

**Congress of the United States**  
Washington, DC 20515

June 1, 2023

The Honorable Xavier Becerra  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue SW  
Washington, DC 20201

Dear Secretary Becerra,

We are extremely concerned by the decision of the Department of Health and Human Services (HHS) Office of Population Affairs (OPA) to suspend the \$4.5 million Title X Family Planning grant awarded to the Oklahoma State Department of Health (OSDH). Oklahomans across the state, particularly in rural areas with limited access to affordable health care, rely on the services provided by this funding. The suspension of the funds due to HHS' novel interpretation of federal law regarding OSDH's obligations under state law will substantially harm our constituency.

We demand the immediate reinstatement of the award FPHPA006507 "Oklahoma State Department of Health Family Planning Services Project," and strongly disagree with HHS' interpretation and application of the obligations of grantees under federal statute.

Section 1008 of the Public Health Services Act, which authorizes Title X grant funding, explicitly prohibits funds from being "used in programs where abortion is a method of family planning." The same sentiment is reiterated each year as a condition of Title X appropriations, which states that Title X funds "shall not be expended for abortions." Nevertheless, HHS has chosen to prioritize abortion instead of prioritizing actual health care, by suspending Title X funding awarded to OSDH because of its obligation to abide by federal law and the state laws of Oklahoma. It is absurd that HHS is suspending funds previously granted to OSDH for its refusal to refer for a procedure that the underlying federal statute explicitly forbids.

It is troubling that access to necessary Title X services for Oklahomans has now been caught in the crossfire of HHS' continued work to promote abortion while neglecting conscience protections. OSDH serves 30,000 Oklahomans in need of these free or low-cost services in accordance with federal and state law, in part through the Title X grant awarded to OSDH in March 2022. Yet, OSDH was wrongly determined by OPA to be out of compliance with the Administration's regulations under Title X that illegally promote abortion as a method of family planning<sup>1</sup> because OSDH cannot counsel or refer for abortion under state law.

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<sup>1</sup> 42 CFR Part 59, Subpart A

Despite attempts over the course of several months to compel OSDH to comply with the Administration’s pro-abortion demands, and ignore federal and state law, the award was suspended, effective May 24, 2023, and is currently under a 30-day review.

OSDH has made every attempt to lawfully provide Oklahomans with family planning services under Title X. They are now being financially punished for not violating state and federal law.

Beyond the prohibition of the inclusion of abortion in Title X services in Section 1008, which in and of itself could not be clearer, there are numerous other federal statutes that prohibit HHS from discriminating against OSDH for refusing to refer for abortions.

For example, the Weldon amendment, which has offered protection from discrimination against health care entities that do not refer for abortions since 2005, reads:

“(1) None of the funds made available in this Act may be made available to a Federal agency or program ... if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.

(2) In this subsection, the term “health care entity” includes ... a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan.”<sup>2</sup>

There is no legitimate reason to believe that OSDH, which operates 68 county health clinics that provide clinical health care services every day, would not be considered a health care entity under Weldon’s definition, and therefore subject to its protections. Any determination to the contrary has no demonstrable basis in statute or regulation. If HHS has made any determination to the contrary, we demand that such documentation be shared with us in writing by June 12<sup>th</sup>.

Weldon’s prohibition against discrimination could not be clearer: no funds appropriated to HHS can be used to discriminate against a health care entity for not referring for abortions. Yet, that is exactly what HHS is doing by suspending OSDH’s award.

As if numerous federal laws did not provide enough of a basis for OSDH to continue to operate lawfully as a Title X recipient, OPA’s determination of noncompliance also conflicts with the Department’s own Title X rule, “Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services.”<sup>3</sup> That rule explicitly states “grantees will not be required to counsel or refer for abortions.”<sup>4</sup>

Further, footnote 2 of the Final Rule states that “providers may separately be covered by federal statutes protecting conscience and/or civil rights,” in reference to what requirements must be met by a Family Planning Projects under Title X.<sup>5</sup>

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<sup>2</sup> Consolidated Appropriations Act, 2023, Public Law 117-328, Div. H, sec. 507(d)

<sup>3</sup> 86 FR 56144

<sup>4</sup> *Id.* At 56153

<sup>5</sup> *Id.* at 56178

OPA's determination that OSDH is out of compliance with the abortion referral requirements of the Title X rule found at 42 CFR § 59.5(a)(5) is in direct contradiction to the actual text of 42 CFR § 59.5(a)(5). In addition to the willful ignorance and disregard of the underlying statute and applicable conscience protections, it is difficult to imagine a more egregious contradiction of the plain text of an implementing regulation than this.

Not only does the suspension lack any foundation in the applicable statutes and rules, but suspending the state's federally-funded family planning services will result in substantial harm to the very individuals that Title X was enacted to serve.

Abortion is not family planning; it is family destruction. Every abortion takes an unborn child's life. Oklahoma's laws protect women and unborn children from the violence of abortion in the interest of promoting families, keeping Oklahomans safe, and protecting life. OSDH's decision to follow federal and state law by protecting unborn life and seeking the welfare of individual patients and their families is a noble one. OPA's determination of noncompliance is jeopardizing the health care of Oklahomans and has no legitimate legal foundation. Rather, HHS is interpreting laws and regulations through a political lens and ignoring clear parameters of the statutes enacted by Congress.

Oklahomans rely on OSDH's family planning program for Title X family planning services including cancer screenings, pregnancy prevention, STI diagnostics and treatment, breast exams, and depression screenings and referrals, among a multitude of other services. OPA's decision to suspend OSDH's award will severely limit Oklahoman's access to these services. In doing this, HHS is disregarding one of its own stated goals to "protect and strengthen equitable access to high quality and affordable health care."<sup>6</sup>

HHS cannot simply will words to mean what they do not; we are a country governed by the rule of law. When the law says "no funds," Congress really means "no funds."

The Biden administration's obsession with abortion seems to know no end. We once again demand that you reverse the suspension of OSDH's award without delay, and provide the aforementioned documents to our offices by June 12<sup>th</sup>, 2023.

Sincerely,



James Lankford  
United States Senator



Markwayne Mullin  
United States Senator

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<sup>6</sup> <https://www.hhs.gov/about/strategic-plan/2022-2026/index.html>



Frank D. Lucas  
Member of Congress



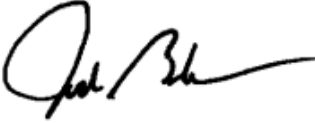
Tom Cole  
Member of Congress



Stephanie Bice  
Member of Congress



Kevin Hern  
Member of Congress



Josh Brecheen  
Member of Congress

cc: Admiral Rachel Levine, Assistant Secretary for Health  
Scott J. Moore, Director / Chief Grants Management Officer  
Jessica Shields, Grants Management Specialist  
Cynda Hall, OPA Project Officer  
Duane Barlow, OASH Grants Branch Chief  
Amy Margolis, OPA Deputy Director  
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