CENTER for PUBLIC POLICY PRIORITIES

October 7, 2016

Susan B. Moskosky, MS, WHNP-BC
Acting Director
Office of Population Affairs
US Department of Health and Human Services
200 Independence Avenue SW, Suite 716G
Washington, DC 20201

ATTN: 937-AA04

Re: **Compliance with Title X Requirements by Project Recipients in Selecting Subrecipients**

Dear Director Moskosky:

The Center for Public Policy Priorities (CPPP) appreciates the opportunity to respond to the proposed rule issued by the Department of Health and Human Services' (HHS) Office of Population Affairs (OPA) related to Title X requirements concerning the selection of project subrecipients.

CPPP is a nonpartisan, nonprofit 501(c)(3) public policy organization that uses data and analysis to advocate for solutions that enable Texans of all backgrounds to reach their full potential. Improving access to health care for Texans has been at the core of our mission and activities since our founding 30 years ago. CPPP has been a vocal advocate for improving access to publicly funded, quality family planning services because making sure that all Texans have access to the tools they need to plan the timing and size of their families is a critical piece of the puzzle in building equal economic opportunity for Texans.

Title X, the only dedicate source of federal funding for family planning, plays an essential role in proving access to preventive health care in Texas and the nation. CPPP strongly supports OPA's efforts to clarify and reinforce the longstanding requirement that health care providers not be excluded from the program for reasons unrelated to their qualifications to provide Title X-funded services.

Tiered funding structures and other prohibitions against family planning providers often exclude the very providers that are the most qualified and best-equipped to help Title X patients achieve their family planning goals. Beyond reducing the number of established, highly-qualified providers and limiting access to quality family planning services, the damaging effects of such state policies reverberate much further.

Sadly, Texas serves as the perfect case study on why the clarifications in the proposed rule are essential to achieve positive health outcomes for women and families. In 2011-2012, Texas implemented a series of wrongheaded changes in its family planning programs including, provider exclusions, a tiered funding structure, and dramatic funding cuts. The changes left the family planning safety net in tatters, with 82 closing or eliminating family planning services, dramatic reductions in the numbers of women served, reduced access to the most effective forms of contraception, and increased costs to Medicaid. Though funding has since been restored, exclusion policies and tiered funding remain in our non-Title X family planning programs and continue to limit access to timely and high-quality family planning.

In 2011, the Texas Legislature cut two-thirds of the funding (a reduction of $70 million for the biennium) for the Family Planning program, which was funded in part with federal Title X funds. At the same time, the Texas Legislature implemented a tiered funding strategy that prioritized funding for certain types of primary care providers, public clinics, and hospitals, resulting in little to no funding for free-standing family planning clinics, whose predominate mission was providing family planning services. During the same period, the Texas Legislature also excluded organizations affiliated with abortion providers from participating in the state's Medicaid family planning waiver. This ended the participation of Planned Parenthood, which had been the state's largest provider, serving over 40% of clients in the program. This clear violation of federal Medicaid protections resulted in the loss of federal funds for the waiver on December 31, 2012.

By 2014, 82 family planning clinics across the state had closed or eliminated family planning services, approximately 167 fewer clinics continued to receive state Family Planning program funding, and 54 percent fewer clients were served.[1] Not surprisingly, 93,000 fewer Title X clients were served and total state Family Planning program client numbers fell by 158,000 clients over the biennium following 2011.

Such dramatic reductions in access to services inevitably led to poorer health outcomes. Since implementation of these policies, Texas has experienced a reduction in the provision of highly effective methods of contraception, interruptions in contraceptive continuation, increased rates of Medicaid births, and increased rates of maternal mortality. After Texas excluded certain highly-qualified providers from its family planning programs, counties in which those clinics were located saw a reduction in the utilization of highly effective contraceptive methods as well as injectable contraception. LARC utilization was reduced by 35 percent and injectable contraception by 31 percent.[2] Continuation of injectable contraception decreased from 60 percent to 38 percent in counties where providers were excluded.[3] Researchers also found that the rate of Medicaid births among women in the injectable contraception group then increased by 27 percent.[4]

Recent research shows that Texas also experienced a 50 percent increase of its maternal mortality rate in the period between 2010 and 2012.[5] The study that discovered this dramatic uptick in maternal deaths did not determine the cause. However, researchers with the Texas Policy Evaluation Project at the University of Texas who have been evaluating the impacts of state family planning policy decision since 2011, suggest that the increase was caused in part the funding cuts, tiered funding implementation, and provider exclusion policies starting in 2011 that reduced access to contraception and increased the likelihood of unintended pregnancies, including among women at high risk for pregnancy-related complications.[6]

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[1] Dr. Kari White, Co-investigator on Texas Policy Evaluation Project, Testimony to the Texas Senate Health and Human Services Committee, September 13, 2016, http://liberalarts.utexas.edu/txpep/legislative-testimony/HHSC%20White.php

[2] Stevenson, A., Flores-Vazquez, I., Allgeyer, R., Schenkkan, P., and Potter, J. Effect of Removal of Planned Parenthood from the Texas Women's Health Program, N Engl J Med 2016; 374:853-860, http://www.nejm.org/doi/full/10.1056/NEJMsa1511902#t=article

[3] Id.

[4] Id.

[5] MacDorman, M., Declercq, E., Cabral, H., and Morton, C., Recent Increases in the U.S. Maternal Mortality Rate: Disentangling Trends From Measurement Issues, Obstetrics and Gynecology 2016; Vol. 128, No. 3, http://d279m997dpfwgl.cloudfront.net/wp/2016/08/MacDormanM.USMatMort.OBGYN_.2016.online.pdf

[6] Joseph Potter and Kari White, "Texas Needs to Restore Family Planning Infrastructure," Austin American-Statesman, August 30, 2016, https://liberalarts.utexas.edu/txpep/op-eds/potter-statesman.php.

**Proposed regulation protects access**

Despite lessons learned in Texas and mounting evidence that expelling well-qualified, trusted family planning providers from publicly funded health programs like Title X has adverse effects on women's access to critical preventive health care, an increasing number of states are targeting family planning providers for exclusion from key federal health programs, including Title X. As such, the proposed amendment to 42 CFR § 59.3 to include a requirement that "[n]o recipient making subawards for the provision of services as part of its Title X project may prohibit an entity from participating for reasons unrelated to its ability to provide services effectively" is a welcome and necessary clarification and strengthening of the current Title X rules. Precluding Title X recipients from "using criteria in their selection of subrecipients that are unrelated to the ability to deliver services to program beneficiaries in an effective manner" will help create a deterrent for legislative and policymaking actions against fully qualified, trusted, and efficient health care providers while ensuring that priority is given to the networks designed on effective service delivery.

The proposed regulation is a critically important step toward protecting access to the Title X network. The rule helps clarify the responsibilities of project recipients and OPA in complying with and overseeing them, and helps ensure access to Title X-funded services and providers.

**Opportunity to further strengthen protections**

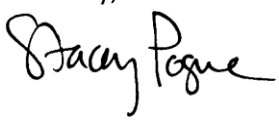
OPA should amend the final rule to codify Title X's longstanding confidentiality protections, which have been consistently upheld by courts. The strong confidentiality protections for adolescents are derived from the Title X statute, regulations, and relevant case law. Developed over several decades, these protections remain in federal law today. They have been modified only to encourage, but not mandate, family involvement, and to require Title X providers to comply with state child abuse reporting laws.

We echo the recommendation from family planning providers that OPA amend § 59.11 as follows:

> § 59.11 Confidentiality.
> All information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual's documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals. **Title X projects may not require written consent of parents or guardians for the provision of services to minors, nor can any Title X project staff notify a parent or guardian before or after a minor has requested and/or received Title X family planning services.**

Thank you for consideration of our comments on this important rule. If you have any questions regarding these comments, please contact Stacey Pogue, senior policy analyst with the Center for Public Policy Priorities at pogue@cppp.org or (512) 320-0222 x 117.

Sincerely,



Stacey Pogue
Senior Policy Analyst