

July 31, 2018

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.

Submitted via [www.regulations.gov](http://www.regulations.gov)

**RE: Title X: Comments on Notice of Proposed Rulemaking re: Compliance with Statutory Program Integrity Requirements – HHS-OS-2018-0008**

The Community Health Care Association of New York State (CHCANYS) appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NPRM) on Compliance with Statutory Program Integrity Requirements (HHS-OS-2018-0008). CHCANYS serves as the voice of New York State’s 70 Federally Qualified Health Centers (FQHCs or “Health Centers”), which serve 2.2 million New Yorkers at 750 sites in communities across the State.

CHCANYS is very interested in this NPRM as the health center authorizing statute<sup>1</sup> requires our members to offer voluntary family planning services to their patients, as part of a broad range of women’s health services. In addition, many health centers participate in the Title X program in an effort to improve the quality and breadth of reproductive health and contraception services offered. Nationwide, roughly one-quarter of all Title X delivery sites are FQHCs, and roughly one-quarter of FQHCs receive Title X funding, either directly or as subrecipients. In New York State, ten FQHCs receive Title X funding as subrecipients and many other health centers have formal or informal referral agreements with Title X providers in their communities.

As discussed below, CHCANYS has significant concerns about the changes outlined in the proposed rule regarding the Title X program.

### **Health Centers care for the “whole person”**

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<sup>1</sup> Section 330 of the Public Health Service Act.

Health centers serve a unique and central role in the nation’s primary care safety net. Their focus is to provide high-quality, affordable, coordinated care to medically underserved persons – including low-income individuals and those who face significant geographic, transportation, and socioeconomic barriers to care. Health centers serve everyone regardless of ability to pay or insurance status. Approximately 89% of patients at New York State Health Centers have incomes below 200% of the Federal Poverty Level (FPL), and 75% of patients receive Medicaid or are uninsured.

Health centers seek to care for the “whole person” by providing a wide variety of clinical and supportive services, including serving as their patients’ medical home; helping patients understand and coordinate the care they need from other providers; and addressing the social and/or environmental factors that impact their health and their ability to access care. This “whole person” approach requires health center staff to develop and maintain strong and trusting relationships with their patients. Health centers seek to establish these relationships in many ways, beginning with assuring patients that they will receive the same level of attention and quality care, regardless of their income or insurance status.

A critical aspect of the health center model is the belief that everyone -- regardless of their race or ethnicity, income, or where they live -- deserves the best medical care and comprehensive, medically-informed, and accurate information available. CHCANYS is extremely concerned that the proposed rule would significantly interfere with the patient-provider relationship by limiting a provider’s ability to give their patients comprehensive information according to evidence-based clinical guidelines, even when the patient directly asks for this information. Thus, the NPRM would be inconsistent with a core health center tenet- that everyone deserves comprehensive, medically-informed, and accurate health care information from his or her providers.

Should this proposed rule be adopted, health centers would have to choose between allowing federal regulations to dictate what they can and must discuss with their patients (as required under § 59.14), and losing a critical source of revenue to support patient care.

### **Requirements Involving Referral Agencies**

CHCANYS also has questions and concerns about some of the potential requirements on “referral agencies” (meaning providers to whom Title X grantees and subrecipients could refer patients but who do not receive Title X funds themselves), as laid out in the preamble discussion of § 59.2. First, it is unclear how broadly these requirements would apply, as the preamble suggests they would apply not only to groups with formal referral contracts with Title X providers, but also to many groups who collaborate informally with Title X providers. Second, it is unclear which “reporting requirements” would apply to these referral agencies, and how those would interact with existing requirements. As a condition of their Federal health center

grant, health centers are currently required to submit extensive data to HHS on a range of issues including (but not limited to) patient demographics, financial indicators, and clinical quality. CHCANYS is unclear about the degree to which new Title X reporting requirements might increase the administrative burden on health centers by overlapping with these existing requirements.

By law, health centers are required to have referral agreements with a range of providers in their communities, including hospitals and specialists.<sup>2</sup> Health centers are concerned that if the Title X requirements on “referral agencies” are too burdensome, these outside providers may be disincentivized from continuing these collaborations. For example, consider a Title X health center that has a referral agreement with a local hospital. Under the language in the NPRM, it could be interpreted that the health center would be required to “ensure adequate oversight and accountability for quality and effectiveness of outcomes” at the hospital. Thus, the hospital would be required to report performance data to the health center on all services related to Title X, and possibly to permit the health center to intervene in its operations in order to “ensure” quality. In this situation, the hospital (or other provider) could decide that it is preferable to end the referral arrangement with the health center rather than to comply with the new reporting requirements. Not only could this potentially put the health center out of compliance with a key Federal requirement but, more importantly, it could also reduce access to and coordination of care for health center patients.

For all these reasons, CHCANYS requests that any new reporting requirements on “referral agencies” be coordinated with existing requirements to avoid creating duplicative or unnecessary reporting burdens. We also request that the requirement that Title X providers “ensure... quality and effectiveness of outcomes” be clarified to ensure that it is not so burdensome as to discourage outside providers from collaborating with Title X providers.

### **Lists of outside providers**

CHCANYS is also concerned by the newly proposed rules pertaining to lists of referral providers. As mentioned previously, one of the fundamental pillars of the FQHC model is to provide access to high quality, medically appropriate, comprehensive care to anyone seeking it, regardless of income or insurance status. Providing women a general list of providers that does not indicate which provider offers the specific service she is seeking unnecessarily interferes with health centers’ ability to provide their patients with the comprehensive information they need to adequately serve their patient’s health needs.

Furthermore, health center patients may have low literacy – both in terms of reading, and in terms of “health literacy”, meaning the knowledge and ability to navigate the health care

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<sup>2</sup> For information on these referral requirements, see Chapters 8 and 14 of the Health Center Compliance Manual, available at <https://bphc.hrsa.gov/programrequirements/compliancemanual/>

system. Some patients also lack regular access to communications tools (e.g., internet, phone) that are needed to access and research information on their own. We are concerned that if patients only receive a general list of providers without any additional detail, they may not be able to identify an appropriate provider on their own, or determine how to contact one. This would make it much more difficult for the patient to access the care she is seeking. For this reason, CHCANYS requests that HHS indicate that this list must contain full contact information (e.g., phone numbers, street address, website) for all providers, and also indicate which services each one offers.

### **Life-threatening conditions**

Finally, CHCANYS requests that HHS clarify language in the NPRM regarding women who are experiencing ectopic pregnancies and other life-threatening conditions related to pregnancy. For example, the exception for “danger of death” should be included in discussions of the Hyde amendment in order to assure that Title X providers have accurate information for compliance and consistency among federal agencies.

Also, with regard to proposed § 59.14(b), which states, “In cases in which emergency care is required, the Title X project shall only be required to refer the client immediately to an appropriate provider of emergency medical services.” we are concerned that this language could be misinterpreted to mean that the client could be referred only to an emergency department. As many other types of providers are licensed and qualified to treat these types of urgent or emergent conditions, we request that HHS clarify this point to state that Title X projects may refer the client immediately to a provider who is licensed and qualified to treat these types of urgent or emergent conditions.

In conclusion, while these comments reflect CHCANYS and health centers’ unique perspective, they are consistent with many of the concerns raised by other provider groups and current Title X providers. Title X is a successful program that has had bipartisan support for decades. On behalf of the low income and vulnerable patients served by health centers across New York State, CHCANYS strongly urges the Administration to withdraw this proposed rule and to reconsider its course of action.

Sincerely,

Rose Duhan

President & CEO

Community Health Care Association of New York State