

Congress of the United States

Washington, DC 20515

December 1, 2023

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

RE: Comments on Proposed Rule: Strengthening Temporary Assistance for Needy Families (TANF) as a Safety Net and Work Program, 88 FR 67697 (October 2, 2023), RIN: 0970-AC97, Docket No. 2023-21169

Dear Secretary Becerra:

We write to express our deep concern regarding the U.S. Department of Health and Human Services (HHS) proposed rule, “Strengthening Temporary Assistance for Needy Families (TANF) as a Safety Net and Work Program,” 88 Fed. Reg. 67697 published on October 2, 2023 (the “Proposed Rule”), and to urge you to withdraw it immediately. The Proposed Rule undermines the TANF program by targeting pregnancy centers and alternatives to abortion programs and threatening to strip them of millions of dollars of funding, depriving pregnant women in need of compassionate assistance for themselves and their unborn babies.

TANF

TANF was created by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which reformed the welfare system by converting cash welfare into block grants to states (currently totaling \$16.5 billion per year). With these grants, States are empowered to address the root causes poverty and reduce dependency on government by promoting work and marriage. Specifically, States are permitted to use TANF funds “in any manner that is reasonably calculated”¹ to achieve one or more of TANF’s four purposes, to:²

- (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- (4) encourage the formation and maintenance of two-parent families.

TANF’s design reflects Congress’ intent to provide flexibility for States to achieve these purposes, while also ensuring States contribute their own funds under the maintenance of effort

¹ Section 404 of the Social Security Act

² Section 401(a) of the Social Security Act.

requirement. The sum of minimum state TANF spending was approximately \$10.6 billion in FY2021.³

Pregnancy Centers and Alternatives to Abortion Programs

Over 2,700 pregnancy centers across the country provide help, hope, and healing to countless women and families in need, with almost two million people served in 2019.⁴ Pregnancy centers help women facing difficult or unplanned pregnancies to choose childbirth instead of abortion, through a combination of client services and material support. Essential services provided by pregnancy centers (typically at virtually no cost to the client) include sexual risk avoidance to youth, STI/STD testing and treatment, pregnancy tests, pregnancy counseling, ultrasounds, parenting and prenatal education, after-abortion support, adoption referrals, diapers, baby clothes, linkages to housing and essential services, and other material support and counseling.⁵ Eight in ten workers at pregnancy centers are volunteers, including more than 6,400 medical volunteers.⁶

Significantly, pregnancy centers save taxpayers many millions of dollars through the work they perform for free, through volunteers and donors, reducing the need for services that would otherwise be provided by the government at the expense of taxpayers. The free services and material assistance provided by pregnancy centers had a conservative estimated value of over \$266 million in 2019.⁷

Eighteen States have established alternatives to abortions programs, which fund life-affirming services to empower pregnant women to choose life for their babies instead of abortion, typically by supporting pregnancy centers, adoption agencies, maternity homes, and other relevant social services partners.⁸ At least five States currently provide a portion of their TANF funding to fund these programs (together amounting to millions of dollars each year), including Indiana, Louisiana, Missouri, Ohio, and Pennsylvania.⁹

Pennsylvania was the first State to use TANF funds to support its alternatives to abortion program, at \$1 million per year. This was approved by HHS under the administration of President George W. Bush in 2001.¹⁰ Pennsylvania's Democrat Governor Josh Shapiro, however, recently announced he will terminate Pennsylvania's longstanding contract with the nonprofit Real Alternatives at the end of 2023, ending decades of Pennsylvania's support for alternatives to abortion through pregnancy centers and maternity homes for pregnant women.¹¹

³ Congressional Research Service, "The Temporary Assistance for Needy Families (TANF) Block Grant: A Primer on TANF Financing and Federal Requirements", August 14, 2023, <https://crsreports.congress.gov/product/pdf/RL/RL32748>

⁴ Charlotte Lozier Institute, "A Legacy of Life and Love: Pregnancy Centers Stand the Test of Time", October 21, 2020, https://lozierinstitute.org/wp-content/uploads/2023/01/Pregnancy-Center-Report-2020_FINAL.pdf

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Jeanneane Maxon, Charlotte Lozier Institute, "Fact Sheet: State Alternatives to Abortion Funding", June 28, 2022, updated on October 13, 2023, <https://lozierinstitute.org/fact-sheet-state-alternatives-to-abortion-funding/>

⁹ Ibid.

¹⁰ <https://www.realalternatives.org/https-wp-content-uploads-2019-06-history-2019-pdfhistory/>

¹¹ <https://apnews.com/article/abortion-pennsylvania-92c940a80f675f5b6cc6fd1642ea9ba3>

It is troubling that the Proposed Rule specifically targets pregnancy centers at a time when they have come under attack since the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organizations*, with over 88 violent attacks on pregnancy centers and pro-life groups documented since the leak of the decision in 2022.¹² Pregnancy centers have also come under siege from pro-abortion politicians¹³ and state Attorneys General, which have sought to fine or regulate them out of existence.¹⁴ Pro-abortion activists and media figures have specially sought to strip pregnancy centers of TANF assistance.¹⁵

Analysis of the Proposed Rule

Under the Proposed Rule if any TANF expenditure “is identified that does not appear to HHS to be reasonably calculated to accomplish a purpose of TANF,” the State is required to “show that it used these funds for a purpose or purposes that a reasonable person would consider to be within one or more of the four purposes of the TANF program.”¹⁶ While we share the administration’s goal of improving program integrity in TANF, we are concerned that the Proposed Rule focuses specifically on States that direct TANF funds to pregnancy centers and alternatives to abortion programs. HHS states:

[P]rograms that only or primarily provide pregnancy counseling to women only after they become pregnant likely do not meet the reasonable person standard because the connection to preventing and reducing out-of-wedlock pregnancies is tenuous or non-existent, and therefore do not accomplish purpose three. States that provide funding for these types of programs, *including through entities sometimes known as crisis pregnancy centers or pregnancy resource centers*, must be able to show that the expenditure actually accomplishes the TANF purpose, that prior expenditures by the state or another entity for the same or a substantially similar program or activity actually accomplished the TANF purpose, or that there is academic or other research indicating that the expenditure could reasonably be expected to accomplish the TANF purpose.¹⁷ (emphasis added)

Alternatives to abortion programs, and the pregnancy centers they support, provide services that fulfill all four purposes of TANF, but the proposed rule inaccurately describes these programs as limited to “only or primarily provid[ing] pregnancy counseling to women only after they become pregnant” and only relevant for preventing and reducing out of wedlock pregnancy. On the contrary, alternatives to abortion programs offer services and material assistance to pregnant women and their families, which may include parenting classes, training in life skills, sexual risk avoidance education, promoting responsible paternity, promoting marriage, care coordination, housing and support services through maternity homes, assistance with job searching, reducing

¹² <https://catholicvote.org/pregnancy-center-attack-tracker/>

¹³ See H.R. 2736/S.1231, 118th Congress

¹⁴ <https://oag.ca.gov/system/files/attachments/press-docs/Open%20Letter%20re%20Crisis%20Pregnancy%20Centers%20FINAL.pdf>

¹⁵ See “TANF: Last Week Tonight with John Oliver (HBO)”, March 13, 2023, <https://www.youtube.com/watch?v=wJDk-czsivk>

¹⁶ Proposed section 263.11(c)

¹⁷ 88 FR 66705

dependence on government and much more.¹⁸ HHS' unfair characterization of these life-affirming programs suggests that they would not be considered allowable uses of TANF funds, regardless of a State's ability to provide justification that they meet one or more of TANF's statutory purposes.

The mere fact pregnancy centers perform some activities that are outside the scope of TANF's third purpose does not disqualify them from receiving TANF funds. HHS does not cite any evidence that pregnancy centers or others receiving TANF funding under alternatives to abortion programs are unlawfully using Federal funds for non-TANF purposes. This suggests HHS is targeting pregnancy centers for their pro-life mission rather than for any kind of misuse of Federal funds.

HHS' singling out of pregnancy centers for performing post-conception pregnancy counseling also reveals a glaring hypocrisy, making the Proposed Rule arbitrary and capricious. Planned Parenthood affiliates reported expending \$1.04 million in TANF funds in 2018.¹⁹ Planned Parenthood performs abortions, for which the expenditure of TANF funds is prohibited,²⁰ yet curiously, HHS does not raise concerns, or demand special justification, for States that have provided TANF funds to Planned Parenthood affiliates.

Chillingly, HHS suggests TANF support for pregnancy centers should be steered toward family planning programs more typical of the business models of Planned Parenthood and the abortion industry instead. Specifically, HHS states TANF funds should be directed to "comprehensive sex education, family planning services, pregnancy prevention programs, and community mobilization services for at risk youth that increase access to pregnancy prevention programs for teens."²¹ This seems to be another attempt by the Biden administration to funnel taxpayer dollars to the abortion industry.

The Proposed Rule fails to provide any analysis about the impact that stripping alternatives to abortion programs and pregnancy centers of TANF funds would have on other Federal expenditures or expenditures by State governments, or any other relevant impacts. These impacts, as well as the harms to those whom pregnancy centers serve if they lose TANF funding, must be addressed by HHS in any final rule.

HHS' proposal to micromanage States' decisions to allocate TANF funds for alternatives to abortion programs is unprecedented, vulnerable to political manipulation, and undermines Congress' design for TANF to provide flexibility to States.

Conclusion

Women deserve better than abortion and should receive support when they choose life for their babies. For decades, pregnancy centers have stood in the gap and generously provided free

¹⁸ Amanda Stirone Mansfield, Charlotte Lozier Institute, "Alternatives to Abortion Programs: Support for Mothers and Families," February 14, 2022, <https://lozierinstitute.org/alternatives-to-abortion-programs-support-for-mothers-and-families>.

¹⁹ U.S. Government Accountability Office, "Health Care Funding: Planned Parenthood Federation of America Affiliates' Expenditures of Federal Funds, 2016 through 2018", June 22, 2021, GAO-21-608R, pg. 12

²⁰ Section 408(a)(6) of the Social Security Act.

²¹ Ibid.

assistance to women, babies, and families in their moments of need—actions aligned with TANF’s purposes. The Proposed Rule, however, would undermine the TANF program and threaten to strip millions of dollars in support for pregnant women and their unborn babies through pregnancy centers, maternity homes, and alternatives to abortion programs. We urge you to withdraw the Proposed Rule immediately.

Sincerely,



Cindy Hyde-Smith
United States Senator



Christopher H. Smith
Member of Congress



Steve Daines
United States Senator



Debbie Lesko
Member of Congress



Mike Lee
United States Senator



Michael Guest
Member of Congress



J.D. Vance
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Erin Houchin
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Mary Miller
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Roger Wicker
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