



July 31, 2018

Valerie Huber, M.Ed., Senior Policy Advisor
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, D.C. 20201

RE: Department of Health and Human Services Proposed Rule, “Compliance with Statutory Program Integrity Requirements,” Docket ID No. HHS-OS-2018-0008 (RIN: 0937-ZA00)

Submitted via: www.regulations.gov

Dear Ms. Huber,

The California Association of Public Hospitals and Health Systems (CAPH) appreciates the opportunity to submit comments on the proposed revisions to Title X Family Planning regulations published by the Office of Population Affairs (OPA), in the Office of the Assistant Secretary for Health. As core safety net providers of health care services in California, we are committed to ensuring that all individuals have timely access to affordable, high-quality health care services, including family planning and related services. **We are concerned that the proposed rule places an undue burden on patients and providers, and urge the Administration to withdraw the proposed rule.**

California’s 21 public health care systems play a central role in the state’s safety net and health care landscape, delivering care to all who need it, regardless of ability to pay or circumstance. Although public health care systems represent six percent of all California hospitals statewide, they serve 2.85 million Californians each year and provide more than 11.5 million outpatient care visits each year through a vast network, including over 100 clinics. Public health care systems provide 35 percent of all hospital care to the Medi-Cal population in their communities and provide nearly 40 percent of all hospital care to the state’s uninsured residents. They serve hundreds of thousands of Californians as their chosen source for primary, specialty, and hospital care. Many of these patients are high-risk and have complex medical needs. Public health care systems, filling multiple and significant health care delivery roles, have a profound impact on the health care and health of millions of Californians.

California’s public health care systems are part of a larger safety net in California that also includes over 1,000 community clinics, many of which are Title X recipients. Title X supports the delivery of family planning and related services including contraception, STD prevention and treatment, pregnancy tests, and life-saving cancer screenings. California’s Title X provider network is the largest in the nation and serves over 1 million low-income individuals throughout the state – over 25% of Title X patients

nationwide. In 2010, California saved roughly \$1.3 billion thanks to a relatively modest \$22 million public investment in family planning and related services provided at Title X-funded health centers.^{1, 2}

1. Patients need and deserve comprehensive information to make informed decisions about their health in a timely manner in order to achieve their reproductive goals and optimal health outcomes.

The proposed rule prohibits Title X-funded entities from offering referrals for abortion services unless patients expressly state they have already decided to have an abortion, and even then, only a doctor “may” provide the patient with a list of clinics, without identifying the type of services offered by the clinic. These proposed requirements contradict medical ethics and the tenet of informed consent in health care by forcing providers to withhold or provide incomplete and misleading information to their patients. It also requires patients to perform unnecessary and onerous sleuthing to identify the service they are seeking when it could be plainly and directly communicated to the patient.

We believe that this proposed restriction of medical information is unethical and may prevent patients from accessing health care in a timely manner, which can lead to negative health outcomes and increased costs associated with delays in care. The American Medical Association (AMA) states in its Code of Medical Ethics, “withholding information without the patient’s knowledge or consent is ethically unacceptable.” The AMA code also states that patients should be informed of all “burdens, risks, and expected benefits of all options.”

The proposed restriction on offering information also puts providers at increased medical liability risk. California’s highest court determined in *Wickline v. State of California*, “it is no defense in a medical liability case to argue that physicians simply have followed a payer’s instructions.”

Lastly, requiring referrals for pregnant patients to obtain prenatal and/or social services, regardless of the patient’s wishes or interest in such referrals, is in violation of federal law that requires all counseling in Title X to be non-directive. Withholding relevant information about a health care option is effectively directing a patient away from that option.

Title X funds should not come with restrictions that are in violation of the authorizing statute, that expose providers to increased medical liability risk, or are medically unethical. Imposing such restrictions would force providers to make a choice between the ethical practice of medicine and critical funding to ensure the availability of services. The Administration should withdraw the proposed changes that would restrict how referrals can be made at Title X-funded sites.

¹ National Family Planning & Reproductive Health Association. (2016). Title X in California: Improving public health and saving taxpayer dollars. *National Family Planning & Reproductive Health Association*. Available at: <https://www.nationalfamilyplanning.org/file/documents---policy--communication-tools/state-snapshots/Title-X-in-California.pdf>

² National Family Planning & Reproductive Health Association. (2016). The Impact of Title X funding cuts in California. *National Family Planning & Reproductive Health Association*. Available at: https://www.nationalfamilyplanning.org/file/California_ImpactMap_FactSheet_R4.pdf

2. The proposed regulations will strain already limited safety-net resources by reducing access to services offered by critical community partners.

Title X-funded health centers are the only access points for many low-income patients to obtain health care and information. If implemented, the restrictions in the proposed rule will likely force many health care organizations and qualified family planning providers – including federally qualified health centers and other primary care providers – to discontinue their participation in the Title X program. This will leave many low-income and uninsured individuals without access to Title X providers that they know and trust.

Widespread, voluntary discontinuation of participation in the Title X program could have a harmful impact on patient access to care. Without Title X funding, many organizations will not be able to serve the same volume of patients. Staff positions may be cut and service hours will likely be reduced, resulting in increased wait times and other barriers for low-income patients to access care in a timely manner. In addition, without critical Title X resources, many Title X-funded sites would be unable to offer the same range of contraceptive methods. The proposed restrictions will also likely deter other providers, who might otherwise be interested in joining California’s Title X network, from participating in the program.

Restricting access to primary and preventive services harms entire communities. When access is reduced in one location, providers elsewhere in the same community experience increased demand for services despite already strained resources. Public health care systems are one of many low-income primary care providers in the communities they serve, and are concerned about any policy that would reduce access to care for our partners.

Title X is a successful program with a history of bipartisan support. On behalf of the low-income and vulnerable patients in California, **CAPH urges the Administration to withdraw this proposed rule and to reconsider its course of action.** Thank you for the opportunity to address the critical role of Title X funding to low-income patients and safety net providers in California.

Sincerely,



Erica Murray

President and CEO