed Practical Nurses, Health Educators, and Social Workers.⁴ These professionals provide critical support to clinicians in team-based care models typical to modern health care delivery. They are also more likely to be BIPOC, and persistently underrepresented in health care professions and more reflective of the Title X patient population.⁵ AHC urges HHS to elevate and acknowledge the critical role these health

⁴ C Fowler, J Gable, B Lasater, and K Asman, *Family Planning Annual Report: 2019 National Summary* (Washington, DC: Office of Population Affairs, 2020).

⁵ E Salsberg, C Richwine, and S Westergaard S, et al, "Estimation and Comparison of Current and Future Racial/Ethnic Representation in the US Health Care Workforce," *JAMA Netw Open*. 2021;4(3):e213789. doi:10.1001/jamanetworkopen.2021.3789.

care professionals play in the Title X program and in delivering culturally and linguistically competent, appropriate, and responsive family planning services.

The Proposed Rule Restores Title X's Commitment to Quality Family Planning & Nationally Recognized Standards of Care

In 1970, Republican President Richard M. Nixon called on Congress to “establish as a national goal the provision of adequate family planning services ... to all those who want them but cannot afford them.”⁶ Congress responded and enacted Title X to create a comprehensive family planning program and make quality contraceptive and related services readily available to those with low-incomes.⁷ Title X was established with strong bi-partisan support to make “comprehensive family planning services readily available to all persons desiring such services.”⁸

The Trump Administration's 2019 rule undermines the program's Congressional mandate in a number of ways and must be rescinded and replaced as soon as possible to restore Title X's commitment to quality family planning and nationally recognized standards of care.

The current rule: 1) Violates medical ethics standards; 2) Denies Title X patients complete and unbiased information about their pregnancy options; 3) Disrespects the health needs and personal decisions of Title X patients; 4) Delays access to desired and time-sensitive care; 5) Requires onerous and cost-prohibitive physical separation requirements that conflict with standards of care and have forced qualified family planning providers out of the program; 6) Eliminates the term “medically approved” from the longstanding regulatory requirement that projects provide “a broad range of acceptable and effective medically approved family planning methods;”⁹ 7) Includes overly permissive language that opened the door to participation in the program by providers who object to contraception and the fundamental tenets of the Title X program, and 8) Diverges from and disregards nationally recognized clinical standards, the Quality Family Planning (“the QFP”) guidelines, published by the Office of Population Affairs and the Centers for Disease Control and Prevention (CDC) in 2014.

AHC applauds HHS for the Proposed Rule's return to the core mission and mandate of the Title X program to provide Title X patients with high-quality, evidence-based, client-centered care that includes comprehensive, medically accurate counseling and information, and referrals for additional services and follow-up care.

Specifically, AHC strongly supports the following changes to help ensure Title X patients receive quality, evidence-based, client-centered family planning services. We urge HHS to include these components in the Final Rule:

- Cite “FDA-approved contraceptive services” and reinstate the term “medically approved” to the proposed definition of family planning services;
- Restore adherence to QFP standards (with regular updates);

⁶ Richard Nixon, Special Message to the Congress on Problems of Population Growth (July 18, 1969).

⁷ See H.R. Rep. No. 91-1472, at 10 (1970); 84 Stat. 1504.

⁸ *Planned Parenthood Federation of America, Inc. v. Heckler*, 712 F.2d 650, 651 (D.C. Cir. 1983) (quoting S. REP. NO. 91-1004, at 2 (1970)).

⁹ 83 Fed. Reg. at 25530.

- Reinstate the requirement that Title X providers offer non-directive pregnancy options counseling upon request, including unrestricted and unbiased abortion referrals;
- Revoke the onerous and harmful prohibition on abortion referrals and the requirement that Title X providers refer pregnant patients for prenatal care, regardless of their expressed wishes; and
- Eliminate the requirement that Title X providers maintain physical, staff, and administrative system separation from locations that provide abortion as a method of family planning and from other abortion-related activities; and the requirement that counseling be provided only by physicians or “advanced practice providers,” meaning “medical professional[s] who receive at least a graduate level degree in the relevant medical field”

The Proposed Rule Restores & Strengthens Patient Confidentiality Protections and a Commitment to Providing Adolescent-Friendly Health Services

Two hallmarks of Title X have been the program’s historically strong protections for patient confidentiality and its commitment to serving adolescents. Since the 1970s, federal law has required that both adolescents and adults be able to receive confidential family planning services in Title X projects. Research shows these confidentiality protections are one of the reasons individuals choose to seek care at Title X sites.¹⁰

Family planning services address some of the most sensitive and personal issues in health care and therefore require strong confidentiality protections. Patients seeking family planning services encompass a broad spectrum of patient populations.¹¹ Certain groups, including adolescents and young adults, and people at risk of domestic or intimate partner violence, have special privacy concerns that require particularly strong protection.¹²

The 2019 rule weakened these protections by requiring providers to encourage family involvement even when it could be harmful. The regulations give the HHS Secretary oversight authority in the enforcement of complex and nuanced state reporting laws and place inappropriate reporting and documentation obligations on providers. In doing so, the 2019 rule undermines the provider-patient relationship and puts patient health and safety at risk.

AHC strongly supports reinstating the Title X confidentiality protections in place prior to the 2019 rule¹³ and the important improvements outlined in the Proposed Rule. First, the Proposed Rule

¹⁰ Frost et al., *Specialized Family Planning Clinics in the United States*.

¹¹ Rachel B. Gold, *A New Frontier in the Era of Health Reform: Protecting Confidentiality for Individuals Insured as Dependents*, 16 GUTTMACHER POLICY REVIEW 2, 2 (2013), <https://www.guttmacher.org/pubs/gpr/16/4/gpr160402.pdf>.

¹² Pamela J. Burke et al., *Sexual and Reproductive Health Care: A Position Paper of the Society for Adolescent Health and Medicine*, 54 J. ADOLESCENT HEALTH 491, 491-496, (2014), https://www.adolescenthealth.org/SAHM_Main/media/Advocacy/Positions/Apr-14-Sexual-Repro-Health.pdf; Diane M. Reddy, Raymond Fleming, & Carolyne Swain, *Effect of Mandatory Parental Notification on Adolescent Girls’ Use of Sexual Health Care Services*, 288 J. AM. MED. ASS’N 710, 710–714 (2002); Rachel K. Jones et al., *Adolescents’ Reports of Parental Knowledge of Adolescents’ Use of Sexual Health Services and Their Reactions to Mandated Parental Notification for Prescription Contraception*, 293 J. AM. MED. ASS’N 340, 340–348; Liza Fuentes, Meghan Ingerick, Rachel Jones, & Laura Lindberg, *Adolescents’ and Young Adults’ Reports of Barriers to Confidential Health Care and Receipt of Contraceptive Services*, 62 J. ADOLESCENT HEALTH 36, 36-43; *National Consensus Guidelines on Identifying and Responding to Domestic Violence Victimization in Health Care Settings*, Family Violence Prevention Fund (2004), <http://www.futureswithoutviolence.org/userfiles/file/HealthCare/consensus.pdf>.

¹³ Title X’s confidentiality requirements are currently largely codified at 42 C.F.R. § 59.11; the NPRM proposes reorganizing the Title X regulations so that the confidentiality section would now be § 59.10.

eliminates the 2019 rule's unnecessary and harmful requirements to take and document specific actions to encourage family involvement in the family planning decision making of all adolescents. The 2019 rule excludes including the statutory directive "[t]o the extent practicable"¹⁴ and disregards the expertise, training, and experience of Title X providers. Health care professionals in Title X-funded health settings are trained and skilled in caring for adolescents and encourage family communication about family planning services and other key health care matters when realistic and appropriate.

Second, we support the elimination of the 2019 rule's attempt to give HHS substantial oversight over compliance with complex state reporting requirements concerning child abuse, child molestation, sexual abuse, rape, incest, or human trafficking. Professionals providing services in Title X-funded sites are aware of their reporting obligations, and already receive regular training to support compliance. Determinations regarding compliance with state reporting laws properly rest with state authorities, not HHS.

Third, AHC urges HHS to include language clarifying longstanding Title X prohibitions on parental notification and consent requirements that remain in effect. To alleviate any confusion, AHC encourages HHS to insert the following language into the Final Rule at the end of § 59.10. This language is identical to program guidance released by OPA in 2001 the 2001:

"Title X projects may not require consent of parents or guardians for the provision of services to minors, nor can any Title X project staff notify a parent or guardian before or after a minor has requested and/or received Title X family planning services."

Title X Patients Must Have Access to a Broad Range of Medically Approved Contraceptive Methods from Qualified Family Planning Providers They Know & Trust, Working at the Ceiling of their Scope and Training

Although the changes above are positive steps in the right direction and begin the process of restoring Title X's mandate to provide comprehensive family planning services for all, AHC is concerned that allowing Title X sites within a program project to offer a single method of contraception, conflicts with QFP standards and HHS' stated goals regarding quality, client-centered care, and health equity. AHC strongly urges HHS to require all Title X funded sites to provide a broad range of medically-approved family planning services. Allowing a site within a Title X project to offer a single method delays patient access to the birth control method of their choice, thereby increasing their risk for unintended pregnancy. This policy disproportionately impacts individuals living in underserved regions with provider shortages as Title X patients might be forced to travel long distances to access the method that meets their unique health needs and reproductive life goals.

If HHS continues to allow a site within a Title X project to offer a single method of contraception, HHS must clarify that it must be a medically approved and effective form of birth control. In addition, the requirement added to the Proposed Rule for sites that offer a single method of contraception to provide a referral for Title X patients to access their method of choice, is vague and does not go far enough. If referral requirements are implemented, HHS must clearly outline the reasons and/or circumstances under which a Title X site may be excused from offering a

¹⁴ 42 U.S.C. § 300.

broad range of medically approved methods and parameters including a maximum “reasonable” distance a Title X patient would have to travel to get their method of choice.

In addition, AHC strongly urges HHS to include protections in the Final Rule that ensure that only qualified family planning providers are permitted to participate in the Title X program. It is imperative that HHS “ensure that Title X projects do not undermine the program’s mission by excluding otherwise qualified providers as subrecipients”¹⁵ or discriminate against entities that provide and/or fund entities that provide abortions outside of Title X with non-Title X funds.¹⁶ It is also essential for HHS to make clear in the Final Rule that providers must be able and willing to offer a full range of medically approved contraception to participate in the Title X program.

Title X Patients Must Have Access to Family Planning Services through Telehealth, Including Audio-Only Visits

AHC supports the Proposed Rule’s enhancements to the 2000 regulations related to “telemedicine”. The COVID-19 public health emergency sparked rapid adoption of remote health care among patients and providers and resulted in a transformation of our health care delivery system. Since spring 2020, use of telehealth modalities has allowed Title X users to remotely access a wide range of Title X services without placing themselves at increased risk for potential COVID-19 exposure. All forms of telehealth modalities, including audio-only must be covered to remove any barriers of access for patients.

However, AHC is concerned about the use of the term “telemedicine” in the Proposed Rule instead of “telehealth,” which refers to a broader scope of remote health care services than telemedicine and includes non-clinical services like counseling and education. HHS should explicitly name and define “telehealth” in the Final Rule as follows:

59.5(b)(1): Provide for clinical and other qualifying services related to family planning (including consultation by a healthcare provider, family planning counseling and education, examination, prescription, and continuing supervision, laboratory examination, contraceptive supplies), in person or via telehealth, including audio-only modalities, regardless of the patient’s or provider’s setting, and necessary referral to other medical facilities when medically indicated, and provide for the effective usage of contraceptive devices and practices.

In addition, to protect patient choice in telehealth modality, advance health equity, and recognize challenges and barriers related to the digital divide in many communities without access to high speed internet, the Final Rule must clarify that audio-only visits qualify as a Title X telehealth visit. Audio-only encounters must also be able to be counted as part of FPAR data in subrecipient and Grantee reports.

The Title X family planning program has been an essential component of the public health safety-net in California and across the country for more than 50 years. For the reasons outlined

¹⁵ “Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services,” 86 Federal Register 19812, 19817 (April 15, 2021).

¹⁶ 42 U.S.C. § 300(a). “The Secretary is authorized to make grants to and enter into contracts with public or nonprofit private entities to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents).” *See also* 42 C.F.R. § 59.3. “Any public or nonprofit private entity in a State may apply for a grant under this subpart.” [emphasis added]

above, we urge HHS to move quickly to release the Final Rule. Every day the 2019 regulations remain in place, the federal government is dictating a lower-standard of care for low-income patients and denying individuals served by the federal family planning program complete and unbiased information about their pregnancy options. These harmful policies must be rescinded and the program enhancements included in the Proposed Rule to ensure access to equitable, affordable, client-centered, and high-quality family planning and related services must be implemented as soon as possible.

We appreciate the opportunity to submit these comments and thank you in advance for your consideration. If you have questions about these comments, please contact.

Sincerely,

A handwritten signature in black ink, appearing to read "Ralph Silber". The signature is fluid and cursive, with a prominent initial "R" and a long, sweeping tail.

Ralph Silber
Executive Director
Alameda Health Consortium