

NFPRHA v. Azar: Legal Challenge to Protect Title X

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The Trump administration is attempting to undermine Title X, the only federal program dedicated solely to the provision of family planning and related preventive health services, in an effort to spread its ideologically driven vision of how people should live their lives.

The fiscal year (FY) 2018 Funding Opportunity Announcement (FOA) for the Title X family planning program—which was released in February 2018, many months behind schedule—attempts to weaken the program’s decades-old foundation of providing communities access to high-quality family planning and sexual health care.

Established in 1970, Title X was created to make modern methods of contraception available to all, in response to President Richard M. Nixon’s call to “establish as a national goal the provision of adequate family planning services within the next five years to all those who want them but cannot afford them.”

The FY 2018 FOA threatens to shift Title X away from its intended purpose and important mission of providing voluntary access to high-quality clinical family planning care necessary to ensure the reality of President Nixon’s assertion that “no American woman should be denied access to family planning assistance because of her economic condition.”

The FY 2018 FOA impermissibly adds a new criterion to the substantive application review and grant-making process that has governed the program for decades. This new criterion which is worth 25% of the score—shoehorns priorities and non-family planning activities into Title X grant-making that are inconsistent with Title X’s governing law and purpose. The FOA:

- Fails to mention “contraceptive care,” a benchmark of Title X’s public health benefit, anywhere in the 60-page document;
- Requires providers to emphasize abstinence only until marriage with patients of all ages, and activities seeking to change patient behaviors – regardless of the health needs and desires of the patient;
- Does not require compliance with the government’s own clinical standards of care;
- Requires providers to attempt to use counseling techniques that encourage family participation for all clients—including “parents, spouses or [other] family” where possible;
- Prioritizes one type of values-based education, and requires that activities for adolescents “do not normalize sexual risk behaviors” (i.e. any sex); and
- Opens the door to applicants that do not provide any clinical care and that only refer out for clinical services that are intended to be provided directly to low-income and other individuals on site.

In order to prevent irreparable harm to its members, their patients, and the Title X program itself, the National Family Planning & Reproductive Health Association (NFPRHA), represented by the American Civil Liberties Union (ACLU), has filed a legal challenge to bar HHS from using the FY 2018 FOA and the criteria contained therein from the review of applications and awarding of FY

2018 family planning services grants under Title X. Planned Parenthood of Wisconsin, Planned Parenthood of Greater Ohio, and Planned Parenthood Association of Utah have filed a separate legal challenge to the FOA asking for similar relief.

NFPRHA is challenging the FY 2018 FOA on the grounds that it violates the Administrative Procedure Act in a number of ways, including because the FOA is contrary to the Title X statute and inconsistent with numerous Title X regulations.

NFPRHA is a national, nonprofit membership organization established to ensure access to voluntary, comprehensive, and culturally sensitive family planning and sexual health services, and to ensure reproductive freedom for all. NFPRHA represents more than 850 health care organizations and individuals in all 50 states and the District of Columbia. NFPRHA's organizational members include state, county, and local health departments; private, nonprofit family planning organizations; family planning councils; Planned Parenthood affiliates; hospital-based clinics; and federally qualified health centers.

NFPRHA represents 66 Title X grantees, 84% of all grantees. Altogether, NFPRHA's grantee members operate or fund a network of more than 3,500 health centers and service sites that provide high-quality family planning and other preventive health services to more than 3.7 million low-income, uninsured, or underinsured individuals each year, roughly 93% of all patients served in Title X-funded health centers.

Today's case *National Family Planning & Reproductive Health Association v. Azar* was filed in the U.S. District Court for the District of Columbia. Lawyers on the case include Ruth Harlow, Senior Staff Attorney, Jennifer Dalven, Director, Elizabeth Watson, Staff Attorney, and Lindsey Kaley, Staff Attorney, with the ACLU Reproductive Freedom Project.

Background

On February 23, 2018, the Department of Health and Human Services' Office of Population Affairs (OPA) issued its long-delayed Funding Opportunity Announcement (FOA) for the Title X family planning program. The FOA redirects funding away from Title X's intended and historical purpose of providing access to modern, high-quality family planning clinical care, including contraceptives, regardless of a patient's income.

The FOA dramatically alters the consistent criteria historically used to award Title X grants and heavily weights the grant-making process in favor of ideologically driven priorities that are contrary to and impermissible under Title X's statute and regulations. The FOA shifts critical resources away from the central tenets of Title X – to provide the “services necessary to aid individuals to determine freely the number and spacing of their children” – and instead requires an emphasis on changing client behaviors, including abstaining from all sex outside of marriage, regardless of the needs and desires of the patient.

Each year, Title X provides essential family planning and related preventive health services to more than 4 million patients, including contraception; pelvic exams; sexually transmitted disease testing and treatment; screening for cervical and breast cancer, high blood pressure, anemia, diabetes, and HIV/AIDS; infertility services; health education; and referrals for health and social services.

For nearly five decades, the Title X program has been a bedrock, cost-effective health care program serving poor and low-income individuals. The FY 2018 FOA seeks to compromise that excellence by omitting any reference to nationally recognized clinical guidelines, including the requirement that Title X-funded programs must follow "Providing Quality Family Planning Services," national standards developed jointly by OPA and the Centers for Disease Control and Prevention in 2014. These guidelines outline how to provide patient-centered services related to contraception, pregnancy testing and counseling, achieving pregnancy, infertility, preconception health, and sexually transmitted diseases.

If HHS is not prevented from using the FY 2018 FOA and its criteria from the review of applications and awarding of FY 2018 Title X family planning services grants, the FOA will:

- Contravene congressional intent and the fundamental purpose of the Title X program, reducing access to critical family planning and related preventive services;
- Divert already scarce resources away from clinical services and toward ideologically driven behavior modification that ignores patient needs and clinical best practices;
- Reduce access to effective contraceptive methods, particularly for low-income and marginalized populations; and
- Leave more individuals subject to unintended pregnancies.