



May 17, 2021

U.S. Department of Health and Human Services  
Attn: Title X Rulemaking  
Office of Population Affairs  
Office of the Assistant Secretary for Health  
Hubert H. Humphrey Building, Room 509  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Becerra,

These comments on the Department of Health and Human Services' Proposed Rule for Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services (RIN 0937-AA11) are submitted on behalf of the HIV Health Care Access Working Group (HHCAGW).

HHCAGW is a coalition of over 100 national and community-based HIV service organizations representing health centers, HIV medical providers, public health professionals, advocates, and people living with HIV who are all committed to ensuring access to critical HIV and hepatitis C-related health care and support services. HHCAGW is actively engaged in efforts to increase early and affordable access to quality and comprehensive care and prevention services for people living with and at risk of HIV.

In general, we strongly support the Department's swift revocation of the Title X regulations promulgated in 2019. We concur that "those rules have undermined the public health of the population the program is meant to serve." Across the country, [community providers with a long history of providing Title X services as grantees or sub-recipients were forced to withdraw from the program](#). As highlighted in the Proposed Rule, this upheaval has had, even during its brief existence, demonstrable negative impacts on access to essential family planning services to which people are entitled. It also negatively impacts other critical services that these sites offer to people with low income—such as HIV prevention services—and, ultimately, undermines national disease prevention and control initiatives—such as our commitment to ending the HIV epidemic.

We also support the Department's proposed additions to the definitions section of the Title X regulations. In particular, the use of the word "client" instead of "women" is more reflective of the diverse population of patients served by the Title X program. An individual's gender identity should never be a barrier to receiving the care they need and all people who are capable of becoming pregnant, including gender-queer, transgender, and non-binary people, may have a need for family planning care, just as their sexual partners may.

We also appreciate the Department’s initiative to resolve gaps in and challenges associated with the 2000 regulations. We agree with many of the proposed revisions and offer the following recommendations on specific aspects of the Proposed Rule to support the realization of our shared goal of equitable, client-centered, comprehensive, quality service delivery in Title X programming:

- **Referral requirements for sites that do not offer a broad range of methods on-site:** While we support this proposed requirement, the Department should clarify that, for the referral to be “client-centered” and “not unduly limit access to the client’s method of choice,” sites must be transparent regarding both (a) methods of family planning not available on-site, and (b) the referral requirement. There is no freedom of choice without accurate, complete, and forthcoming information.
- **State restrictions on subrecipient eligibility unrelated to the ability to deliver Title X services:** We support the Department’s efforts in ensuring that the program’s mission is not undermined by state restrictions on subrecipient eligibility that are unrelated to the ability to deliver Title X services. Despite mounting evidence that excluding well-qualified, trusted family planning providers from publicly-funded health programs has adverse effects on access to critical family planning and sexual health care, states in recent years have increasingly targeted some family planning providers for exclusion from key federal health programs, including Title X. Tiering and other prohibitions against family planning providers often preclude participation by the very providers that are the most qualified and best-equipped to help Title X patients achieve their family planning goals. To best achieve the program’s goals, we believe the Department should ensure that the Title X program funds a diverse network of service delivery providers, including state, county, and local health departments, as well as hospitals, family planning councils, Planned Parenthood affiliates, federally qualified health centers, and other private non-profit organizations. These networks vary widely across communities because they are specifically established to provide the most effective care to their patient populations. We urge the Department to ensure that Title X projects do not exclude otherwise qualified providers as subrecipients due to state policies that unnecessarily interfere with clients’ access to family planning and sexual health care.
- **Client confidentiality:** We support the proposal that Title X recipients must inform patients of potential disclosures of confidential health information to health insurance policyholders. Disclosures of sensitive services to third parties—even a third-party policyholder—present harms for people who have not disclosed information (including HIV status, sexual activity, sexual preference, gender identity) with others and people who live with or are at risk of domestic abuse. Studies have shown, for example, that adolescents will [stop seeking sexual health care services](#) (including delaying testing or treatment of HIV or other sexually transmitted diseases) if parents were told about their seeking prescribed contraception, and that 18% of 15- to 17- year olds reported that they would [forgo sexual and reproductive health services](#) because their parents might find out. The Department should specify that recipients must inform patients of potential disclosures of confidential health information to health insurance policyholders before services are rendered and should provide alternative options for patients who are unwilling to receive services as a result.
- **Advancing health equity and serving historically-disadvantaged communities:** We support the goal of ensuring Title X programs advance health equity and serve historically-disadvantaged communities with client-centered family planning services and other care. We

are particularly in support of the stated priority in advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. Applications should require applicants to affirm that all of their service sites and subrecipients provide nondiscriminatory care, including to individuals and families from LGBTQ+ communities and to patients who have limited English proficiency. Transgender and gender non-conforming people, for example, [regularly face discrimination in provider settings](#), and individuals with limited English proficiency also [face significant barriers](#) when accessing basic health care. Moreover, ongoing discrimination in an entity's non-Title X services would nonetheless undercut Title X's health equity aims; applicants must be accountable to nondiscrimination across all of their services.

- **Nondiscrimination protections:** We urge the Department to ensure that Section 1557 of the Affordable Care Act and its corresponding regulations are included in the list of HHS regulations that apply to Title X grants (§ 59.12). Section 1557, among other things, provides specific protections for individuals against discrimination on the basis of sex in health programs or activities that receive federal financial assistance. The ability to receive nondiscriminatory health care services is a key component to achieving health equity and Title X recipients should be reminded that such protections apply.
- **Supporting telehealth efforts:** We support HHS' efforts to ensure that family planning services provided using telemedicine are supported by these regulations. We encourage HHS to use the term "telehealth" instead to ensure that efforts support a broader scope of remote health care services and includes non-clinical services like counseling and education. We recommend that HHS explicitly include telehealth into Title X regulations by adopting the following changes to proposed § 59.5(b)(1):

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.

Ultimately, even with an increased number of grantees receiving Title X funding as a result of the proposed rule, the Department will need to commit to long-term efforts that ensure individuals with low incomes and individuals who are uninsured or underinsured have steady and reliable access to comprehensive, nondiscriminatory, and culturally-appropriate medical care. Similar to many of the other rules promulgated in the last four years, we suspect that undoing the harm of the 2019 rule will require time—the 2019 rule not only caused thousands of service sites to shutter, but it fostered an environment where medical providers were restricted from providing comprehensive and complete information to their patients and were required to mask information about legal and appropriate health care services. We hope that this will be the first of many initiatives that commit to advancing health equity, sexual and reproductive health care, and a better health care system for all.

Thank you for the opportunity to comment on this important regulation. Please contact HHCAGW co-chairs Phil Waters, Center for Health Law and Policy Innovation at [pwaters@law.harvard.edu](mailto:pwaters@law.harvard.edu), Aisha Davis, AIDS Foundation of Chicago at [adavis@aidschicago.org](mailto:adavis@aidschicago.org), and Rachel Klein, The AIDS Institute at [rklein@tmail.org](mailto:rklein@tmail.org), if we can be of assistance.

Respectfully submitted by the undersigned organizations:

AHF

AIDS Alabama

AIDS Alliance for Women, Infants, Children, Youth & Families

AIDS Foundation Chicago

American Academy of HIV Medicine

APLA Health

Association of Nurses in AIDS Care

Center for Health Law and Policy Innovation

Community Access National Network - CANN

Community Research Initiative, Inc. (CRI)

HealthHIV

HIV + Hepatitis Policy Institute

HIV Dental Alliance

HIV Medicine Association

Human Rights Campaign

iHealth

NASTAD

Positive Women's Network-USA

Prevention Access Campaign

San Francisco AIDS Foundation

The AIDS Institute

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