May 17, 2021

Office of Population Affairs
Office of the Assistant Secretary for Health
US Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Attn: “Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services (RIN 0937-AA11)

The Society for Maternal-Fetal Medicine (SMFM) is pleased to provide comments to the US Department of Health and Human Services’ (HHS) notice of proposed rulemaking (NPRM), “Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services,” RIN 0937-AA11.

Established in 1977, SMFM is a non-profit, membership organization with more than 5,000 physicians, scientists, and high-risk pregnancy experts around the world. The Society supports the clinical practice of maternal-fetal medicine (MFM) by providing education, promoting research, and engaging in advocacy to optimize the health of high-risk pregnant individuals and their babies. Although SMFM is a membership organization based in the United States, we are committed to improving the health and well-being of high-risk pregnant individuals worldwide.

SMFM strongly supports the proposed rule to revoke the 2019 Title X regulations (the Trump Rule) and reinstate the 2000 regulations with some revisions. Once finalized, the proposed rule would return Title X to its intended mission of, “making comprehensive voluntary family planning services readily available to all persons desiring such services.” Furthermore, because of the devastating impact of the 2019 Title X regulations on the program’s provider network and its patients, SMFM supports finalization of the proposed rule as quickly as possible.

Impact of Trump Rule and Importance of Restoring Previous Rules and Network

When the Trump Rule was implemented in August 2019, grantees immediately began to withdraw from Title X rather than comply with the Trump Rule’s requirements. Overall, as the proposed rule notes, the Title X program lost more than 1,000 health centers. Those health centers represented approximately one quarter of all Title X-funded sites in 2019. Nearly two years later, six states continue to have no Title

2 NPRM p. 19815.
X-funded provider network (Hawaii, Maine, Oregon, Utah, Vermont, and Washington)\(^4\) and an additional six states have a very limited Title X-funded network (Alaska, Connecticut, Massachusetts, Minnesota, New Hampshire, and New York).\(^5\) The significant damage to the Title X provider network resulted in at least 1.5 million patients losing access to crucial Title X-funded services, including contraceptive care, due to the rule.\(^6\)

SMFM represents experts in high-risk pregnancy. Individuals with high-risk pregnancies are more likely to experience medical complications – for themselves, their fetus(es), or both – that can lead to increased maternal and perinatal morbidity and mortality. The patients that MFM\(^s\) see must have access to the full spectrum of reproductive health care services, including access to family planning services as provided through the Title X program. People with a history of a high-risk pregnancy or health condition that may make their pregnancy more complicated have healthier outcomes when they can plan and appropriately space pregnancies. SMFM strongly supports the revocation of the 2019 rule, and reinstatement of the 2000 regulations with revisions, so that the Title X program can return its focus to its patients and communities.

**Health Equity**

SMFM strongly supports the Biden Administration’s emphasis on health equity in the proposed rule. The statutory requirements that Title X-funded health centers prioritize people with low-incomes, provide care regardless of ability to pay, and ensure that the Title X program is well-positioned to advance health equity for the patients it serves. However, the onerous requirements of the 2019 rule diverted attention and resources from this important work and undermined Title X’s mission to provide equitable, affordable, client-centered, quality family planning and sexual health services.

SMFM strongly supports the additions to the proposed rule make which define health equity and inclusivity. In particular, the transition from using the word “women” to the more inclusive “client” is more reflective of the diverse population of patients served by the Title X program. Gender identity should never be a barrier to receiving the care one needs and all people who can become pregnant, including queer, transgender, and nonbinary people, may have a need for family planning care, just as their sexual partners may. MFM\(^s\) work with a diverse population of individuals who are at risk or experiencing high-risk pregnancies. Including inclusive language for any individual who can become pregnant is imperative when being referred by a provider to a Title X funded health center for care.

In the wake of Centers for Disease Control and Prevention’s recent declaration that racism is a serious threat to public health, SMFM would like to see systemic racism explicitly included and addressed as part of the expectations related to health equity. SMFM is concerned with systematic racism and its impact on health outcomes for people prior to pregnancy, during pregnancy, childbirth, and the postpartum period.\(^7\)

**Confidentiality**

SMFM opposes policies that compromise the sanctity of the patient-health care provider relationship by limiting a health care provider’s ability to counsel patients and provide medically appropriate treatment. Two interrelated hallmarks of Title X have been the program’s historically strong protections for patient confidentiality and its commitment to serving adolescents. Family planning services address some of the

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\(^4\) Zolna et al., n.59, at 2.
\(^5\) NPRM p. 19815.
\(^6\) Title X: Key Facts About Title X, n.5.
most sensitive and personal issues in health care and therefore require strong confidentiality protections. It is essential that all medically appropriate options are available to patients and clinicians to guarantee high-quality and equitable reproductive health care. For high-risk pregnancies, limiting the types of information, care, or referrals a clinician can provide in pregnancy presents significant challenges to patient, directly impacting health care providers’ ability to make ethical and professional decisions in the best interest of their patients.

Purpose of the Program/Standard of Care
Statute requires Title X projects to “offer a broad range of acceptable and effective family planning methods and services,” and prioritizes a project’s capacity to make rapid and effective use of federal funds for family planning. SMFM applauds HHS for the proposed rule’s return to the core mission of the Title X program and will once again match patients’ expectations that they will receive high-quality client-centered care that includes comprehensive, medically accurate counseling and information, and referrals for any other services sought. Specifically, SMFM strongly supports the following changes and urges the Administration to finalize them:

- the inclusion of “FDA-approved contraceptive services” and reinstatement of the term “medically approved” to the proposed definition of family planning services;
- the requirement that Title X service sites refer patients out if the site does not offer the contraceptive method of the patient’s choice;
- the requirement to provide services “in a manner that is client-centered, culturally and linguistically appropriate, inclusive, and trauma-informed; protect(ing) the dignity of the individual; and ensur(ing) equitable and quality service delivery consistent with national recognized standards of care;”8 the reinstatement of the requirement to offer nondirective options counseling to pregnant patients on each of the three options “antenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination,”9 if requested by the patient, including referral upon request.
- the elimination of unnecessary, unworkable physical, systems, and administration separation, contrary to the requirements and realities of modern quality health care.

SMFM appreciates the opportunity to comment on the proposed rule and we are committed to protecting access to high-quality and equitable reproductive health care services, including the Title X Family Planning Program. If you require additional information about the issues raised in these comments, please feel free to contact Helena Hernandez, Program Manager Reproductive Health Project at hherandez@smfm.org or 202-655-5803

Sincerely,

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8 NPRM, p. 19830
9 NPRM, p. 19830