



State of California  
Office of the Attorney General

XAVIER BECERRA  
ATTORNEY GENERAL

**Attorneys General of California, Massachusetts, New Jersey,  
Oregon, Vermont, and Washington**

July 18, 2018

The Honorable Mick Mulvaney, Director  
Office of Management and Budget  
725 17th Street NW  
Washington, DC 20503

The Honorable Alex Azar II, Secretary  
U.S. Department of Health & Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue SW  
Washington, DC 20201

RE: Proposed Rule "Compliance with Statutory Program Integrity Requirements"

Dear Director Mulvaney and Secretary Azar:

We write to express our concerns with the federal government's issuance of the recent Proposed Rule, "Compliance with Statutory Program Integrity Requirements." This Rule significantly alters the Title X federal family planning program, and, if implemented, will have negative impacts on women in our States by limiting their reproductive rights and creating barriers to their ability to access quality care. In fact, the Rule, as drafted, does not take into account the many burdens and costs it creates for women, providers, and States. Its analysis is incomplete, and given the drastic changes proposed, it warrants a more thorough review. For these reasons, we urge you to reopen review of this Rule to allow the Office of Management and Budget (OMB) and Department of Health and Human Services to perform a more complete analysis, and to extend the comment period to allow the public more time to review the impacts of the Rule.



Executive Order 12866 grants the OMB's Office of Information and Regulatory Affairs the discretion to meet with stakeholders concerning regulatory actions under review to "make the [regulatory review] process more accessible and open to the public." The interests of our democratic system urge a clear, transparent regulatory process, wherein the views of all sides are taken into consideration. On May 24, 2018, the State of California submitted a request for a meeting on the Rule.<sup>1</sup> OMB did not grant California's request nor did it respond. According to the OMB's website, it appears that no other group was able to obtain a meeting on this Rule.<sup>2</sup> Such a lack of transparency and engagement with the public imbues the regulatory review process with the appearance of partiality and bias, and undermines faith in the process and its ultimate conclusions.<sup>3</sup>

Disappointingly, the Rule provides an economic analysis that neglects many associated costs and does not take into account financial harm to States. Specifically, the Rule may lead to the closure of health clinics or a reduction in the number of federally funded family planning providers. State-funded programs will be expected to fill in the gaps. For example, without Title X funds, "six or seven health centers, including four rural sites" will close in Wisconsin "within three to six months, as they already operate at a loss and cannot be sustained with Medicaid and private reimbursement alone."<sup>4</sup> The resulting shift of costs from the federal government to the States and the burden it will cause is not mentioned in the Rule.

Further, the Rule requires physical and financial separation between any Title X program and a facility that provides abortion.<sup>5</sup> Providers will effectively have to open second clinics to continue to obtain Title X funding while providing abortions. The economic analysis of this provision in the Rule claims that this requirement will cost a clinic between \$10,000 and \$30,000 in the first year to comply. According to clinics in our States, this estimate is extremely low. By some estimates, the cost to open a second clinic could be in the hundreds of thousands of dollars. This requirement alone would be economically burdensome to clinics and will ultimately have a significant economic impact on States as clinics close their doors and patients have decreased access to care.

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<sup>1</sup> See <https://oag.ca.gov/news/press-releases/attorney-general-becerra-opposes-trump-pence-rule-restricts-womens-health-and>.

<sup>2</sup> See <https://reginfo.gov/public/do/eom12866SearchResults?pubId=&rin=0937-ZA00&viewRule=true>.

<sup>3</sup> The review process for this rule was truncated and did not allow sufficient time for input from states and other stakeholders before the Rule was published. OMB received the Rule from the U.S. Department of Health & Human Services (HHS) on Thursday, May 17, 2018, and completed its review four days later on Tuesday, May 22, 2018. Thus, the period of OMB review spanned a weekend, leaving only two business days to discuss with OMB the Rule's many grave consequences before its release. Notably, on May 22, 2018, President Trump announced the Rule's changes to the Title X program in a speech at the Susan B. Anthony List's 11<sup>th</sup> Annual Campaign for Life Gala. This same day, HHS sent the Rule to the Office of the Federal Register for publication and it was published on June 1, 2018.

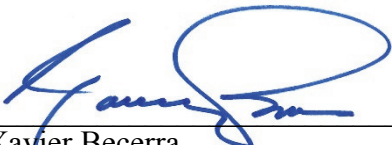
<sup>4</sup> Decl. Atkinson (ECF No. 18-1) at ¶ 48, *Planned Parenthood of Wisconsin, et al. v. Azar*, No. 18-cv-01035-TNM (05/08/2018).

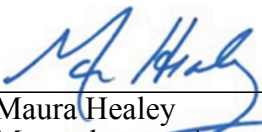
<sup>5</sup> To comply with the separation requirement, the provider must have at a minimum separate examination and waiting rooms, office entrances and exits, phone numbers, email addresses, educational services, websites, personnel, electronic or paper-based healthcare records, and workstations.


The Rule also entirely ignores the costs it imposes on women. Under the Rule, doctors are forbidden from giving patients nonbiased counseling on their healthcare choices, including information on or referrals for pregnancy termination. Instead, a doctor may only provide a “referral” for an abortion once a woman “clearly states that she has already decided to have an abortion.” Even once a woman has made “clear” to her healthcare provider that she wants an abortion, the provider is prohibited from helping her, and instead must give her a list of providers that may or may not provide abortion. Thus, under the Rule, a healthcare provider will no longer be able to give a woman the type of complete healthcare information she has traditionally received. A patient may have to take additional time off from work and pay for childcare to navigate the system created by the Rule. This new burden will not only be detrimental to women patients who need care for a time-sensitive healthcare issue, but it will erode the patient-provider relationship. Yet there is no analysis of this cost to patients and instead the rule only discusses its “Patient/Provider Benefits and Protections.”


The process of issuing the Title X Rule did not allow for important public engagement or complete review. As public officials, it is our role to use facts to drive the regulatory process. Conducting a thorough economic analysis with robust public engagement is the only true method to ensure that we are serving the American people. Unfortunately, this regulation falls short of this standard. Accordingly, we respectfully urge you to reopen the OMB review of this Rule, and extend the public comment period to allow the OMB to complete a more thorough analysis that considers all appropriate factors.

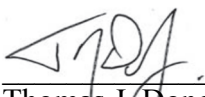
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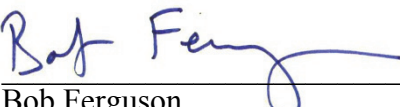
  
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Xavier Becerra  
California Attorney General

  
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Maura Healey  
Massachusetts Attorney General

  
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Gubir S. Grewal  
New Jersey Attorney General

  
\_\_\_\_\_  
Ellen F. Rosenblum  
Oregon Attorney General

  
\_\_\_\_\_  
Thomas J. Donovan, Jr.  
Vermont Attorney General

  
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Bob Ferguson  
Washington Attorney General