Congress of the United States
Washington, DC 20510

September 23, 2016

The Honorable Sylvia Mathews Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Burwell,

We write to express our strong opposition to the Department of Health and Human Services (HHS) September 7, 2016, notice of proposed rulemaking titled "Compliance with Title X Requirements by Project Recipients in Selecting Subrecipients." Although we appreciate the Department's intent to follow proper regulatory procedure pursuant to the Administrative Procedure Act, HHS's purpose for engaging in the rulemaking appears on its face to be an attempt to subvert the will of elected representatives.

Moreover, apart from the Department's impetus for the notice of proposed rulemaking, we also question whether the Department's stated rationale adequately supports its conclusion that providers with a reproductive health focus are more "effective" than other health providers that offer comprehensive care for women and men. Nowhere in the proposed notice of rulemaking does HHS clearly define what it means to provide Title X services in an "effective" manner. It does appear to assert that a number of factors – such as the range of contraceptive methods on-site, the number of clients in need of publicly funded family planning services served, and the availability of preconception care – distinguish providers with a reproductive health focus as more "effective" and "high quality" than other types of providers. However, that list of factors falls far short of all of the attributes and recommendations included in the Centers for Disease Control and Office of Population Affairs report entitled "Providing Quality Family Planning Services: Recommendations of CDC and the US Office of Population Affairs."[1]

To further complicate the argument about quality and effectiveness, the data cited in the notice of proposed rulemaking is not adequate for determining patient outcomes. The Department relies heavily on utilization and demographic statistics, but appears to lack hard data regarding actual patient outcomes and need, as the Department does not require grantees to track patients or verify their income. As you know, the issue of inadequate data has previously been raised by the Institute of Medicine (IOM), after the HHS Office of Family Planning in 2007 asked IOM to provide a critical review of the Title X Family Planning Program. In addition to finding "no clear, evidence-based process for establishing or revising program priorities and guidelines," IOM stated the following in its May 2009 Report Brief:

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[1] Centers for Disease Control and Prevention, Recommendations and Reports: Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs (April 2014).

> "The committee concludes that the program does not collect all the data needed to monitor and evaluate its impact. Therefore, the committee proposes a comprehensive framework to evaluate the program and assess how well clinics meet the family planning needs of the program's clients. The committee concludes that additional data will be needed in the areas of client needs, structure, process, and outcomes in order to assess the program's overall progress."[2]

We welcome evidence that this recommendation has been fully adopted, but are unaware of any clear evidence confirming that to be the case. If HHS cannot clearly define an "effective" or "high quality" provider, it is unclear to us how state and local project grantees are supposed to do so in order to comply with this proposed rule. It is also therefore unclear how HHS will be able to accurately determine in every case whether state or local project recipients – who are generally closer to and more familiar with subrecipients and the patient base in their geographical region – have considered inappropriate criteria in evaluating subrecipients. Rarely do the American people benefit when the federal government attempts to substitute its judgment for that of state or local governments – particularly when the criteria used to inform that judgment are unclear, and that judgment is not supported by coherent and impartial facts.

Finally, if HHS is going to assert the authority to adapt its rules in order to address changing circumstances, we implore HHS to consider the recent general shift in health care policy toward comprehensive care. As HHS states on its website, in addition to assisting individuals and couples in planning and spacing births, part of the mission of Title X is to contribute to "improved health for women and infants."[3] HHS's suggestion that subrecipients like federally qualified health centers – which provide greater preventive and primary health care services than providers with a reproductive health focus – are per se less "effective" than providers with a reproductive health focus does not comport with that stated mission.

We urge HHS to reconsider this overreaching and ill-supported rule. We will continue to closely monitor this proposed rulemaking, and intend to submit this letter as a formal comment. We look forward to a detailed response from your Department.

Sincerely,

Joni K. Ernst
United States Senator

Diane Black
United States Congressman

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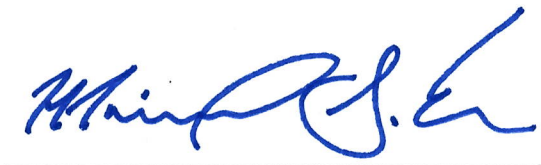
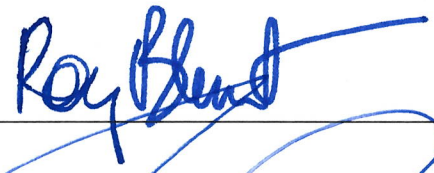
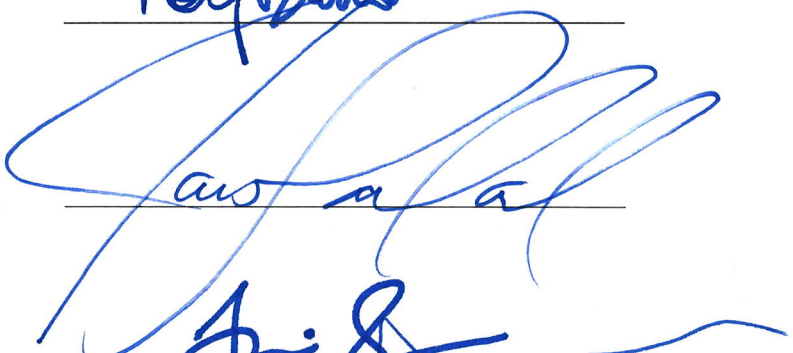
[2] Institute of Medicine, Report Brief: A Review of the HHS Family Planning Program: Mission, Management, and Measurement of Results (May 2009).

[3] U.S. Department of Health & Human Services, Office of Population Affairs, Title X Family Planning, http://www.hhs.gov/opa/title-x-family-planning/.



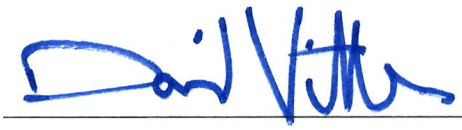


Ben Sasse



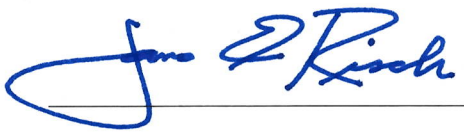
Mike Crapo

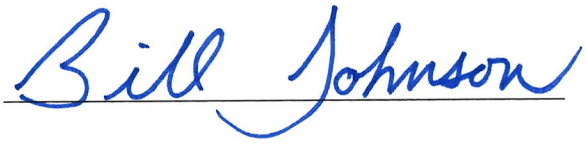
Jerry Moran

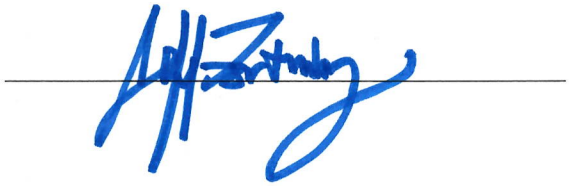


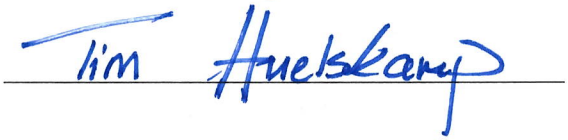
Bill Cassidy, M.D.

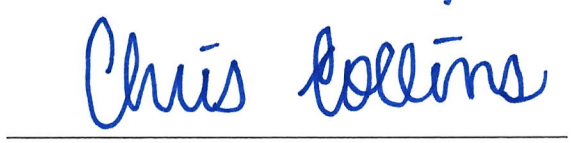
John Boozman

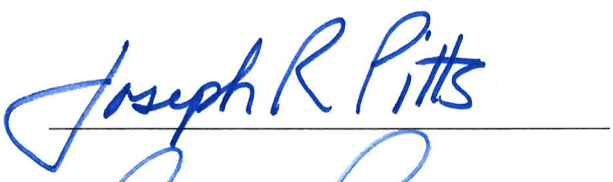


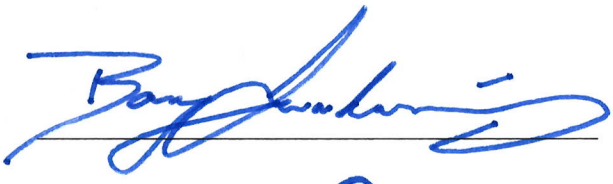


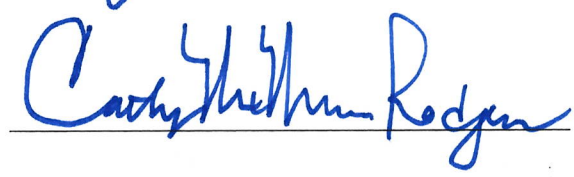


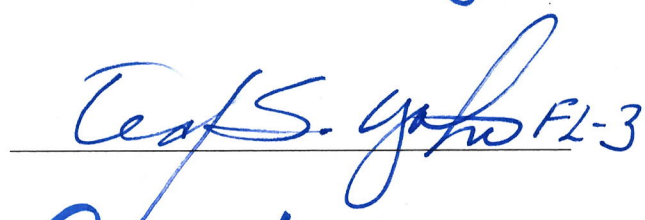


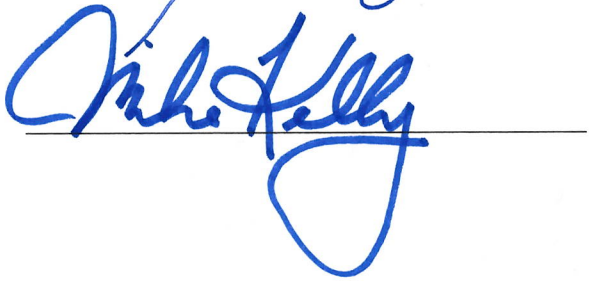












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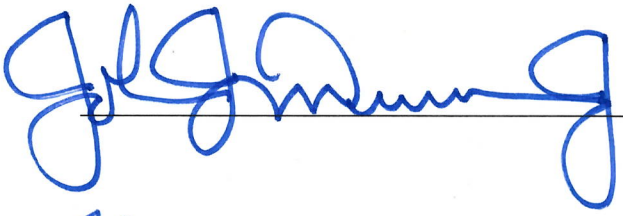

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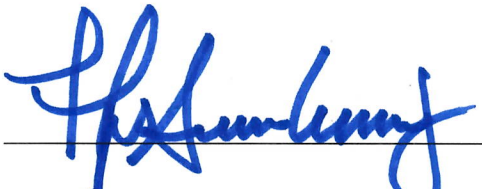
Tom Graves



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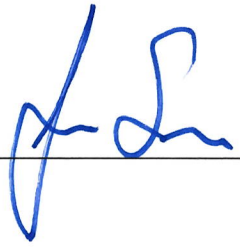

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