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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

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August 27, 2018

The Honorable Alex Azar
Secretary of Health and Human Services
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue SW
Washington, DC 20201

Dear Secretary Azar:

I write to follow up on the concerns previously raised regarding the proposed rule, “Compliance With Statutory Program Integrity Requirements” (Docket ID No. HHS-OS-2018-0008), issued by the Department of Health and Human Services (HHS) on June 1, 2018 to dramatically undermine the Title X Program and institute a domestic gag rule that would interfere with providers’ ability to discuss the full range of reproductive health options with their patients. As you know, a 60-day comment period on the rule concluded on July 31, 2018, and the hundreds of thousands of comments submitted by a broad range of provider organizations, consumer advocates, and public health officials raise extremely serious issues about the impact of the rule on people’s health and wellbeing across the country. Before the rule is finalized, I request that you provide me with information about any analyses and evaluations HHS has conducted or plans to conduct regarding the potential harms imposed by the proposed rule, especially since the regulatory impact analysis conducted under the proposed rule completely failed to account for most of these harms. The millions of women and families who rely on Title X-funded care centers for the care they need deserve to know that the Department will fully and diligently evaluate the harms of this proposed rule.

The proposed rule faces significant opposition. Major medical associations, including the American Medical Association (AMA), the American College of Obstetricians and Gynecologists (ACOG), the National Medical Association, the American Academy of Pediatrics, and the American Academy of Nursing, expressed deep concern about the rule’s violation of professional ethics. The AMA stated that the proposed gag rule would “dangerously interfere with the patient-physician relationship and conflict with physicians’ ethical obligations, exclude qualified providers, and jeopardize public health.”¹ The National Association of Community Health Centers (NACHC), the leading national advocacy organization representing the interests of community-based health centers, stated in their comments: “Should this proposed rule be adopted, health centers would have to choose between allowing federal regulations to dictate what they can and must discuss with their patients (as required under § 59.14), and losing a critical source of revenue to support patient care.”²

¹ <https://searchlf.ama-assn.org/undefined/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2018-7-31-Letter-to-Azar-re-Title-X-Comments.pdf>

² <http://www.nachc.org/news/new-nachc-statement-regarding-the-proposed-rule-for-title-x-funding/>

Similarly, health care providers — including affiliates of Planned Parenthood Federation of America, which serve more than 40 percent of Title X patients — have indicated that the harmful and incredibly burdensome restrictions imposed by the proposed rule would effectively make participation in the program impossible. Furthermore, after analyzing the proposed rule, the governors of Hawaii, New York, Oregon, and Washington determined that if the rule is finalized, they would be unable to comply with the harmful policies contained in the proposed rule and would instead have to withdraw from the program. It is clear that other providers would not be able to “absorb” the patients currently served by these grantees.³ These grantees serve nearly 1.8 million people, including 80,000 people in my home state of Washington. If finalized, the proposed rule would completely undermine the Title X program as providers serving nearly half the patient population would be forced to withdraw.

In addition to the concerns raised by provider organizations, commenters also indicated they believe the costs of the rule will significantly surpass the projected costs calculated by HHS, suggesting that the tremendous economic and societal costs of the proposal have not been accurately evaluated by the Department. For example, the Institute for Policy Integrity at the New York University School of Law states in its official comment that HHS “has failed to provide an adequate cost-benefit analysis in explanation of the proposed Title X revisions, omitting indirect transaction costs and health costs, and the distributional effects of these costs, thereby misrepresenting the true impacts of the rule to the public,” pointing in particular to the impact of the rule on women of color, women with low incomes, immigrants and rural women.⁴ Similarly Stacey McMorrow of the Urban Institute’s Health Policy Center states in her comment: “the decision by the Department to ... focus only on costs related to compliance with the regulation among a fixed set of grantees does not provide a complete picture of the potential effects of this regulation. Given that the Title X program serves a particularly vulnerable population and that its policies have implications for both the health and economic well-being of millions of women, it seems important for the Department to delay implementation of this rule until they can put forth a more complete estimate of the true impacts of the rule on the Title X program, the population it serves and the associated costs.”⁵

In light of the comments received, HHS must ensure it has a full and accurate understanding of the full scope of the proposed rule’s harm on communities across the country. In order to better understand the steps that HHS is taking to evaluate the harm, I ask that you respond to the following questions no later than August 31, 2018:

1. How is HHS evaluating the impact and harms of the rule, particularly in relation to health care access and outcomes, in each community currently served by Title X, especially given the loss of providers serving nearly half of the patient population?
2. Is HHS’s Office of the Assistant Secretary for Planning and Evaluation conducting a community-by-community analysis of the expected impact on health care access and outcomes of the rule as proposed?
3. How is HHS assessing the harms in communities that already face limited access to providers? In particular how is HHS assessing the impact in rural communities and in communities that are designated as Health Professional Shortage Areas and/or Medically Underserved Areas?

³ <https://www.healthaffairs.org/doi/10.1377/hblog20150908.050394/full>; <https://www.gutmacher.org/gpr/2017/08/beyond-rhetoric-real-world-impact-attacks-planned-parenthood-and-title-x>; <http://www.usatoday.com/story/news/2015/07/30/family-planning-budgets-crisis-before-planned-parenthood-controversy/30861853/>

⁴ http://policyintegrity.org/documents/HHS_Title_X_Comments.pdf

⁵ <https://www.regulations.gov/document?D=HHS-OS-2018-0008-191202>

4. Is HHS conducting a state-by-state evaluation of the financial costs that will fall on state and local health systems as a result of the proposed rule, including the impact on Medicaid programs?
5. What is HHS doing to reassess the regulatory and economic impact of the rule, given the lack of any assessment of health care-related costs in the proposed rule and the considerable comments on the issue?

HHS should conduct this significant rulemaking process in a transparent and thoughtful way. I look forward to your response as I seek to understand what HHS is doing to evaluate the true impact of this proposed rule.

Sincerely,



Patty Murray
Ranking Member
United States Senate Committee on Health,
Education, Labor, and Pensions

CC:

Neomi Rao
Administrator, U.S. Office of Information and Regulatory Affairs, Office of Management and Budget
New Executive Office Building, Room 9235
725 17th Street NW
Washington, DC 20503