

# United States Senate

WASHINGTON, DC 20510

July 25, 2018

The Honorable Alex Azar  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Azar,

We write to express our strong support and deep thanks for the Department of Health and Human Services proposed rule titled, "Compliance with Statutory Program Integrity Requirements." Created by Congress in 1970, Title X of the Public Health Service Act authorized taxpayer funds to assist "voluntary family planning projects," and clearly prohibited federal funds from being spent in "programs where abortion is a method of family planning." The proposed rule fulfills both the spirit and letter of this decades-old law by separating abortion from family planning.

Current program regulations require all Title X recipients to refer for abortion, in contradiction of longstanding conscience laws intended to protect against abortion discrimination.<sup>1</sup> For instance, the Weldon Amendment protects health care providers who choose not to participate in abortion from discrimination by "a federal agency or program." The Title X program has not been updated since the Weldon Amendment was first approved by Congress in 2005 (it has been re-affirmed annually since that time, most recently in P.L. 115-141.)<sup>2</sup> As they stand now, Title X regulations are contrary to federal law and in dire need of the proposed update.

The proposed rule appropriately eliminates the egregious abortion referral mandate. By protecting the conscience rights of health care providers, the Department's revision increases the potential for diversity among providers within the program. It allows providers previously unable to comply with the referral mandate to apply for Title X funding.

We strongly support the proposed rule's clarification that "a Title X project may not perform, promote, refer for, or support abortion as a method of family planning." While critics of the proposed rule claim it will restrict conversations between health care providers and patients, the rule does not prohibit nondirective counseling. Reflecting the statutory intention that Title X funds may only be used for family planning, once a Title X client is pregnant, the proposed rule advises that she "shall be given assistance with setting up a referral appointment to optimize the health of mother and unborn child."

The proposed rule stipulates that Title X projects must be organized in such a way that there is complete physical and financial separation between a grantee's Title X activities and abortion activities. This much-needed reform will finally end the practice of "colocation," where

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<sup>1</sup> 45 CFR 59.5

<sup>2</sup> The Weldon Amendment was included in H.R. 1625, the Consolidated Appropriations Act, 2018, which became Public Law 115-141 on March 23, 2018.

abortions are conducted in the same facility as the Title X-funded family planning activities. This practice made federal funds vulnerable to misuse in support of abortion activities. It also implied that abortion was a method of family planning, in violation of Congressional intent.

Importantly, both elements – ending abortion referral and requiring the physical and financial separation of abortion activities within the program – were part of the regulations promulgated under President Ronald Reagan in 1988 and upheld by the Supreme Court in 1991.<sup>3</sup>

Additionally, the proposed rule increases Title X program accountability and oversight in cases of suspected sexual abuse of minors. We are deeply concerned by a recent report that compiles several court cases, state health department reports, and testimonials from former Planned Parenthood employees, highlighting multiple instances where Planned Parenthood facilities across the country have repeatedly failed to report the suspected sexual abuse of minors in their care. Planned Parenthood is a significant recipient of Title X grant awards; according to a 2018 GAO report the organization expended approximately \$56 million annually from Title X between 2013 and 2015.<sup>4</sup> The documented instances of Planned Parenthood’s complicity in child sexual abuse suggests that the Department needed to strengthen protections for victims of sexual abuse being served at Title X clinics.

Since 1999, Congress has annually approved language intended to clarify that Title X entities are not exempt from state reporting laws on child abuse, child molestation, sexual abuse, rape or incest.<sup>5</sup> However, Title X regulations have not been updated since that time to reflect Congress’s concern in this area. Therefore, we commend the Department for taking steps in the proposed rule to bolster its oversight of grantee compliance with state abuse reporting requirements, notably making such compliance a condition of continued grant funding. Further, while respecting Title X’s commitment to patient confidentiality, the proposed rule clarifies that confidentiality “may not be used as a rationale for noncompliance with laws requiring notification or reporting of child abuse, child molestation, sexual abuse, rape, incest, intimate partner violence, human trafficking, or similar reporting laws.” We are grateful for these important steps to protect minors who may be the victims of sexual abuse.

Through annual appropriations Congress has also instructed that potential Title X grantees must certify that they encourage family participation when minors seek family planning services.<sup>6</sup> The proposed rule responds to Congressional intent and finally makes this provision a requirement within the regulations for program grantees.

A Guttmacher Institute survey found that 61% of clients use Title X clinics as their “usual” or only regular source of health care.<sup>7</sup> As such, it is important that Title X funds are used to provide

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<sup>3</sup> Rust v. Sullivan, 500 US 173, (1991)

<sup>4</sup> <https://www.gao.gov/products/GAO-18-204R>

<sup>5</sup> This language was most recently included in H.R. 1625, the Consolidated Appropriations Act, 2018, which became Public Law 115-141 on March 23, 2018.

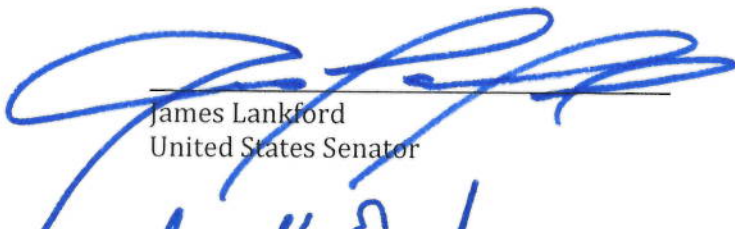
<sup>6</sup> H.R. 1625, the Consolidated Appropriations Act, 2018, which became Public Law 115-141 on March 23, 2018.

<sup>7</sup> Jennifer J. Frost, U.S. Women’s Use of Sexual and Reproductive Health Services: Trends, Sources of Care and Factors Associated with Use, 1995–2010, Guttmacher Institute, May 2013, p. 1 <https://www.guttmacher.org/report/uswomens-use-sexual-and-reproductive-health-services-trends-sources-care-and-factors>.

comprehensive life affirming health care. This rule provides clarity as to what is covered by Title X funds for those seeking and Congressional intent for family planning funds.

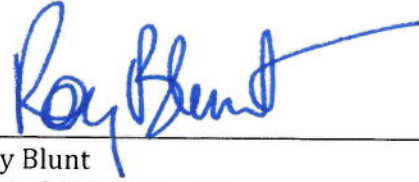
In sum, this proposed rule restores to the Title X program a bright line of separation between family planning and abortion that is consistent with Congressional intent. We urge the Department to promptly finalize the proposed rule.

Sincerely,



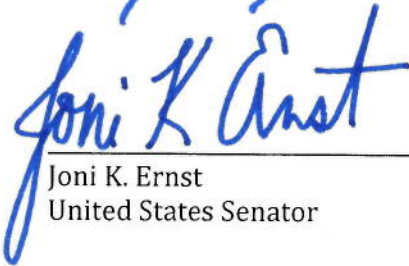
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United States Senator



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Roy Blunt  
United States Senator



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Steve Daines  
United States Senator



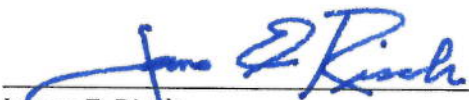
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Michael B. Enzi  
United States Senator



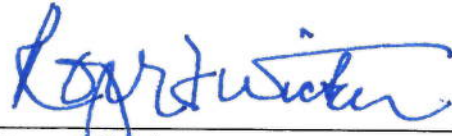
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