



May 13, 2021

Alicia Richmond Scott, MSW, Director  
Office of Population Affairs  
Office of the Assistant Secretary for Health  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

**ATTN: 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)**

Dear Director Scott:

On behalf of [Health Center Partners of Southern California](#), representing 17 member organizations, including 12 Federally Qualified Health Centers, 4 Indian Health Centers, and Planned Parenthood of the Pacific Southwest, which operate over 160 practice sites across five counties, and serve 917,000 patients with 3.9 million patient visits annually, **I 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).** I applaud 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 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.

The current public health emergency has made the need to rebuild and strengthen our family planning safety-net even more time-sensitive. **For the reasons listed below I 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 and Nationwide**

**As a result of the 2019 rule, more than 1,200 family planning providers in 34 states left the program.<sup>1</sup>** 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.<sup>2</sup> 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

<sup>1</sup> 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>.

<sup>2</sup> 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](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.

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. **California’s Title X provider network has been drastically reduced to 238 clinic sites in 20 counties. 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.**

### **The Proposed Rule Advances Health Access + Equity**

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**I strongly support 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 all Title X patients can attain their full health potential. Additionally, the inclusion definition affirms everyone in need should be able to actively participate in and benefit from Title X-funded services.

Further, 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.

**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.<sup>3</sup> These professionals provide critical support to clinicians in team-based care models typical to modern health care delivery. I ask HHS to elevate and acknowledge the critical role these health 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 and Nationally Recognized Standards of Care**

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I applaud 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, I strongly support the following changes to help ensure Title X patients receive quality, evidence-based, client-centered family planning services.**

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<sup>3</sup> C Fowler, J Gable, B Lasater, and K Asman, *Family Planning Annual Report: 2019 National Summary* (Washington, DC: Office of Population Affairs, 2020).

**I 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);
- 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”.

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

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**I support 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 access remotely a wide range of Title X services without placing themselves at increased risk for potential COVID-19 exposure. However, I am 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 health care 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.**



For the reasons outlined above, I urge HHS to move quickly to release the Final Rule. 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. Let's work together to ensure the program continues to advance equitable access to comprehensive, evidence-based family planning services.

Sincerely,

A handwritten signature in blue ink, appearing to read "Henry N. Tuttle".

Henry N. Tuttle  
President and Chief Executive Officer

cc: Essential Health Access  
Health Center Partners Board of Directors

[Health Center Partners of Southern California](#), a family of companies, includes a 17-membership organization of federally qualified health centers, Indian Health Services Organizations, both urban and sovereign, and Planned Parenthood of the Pacific Southwest, collectively serving 917,000 patients each year, for 3.9 million patient visits each year, at 160 practice sites across San Diego, Riverside and Imperial counties, and is the seventh largest provider group in the region. [Read our latest Impact Report.](#)