



MASSACHUSETTS MEDICAL SOCIETY

Every physician matters, each patient counts.

HENRY L. DORKIN, MD, FAAP
President

ALAIN A. CHAOUI, MD, FAAFP
President-Elect

MARYANNE C. BOMBAUGH, MD,
MSc, MBA, FACOG
Vice President

COREY E. COLLINS, DO, FAAP
Secretary-Treasurer

JOSEPH C. BERGERON, JR., MD,
FCAP
Assistant Secretary-Treasurer

DAVID A. ROSMAN, MD, MBA
Speaker

FRANCIS P. MACMILLAN, JR., MD,
FACG
Vice Speaker

LOIS DEHLS CORNELL
Executive Vice President

860 WINTER STREET

WALTHAM, MA 02451-1411

TEL (781) 893-4610

TOLL-FREE (800) 322-2303

FAX (781) 893-9136

WWW.MASSMED.ORG

July 26, 2018

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

RE: Docket No.: HHS-OS-2018-0008;42 CFR Part 59; RIN 0937-ZA00
Compliance with Statutory Program Integrity Requirements

Dear Secretary Azar,

I am writing on behalf of the Massachusetts Medical Society, which represents over 25,000 Massachusetts physicians, medical students, and residents, in opposition to the above referenced rulemaking, which would significantly change the Title X program and patients' access to health care. These proposed rules would fundamentally compromise one of the most vital tenets of medical ethics and the patient-physician relationship: trust built on open communication between physicians and patients. If passed, these rules would censor physicians, preventing us from providing our patients with the information needed to seek and receive evidence-based care that meets the medical standard. In addition, these proposed rules discriminate against a group of women who rely on Title X funded clinics for health care. These rules would thereby impede their access to a wide range of health care services which they can access only through these clinics.

As physicians, we have embraced a calling with moral and ethical obligations at its core. Among these are obligations to communicate openly and honestly with our patients, so that we can be worthy of the trust that they give to us; to ensure that all patients receive equitable access to the highest possible quality of care, regardless of gender, age, race, ethnicity, sexual orientation, and all other characteristics protected under the laws of the United States; and to provide care that is based in reproducible scientific evidence, so that we can achieve the vital goal of keeping our patients well. We must also advocate on our patients' behalf, to promote the passage of laws and regulations in keeping with those aims, and, when needed, to prevent the passage of laws and regulations that would contravene those aims. These proposed rules constitute the latter, and we come together as an organization, united by our shared ethics, to urge the administration not to finalize these rules.

It is important to emphasize the broad range of health care services that Title X clinics provide, and to which these rules would jeopardize women's access.

In Massachusetts, six out of ten women who use Title X family planning services use these services as their regular source of health care for a range of services that includes pregnancy testing, contraceptive services, pelvic exams, screening for cervical and breast cancer, screening for high blood pressure, anemia, and diabetes, screening for STIs and HIV/AIDS, infertility services, health education, and referrals for other health and social services.¹ The administration has targeted Title X clinics in order to prevent women from seeking abortions; in so doing, they will inadvertently, and catastrophically, preclude access to the full range of non-abortion healthcare services that these clinics provide.

Given the administration's stated objective, it is sadly ironic that the proposed rules would also deter access to a comprehensive range of preventative health care services, without which, many more unplanned pregnancies and abortions would occur. According to 2015 data from the Guttmacher Institute, Title X funding allowed providers to serve 3.8 million women to avoid 822,300 unintended pregnancies that year, which would have resulted in 277,800 abortions, and 188,700 teen pregnancies. Despite significant cuts to funding, Title X-funded services have reduced the rate of unplanned pregnancies and abortions in the U.S. by 31% and teen pregnancy by 44%.^{2,3} Government savings from Title X funding was estimated at \$7 billion in just one year for averting unintended pregnancies as well as protecting women from sexually transmitted infections (STIs) and reproductive cancers.

It must also be noted that the alleged concerns that have spurred these regulations are unfounded: Title X funds have not been used, and are not being used, to provide abortions. In institutions that both use Title X funds and provide abortions, review audits confirm the complete separation of those processes and of their funding streams.⁴ The proposed rules, then, are unnecessary, and could potentially harm the millions of women who rely on Title X clinics for their care.

Furthermore, the administration's policy on this issue is discriminatory, as it would impede women who are dependent upon Title X-funded healthcare from accessing the full complement of health care services they are entitled to under the law. The discriminatory impact of this policy is exacerbated by the fact that the proposed rules would disproportionately affect already marginalized patient populations who often lack medical literacy or financial or employment resources to take time off of work for care. The Massachusetts Medical Society's policy states that we "will continue to strive for universal access to health care and nondiscrimination in health care settings for all people," and we therefore oppose the discriminatory nature of these proposed rules.

We also oppose this rulemaking on the grounds that they would compromise open communication in the patient-physician relationship. The proposed rules would contravene the oaths of physicians practicing at facilities that receive Title X funds, by prohibiting them from referring their patients to receive abortions. The administration has argued that these proposed rules do not constitute a gag rule, but their argument is premised on a specious distinction: that physicians may refer to abortions in conversation with their patients, but that they may not knowingly refer patients to colleagues or institutions where abortions are provided. Prohibiting physicians from providing referrals to evidence-based care is a gag order, and an unconscionable interference by the federal government into the practice of medicine. The Medical Society's policy states, "That the MMS strongly oppose any attempt by local, state, or federal government to interfere with a physician's right to free speech as a means to improve the health and wellness

The Honorable Alex M. Azar

July 26, 2018

Page 3

of patients across the United States.” These proposed rules constitute just such an interference, and therefore, ought not to be adopted.

This proposal would also infringe on another essential aspect of the physician’s oath: our duty to provide the highest standard of evidence-based medical care to our patients. Abortion is a legal and evidence-based form of medical care; as such, patients have a right to receive it. The Massachusetts Medical Society holds policy specific to abortion, to oppose “legislative proposals that utilize federal or state health care funding mechanisms to deny established and accepted medical care to any segment of the population.” We also have policy on the scientific basis of care, writ large: “A physician shall continue to study, apply, and advance scientific knowledge, maintain a commitment to medical education, [and] make relevant information available to patients, colleagues, and the public.” This policy speaks to one of the core tenets of our work, and these proposed rules would undermine our ability to do that work in caring for our patients.

We also want to call attention to the fact that these proposed rules constitute the most egregious infringement of a federal administration on physician practice in memory. The federal government has long respected the vital importance of not intervening with the patient-physician relationship, a separation of authorities as essential as that of church and state. These proposed rules would set an untenable precedent, that the federal government could prohibit access to necessary and legal health care based on religious or political bias. Such a precedent would open the door to further discrimination on the basis of protected characteristics. There is virtually no other medical treatment where it would be acceptable for a physician to be knowledgeable about a legal medical treatment and be prohibited by law from referring a patient for care. If this rule should pass, we fear that more discriminatory policies will follow.

In conclusion, as physicians, we find it unconscionable that the government would compromise the patient-physician relationship by prohibiting the open communication about evidence-based medical care that is a cornerstone of that relationship. The precedent that would be set by this rule is dangerous and unwarranted. As physicians, we will continue to defend and advocate strenuously in support of our medical and ethical responsibility to fully inform or patients of all treatment options and to help them receive medical care. We urge the Administration to withdraw these proposed rules, which are inherently discriminatory, and would prevent women’s and adolescents’ access to healthcare.

Sincerely,



Alain A. Chaoui, MD

¹ Jennifer J. Frost and others, “Return on Investment: A Fuller Assessment of Benefits and Cost Savings of the US Publicly Funded Family Planning Program,” *The Milbank Quarterly* 92 (4) (2014): 667–720, available at https://www.guttmacher.org/sites/default/files/pdfs/pubs/journals/MQ-Frost_1468-0009.12080.pdf.

² Jennifer J. Frost, Mia R. Zolna, and Lori Frohwirth, “Contraceptive Needs and Services, 2010” (New York: Guttmacher Institute, 2013), available at https://www.guttmacher.org/sites/default/files/report_pdf/contraceptive-needs-2010.pdf.

³ <https://www.guttmacher.org/gpr/2017/01/why-we-cannot-afford-undercut-title-x-national-family-planning-program>.

⁴ <https://fas.org/sgp/crs/misc/RL33644.pdf> (p. 22).