



National Association of Catholic Nurses-U.S.A
Where NURSING, MINISTRY and CATHOLIC MISSION meet.
“Charity in Truth”



July 24, 2018

Department of Health and Human Services
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, DC 20201

**Subj: Compliance with Statutory Program Integrity Requirements Title X - Population
Research and Voluntary Family Planning Programs, Proposed Rules, Call for Comments¹**

Dear Sir or Madam:

The National Association of Catholic Nurses U.S.A. (NACN-USA) is the national professional organization for Catholic nurses in the United States. Representing hundreds of nurses of different backgrounds, the NACN-USA promotes education in Catholic nursing ethics, nurtures spiritual growth, provides guidance, support and networking for Catholic nurses, nursing students, and others who support our mission and objectives. The NACN-USA is approved by the United States Conference of

¹ U.S. Dept. HHS, *Compliance with Statutory Program Integrity Requirements. A Proposed Rule by the Health & Human Services Department, Federal Register* (June 1, 2018).

<https://www.federalregister.gov/documents/2018/06/01/2018-11673/compliance-with-statutory-program-integrity-requirements>

Catholic Bishops and is a part of the International Catholic Committee of Nurses & Medico-Social Assistants, which collaborates with the Holy See and its Dicastery for Promoting Integral Human Development.

The National Catholic Bioethics Center (NCBC) is a nonprofit research and educational institute committed to applying the moral teachings of the Catholic Church to ethical issues arising in health care and the life sciences. The Catholic Church is the largest non-governmental, non-profit sponsor of health care in the United States. Many of these sponsors are NCBC members. NCBC has 2500 members throughout the United States, many of whom employ and/or serve thousands of persons, and thus its collective membership is significant. The NCBC provides ethical consultation to thousands of institutions and individuals seeking its opinion on the appropriate application of Catholic moral teaching to these ethical issues. With the realities on interagency collaboration, impacted by funding sources, the issue of providing funding for abortion, abortifacients, and contraception has far-reaching negative implications for our membership who regularly seek our ethical advice on the moral quandaries in which such provisions place them.

The Catholic Medical Association (CMA) has over 2,200 physicians and hundreds of allied health members nationwide. CMA members seek to uphold the principles of the Catholic faith in the science and practice of medicine—including the belief that every person’s conscience and religious freedoms should be protected. The CMA’s mission includes defending its members’ right to follow their conscience and Catholic teaching in their professional work.

The NACN-USA, NCBC, and CMA submit the following comments on the proposed rule regarding compliance with statutory program integrity requirements for the Public Health Services Act (PHS Act) Title X - Population Research and Voluntary Family Planning Programs.

Re: Interpretation of the Statutory Prohibition on Abortion

Section 1008 [300a-6] of the PHS Act states the following: "None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning."² We agree with the proposed rule that this statement establishes a broad prohibition on funding, directly or indirectly, of activities related to abortion as a method of family planning. This statement is the same today as it was in 1970 when Title X was enacted.

The choice of the word, "none," is intentional and significant. None means "not any," having no part," "nothing to do with"³ abortion. We agree that "none" is meant to exclude *any* action that directly or indirectly facilitates, encourages, or supports in *any* way the use of abortion as a method of family planning. In short, the intent of Title X is to sever itself completely from abortion.

² United States Department of Health & Human Services, Office of Population Affairs, *Title X - Population Research and Voluntary Family Planning Programs*. https://www.hhs.gov/opa/sites/default/files/title-x-statute-attachment-a_0.pdf, accessed July 22, 2018.

³ Merriam Webster. <https://www.merriam-webster.com/dictionary/none>

In addition, consider the fact that this mandate on abortion, rather than being buried within a larger section, stands alone, a single sentence in its own section, as the final statement of the PHS Act. This speaks to the gravity and vital importance it carries in understanding the purpose and intention of Title X and to the special attention it requires to avoid being misinterpreted or overlooked.

Re: Ensuring Compliance with the Statutory Prohibition on Abortion

Nonetheless, over the years it unfortunately has been misinterpreted and overlooked. We agree that the mandate is most clearly met where there is a clear separation between Title X programs and programs in which abortion is presented or provided as a method of family planning. Again, because the statute states that "none" of the funds shall be used in programs where abortion is a method of family planning, this means that *all* funding for abortion or abortion related activity is *absolutely prohibited*.

Abortion Counseling and Referral.

A proper understanding of the statute clearly prohibits abortion counseling and referral. Moreover, requiring Title X projects to offer pregnant women the opportunity to be provided information and counseling regarding abortion and referral for abortion, is inconsistent with conscience protection laws. We appreciate the Department's recognition of these violations and support the proposal to eliminate these erroneous requirements.

However, we disagree that nondirective counseling to a pregnant woman who already has decided to have an abortion and providing her a list of health service providers, some being abortion providers, fully complies with the statute. First, nondirective counseling does not mean that the counseling has no direction. It simply means that the direction always comes from the client and that the counselor accompanies the client in whatever direction the client chooses to take.⁴ If that client already has decided to abort, the client already has decided the direction, and that direction is one that the counselor under Title X cannot take. Second, handing a woman who has decided to abort a list *intentionally* containing abortion providers, even though the list also includes providers who do not provide abortion, constitutes an indirect referral or, at minimum, creates confusion as to the scope of services supported by the Title X program.

The goal of the proposed rule is to eliminate confusion. Confusion would be minimized by offering a transfer of care of the client, if care of the client already had been initiated, and transfer of the medical records to a provider selected by the client. The client could be provided a generic list by local geographic area of obstetricians and gynecologists from which she might choose to have her medical records sent. Such a list might, by accident but not intention, include providers who perform abortions. However, to avoid confusion and to maintain program integrity, no one on the list should be identified as an abortion provider.

⁴ S. Joseph, "What is nondirective therapy?" *Psychology Today* (2014, August 23). <https://www.psychologytoday.com/us/blog/what-doesnt-kill-us/201408/what-is-non-directive-therapy>

Comingling Funds Between Title X Projects and Abortion Activities of Title X Grantee/Subrecipient.

Shared facilities, including waiting rooms, common staff, and a common medical record or file system each create an impression of mutual support and can be difficult to separate in a clear and convincing manner. Thus, we agree that a bright line rule that requires a clear, transparent system of separation and accountability is necessary. Such a system would allow thorough auditing and full enforcement of program requirements.

Infrastructure Building that Creates Fungibility Concerns Related to Abortion Services.

We also are concerned about the interchangeability of funds which could be used to build infrastructure for abortion services. We support the proposed rule requiring physical and financial separation of Title X projects from all activities that could not be funded by those programs. Thus, sharing of infrastructure with abortion-related activities would be disallowed.

Ensuring Responsible Use of Taxpayer Funds.

We support the requirement that grantees of Title X funds submit to the government, information, as described in the proposed rule, about their subrecipients, referral agencies, or other partners to whom Title X funds may flow. This would assist in ensuring oversight of the activities and accountability of the program and project subrecipients.

Because Medicaid already funds the majority of family planning services, as noted in the proposed rule,⁵ the potential misuse of Title X funds and the misbilling or overbilling of other Federal or state programs has become a real problem and threatens the integrity of the Title X program, as described in the proposed rule.⁶ According to the latest report to the Office of Public Affairs, in 2016 the percentage of family planning users of Title X funds with either public or private health insurance (55%) was 26 points higher than in 2006 (29%), while the percentage uninsured was 18 points lower (43% in 2016 vs. 61% in 2006).⁷ The report notes that this change may be attributed to higher levels of insurance coverage, better collection of information from users on the status of health insurance by Title X providers, and increased efforts by Title X providers to identify and bill third-party payers.⁸ This raises the question to what extent are Title X funds now needed to support family planning.

The proposed rule seeks to expand the definition of low income family to include women who are unable to obtain certain family planning services under their employee policies due to their employers' religious beliefs or moral convictions.⁹ While it is true that Title X was designed to provide

⁵ Department of Health & Human Services, Proposed Rules: Compliance with Statutory Program Integrity Requirements, *Federal Register* Vol. 83, No. 106 (2018, June 1), page 25509.

⁶ *Ibid.*

⁷ C. I. Fowler, J. Gable, J. Wang & B. Lasater, *Family Planning Annual Report: 2016 National Summary* (Research Triangle Park, NC: RTI International, August 2017), page 23. <https://www.hhs.gov/opa/title-x-family-planning/fp-annual-report/index.html>.

⁸ *Ibid.* Page 24.

⁹ Department of Health & Human Services, page 25514.

contraceptive supplies and services to all who want and need them, with priority given to persons from low-income families,¹⁰ to continue to use taxpayer dollars to provide contraception to persons who either have healthcare coverage for it or an income that allows them to pay for it, is not prudent use of limited resources. Moreover, using taxpayer dollars to provide services that are entirely lifestyle in nature is morally problematic when persons who need medication and supplies that are medically necessary and *life-saving*, such as insulin for diabetes for example, are offered no such program.

When Title X funds are no longer needed for family planning, it is not surprising that grantees might be tempted to use them for purposes not intended by Title X, or in ways that may not be compliant with other laws that govern the expenditure of taxpayer funds. In addition to the concerns noted above, the proposed rule mentions concerns over the use of Title X funds for publicity, propaganda, lobbying or political activities. Requiring Title X grantees to submit written assurance that they understand and agree to the use of funds only in ways that are allowed by Title X and permitted by law is helpful. However, it does not address the question of whether Title X funds are needed by these grantees if funding for family planning is coming from other sources.

Inadequate Grant Review Criteria.

A more rigorous and comprehensive process of review of applicants not only would allow the selection of recipients who are more likely to abide by Title X regulations but also would allow better evaluation of the applicant's need for Title X funding in the first place. We support the thorough process described in the proposed rule and that applicants would need to demonstrate their ability to comply with regulations especially in terms of separation of funds and transparency of activity. Such a process likely would reduce upfront the potential for misuse of funds and would allow better determination of the need to continue to offer Title X funds for family planning purposes.

As to the criteria of need, a question that should be asked is whether there is a gap in a family planning method in the community that could be filled by Title X grant money. For example, if there are no natural family planning services in the community, applicants who commit to provide these services would score higher than an applicant who does not wish to provide them.

Title X and Developments and Trends in Methods of Family Planning and Abortion.

Methods of family planning and methods of abortion have changed over the years, and so has their use. It is important to be aware of these changes to ensure compliance with the statutory prohibition on abortion and on Title X's clear focus on preconception methods of family planning¹¹ so as not to include methods that destroy human life even at its earliest stage of development.

According to a 2018 Consensus Study Report by the National Academies of Sciences, although aspiration remains the most common abortion method used in the United States, its use is predicted to

¹⁰ C. I. Fowler, et, al., page 1 <https://www.hhs.gov/opa/title-x-family-planning/fp-annual-report/index.html>.

¹¹ Department of Health & Human Services, page 25505.

decline as the use of medication abortion increases.¹² In the year 2000, medication abortion using mifepristone was approved by the FDA for up to ten weeks gestation and in 2016 the FDA granted approval for the addition of misoprostol to the abortion regimen which can be prescribed by healthcare providers who are certified to do so.¹³ In 2014, approximately 45% of abortions up to nine weeks gestation were medication abortions, up from 36 % in 2011.¹⁴ Moreover, most abortions, including by the aspiration method, are said to have the ability to be provided safely in office-based settings,¹⁵ a common site for recipients of Title X funds.

Family planning methods have changed as well. Many methods of contraception have properties that can cause abortion by means of preventing or disrupting the implantation of a fertilized egg into the lining of the uterus. Trends in the use of such methods have increased. For example, the largest increase in use of contraceptives was among users of long-acting reversible methods, including the intrauterine device and implant—from 6% to 14%—across almost all population groups of female contraceptive users.¹⁶

According to the National Institutes of Health (NIH) regarding hormonal methods:

Hormones can be introduced into the body through various methods, including pills, injections, skin patches, transdermal gels, vaginal rings, intrauterine systems, and implantable rods. Depending on the types of hormones that are used, these methods can prevent ovulation; thicken cervical mucus, which helps block sperm from reaching the egg; or *thin the lining of the uterus* (emphasis added).¹⁷

Regarding the intrauterine device (IUD) and intrauterine system (IUS), the NIH explains:

A hormonal IUD or IUS releases a progestin hormone (levonorgestrel) into the uterus. The released hormone causes thickening of the cervical mucus, inhibits sperm from reaching or fertilizing the egg, *thins the uterine lining*... A copper IUD prevents sperm from reaching and fertilizing the egg, and it may *prevent the egg from attaching in the womb*. If fertilization of the egg does occur, *the physical presence of the device prevents the fertilized egg from implanting into the lining of the uterus* (emphases added).¹⁸

¹² National Academies of Sciences, Engineering, and Medicine, *The safety and quality of abortion care in the United States* (Washington, DC: The National Academies Press, S5. Doi, 2018): <https://doi.org/10.17226/24950>.

¹³ U.S. Food & Drug Administration, “Drugs: Mifeprex (Mifepristone) Information” (February 5, 2018). <https://www.fda.gov/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm111323.htm>

¹⁴ National Academies of Sciences, Engineering, and Medicine, 2018.

¹⁵ *Ibid.* S8.

¹⁶ Guttmacher Institute, *Contraceptive method use in the United States: Trends and characteristics between 2008, 2012 and 2014* (October 2017). <https://www.guttmacher.org/article/2017/10/contraceptive-method-use-united-states-trends-and-characteristics-between-2008-2012>

¹⁷ National Institute of Health, *What are the different types of contraception?* <https://www.nichd.nih.gov/health/topics/contraception/conditioninfo/types>

¹⁸ *Ibid.*

Methods of family planning for the purposes of addressing infertility and achieving pregnancy have changed as well. Some methods respect human life at the earliest stage of development, respect the human person, and respect the intimate relationship exclusive to a man and a woman united in the bond of marriage and others do not. We can only support those methods of family planning, whether to avoid pregnancy, address infertility, or achieve pregnancy, that afford the respect properly owed to human life, the human person and the marital relationship. Natural family planning methods of avoiding or achieving pregnancy, including infertility methods such as NaProTECHNOLOGY, can be fully supported and are fully compliant with Title X.¹⁹

Re: Title X and The War on Poverty

In his January 8, 1964 address, President Lyndon Johnson called for a "War on Poverty."²⁰ In response to that call, Title X was enacted in 1970 under President Richard Nixon.²¹ Many things have changed in the United States in the last fifty years; but one thing that has not changed is the rate of poverty.²² While poverty is a complex problem with differing opinions on how it should be addressed, it is safe to say that Title X has had no effect on reducing poverty.

This is not to suggest that Title X should be abolished. Rather, given that the single most important determinant of poverty is family structure and that poverty is most concentrated among broken families,²³ we recommend selecting those activities and programs that have had a positive impact on improving the health and well-being of individuals and families and only support them. At a minimum, the absolute prohibition on abortion should remain and further strengthened by the compliance initiatives described in the proposed rule. From there, support for every type of family planning method should be reconsidered.

Consider the fact that contraception can increase the negative outcomes Title X seeks to avoid. For example, research shows that adolescents who used oral contraceptives were three times more likely to have a sexually transmitted disease, pelvic inflammatory disease, and to become pregnant, had significantly more sexual partners, earlier sexual debut, plus were ten times more likely to have an abortion compared to adolescents who used no contraception.²⁴ Factors that protected against negative health outcomes were church attendance, family cohesiveness and having always lived with

¹⁹ Pope Paul VI Institute, NaProTECHNOLOGY (2018). <https://www.naprotechnology.com/>

²⁰ Lyndon Baines Johnson, *First State of the Union Address* (January 8, 1974).

<http://www.americanrhetoric.com/speeches/lbj1964stateoftheunion.htm>

²¹ Richard Nixon, "Statement on Signing the Family Planning Services and Population Research Act of 1970", December 26, 1970, in Gerhard Peters and John T. Woolley, *The American Presidency Project*.

<http://www.presidency.ucsb.edu/ws/?pid=2865>

²² US Census Bureau, *Historical Poverty Tables Peoples and Families 1959-2016*.

<https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-people.html>

²³ House Budget Committee, "The War on Poverty 50 Years Later: A House Budget Committee Report" (2014, March 3), page 4. <http://budget.house.gov/waronpoverty/>.

²⁴ R. Fehring, T. Bouchard, & M. Meyers, "Influence of Contraception Use on the Reproductive Health of Adolescents and Young Adults", *The Linacre Quarterly* 85:2 (2018), 167-177.

both biological or adoptive parents; these factors also were associated with a decreased likelihood of sexual activity.²⁵

Consider the fact that certain methods of family planning can increase the positive outcomes we seek. For example, research has found that Natural Family Planning a) enhances a couple's relationship by forming deeper bonds of respect and sensitivity for the other with less selfishness, more and better communication and shared responsibility, b) improves knowledge of the human body and appreciation of sexuality and c) enriches a person spiritually and enables a person to feel closer to God.²⁶ In addition, research shows that Natural Family Planning methods are very efficient and very effective in both avoiding or achieving pregnancy, depending upon the intention of the couple.²⁷

Other activities that are worth continuing include the requirement that entities receiving grants or contracts encourage family participation and provide counseling to minors on how to resist attempts to coerce them into engaging in sexual activities. It goes without saying that support should continue for the requirement that all providers under Title X must adhere to State law requiring notification or reporting of child abuse, child molestation, sexual abuse, rape or incest. Physical examinations, breast and cervical cancer screenings, sexually transmitted disease and human immunodeficiency virus testing, and pregnancy testing and counseling all can improve health outcomes. Finally, we appreciate including the requirement for compliance with and provision for the enforcement of laws that protect the conscience rights of individuals and entities who decline to perform, participate, or refer for abortion.

Conclusion

In sum, we support the absolute prohibition of the use of funds for abortion or abortion related activities and the rigorous compliance and oversight of grantees and subrecipients. We encourage a thorough reexamination of the various methods of family planning now available for avoiding or achieving pregnancy and support only those methods and related activities that respect human life at its earliest stage of development, respect the human person, respect the intimate relationship exclusive of a man and a woman united in marriage and have further shown to contribute to positive health

²⁵ *Ibid.* page 167.

²⁶ L. VandeVusee, L. Hanson, R. J. Fehring, A. Newman, J. & Fox, "Couples' views of the effects of natural family planning's on marital dynamics", *Journal of Nursing Scholarship* 35: 2 (2003), 171-176.

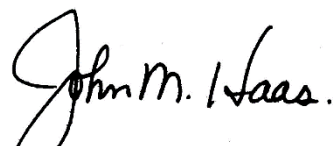
²⁷ Examples of research include: Fehring, R.J., Schneider, M., Raviele, K., Rodriguez, D., Pruszyński, J. 2013. Randomized comparison of two Internet supported fertility-awareness-methods of family planning. *Contraception* 88, 24-30. Fehring, R.J., Schneider, M. (2017). Effectiveness of a Natural Family Planning Service Program. *Maternal Child Nursing* 42(1), 43-49. Frank-Herman, P., et al. (2007). The effectiveness of a fertility awareness based method to avoid pregnancy in relation to a couple's sexual behavior during the fertile time: a prospective longitudinal study. *Human Reproduction*, 1-10. Fehring, R.J. (Ed.) *Natural Family Planning: Current Medical Research* 2017 Summer/Fall, USCCB, 28(3-4).

outcomes and to the promotion of the good of individuals and families. Thank you for the opportunity and for your consideration of our comments.

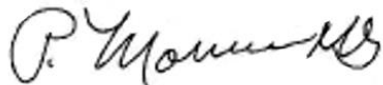
Sincerely,



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