

July 31, 2018

Alex Azar, Secretary of Health and Human Services  
Attention: Family Planning  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building, Room 716G  
200 Independence Avenue SW  
Washington, DC 20201



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Valerie Huber, Senior Policy Advisor, Assistant Secretary for Health  
Attention: Family Planning  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building, Room 716G  
200 Independence Avenue SW  
Washington, DC 20201

Diane Foley, Deputy Assistant Secretary for Population Affairs  
Office of the Assistant Secretary for Health, Office of Population Affairs  
Attention: Family Planning  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building, Room 716G  
200 Independence Avenue SW  
Washington, DC 20201

*Submitted electronically*

RE: Docket HHS-OS-2018-0008 Department of Health and Human Services  
RIN 0937-ZA00, Proposed Rule for Compliance With Statutory Program  
Integrity Requirements

Dear Secretary Azar, Senior Advisor Huber, and Deputy Assistant Secretary  
Foley:

YWCA USA submits these comments on the proposed rule published at 83 FR  
25502 (June 1, 2018), RIN 0937-ZA00, with the title, Compliance with Statutory  
Program Integrity Requirements (the "Proposed Rule" or "Rule").

As one of the oldest and largest women's organizations in the nation, YWCA  
USA is dedicated to eliminating racism, empowering women, and promoting  
peace, justice, freedom, and dignity for all. Today, we serve over 2 million  
women, girls, and their families through a network of 210 local associations in  
46 states and the District of Columbia by combining programming and  
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rights, empowerment and economic advancement for women and girls, and  
health and safety of women and girls. YWCA has been at the forefront of the  
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YWCA believes that quality, affordable healthcare is critical for everyone, but for many women, particularly women of color, those who are low-income, and those who are survivors of violence, medical care often remains inaccessible. This is why we write to express our opposition to the Proposed Rule, which would interfere with the doctor-patient relationship and deny Title X patients information they need to stay healthy and undermine Title X’s goals of providing comprehensive reproductive health services to people with low incomes. Additionally, the Proposed Rule radically underestimates the likely costs it will impose on patients, providers, and on society. Finally, the Rule would exacerbate existing health disparities – impacting essential access to health for communities of color at much higher rates.

Almost two-thirds of those attending Title X-funded clinics come from households with incomes below the federal poverty level. Nearly 90 percent of Title X recipients have incomes below 200 percent of the federal poverty level, and 48 percent are uninsured.<sup>1</sup> Planned Parenthood health centers serve over 40 percent of Title X patients; hospitals, family planning councils, federally qualified health centers, and other private nonprofit organizations make up the rest of the Title X network. Every year, more than 4 million low-income, including under-insured and uninsured individuals, rely on Title X clinics to access services they otherwise might not be able to afford.<sup>2</sup> Of these clients, more than half are women of color: 30 percent identify as either Black, Asian, Asian or Pacific Islander, or American Indian or Alaska Native, and another 32 percent of clients identify as Latinx.<sup>3</sup> Title X is an essential source of publicly-funded health care for these communities, and this Rule would have a devastating impact on women and their families across the country.

Women, particularly women of color, those who are low-income, and those who are survivors of domestic and sexual violence, need publicly-funded essential family planning services to ensure quality health care, to plan their pregnancies, and to protect the future for themselves and their families. The Proposed Rule threatens to significantly harm this crucial health care right and will have a devastating impact on women and families across the county. To address these and other concerns, we urge the Department to reject the Rule in its entirety.

**I. The Proposed Rule would interfere with the doctor-patient relationship and denies patients information that they need to make the best decisions for themselves and their families.**

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<sup>1</sup> C.I. Fowler and others, “Family Planning Annual Report: 2015 National Summary” (Research Triangle Park, NC: RTI International, 2015), available at <https://www.hhs.gov/opa/sites/default/files/title-x-fpar-2015.pdf>.

<sup>2</sup> Id.

<sup>3</sup> Id.



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The Proposed Rule would ban Title X providers from giving women and gender non-conforming people full information about their health care options. Specifically, the Rule would eliminate the existing requirement that patients be provided with referrals upon request for the full range of pregnancy options, including prenatal care and delivery; infant care, foster care, or adoption; and abortion.<sup>4</sup> That requirement would be replaced with a complete ban on health care providers giving abortion referrals.<sup>5</sup> Many experts call this provision a gag rule, since it would restrict providers from speaking freely with their patients. The gag rule violates core ethical standards and undermines the patient-provider relationship.

This proposal directly conflicts with the requirements of medical professional associations, including the American College of Obstetricians and Gynecologists and the American College of Physicians, which assert that patients should receive complete and accurate information to inform their health care decisions.<sup>6</sup> Similarly, the American Medical Association states in its Code of Medical Ethics that providers must “present relevant information accurately and sensitively, in keeping with the patient’s preferences”<sup>7</sup> and that “withholding information without the patient’s knowledge or consent is ethically unacceptable.”<sup>8</sup> The Code of Ethics for Nursing stipulates that patients must be given “accurate, complete, and understandable information in a manner that facilitates an informed decision.” That is why both the American Medical Association<sup>9</sup> and the American Nurses Association,<sup>10</sup> among others, have publicly announced their strong objection to the gag rule.

## II. The Proposed Rule would drastically impact the access and affordability of preventive and contraceptive care for communities of color and those with low incomes

**Physical and Financial Separation Requirement.** The Proposed Rule is clearly designed to make it impossible for specialized reproductive health providers to continue to participate in the Title X program, leaving thousands of people

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<sup>4</sup> 42 C.F.R. § 59.5(a)(5).

<sup>5</sup> Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25,531.

<sup>6</sup> Kinsey Hasstedt, *Unbiased Information on and Referral for All Pregnancy Options Are Essential to Informed Consent in Reproductive Health Care*, Guttmacher Institute (Jan. 2018), available at <https://www.guttmacher.org/gpr/2018/01/unbiased-information-and-referral-all-pregnancy-options-are-essential-informed-consent>.

<sup>7</sup> American Medical Association, Code of Medical Ethics Opinion 2.1.1.1, Informed Consent, available at <https://www.ama-assn.org/delivering-care/informed-consent>.

<sup>8</sup> American Medical Association, Code of Medical Ethics Opinion 2.1.3, Withholding Information from Patients, available at <https://www.ama-assn.org/delivering-care/withholding-information-patients>.

<sup>9</sup> American Medical Association, AMA Response to Administration's Attack on Family Planning Services (May 23, 2018), available at <https://www.ama-assn.org/ama-response-administrations-attack-family-planning-services>.

<sup>10</sup> American Nurses Association, ANA Condemns Title X Funding Cuts Proposed by the Trump Administration (May 22, 2018), available at <https://www.nursingworld.org/news/news-releases/2018/ANA-condemns-title-x-funding-cuts--proposed-by-the-trump-administration/>.



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with nowhere to go for critical care. First, the Rule would require Title X recipients to physically and financially separate Title X project activities from any of their abortion-related activities, including abortion referrals.<sup>11</sup> These provisions completely ignore that specialized providers have for decades played an important -- and irreplaceable role -- in the Title X program.

The Rule would grant broad discretion to the Department of Health and Human Services (“the Department”) to evaluate an individual Title X recipient’s compliance with the new physical and financial separation standard by instructing HHS to employ a “facts and circumstances” test to determine whether a Title X project has achieved “objective integrity and independence” from abortion-related activities.<sup>12</sup> In its analysis, the agency would be required to consider at least four factors:

1. The existence of separate, accurate accounting records;
2. The degree of separation from facilities (e.g., treatment, consultation, examination and waiting rooms, office entrances and exits, shared phone numbers, email addresses, educational services, and websites) in which prohibited activities occur and the extent of such prohibited activities;
3. The existence of separate personnel, electronic or paper-based health care records, and workstations; and
4. The extent to which signs and other forms of identification of the Title X project are present, and signs and material referencing or promoting abortion are absent.<sup>13</sup>

These factors reverse the Department’s longstanding interpretation that, “[i]f a Title X grantee can demonstrate [separation] by its financial records, counseling and service protocols, administrative procedures, and other means . . . , then it is hard to see what additional statutory protection is afforded by the imposition of a requirement for ‘physical’ separation.”<sup>14</sup> A prior notice issued by the Department further made clear that Title X service sites could use common waiting rooms, staff, and filing systems for abortion-related activities and Title X project activities.<sup>15</sup> The Department fails to justify why this reversal is warranted. Moreover, these factors go even further than a 1988 rule issued by the Reagan administration. Even so, the Department states that the standard still may not go far enough in separating Title X services from abortion.

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<sup>11</sup> Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25,532.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Standards of Compliance for Abortion Related Services in Family Planning Services Projects, 65 Fed. Reg. 41,270, 41,276 (Jul. 3, 2000).

<sup>15</sup> Provision of Abortion-Related Services in Family Planning Projects, 65 Fed. Reg. 41,281, 41,282 (Jul. 3, 2000).

**Elimination of Reproductive Health Providers.** These provisions are clearly designed to remake the Title X network by pushing out reproductive health-focused providers out and bringing in providers that do not focus on reproductive health care. However, millions of women continue to rely on specialized reproductive-health providers to provide publicly-funded contraceptive care. In 2015, the contraceptive care provided at Title X sites helped prevent 822,000 unintended pregnancies, which would have resulted in 387,000 unplanned births and 278,000 abortions.<sup>16</sup>



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Title X providers offer health care services to uninsured and underinsured individuals who otherwise would not have access to care because of the additional barriers communities of color face in accessing coverage. Under the Affordable Care Act (ACA), millions of women of color gained access to affordable coverage and critical health care. As a result, more than 80 percent of women of color ages 18–64 are now insured in the majority of states.<sup>17</sup> Under the ACA, marketplace plans are not able to deny coverage or increase premiums based on prior health conditions or medical history, including for pregnancy and childbirth. This has been critical for our communities choosing if, when, and how, to parent. This proposed rule is an attack on the Title X program and a gamble with the health and economic stability of Black, Latinx, and Asian and Pacific Islander (AAPI) women, families, and communities. Women of color will be disproportionately impacted by the proposed rule and, if current protections and policies are eliminated, stand to lose the most. The implementation of this rule as written would put our health and lives on the line.

For many women and gender non-conforming people, a visit to a family planning provider is about far more than planning and spacing pregnancies. Title X providers also help improve people’s health by screening for other preventative sexual and reproductive health services – including preconception care and counseling – STI testing and treatment, the HPV vaccine, and Pap tests for early detection of cervical cancer. In 2010, these services by the Title X network prevented 87,000 preterm or low-birth-weight births, 63,000 STIs and 2,000 cases of cervical cancer.<sup>18</sup> At Title X sites, clients can also be screened for other health issues, such as high blood pressure, diabetes, depression, and anxiety, and be connected to further care when

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<sup>16</sup> Frost JJ, et al., *Publicly Funded Contraceptive Services at U.S. Clinics*, 2015, New York: Guttmacher Institute, 2017, <https://www.guttmacher.org/report/publicly-funded-contraceptive-services-us-clinics-2015>.

<sup>17</sup> National Women’s Law Center. (2017, February). *Affordable Care Act Repeal Threatens the Health and Economic Security of 5.1 Million Women of Color Who Recently Gained Insurance Coverage*. Retrieved 17 March 2017, from <http://nwlc.org/wp-content/uploads/2017/02/WOC-Health-Coverage-by-State.pdf>

<sup>18</sup> Sonfield A, *Beyond preventing unplanned pregnancy: the broader benefits of publicly funded family planning services*, *Guttmacher Policy Review*, 2014, 17(4):2–6, <http://www.guttmacher.org/gpr/2014/12/beyond-preventing-unplanned-pregnancy-broader-benefits-publicly-funded-family-planning>.



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needed. For approximately four in 10 women who use Title X providers to obtain contraceptive care, that provider is their only source of care.<sup>19</sup>

In addition to the many types of providers that make up the Title X network, Planned Parenthood health centers play a critical and outsized role in the program: providing care to approximately 40 percent of Title X patients annually. Eliminating Planned Parenthood from the Title X program would leave many people, including women of color, without access to essential preventive health services and other health care needs. Title X funded health centers provide high-quality primary and preventive health care to many women of color who otherwise would have nowhere to turn for care. Defunding any Title X funded health centers, including Planned Parenthood, would remove access to critical health care services and providers that our communities rely on for trusted care.

Title X funded health centers are a lifeline for quality health care for underserved communities. For example, fifteen percent of Planned Parenthood patients are Black, 23 percent are Latinx, and four percent are AAPI. Fifty-four percent of Planned Parenthood health centers are in underserved areas. In 21 percent of counties with a Planned Parenthood health center, Planned Parenthood is the only safety-net family planning provider, and in 68 percent of counties with a Planned Parenthood health center, Planned Parenthood serves at least half of all safety-net family planning patients.<sup>20</sup>

**Federally Qualified Health Centers (FQHCs) cannot meet the increased demand for services that will result from the proposed rule.** Federally Qualified Health Centers (FQHCs) are currently a valuable component of federally-funded health centers, providing affordable primary and preventative care for people of all socio-economic statuses and comprising 26 percent of the Title X network.<sup>21</sup> But FQHCs will not be able to absorb the sheer number of individuals needing health care services if such a large segment of the current network of Title X providers is unable to receive funding under the proposed rule. The burden of providing health care services to this amount of people would not only place unrealistic expectations on FQHCs that are already stretched thin in meeting the needs of their communities but would also jeopardize the quality of care provided. Providers with even less experience and capacity to provide a broad range of family planning care will likely be even less likely to fill this gap.

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<sup>19</sup> Frost JJ, Gold RB and Bucek A, Specialized family planning clinics in the United States: why women choose them and their role in meeting women's health care needs, *Women's Health Issues*, 2012, 22(6):e519–e525, [http://www.whijournal.com/article/S1049-3867\(12\)00073-4/pdf](http://www.whijournal.com/article/S1049-3867(12)00073-4/pdf).

<sup>20</sup> Hasstedt, Kinsey. *Understanding Planned Parenthood's Critical Role in the Nation's Family Planning Safety Net*. New York: Guttmacher Institute, 2017.

<sup>21</sup> Frost, Jennifer J., Frohwirth, Lori F., Blades, Nakeisha, Zolna, Mia R., Douglas-Hall, Ayana, and Bearak, Jonathan. *Publicly Funded Contraceptive Services at U.S. Clinics*, 2015. New York: Guttmacher Institute, 2017.



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In states that have eliminated Planned Parenthood from their family planning programs, the public health results have been disastrous. For instance, a recent study in the *New England Journal of Medicine* showed that blocking patients from going to Planned Parenthood in Texas had serious public health consequences.<sup>22</sup> The study found a 35 percent decline in women in publicly-funded programs using the most effective methods of birth control. Further, denying women access to the contraceptive care that they needed led to a dramatic 27 percent increase in births among women who had previously accessed injectable contraception through those programs. Moreover, public health officials fear a domestic gag rule, “could cripple federal efforts to stop a dramatic increase in sexually transmitted diseases in the U.S.”<sup>23</sup>

The proposed changes to the Title X Family Planning Program would drastically impact the access and affordability of preventive and contraceptive care for communities of color and those with low incomes, communities that would not be able to be absorbed by other federally funded programs. Although FQHCs are critical for communities of color to access health care, transferring the care of individuals from Title X health care providers to FQHCs does not guarantee that a person can receive the same services at an FQHC. Not all FQHCs provide contraceptive care, a key component of the Title X Family Planning Program. In 2015, Guttmacher found that only six in 10 FQHC sites reported serving at least 10 contraceptive clients in a year; this subset of sites is then counted among the nation’s safety-net family planning centers. On average, a Planned Parenthood health center serves 2,950 contraceptive clients in a year, while an FQHC site providing contraceptive care serves 320.<sup>24</sup>

In response to a Senate Health, Education, Labor, and Pensions Committee request to better understand how FQHCs could absorb the mass number of individuals seeking Title X services, the Guttmacher Institute found that in twenty-seven states, FQHC sites would have to at least double their contraceptive client caseloads to do so, and in nine of those states, they would have to at least triple them.<sup>25</sup> As the only family planning program in our country’s history, it is critical to understand the negative impact of these proposed changes to Title X on low-income and communities of color’s access to care.

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<sup>22</sup> Amanda J. Stevenson et al. “Effect of Removal of Planned Parenthood from the Texas Women’s Health Program,” *New England Journal of Medicine*, Vol. 374, available at <http://www.nejm.org/doi/full/10.1056/NEJMs1511902#t=article>.

<sup>23</sup> Michelle Andrews, *Trump’s Redirection Of Family Planning Funds Could Undercut STD Fight*, NPR (June 12, 2018), available at <https://www.npr.org/sections/health-shots/2018/06/12/618902785/trumps-redirection-of-family-planning-funds-could-undercut-std-fight>.

<sup>24</sup> Frost JJ et al., *Publicly Funded Contraceptive Services at U.S. Clinics, 2015*, New York: Guttmacher Institute, 2017, <https://www.guttmacher.org/report/publicly-funded-contraceptive-services-us-clinics-2015>.

<sup>25</sup> Frost JJ and Zolna MR, *Response to inquiry concerning the availability of publicly funded contraceptive care to U.S. women*, memo to Senator Patty Murray, Senate Health, Education, Labor and Pensions Committee, New York: Guttmacher Institute, May 3, 2017, <https://www.guttmacher.org/article/2017/05/guttmacher-murray-memo-2017>.



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**III. The Proposed Rule would radically change the Title X program, adversely impacting the health of the people across the nation.**

**Contraceptive Access.** The Proposed Rule also seems to threaten Title X program protections that are designed to ensure access to the full range of contraceptive methods. Currently, Title X projects must, by statute and regulation, offer a broad range of acceptable and effective family planning methods and services.<sup>26</sup> Access to “the full range of FDA-approved contraceptive methods” has also been deemed an essential feature of quality family planning by the U.S. Office of Population Affairs, which administers Title X, and the Centers for Disease Control and Prevention in their authoritative clinical guidelines for quality care.<sup>27</sup> While HHS cannot alter the statutory requirement that Title X projects offer “a broad range of acceptable and effective family planning methods and services,”<sup>28</sup> the proposed rule goes out of its way to emphasize that “projects are not required to provide every acceptable and effective family planning method or service,” giving Title X projects authority to exclude methods or services of their choosing.<sup>29</sup> Moreover, the Proposed Rule would remove the requirement that family planning methods available from Title X projects must be “medically approved.”<sup>30</sup>

Collectively, these changes appear intended to allow Title X projects to deny patients access to the full complement of effective contraceptive methods. We are very concerned that this lowering of the threshold for participation in Title X will result in organizations with little or no experience providing sexual and reproductive health care participating in the program, which in turn would inevitably lead to reduced access to a broad range of contraceptive methods for patients. All people seeking care in Title X programs are entitled to access the contraceptive method that works best for their individual circumstances, and that requires access to all methods of contraception. Indeed, this was the very purpose of the Title X program in the first place. At the time, Congress stated that Title X’s purpose was “making comprehensive voluntary family planning services readily available to all persons desiring such services.”<sup>31</sup>

**The proposed rule threatens progress in lowering unintended and teen pregnancy rates.** The United States is currently experiencing a 30-year low in unintended pregnancy and an all-time low in teen pregnancy. These results

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<sup>26</sup> 42 U.S.C. § 300(a); 42 C.F.R. § 59.5(a)(1). While the entire project is held to the “broad range” standard under the current rules, each participating entity is not. So “[i]f an organization offers only a single method of family planning, it may participate as part of a project as long as the entire project offers a broad range of family planning services.”

<sup>27</sup> Department of Health and Human Services and Centers for Disease Control and Prevention, *Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs*, 2, (Apr. 2014), available at <https://www.cdc.gov/mmwr/pdf/rr/rr6304.pdf>.

<sup>28</sup> 42 U.S.C. § 300(a); 42 C.F.R. § 59.5(a)(1).

<sup>29</sup> Compliance With Statutory Program Integrity Requirements, 83 Fed. Reg. at 25,530.

<sup>30</sup> *Id.* at 25,530.

<sup>31</sup> Pub. L. No. 91-572, § 2(1); see S. Rep. No. 91-1004, at 2 (1970) (emphasis added).

have been achieved in large part due to access to affordable contraception - in particular the most effective methods of contraception - including through programs like Title X. This rule threatens to turn back the progress that has been made.

Although unintended pregnancy rates have dropped in recent years across nearly all age, education, income, and race and ethnic groups, rates have remained relatively high among poor women and women of color. For instance, poor women have more than five times as many unintended pregnancies as higher-income women, and women of color are approximately twice as likely to experience an unintended pregnancy as White women.<sup>32</sup> The Proposed Rule would exacerbate these disparities.



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#### **IV. The Proposed Rule would worsen existing health disparities leaving communities that already experience worse health outcomes with less access to care.**

Despite recent gains in medical coverage, women of color still face disparities in reproductive health treatment and outcomes. Structural racism and income inequality have raised additional barriers for communities of color attempting to access coverage. This Proposed Rule is an attack on the Title X program and a gamble with the health and economic stability of Black, Latinx, Asian and Pacific Islander (AAPI), and American Indian and Alaska Native women, families, and communities. Women of color will be disproportionately impacted by the Proposed Rule and, if current protections and policies are eliminated, stand to lose the most. More than half of Title X patients are women of color,<sup>33</sup> more than one-third are Latinx, and 13 percent have limited proficiency in English.<sup>34</sup> Title X health care providers also offer services for foreign-born individuals who are less likely to have coverage (46 percent) than U.S.-born people (75 percent).<sup>35</sup> This rule will deny people who already face health disparities access to the best possible care through experienced providers and to all methods of contraception.

#### **Black Women**

Quality family planning and sexual health services provided by Title X-funded health centers are crucial for the health of Black women. Of the 4.2 million people served through Title X funded health centers, 92 percent are women,

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<sup>32</sup> Finer, L. and Zolna, M. Declines in Unintended Pregnancy in the United States, 2008-2011. *New England Journal of Medicine*. March 3 2016 <https://www.nejm.org/doi/full/10.1056/NEJMsa1506575>.

<sup>33</sup> C.I. Fowler and others, "Family Planning Annual Report: 2015 National Summary" (Research Triangle Park, NC: RTI International, 2015), available at <https://www.hhs.gov/opa/sites/default/files/title-x-fpar-2015.pdf>.

<sup>34</sup> *Id.*

<sup>35</sup> Kavanaugh, Megan, et al. *Use of Health Insurance Among Clients Seeking Contraceptive Services at Title X-Funded Facilities in 2016*. New York: Guttmacher Institute, 2018.

<https://www.guttmacher.org/journals/psrh/2018/06/use-health-insurance-among-clients-seeking-contraceptive-services-title-x>.



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and more than 20 percent are Black.<sup>36</sup> Black women are currently three to four times more likely to die during pregnancy and childbirth than White women<sup>37</sup> and are twice as likely to suffer from severe maternal morbidity.<sup>38</sup> Title X family services are essential to ensuring that Black women experience healthier pregnancies, and to improving post-natal health outcomes for both mothers and infants.<sup>39</sup> Family planning services are also life saving for early detection and treatment of STIs and reproductive cancers, such as breast cancer, which disproportionately impact Black women.<sup>40,41</sup> This proposed rule is a direct threat to family planning services for Black women and will disproportionately impact Black women’s health.

**Latinx Community**

As the most uninsured group in the United States, Title X provides critical access to care for Latinxs,<sup>42</sup> who would otherwise be unable to access contraception, STI testing, and preventive services like cervical cancer screenings. Thirty-two percent of Title X patients identify as Latinx, including 18,982 in Puerto Rico, who were served in 2016.<sup>43</sup> The range of reproductive health services provided by Title X health care providers allow Latinxs to access services that address health disparities and provide preventive services.

Title X funded health centers allow many Latinxs to access contraception that they otherwise would have to go without. Because of the high uninsured rate in the Latinx community, seeing a provider and accessing birth control is not an option for many women and Latinx youth experience pregnancies at about twice the rate of their white counterparts.<sup>44</sup> Latinx women also experience

<sup>36</sup> U.S. Department of Health & Human Services (HHS), Office of Population Affairs, *Title X Family Planning*, Rockville (MD): HHS, 2016. Online: <https://www.hhs.gov/opa/title-x-family-planning/index.html#>.

<sup>37</sup> Pregnancy Mortality Surveillance System, Center for Disease Control, (Dec. 2016), <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pmss.html>.

<sup>38</sup> Black Mamas Matter: A Toolkit for Advancing the Human Right to Safe And Respectful Maternal Care, Center for Reproductive Rights, (2016), [https://www.reproductiverights.org/document/black-mamas-matter-toolkit-for-advancing-human-right-to-safe-respectful-maternal-healthcare?utm\\_content=buffer2efd5&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](https://www.reproductiverights.org/document/black-mamas-matter-toolkit-for-advancing-human-right-to-safe-respectful-maternal-healthcare?utm_content=buffer2efd5&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer).

<sup>39</sup> U.S. Department of Health and Human Services (HHS), Office of Disease Prevention and Health Promotion, *Healthy People 2020 Topics and Objectives: Family Planning*, Rockville (MD): HHS, no date. Online: <https://www.healthypeople.gov/2020/topics-objectives/topic/family-planning>.

<sup>40</sup> Centers for Disease Control and Prevention (CDC), *Health Disparities in HIV/ AIDS, Viral Hepatitis, STDs, and TB - African Americans/Blacks*, Atlanta: CDC, 2017. Online: <http://www.cdc.gov/nchhstp/healthdisparities/africanamericans.html>.

<sup>41</sup> Centers for Disease Control and Prevention (CDC), *Gynecologic Cancers: Cervical Cancer Rates by Race and Ethnicity*, Atlanta: CDC, 2016. Online: [www.cdc.gov/cancer/cervical/statistics/race.htm](http://www.cdc.gov/cancer/cervical/statistics/race.htm).

<sup>42</sup> “Latinx” is a term that challenges the gender binary in the Spanish language and embraces the diversity of genders that often are actively erased from spaces.

<sup>43</sup> Office of Population Affairs. *Family Planning Annual Report: 2016 National Summary*. August 2017. <https://www.hhs.gov/opa/sites/default/files/title-x-fpar-2016-national.pdf>.

<sup>44</sup> Centers for Disease Control and Prevention. *Reproductive Health: Teen Pregnancy. Social Determinants and Eliminating Disparities in Teen Pregnancy*. <https://www.cdc.gov/teenpregnancy/about/social-determinants-disparities-teen-pregnancy.html>.



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cervical cancer at twice the rate of White women,<sup>45</sup> which Title X-funded health centers are critical to providing early testing to prevent. Because of Title X-funded health care centers, Latinxs can also continue to receive linguistically-appropriate testing, care, and education to prevent against transmission of HIV, which helped to lower the rate of HIV diagnosis of Latinx women by 14 percent between 2011 and 2015.<sup>46</sup>

Latinx youth also rely on Title X centers for confidential and affordable services. In 2014, nearly half of U.S. born Latinxs were younger than 18, about a quarter (14.6 million) of all Latinxs were millennials (ages 18 to 33), and Latinxs comprise the youngest major ethnic group in the United States.<sup>47</sup> In 2015, more than three-fifths of Latinx youth (62 percent) lived in families living with low incomes (below 200 percent of the official poverty line), twice the proportion for White children (31 percent).<sup>48</sup> Title X providers provide critical services to uninsured and underinsured Latinxs, providing opportunities to make decisions about their bodies, sexuality, health, and families with dignity and determination.

**Asian American, Native Hawaiian, and Pacific Islander (AA&NHPI) Community**

Cancer is the leading cause of death for AAPI communities, and the cervical cancer incidence rate is higher in several Asian-American, Native Hawaiian and Pacific Islander (AA&NHPI) subgroups than in non-Hispanic Whites. For instance, the incidence rate is twice as high in Cambodians as in non-Hispanic whites, and 40 percent higher among Vietnamese women.<sup>49</sup>

The 13 percent of Title X patients who are Limited English Proficient (LEP) will also lose access to critical language assistance services, on which some Asian American and Pacific Islander (AA&NHPI) women rely to receive sexual and reproductive health services. While the majority of AA&NHPIs speak English well, approximately 35 percent are LEP and experience difficulty speaking, reading, writing, or understanding English.<sup>50</sup> According to U.S. Census data, 20 percent or more of Vietnamese, Korean, Chinese, Bangladeshi, Laotian, Thai, Hmong, Indonesian, and Cambodian households are linguistically isolated,

<sup>45</sup> Mann, L., et al. Increasing Cervical Cancer Screening Among US Hispanics/Latinas: A Qualitative Systematic Review. *J Cancer Educ.* 2016 1 Jun. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4344418/>.

<sup>46</sup> Center for Disease Control and Prevention. "Women Among HIV." July 5, 2018. <https://www.cdc.gov/hiv/group/gender/women/index.html>.

<sup>47</sup> E. Patten. The Nation's Latino Population is Defined By It's Youth. Pew Research Center. April 20, 2016. Available at <http://www.pewhispanic.org/2016/04/20/the-nations-latino-population-is-defined-by-its-youth/>.

<sup>48</sup> Mather, Mark Trends and Challenges Facing America's Latino Children. Population Reference Bureau. <https://www.prb.org/trends-and-challenges-facing-americas-latino-children/>.

<sup>49</sup> L.A. Torre et al., Cancer Statistics for Asian Americans, Native Hawaiians, and Pacific Islanders, 2015: Convergence of incidence between males and females. *CA Cancer J Clin.* 2016 May 66(3). Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5325676/>.

<sup>50</sup> Karthick Ramakrishnan & Farah Z Ahmad, "Language Diversity and English Proficiency." Center for American Progress (27 May 2014). <https://www.americanprogress.org/wp-content/uploads/2014/04/AAPI-LanguageAccess1.pdf> (last visited Aug 15, 2017).

meaning no one in the household 14 years and older speaks English very well; in addition, approximately six percent of Native Hawaiian and Pacific Islander households are linguistically isolated.<sup>51</sup> For these communities, the language assistance services that Title X provides offers the best option in seeking reproductive health care and family planning services that other centers may not include.

**V. The Proposed Rule would have a devastating impact on the ability of women and others experiencing domestic and sexual violence to access comprehensive sexual and reproductive health care.**

Family planning providers see particularly high rates of survivors of intimate partner violence (IPV); more than half (53 percent) of women seen at family-planning clinics report physical or sexual violence,<sup>52</sup> and forty percent of female adolescents who visited urban health clinics had experienced IPV.<sup>53</sup> Survivors particularly need these confidential services because of risk of retaliation by abusers for disclosing abuse or reaching out for help. In addition, exposure to IPV, sexual violence, and reproductive coercion increases risk for unplanned pregnancy, STIs, and poor pregnancy outcomes.

**Confidential Services.** Survivors of intimate partner violence (IPV) often require confidentiality when obtaining needed health care services, particularly sexual and reproductive health care services. Fortunately, federal family planning policy has long-stressed the importance of confidential care: Title X funded providers must ensure client confidentiality, regardless of age, income, or insurance status.<sup>54</sup> This protection is particularly important for Title X-funded providers, given the sensitive nature of sexual and reproductive health services, and is intended to protect the privacy of the especially vulnerable groups who access safety-net family planning services. These groups include survivors of domestic and sexual violence, who could suffer even greater harm if their partners were informed that they were accessing health services or that they disclosed abuse. In fact, Title X providers often serve women who are at the highest risk for intimate partner violence.<sup>55</sup>

Further, in 2014 the U.S. Office of Population Affairs, together with the Centers on Disease Control, released “Providing Quality Family Services,” clinic recommendations that define the core services of family planning care and

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<sup>51</sup> Id.

<sup>52</sup> Miller E, Decker MR, McCauley HL, Tancredi DJ, Levenson RR, Waldman J, Schoenwald P, Silverman JG. Pregnancy coercion, intimate partner violence and unintended pregnancy. *Contraception*. 2010 Apr; 81 (4):316-22. PubMed Central PMCID: PMC2896047. PubMed PMID: 20227548.

<sup>53</sup> Miller E, Decker MR, Raj A, Reed E, Marable D, Silverman JG. Intimate Partner Violence and Health Careseeking Patterns among Female Users of Urban Adolescent Clinics. *Maternal and Child Health Journal*. 2010 Nov;14(6):910-917.

<sup>54</sup> Office of Population Affairs. Program Requirements for Title X Funded Family Planning Projects, April 2014. Available at <https://www.hhs.gov/opa/sites/default/files/Title-X-2014-Program-Requirements.pdf>.

<sup>55</sup> K. Hasstedt and A. Rowan, Understanding Intimate Partner Violence as a Sexual and Reproductive Health and Rights Issue in the United States., 2106. Available in [https://www.guttmacher.org/sites/default/files/article\\_files/gpr1903716\\_1.pdf](https://www.guttmacher.org/sites/default/files/article_files/gpr1903716_1.pdf)



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detail how sexual and reproductive care should be provided. These recommendations – which are applicable to all family planning providers, regardless of whether they receive Title X funding – state that client confidentiality is critical for individuals obtaining sexual and reproductive health care, especially for those experiencing IPV.<sup>56</sup>

However, the Proposed Rule would place the confidentiality, and therefore safety, of survivors of intimate partner violence at risk. Section 59.17 of the Rule proposes adding “intimate partner violence” to the list of mandated reportable crimes for providers who receive Title X funds. While all Title X clinics provide intimate partner violence screening as part of preventative services, as well as services to assist with preventing or achieving pregnancy,<sup>57</sup> mandating that providers report intimate partner violence can have a chilling effect on survivors’ access to care.

Many survivors have been isolated from friends and family by their abusers, making health care providers the only professionals whom they can safely access. Mandatory reporting of IPV-related injuries would negate the confidential nature of the doctor-patient relationship and can undermine survivor’s faith and trust in health care providers. When survivors are concerned that their medical provider will report without their consent, they are less candid about their injuries, which prevents health care providers from making well-informed decisions about their medical care. Additionally, the foundation of IPV is power and control. Mandatory reporting further limits the control survivors of IPV have over their lives. In a typical health care setting, informed patients make decisions about the course of action that is best for them. Mandatory reporting of IPV-related injuries negates their ability to make critical life decisions and compromises the provider’s relationship with the patient. Finally, for some survivors, reporting to police may result in further harm by their abusers and as a result, survivors may withhold information from their providers regarding their injuries or their origin, their medical needs, or avoid seeking medical care all together – mandatory reporting would exacerbate these issues, which is why so few states have reporting requirements specific to IPV.

**IPV and sexual assault increase the risk for poor reproductive and sexual health outcomes, making access to care crucial.** Access to appropriate STI testing and treatment, the full range of contraceptive options, and abortion care crucial for survivors of domestic and sexual violence. The Title X network is key to providing these services for survivors. The Proposed Rule will limit their access.

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<sup>56</sup> Loretta Gavin et al. Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs, Centers for Disease Control and Prevention. April 25, 2014. Available at <https://www.cdc.gov/mmwr/preview/mmwrhtml/rr6304a1.htm>.

<sup>57</sup> Brownridge DA, Taillieu TL, Tyler KA, Tiwari A, Chan KL, Santos SC. Pregnancy and intimate partner violence: risk factors, severity, and health effects. *Violence Against Women* 2011;17(7):858–81.



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Much like other forms of domestic violence, abusers use reproductive and sexual violence and coercion as a tool of control and power. A systematic review of intimate partner sexual violence shows that IPV is associated with increased rates of STIs, inconsistent condom use, unplanned pregnancies, and induced abortions. Studies on reproductive and sexual coercion highlight its prevalence within the context of intimate partner violence.<sup>58</sup> Further, more than half (51.1 percent) of female victims of rape reported being raped by an intimate partner.<sup>59</sup>

**Sexually Transmitted Infections and Violence.** Multiple studies have documented associations between experiences of IPV and lifetime acquisition of an STI, making access to prevention and care for STIs particularly critical. For instance, women experiencing domestic violence are three times more likely to report HIV/AIDS diagnosis. And women who were abused by their partners are 48 percent more likely to become infected with HIV.<sup>60</sup> Across a number of studies, the rate of IPV among HIV-positive women (55 percent) was double the national rate, and HIV-positive women experienced more frequent abuse and a higher severity of abuse.<sup>61</sup> In addition, women who are experiencing IPV are often less likely to obtain care for STIs, including HIV, as abusive partners may deny access to health care. An estimated 1.8 million women in the U.S. have contracted an STI as a result of sexual assault by an intimate partner at some point in their life.<sup>62</sup> However, sexual violence is not the only form of IPV that can increase the risk of STIs. Sexual and reproductive coercion can also include the refusal to wear condoms, and women who are experiencing IPV may feel unable to negotiate condom use. Study after study has linked IPV with a partner's refusal to use a condom.<sup>63</sup> Further, the connection between refusal to use condoms and intimate partner violence is not only limited to physical violence. For instance, in a study of women with abusive partners, 32 percent reported they were verbally

<sup>58</sup> Miller E, McCauley HL, Tancredi DJ, Decker MR, Anderson H, Silverman JG. Recent Reproductive coercion and unintended pregnancy among female family planning clients. *Contraception*. February 2014; 89(2):122-8. PMID: 24331859; (doi: 10.1016/j.contraception.2013.10.011); PubMed Central PMCID: PMC 4018410. Grace KT and Anderson JC. Reproductive Coercion: A Systematic Review. *Trauma Violence and Abuse* 2016; epub ahead of print

<sup>59</sup> Black MC et al., The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report, Atlanta, GA: National Center for Injury Prevention and Control, CDC, 2011, [http://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf).

<sup>60</sup> The Facts on Violence Against Women and HIV/AIDS, Futures Without Violence, Retrieved 2017, From <https://www.futureswithoutviolence.org/userfiles/file/HealthCare/The%20Facts%20on%20Violence%20Against%20Women%20and%20HIV/AIDS.pdf>

<sup>61</sup> The Facts on Violence Against Women and HIV/AIDS, Futures Without Violence, Retrieved 2017, From <https://www.futureswithoutviolence.org/userfiles/file/HealthCare/The%20Facts%20on%20Violence%20Against%20Women%20and%20HIV/AIDS.pdf>

<sup>62</sup> Black MC et al., The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report, Atlanta, GA: National Center for Injury Prevention and Control, CDC, 2011, [http://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf).

<sup>63</sup> See, e.g. Wingood GM, DiClemente R, McCree DH, Harrington K, Davies SL. Dating Violence and the Sexual Health of Black Adolescent Females. *Pediatrics*. 2001;107(5):1-4; Teitelman AM, Ratcliffe SJ, Morales-Aleman MM. Sexual Relationship Power, Intimate Partner Violence and Condom Use Among Minority Urban Girls. *Journal of Interpersonal Violence*. 2008;23(12):1694-1712; Wu E, El-Bassel N, Witte SS, Gilbert L, Chang M. Intimate Partner Violence and HIV Risk Among Urban Minority Women in Primary Health Care Settings. *AIDS & Behavior*. 2003;7:291-301; Bogart LM, Collins RL, Cunningham W, Beckman R, Golinelli D, Eisenman D, et al. The Association of Partner Abuse With Risky Sexual Behaviors Among Women and Men With HIV/ AIDS. *AIDS & Behavior*. 2005;9(3):325-333.



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threatened when they tried to negotiate condom use.<sup>64</sup> And a national study of adolescents found that girls who were involved in verbally abusive relationships were less likely to have reported condom use during the most recent sexual encounter.<sup>65</sup> The Title X network provides crucial services in STI prevention, testing, and treatment. Limiting the number reproductive health-focused providers in the Title X network will undoubtedly harm survivors who need to seek health care related to sexually transmitted infections.

**Reproductive Coercion and unplanned pregnancy.** Interfering with a survivors' birth control is also used as a means of control by abusers. Victims and survivors of IPV are more likely to report interference with birth control or a partner who refuses to use birth control. Survivors are also more likely to report non-use due to affordability, and to report having used emergency contraception than non-abused women.<sup>66</sup> Among patients in family planning centers, 15 percent of patients with a history of physical and/or sexual IPV reported that they had experienced birth control sabotage, including hiding, withholding, or destroying a partner's birth control pills; intentionally damaging condoms or taking them off during sex; not withdrawing when that was the agreed upon method of contraception; pulling out vaginal rings; and tearing of contraceptive patches.<sup>67</sup>

Increased rates of birth control sabotage lead to increase rates of unintended or unwanted pregnancy among survivors. Though the research is limited, several studies have shown that women who experience IPV are more likely to become pregnant when they did not intend to. For instance, one in four women in family planning clinics who experience physical or sexual IPV also reported experiencing pressure to become pregnant. Other studies further detail women's experiences being pressured by abusers to become pregnant, which, together with birth control interference, helps to explain the higher rates of unintended pregnancy among abused women.<sup>68</sup> Women with unwanted pregnancies are four times more likely to experience physical intimate partner violence compared to women with intended pregnancies.<sup>69</sup>

**Abortion and IPV:** Finally, in a national study of women who had obtained abortion services, seven percent reported experiencing IPV by the man

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<sup>64</sup> Wingood GM, DiClemente RJ. The Effects of An Abusive Primary Partner on Condom Use and Sexual Negotiation Practices of African-American Women. *American Journal of Public Health.* 1997;87(6):1016-1018.

<sup>65</sup> Id.

<sup>66</sup> Gee RE, Mitra N, Wan F, Chavkin DE, Long JA. Power Over Parity: Intimate Partner Violence and Issues of Fertility Control. *American Journal of Obstetrics & Gynecology.* 2009;201:148.e1-7.

<sup>67</sup> Miller E, Decker MR, McCauley H, Tancredi DJ, Levenson RR, Silverman JG. Pregnancy Coercion, Intimate Partner Violence, and Unintended Pregnancy. *Contraception.* 2010;81(4):316-322.

<sup>68</sup> Miller E, Decker MR, McCauley H, Tancredi DJ, Levenson RR, Silverman JG. Pregnancy Coercion, Intimate Partner Violence, and Unintended Pregnancy. *Contraception.* 2010;81(4):316-322.

<sup>69</sup> Gazmararian JA, Adams MM, Saltzman LE, Johnson CH, Bruce FC, Marks JS, Zahniser C, and the PRAMS Working Group. The Relationship Between Pregnancy Intendedness and Physical Violence in Mothers of Newborns. *Obstetrics & Gynecology.* 1995;85(6):1031-1038.



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involved in the pregnancy.<sup>70</sup> That same study found that women who experienced IPV were significantly less likely than others to have a male partner who knew about or was supportive of the abortion. Women who are survivors of abuse, or who fear physical harm, are much less likely to involve men in their decision to obtain an abortion.<sup>71</sup> Research also suggests that abusers may exert control over victims by pressuring them to terminate a pregnancy when the woman does not want to do so or, conversely, threatening to hurt her if she does not continue the pregnancy.<sup>72</sup> Title X clinics provide intimate partner violence screening as part of preventative services as well as services to assist with preventing, achieving, continuing, or terminating pregnancy. With fewer trained reproductive health specialists, domestic violence survivors will suffer.

**Women, particularly women of color, those who are low-income, and those who are survivors of domestic and sexual violence, need publicly-funded essential family planning services to ensure quality health care, to plan their pregnancies, and to protect the future for themselves and their families. The Proposed Rule threatens to significantly harm this crucial health care right and will have a devastating impact on women and families across the country. To address these and other concerns, we urge the Department to reject the Rule in its entirety.**

YWCA appreciates the opportunity to share our views with you. If you have any questions, please contact YWCA USA Vice President of Public Policy and Advocacy, Catherine Beane, at [cbeane@ywca.org](mailto:cbeane@ywca.org) or 202-835-2354.

Sincerely,

Alejandra Y. Castillo, CEO YWCA USA

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<sup>70</sup> Jones RK, Moore AM and Frohwirth LF, Perceptions of male knowledge and support among U.S. women obtaining abortions, *Women's Health Issues*, 2011, 21(2):117-123.

<sup>71</sup> K. Hasstedt and A. Rowan. Understanding Intimate Partner Violence as a Sexual and Reproductive Health and Rights Issue in the United States, Guttmacher Institute, 3 July 2016. Available at [guttmacher.org/gpr/2016/07/understanding-intimate-partner-violence-sexual-and-reproductive-health-and-rights-issue](http://guttmacher.org/gpr/2016/07/understanding-intimate-partner-violence-sexual-and-reproductive-health-and-rights-issue).

<sup>72</sup> See, e.g. Evins G, Chescheir N. Prevalence of Domestic Violence Among Women Seeking Abortion Services. *Women's Health Issues*. 1996;6:204-210; Woo J, Fine P, Goetzl L. Abortion Disclosure and the Association with Domestic Violence. *Obstetrics & Gynecology*. 2005;105:1329-1334. Weibe ER, Janssen P. Universal Screening for Domestic Violence in Abortion. *Women's Health Issues*. 2001;11(5):436-441; Bourassa D, Berube J. The Prevalence of Intimate Partner Violence Among Women and Teenagers Seeking Abortion Compared With those Continuing Pregnancy. *Journal of Obstetrics & Gynaecology Canada*. 2007;29(5):415-423; Fisher WA, Sukhbir S, Singh SS, Shuper PA, Carey M, Otchet F, MacLean-Brine D, Dal Bello D, Gunter J. Characteristics of Women Undergoing Repeat Induced Abortion. *CMAJ*. 2005;172(5):637-641.