KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 22, 2018

Alex Azar, Secretary
U.S. Department of Health and Human Services
200 Independence Ave., S.W.
Washington, D.C. 20201

RE: Discrimination Against Texas Regarding Title X Grants

Secretary Azar:

On behalf of the residents of Texas, as well as the Texas Health and Human Services Commission, I applaud the Trump Administration's January 19, 2018 return to respecting laws that protect the religious and conscience rights of all Americans. The new Guidance issued to state Medicaid directors restoring the federal government's respect for the authority of the States to decide program standards is an encouraging sign that the rule of law and respect for the rights of Americans is being restored in the federal government.

Regrettably, the Obama Administration often denied the conscience rights of Texas's voters outright when it came to Texans' overwhelming support for laws that respect the sanctity of life among the unborn. That Administration routinely embraced opportunities to attack Texans for pursuing a culture of life in our laws and policies. Despite those attempts to bully Texas into abandoning these principles, Texas has continued to protect the rights of the unborn.

As you may be aware, in 2012, your predecessor removed Texas from the list of eligible Title X grant recipients because of our Legislature's commitment to protecting the lives of the unborn. Though Texas was fully capable of accomplishing the objectives of the Title X program, the Obama administration nonetheless denied Texas's bid to continue to participate in the Title X program for ideological, not programmatic, reasons. In other words, because Texas is unwilling to function as a conduit of federal monies to abortion providers, Texas has been denied the ability to participate in the program.

Because of the Obama Administration's unconscionable, ideological pro-abortion requirements, Title X funding was discontinued to Texas in 2013. Thereafter, Texas taxpayers began funding its own Texas Family Planning Program. In 2016, the Obama Administration codified its discrimination against Texas in a new rule. 81 Fed. Reg. 91852. Therein, the Obama Administration specifically named Texas as a problem necessitating

the rule. *Id.* at 91853. However, Congress recently disapproved this discriminatory rule, finding that it "shall have no force or effect." H.J. Res. 43, 115th Cong. (Apr. 13, 2017) (enacted). Yet to date, Texans continue to self-fund their program for women, displaying both the strength and commitment of Texas to protecting the lives of its residents, both born and unborn, but also denying both Texans and your agency of the opportunity to work together for the betterment of our country.

The summary of the most recent Title X Family Planning Annual Report indicates that "48 state and local health departments" are part of Title X.[1] Texas is not one of them. As the second largest sovereign in the country, with nearly 13 million female residents, your predecessor's exclusion of Texas from the Title X program is not a badge of honor. A precursor to participation in federal programs should *not* be an uncompromising commitment to abortion providers.

In light of the recent statements by both President Trump and the Acting Secretary Hargan, and communications that Texas officials had with members of your agency last Fall, Texans are encouraged that cooperative participation to accomplish the objectives of the Title X program, is yet again possible. The application process associated with the Title X program, however, is long and arduous. Texas's non-binding letter of intent is due by April 13, 2018, with final applications due by May 24, 2018.

Texas, of course, is willing to undertake the necessary steps to reestablish the cooperative relationship that our sovereigns once shared to achieve the ends of Title X—providing access to family planning and related preventive health services for low-income Texans. However, the prejudice of the past leaves Texas with reasonable questions as to whether a new application will be received with respectful consideration or the same derision of the prior administration.

Of course, Congress is abundantly clear, in myriad circumstances, that government is not to discriminate against those who oppose abortion. Accordingly, it is nonsensical for Congress to have such strong and robust policies protecting the conscience rights of those that do not favor abortion but simultaneously exclude Texas from participating in federal programs for having and acting upon the very same beliefs that Congress seeks to preserve.

For example, in the Church amendment of 1973, 42 U.S.C. § 300a–7, Congress safeguards the rights of *all* entities, and not just medical providers, that possess "religious beliefs or moral convictions." This protection, which extends to an "entity which receives a grant, contract, loan, or loan guarantee," is a mainstay of federal conscience protections for the last 45 years.

[1] *See* https://www.hhs.gov/opa/title-x-family-planning/fp-annual-report/fpar-2016/index.html.

In like manner, the Hyde/Weldon Amendment also protects non-religious rights of conscience. Specifically, it forbids discriminating against "any institutional or individual health care entity . . . on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions." Pub. L. No. 114–113, Div. H, § 507(d), 129 Stat. 2242, 2649 (2015). The Hyde/Weldon amendment has been adopted by Congress and approved by the President every year since 2004. *See* Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, § 508(d)(1)–(2), 118 Stat. 2809, 3163 (2004).

The Coats/Snow Amendment also functions to forbid discrimination against entities that refuse to participate in the performance of or referrals for abortions. Specifically, it prohibits discrimination against a medical provider that "refuses to undergo training in the performance of induced abortions, to require or provide such training, to perform such abortions, or to provide referrals for such training or such abortions." 42 U.S.C. § 238n(a)(1). As a conduit for federal monies, Texas operates like the referrers that the Coats/Snow Amendment seeks to protect.

While Texas undertakes the exhaustive task of reapplying to become yet again a recipient of Title X monies, we request that your office undertake a simultaneous review of agency practices. We hope that such a review will assure that Texas law forbidding the extension of taxpayer funds to entities that perform or promote elective abortions, or otherwise affiliate with abortion-promoting or abortion-performing entities, will not summarily disqualify Texas from otherwise participating in the Title X program.

Thank you for your attention to this matter. We very much appreciate the work you and your staff are accomplishing in restoring the rule of law and respect for the religious and conscience rights of Americans. Please do not hesitate in contacting my office if you have any questions or require additional information.

Very truly yours,

Ken Paxton

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