

Re: Family Planning  
Department of Health and Human Services  
42 CFR Part 59  
[Docket No.: HHS–OS–2018–0008] RIN 0937–ZA00  
Compliance With Statutory Program Integrity Requirements

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The 19,000-member Christian Medical Association and the 30,000 constituents of Freedom2Care enthusiastically endorse and support the proposed rule as a measure that will:

1. broaden healthcare options and enhance health outcomes for women;
2. protect the vulnerable including the unborn, minor children and victims of abuse, and;
3. prevent American tax dollars from propping up the abortion industry.

## Overview

On a bipartisan basis, lawmakers passed the original Title X family planning program with a goal of broadening healthcare options, improving healthcare outcomes and enhancing services, especially for families and women of child-bearing age. Had those lawmakers realized that ideological bureaucrats would turn the program into an abortion-promoting and subsidizing vehicle that by explicit policy discriminates against and excludes life-affirming health providers, the Title X program would never have come into existence.

Instead of restricting tax resources to the original program goals, politically and ideologically motivated HHS appointees and bureaucrats in recent years have diverted Title X funds down a lucrative pipeline through which to channel fungible funds to the abortion industry and to lead patients to abortions. The unlawfully discriminatory Title X policies have served to prop up the abortion industry, including billion-dollar businesses such as Planned Parenthood, which annually takes in over half a billion tax dollars while performing nearly a third of a million abortions.

The discrimination cycle continues through a byzantine Title X grant process that virtually embeds such rich organizations (which can afford to hire an army of grants acquisitions experts and lobbyists) into the annual funding process. Thus, the same wealthy, tax-funded organizations—abortion businesses that grow even wealthier through Title X-funded abortion referrals--receive Title X grants year after year after year.

The proposed rule promises to end discriminatory restrictions and open the door to a host of new partners, many of whom will offer a much more holistic health program than abortion-focused businesses offer. The resulting continuum of care and broadening of options will result in better health outcomes for the population that the Title X program aims to aid.

The following comments address some of the specific questions (listed with page numbers) included in the proposed rule.

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## 1. ***Abortion referral and counseling***

Pp. 25506-25507 – "The abortion referral and counseling requirements in the current Title X regulations, thus, cannot be enforced against objecting grantees or applicants, and such requirements cannot be used to deny participation in the Title X program or a Title X project of objecting family planning providers. For these reasons, the Department proposes to change the Title X regulations to eliminate the requirement that Title X projects provide abortion referral and counseling. In addition, consistent with the purpose of the program, the proposed rule would prohibit recipients from using Title X funds to perform, promote, refer for, or support abortion as a method of family planning. This rule would better align with both the best reading of section 1008 and with the Federal conscience statutes. Recognizing, however, the duty of a physician to promote patient safety, a doctor would be permitted to provide nondirective counseling on abortion. Such nondirective counseling would not be considered encouragement, promotion, or advocacy of abortion as a method of family planning, as prohibited under section 59.16 of this proposed rule. Moreover, as permitted by the 1988 Regulations, a doctor would be permitted to provide a list of licensed, qualified, comprehensive health service providers, some (but not all) of which provide abortion in addition to comprehensive prenatal care. Providing such a list would be permitted only if a woman who is currently pregnant clearly states that she has already decided to have an abortion."

**Comment:** The new, law-conforming policy of no longer *requiring* referrals is a key provision essential to breaking the abortion industry monopoly and to opening the door to new and more effective and holistic health partners. Without this change in policy, pro-life health professionals and programs would remain on the sidelines, prevented by ethical commitments from participating in abortion-promoting Title X programs.

A survey conducted for CMA's Freedom2Care by The Polling Company, Inc. revealed that 92 percent of faith-based physicians said they would be forced to leave medicine if coerced into violating the faith tenets and medical ethics principles that guide their practice of medicine.<sup>i</sup> Faith-based health professionals do not, and cannot, separate the faith principles that motivate them to serve the needy from the faith principles that uphold the sanctity of human life.

Polling shows that a majority of Americans oppose the use of tax dollars for abortion.<sup>ii</sup> The expansive presence and aggressive marketing of abortion businesses and the fact that over a million abortions are performed annually in the United States indicate that abortion referrals from a tax-supported government program are hardly necessary to identify an abortion outlet. A policy *prohibiting* abortion referrals in tax-funded program therefore seems appropriate.

## **2. Implementation and understanding of protections**

P. 25511 – "The Department also seeks public comment as to whether the protections and services funded through Title X are adequately implemented and clearly understood throughout the Title X program, in order to alleviate the current confusion, and avoid future confusion, among clients and the general public."

**Comment:** Regarding implementation of the law, investigative reporting including undercover video provides evidence that abortion businesses such as Planned Parenthood skirt the law, cover up abuse and endanger minors.<sup>iii</sup>

Regarding understanding of the law, multiple reports from Christian Medical Association members who have experienced abortion-related discrimination such as that prohibited by federal conscience laws suggest a lack of awareness of conscience laws. These reports have been documented.<sup>iv</sup>

To compound this lack of awareness, an aggressive movement has been underway in the medical community to frame patient autonomy as requiring abortion participation by health professionals. This anti-conscience ideology advanced by medical professionals and academics arguably has influenced medical schools and professionals much more directly and pervasively than has the content of federal conscience laws, which often requires legal expertise for full understanding.

## **3. Application review criteria**

P. 25517 – "The Department seeks public comment as to whether additional regulatory application review criteria may be necessary or advisable to reflect the text and purpose of the statutory provisions applicable to Title X, in particular section 1008; to protect the rights of individuals and entities who decline to participate in abortion-related activities; or to ensure that all services funded through Title X offer optimal health benefits to clients of all ages."

**Comment:** Grant applicants should be required not only to provide written assent to all relevant statutory and regulatory requirements but also to provide all relevant organizational documents, such as personnel manuals, client guidelines and protocols to demonstrate that the organization has a pervasive policy framework and organizational culture consistent with the law and rule. Any requirements should take into account the challenge encountered in *Agency for International Development v. Alliance for Open Society International, Inc.* The current requirements would simply document compliance with relevant law.

Preference is wisely accorded potential grantees who can offer onsite the widest possible range of services, for holistic healthcare. A robust referral program in some instances may suffice in the absence of onsite comprehensive primary health services, but patients are far more likely to take advantages of services where they already have accessed and satisfactorily experienced services than if they have to explore an entirely separate, unknown provider.

## **4. Ensuring compliance**

P. 25527 - The Department seeks comment on whether additional policies or requirements, beyond those proposed herein, should be imposed to ensure compliance. These include expanding the requirement that referral agencies that do not receive Title X funds but

nevertheless provide information, counseling, or services to Title X clients be subject to the same reporting and compliance requirements as do grantees and subrecipients; and requiring organizational separation in addition to physical and financial separation.

**Comment:** Assertions of compliance and *actual* compliance unfortunately are sometimes different. Unannounced on-site visits and other enforcement measures may be required to verify separation of Title X program operations from abortion operations.

This is especially needful if organizations receiving Title grants previously have shown a pattern of untrustworthiness, duplicity and/or disregard for the law.

The Final Report of the Select Investigative Panel of the [House] Energy & Commerce Committee<sup>v</sup>, December 30, 2016, provides such evidence regarding organizations such as Planned Parenthood that take in millions of Title X dollars every year.

The report, focused on the sale of fetal body parts, found that "Planned Parenthood affiliates violated the federal guidelines on patient consent" (p. 360); "Planned Parenthood abortion clinics appear to have committed systematic violation of HIPAA" (p. 365); "four Planned Parenthood clinics ... may have violated federal law, specifically Title 42 U.S.C. §289g-2, which forbids the transfer of fetal tissue for valuable consideration" (p. xxvi); and numerous other findings suggesting a pattern of gross disregard for the law.

As Congressman Diane Black observed, "Over the last year, the Select Panel's relentless fact-finding investigation has laid bare the grisly reality of an abortion industry that is driven by profit, unconcerned by matters of basic ethics and, too often, noncompliant with the few laws we have to protect the safety of women and their unborn children."<sup>vi</sup>

A report by the *New York Times* focused on the Judiciary Committee's finding that federal agencies had failed to provide oversight and verification: "The Judiciary Committee's report, "Human Fetal Tissue Research: Context and Controversy," concluded that the executive branch had for years failed to exercise oversight on the tissue transfer process and created a situation where costs and fees were not properly accounted for. The report recommended that the Justice Department 'fully investigate' the fetal tissue practices of Planned Parenthood, its affiliates, and three companies involved in the sale of the tissue for potential crimes."<sup>vii</sup>

While grant panel reviewers are not made aware of an organization's shortcomings apart from their submitted application, HHS officials who have ultimate say over Title X grants have a duty to taxpayers to review and consider evidence regarding a potential grantee's trustworthiness. Relevant evidence from Congressional investigations and justice system findings should be considered in the grant review process by HHS officials.

Even if organizations purport to meet the new guidelines, a past and well-documented history of untrustworthiness strongly suggests that outside verification will be required to ensure that legal requirements are, in fact, being met.

To ensure compliance with the new Title X rule, HHS should draw from its methods used to ensure compliance with the Protecting Life in Global Health Assistance (PLGHA) policy. According to the published six-month review of PLGHA, those methods at HHS include "site

visits, conference calls, emails, in-person conversations, official letters of notification, and postings on the websites of its operating divisions. At the time of issuance of an NOA, the relevant grants management and program staff review with the awardee the details of the policies and regulations that govern the acceptance of the PLGHA conditions. Official acceptance by the awardee of the provision occurs once the awardee draws down funds. Because the majority of these awards are cooperative agreements ..., site visits, project oversight, monitoring calls, grant management meetings and other communications with the awardees occur on a frequent basis."<sup>viii</sup>

## **5. *New partners, grants process, training, outreach and required issues***

P. 25528 – "We are soliciting public comment on each of the required issues under section 3506(c)(2)(A) of the PRA."

**Comment:** The abortion industry would assert that without abortion outlets, patients will lose access to Title X services. It is true that in some areas, wealthy abortion businesses (including those technically labeled as "nonprofits") that can afford large staffs of grant writers and lobbyists and have virtually monopolized Title X grants. But that does not negate the fact that many other potential Title X program providers--such as community health centers—often provide a broader range of services that actually focus on patients and healthcare (rather than on abortion profits).

For example, approximately one in twelve patients in the United States—including one in three who live in poverty—currently rely on a federally funded health center.<sup>ix</sup> HHS's HRSA notes that "Today there are nearly 1,400 health centers, which operate approximately 10,400 delivery sites, across the country serving nearly 26 million people."<sup>x</sup>

Federally qualified health centers (FQHCs) offer years of experience as well as establishment and recognition within communities. They already have successfully navigated the federal grants system and they have systems in place to comply with federal requirements. Many FQHCs could quickly partner with HHS on Title X programs (see also comment below on the question on p. 25528).

While federally qualified health centers (FQHCs) represent potentially effective outlets for Title X programs, not all FQHCs currently participate in Title X. Research and analysis should be undertaken, including surveying FCHCs and analyzing reporting and financial requirements and benefits, to ascertain factors that would encourage more FQHCs to participate.

Beyond FQHCs, one key reason that other qualified organizations do not apply for Title X grants is that they find the federal grants process far too complex and intimidating. They quit without trying. This is a main reason why large, well-funded organizations have monopolized Title X grants in the past: they can afford to hire an army of technical experts to navigate the federal grants maze.

Over decades, HHS and other federal agencies have created a grants system that, whether by design or accident, discriminates against more effective but smaller organizations—many of which are faith-based--and discourages new partnerships.

With an eye to reform in favor of enabling and encouraging more applicants, HHS should conduct a wholesale review of, and, where needed, a restructuring of its grants process. Correcting the problem is no small task and will take years, but every step of reform taken now is a step toward more effective, inclusive and robust grant partnerships that will yield improved outcomes for patients and clients.

The Christian Medical Association recently surveyed health professional members working in faith-based organizations (FBOs) overseas, on the topic of strengthening partnerships between the U.S. government and faith-based organizations. The survey, which included responses from individuals working in over 100 faith-based organizations, found that:

1. 60% have never applied for a U.S. government grant.
2. 49% feel that the U.S. government is not inclined to work with FBOs.
3. 84% desire grants technical training. (The most sought training topics include learning about funding opportunities, preparing a proposal and religious issues with government grants.)<sup>xi</sup>

This strong perception of bias by the federal government against faith-based organizations suggests a need for special outreach by HHS to the faith community to:

- provide reassurance of respect for the faith community's vital contribution to community and national health and social services goals;
- educate the faith community regarding religious freedom protections (as well as boundaries that come with federal grants);
- encourage applying for partnerships in grant programs;
- provide technical training in grant applications and grant program management and reporting. This training should include how to access grant opportunities, evaluating and enhancing organizational capacity, creating and submitting a proposal, faith-relevant protections and rules, monitoring and reporting outcomes, building coalitions and working with prime grantees.

A core training module with information applicable to all federal grants could form the foundation for the training resource, with specific modules included for specific grants programs such as Title X added on to the core module. Existing HHS grants training resources should be reviewed and included in this new resource as appropriate.

HHS should also review, with an eye to replicating successful strategies, two federal programs in the past that have endeavored to attract and train new partners for federal grants programs: the [Compassion Capital Fund](#) for domestic programs, which included Nuts and Bolts technical training seminars, and the [New Partners Initiative](#) that arose out of the President's Emergency Plan for AIDS Relief (PEPFAR).

Besides creating resources to encourage new grants partnerships, HHS should consider creating resources--including audiovisual products, conferences, print and online resources--

that not only explain the technical aspects of the new Title X rule but also cast a vision for building a more effective, inclusive, diverse network of Title X programs. Resources should explain how the new rule ultimately will yield improved health outcomes and other benefits for Title X clients.

## **Conclusion**

By broadening healthcare options and enhance health outcomes for women; by protecting the vulnerable including the unborn, minor children and victims of abuse; and by preventing American tax dollars from propping up the abortion industry, the proposed new rule promises to align the Title X program with the original intent of Congress and with the values of the American people.

Implementing the valuable and strong reforms in the proposed rule related to Title X requirements is an important step in closing the door to past abuses and opening the door to new and more effective Title X partnerships. Turning this vision into reality also will require reevaluation and reformation of the grants process, building bridges to communities previously discriminated against, and providing technical training and encouragement to help new partners engage with HHS to serve Americans in need.

Thank you for HHS's commitment to serving the American people and for your consideration of these views.

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<sup>i</sup> Polling details available at <https://www.freedom2care.org/polling> and at [https://docs.wixstatic.com/ugd/809e70\\_2f66d15b88a0476e96d3b8e3b3374808.pdf](https://docs.wixstatic.com/ugd/809e70_2f66d15b88a0476e96d3b8e3b3374808.pdf).

<sup>ii</sup> "Abortion Limits Favored," Marist poll report, January 17, 2018, <https://www.kofc.org/en/news/polls.html#/> accessed June 26, 2018. "More than three quarters of Americans would limit abortion to — at most — the first three months of pregnancy, according to a new Marist Poll. That number has consistently been about three quarters or more for the past decade. This year, the survey found that 76 percent of Americans want such limits. Strong majorities of Republicans (92 percent), Independents (78 percent) and Democrats (61 percent) agree, as do a majority of those who identify as pro-choice (60 percent). While a slim majority of Americans (51 percent) identify as pro-choice, even 60 percent of those who identify as such also support substantial limits."

<sup>iii</sup> "For 12 years, media has ignored Lila Rose's evidence against Planned Parenthood," Live Action, June 24, 2018 <https://www.liveaction.org/news/12-years-evidence-planned-parenthood/> accessed June 26, 2018.

<sup>iv</sup> Many of these incidents are documented in "Real Life Stories," [https://docs.wixstatic.com/ugd/809e70\\_99b340dd952e4e57a98cc59b0dd8a0c2.docx?dn=Real%20life%20stories.pdf.docx](https://docs.wixstatic.com/ugd/809e70_99b340dd952e4e57a98cc59b0dd8a0c2.docx?dn=Real%20life%20stories.pdf.docx) accessed June 26, 2018.

<sup>v</sup> Report available at [https://archives-energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/documents/Select\\_Investigative\\_Panel\\_Final\\_Report.pdf](https://archives-energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/documents/Select_Investigative_Panel_Final_Report.pdf), accessed July 12, 2018.

<sup>vi</sup> Panel press release, "The Select Investigative Panel Releases Final Report," January 4, 2017. <https://energycommerce.house.gov/news/press-release/select-investigative-panel-releases-final-report/> accessed July 12, 2018.

<sup>vii</sup> "Justice Dept. Investigating Fetal Tissue Transfers by Planned Parenthood and Others," *New York Times*, Dec. 8, 2017. <https://www.nytimes.com/2017/12/08/us/politics/planned-parenthood-fetal-tissue-transfers-federal-investigation.html>, accessed July 12, 2018.

<sup>viii</sup> "Protecting Life in Global Health Assistance Six-Month Review," U.S. Dept. of State, Feb. 6, 2018. <https://www.state.gov/f/releases/other/278012.htm> accessed July 13, 2018.

<sup>ix</sup> According to the HHS Health Resources Services Administration. <https://bphc.hrsa.gov/about/index.html>, accessed July 12, 2018.

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<sup>x</sup> <https://bphc.hrsa.gov/about/healthcenterweek.html>, accessed July 12, 2018.

<sup>xi</sup> "Strengthening USG-FBO Overseas Health Partnerships" survey, May 2018. To download the full survey report, visit [www.freedom2care.org/polling](http://www.freedom2care.org/polling).