



MEMORANDUM

June 17, 2019

To: Subcommittee on Oversight and Investigations Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Hearing on “Protecting Title X and Safeguarding Quality Family Planning Care”

On Wednesday, June 19, 2019 at 10 a.m. in the John D. Dingell Room, 2123 of the Rayburn House Office Building, the Subcommittee on Oversight and Investigations will hold a hearing entitled, “Protecting Title X and Safeguarding Quality Family Planning Care.” The hearing will examine the Federal Title X Family Planning Program.

I. BACKGROUND

Enacted in 1970 with bipartisan support, Title X of the Public Health Service Act is the only federal program solely dedicated to family planning and related health services in the United States.¹ The majority of Title X funding is competitively awarded to grantees for projects that are required to provide a broad range of acceptable and effective medically approved contraceptive methods and related services on a voluntary and confidential basis.² Title X prioritizes services for low-income or uninsured patients.³ The Office of Population Affairs (OPA), within the Office of the Assistant Secretary for Health (OASH) of the U.S. Department of Health and Human Services (HHS) administers the program, which has received continuous appropriations funding since its establishment in fiscal year (FY) 1971.⁴

¹ Congressional Research Service, *Family Planning Program Under Title X of the Public Health Service Act* (Oct. 2018) (R45181); Guttmacher Policy Review, *Title X: An Essential Investment, Now More than Ever* (Sep. 2013).

² *Id.*; U.S. Department of Health and Human Services, Office of Populations Affairs, Program Requirements for Title X Funded Family Planning Projects (Apr. 2014) (www.hhs.gov/opa/sites/default/files/Title-X-2014-Program-Requirements.pdf).

³ U.S. Department of Health and Human Services, Office of Populations Affairs, *About Title X Grants: Statutes and Regulations* (www.hhs.gov/opa/title-x-family-planning/about-title-x-grants/statutes-and-regulations/index.html).

⁴ U.S. Department of Health and Human Services Office of Populations Affairs, Title X Family Planning, *Funding History* (www.hhs.gov/opa/title-x-family-planning/about-title-x-grants/funding-history/index.html).

II. TITLE X GRANTS AND SERVICES

Through competitive family planning services grants, Title X supports such services as natural family planning and contraceptives, infertility services, breast and cervical cancer screenings, HIV and other sexually transmitted diseases (STDs) testing and prevention education, services for adolescents, and preconception services.⁵

Under the law, Title X projects must provide nondirective pregnancy counseling, including information about parenting, adoption and abortion; certify that providers encourage family participation for minors and counseling on how to resist sexual coercion; and adhere to state notification and reporting laws related to child abuse, child molestation, sexual abuse, rape, or incest.⁶ Title X grantees are prohibited from using awarded funding to promote or oppose a legislative proposal or candidate for public office, and from using Title X funds for abortions.⁷ Grantees may provide other services with funds not allocated through Title X.⁸

In 2017, 89 Title X grantees, comprised of 47 state, local, and territorial health departments and 42 nonprofit organizations, provided services to over four million clients at nearly 3,900 clinics in 50 states, the District of Columbia, and eight U.S. territories.⁹ Ninety percent of these clients qualified for subsidized or no-charge services due to their income.¹⁰

For many patients, Title X health centers are their only source of health care. According to a 2016 nationally representative study of patients seeking contraceptive care at a Title X site, 60 percent had no other source of health care in the prior year.¹¹ Title X providers serve a racially and ethnically diverse population, most of whom are low-income women under 30 years of age.¹²

⁵ U.S. Department of Health and Human Services Office of Populations Affairs, Title X Family Planning, *Statutes and Regulations* (www.hhs.gov/opa/title-x-family-planning/about-title-x-grants/statutes-and-regulations/index.html).

⁶ Congressional Research Services, *Family Planning Program Under Title X of the Public Health Services Act* (Oct. 2018).

⁷ Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Pub. L. 115-245.

⁸ *Id.*

⁹ U.S. Department of Health and Human Services, Office of Population Affairs, *Title X Family Planning Annual Report, 2017 National Summary* (Aug. 2018).

¹⁰ *Id.*

¹¹ Kavanaugh, Megan L. et al. Use of Health Insurance Among Clients Seeking Contraceptive Services at Title X-Funded Facilities in 2016, *Perspectives on Sexual and Reproductive Health* (Jun. 12, 2018).

¹² U.S. Department of Health and Human Services, Office of Population Affairs, *Title X Family Planning Annual Report, 2017 National Summary* (Aug. 2018).

III. TITLE X UNDER THE TRUMP ADMINISTRATION

The Title X family planning services grants funding opportunity announcements issued by the Trump Administration indicated a significant shift from prior program priorities.¹³ These changes included promoting natural family planning over other forms of contraceptive options; promoting an abstinence-only approach for adolescents and unmarried adults and counseling on avoiding sexual activity for those already sexually active; emphasizing spousal and family participation in client family planning care; and a focus on primary care providers over reproductive health care providers within the Title X network.¹⁴

On June 1, 2018, the Trump Administration published a proposed rule to revise Title X regulations.¹⁵ Among numerous changes to reporting and site preference guidance, the rule proposed extensive physical and financial separation requirements from any entity providing abortion services, including referral and counseling as well as other activities related to abortion. The proposed rule also prohibited Title X projects from offering provider referrals for abortion services and would allow the withholding of information related to abortion services.¹⁶ The rule also proposed an alternate definition of a broad range of family planning, eliminating the term, “medically approved,” while emphasizing natural family planning, such as fertility awareness-based methods.¹⁷ Further, the proposed rule would require documentation of family participation in adolescent family planning care, extending beyond current requirements for providers to encourage family engagement with minors.¹⁸ Over 500,000 comments were submitted to HHS regarding the proposed rule.¹⁹ The proposed rule was finalized on March 4, 2019. Most of the provisions summarized above remained intact with some minor changes and clarifications.²⁰

¹³ U.S. Department of Health and Human Services, Office of Population Affairs, *FY 2018 Announcement of Anticipated Availability of Funds for Family Planning Services Grants* (Feb. 23, 2018); U.S. Department of Health and Human Services, Office of Population Affairs, *FY 2019 Announcement of Anticipated Availability of Funds for Family Planning Services Grants* (Oct. 22, 2018).

¹⁴ *Id.*

¹⁵ U.S. Department of Health and Human Services, *Compliance with Statutory Program Integrity Requirements*, 83 Fed. Reg. 25502 (Jun. 1, 2018) (proposed rule).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ U.S. Department of Health and Human Services, *HHS Releases Final Title X Rule Detailing Family Planning Grant Program* (Feb. 22, 2019) (press release).

²⁰ U.S. Department of Health and Human Services, *Compliance with Statutory Program Integrity Requirements*, 84 Fed. Reg. 7714 (May 3, 2019) (final rule).

III. CURRENT TITLE X RULE LITIGATION

Shortly after the Title X final rule was published, attorneys general from 23 states as well as other entities—including the American Medical Association, the National Family Planning & Reproductive Health Association, and several Title X grantees—filed multiple suits against HHS over the final rule.²¹

In the months following the plaintiffs’ filings, two nationwide injunctions have been issued for several consolidated lawsuits. In addition, California and Maryland have secured statewide injunctions, putting implementation of the final rule on hold for the pendency of the underlying court proceedings.²² HHS has appealed the decisions and litigation is ongoing.²³

III. WITNESSES

The following witnesses have been invited to testify:

Panel I

Diane Foley, MD, FAAP

Deputy Assistant Secretary
Office of Populations Affairs
Office of the Assistant Secretary for Health
U.S. Department of Health and Human Services

Panel II

Clare Coleman

President & Chief Executive Officer
National Family Planning & Reproductive Health Association

Kami E. Geoffray, JD

Chief Executive Officer
Women’s Health and Family Planning Association of Texas

²¹ KFF, *New Title X Regulations: Implications for Women and Family Planning Providers* (Mar. 8, 2019); NPR, *Trump’s Overhaul of Federal Family Planning Program Faces Multiple Lawsuits* (Mar. 6, 2019).

²² The Hill, *Second federal judge blocks Trump abortion measures* (Apr. 2019); Maryland Matters, *Baltimore Wins Injunction in Title X Gage Rule Case* (Jun. 3, 2019).

²³ Reply In Support of Motion For Stay Pending Appeal, *State of Oregon et. al. v Azar, American Medical Association et. al. v. Azar*, No. 19-35386(L) (9th Cir. May 24, 2019); Motion for Stay Pending Appeal (May 10, 2019), *California v. Azar and Essential Access Health et. al. v. Azar*, 9th Cir. (Nos. 19-15974 & 19-15979); *US court appeals Maryland’s move to block abortion changes*, Associated Press (Jun. 11, 2019).

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