IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MAYOR AND CITY COUNCIL OF BALTIMORE, *Plaintiff*, v. ALEX M. AZAR II, in his official capacity as the Secretary of Health and Human Services; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; DIANE FOLEY, M.D., in her official capacity as the Deputy Assistant Secretary, Office of Population Affairs; OFFICE OF POPULATION AFFAIRS, *Defendants*.	Case No. 1:19-cv-01103

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR A STAY OF PROCEEEDINGS PENDING APPEAL

INTRODUCTION

A stay of proceedings is unwarranted in this case. A stay would harm not only Baltimore but millions of low income men, women, and adolescents in the United States, by delaying the Rule's vacatur. At the same time, Defendants admit that the remaining issues are purely legal, they anticipate no discovery and no trial, and they will suffer no prejudice if this case proceeds. As for judicial resources, this Court's resolution of the case would likely save resources. If this Court ultimately rules in Baltimore's favor after the interlocutory appeal concludes, resolution of Defendants' interlocutory appeal will have *maximized* the waste of judicial and party resources, not minimized it. And as Defendants have argued, resolving the interlocutory appeal from the preliminary injunction will be "a potentially lengthy appeal process." *Baltimore v. Azar*, No. 19-1614, Appellants' Resp. Emergency Mot. for Recons. *En Banc* at 1 (4th Cir. June 10, 2019), ECF 35 ("*Baltimore II*"). Millions of people and over twenty States—not to mention Baltimore—are suffering irreparably right now. Even if the stay would actually conserve judicial resources while the appeal is pending—which it would not—these concerns far outweigh any limited resource savings. The Court should deny Defendants' motion.

ARGUMENT

I. Stays Are The Exception, Not the Rule

Stays pending interlocutory appeals are disfavored. *See* David G. Knibb, *Fed. Court of Appeals Manual* § 5:6 (6th ed. 2018) (discussing § 1292(b) appeals). "The presumption is against a stay, and even if one is ordered, it may be limited to matters that could interfere with the appeal." *Id.* "By requiring that a stay be specifically ordered, Congress intended to avoid unnecessary delays." *Id.* (citing S. Rep. No. 85-2434, 1958 WL 3723 (1958)). "Only in the most extraordinary circumstances . . . may federal courts abstain from exercising jurisdiction in order to avoid piecemeal litigation." *Gordon v. Luksch*, 887 F.2d 496, 497 (4th Cir. 1989) (discussing

abstention). There is a "heavy presumption favoring the exercise of jurisdiction." *New Beckley Min. Corp. v. Int'l Union, United Mine Workers of Am.*, 946 F.2d 1072, 1074 (4th Cir. 1991). Courts of appeals "have repeatedly admonished district courts not to delay trial preparation to await an interim ruling on a preliminary injunction." *California v. Azar*, 911 F.3d 558, 583 (9th Cir. 2018).

When courts determine the appropriateness of staying proceedings in a given case, three factors must be taken into account: (1) the interest in judicial economy; (2) the hardship to the moving party if the action is not stayed; and (3) the potential damage or prejudice to the non-moving party. *Int'l Refugee Assistance Project v. Trump*, 323 F.Supp.3d 726, 731 (D. Md. 2018). "The party seeking a stay must justify it by clear and convincing circumstances outweighing potential harm to the party against whom it is operative." *Williford v. Armstrong World Indus., Inc.*, 715 F.2d 124, 127 (4th Cir. 1983). The movant "bears the burden of establishing its need" for a stay and does not enjoy an automatic stay as a right. *Clinton v. Jones*, 520 U.S. 681, 708 (1997). The burden is heightened when a stay will "work damage" to another party. *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936).

II. The Court Should Deny the Stay Motion

A. The Balance of Hardships Tips Decisively Against a Stay

1. Baltimore suffers irreparable harm from every moment's delay in the resolution of this case. On May 30, this Court issued a preliminary injunction to protect Baltimore from the implementation of the Rule. Op. & Order (D. Md. May 30, 2019), ECF 43 & 44 (*Baltimore I*). But without explanation or opinion, and over a vigorous dissent, a divided Fourth Circuit panel stayed the injunction. *Baltimore II*, Order, ECF 24. Every day that the Rule remains in effect increases not only federal funds foregone, but also the likelihood of clinic closures and the resulting loss of medical services available to Baltimore City residents, *see Baltimore I*, Op. at

24, ECF 43, increasing unwanted pregnancies (including teen pregnancies), abortions, and untreated STDs, among other adverse health impacts. *Id.*, Decl. Martha Bailey at 19, ECF 11-2; *id.*, Decl. Kathryn Kost at 18, ECF 11-3; *id.*, Decl. Claire D. Brindis at 21-22, ECF 11-4; *id.*, Decl. of Charlotte Hager at 6, ECF 11-7.

Because Baltimore is suffering serious, ongoing, irreparable harm as a result of the Rule, there is much more than a "fair possibility of harm" from a stay of proceedings. *Landis*, 299 U.S. at 254-55 ("even a fair possibility" of such harm requires Defendants to "make out a clear case of hardship or inequity in being required to go forward"). Because Baltimore cannot ethically comply with the Rule, it is currently spending its own money to provide family planning services in accordance with the 2000 Title X Rules. Baltimore is doing so because, although Defendants told the Fourth Circuit on July 12 that "Maryland . . . is now the only place where the Rule is not in effect," *Baltimore II*, Defs.' Resp. Opp'n to Mot. for Reh'g *En Banc* at 5, ECF 35, three days later, HHS told Maryland and all other grantees that "HHS shall now require compliance with the Final Rule." Letter from Diane Foley to Office of Population Affairs (July 15, 2019) (attached as Exhibit A). Meanwhile, other providers, serving patients who will ultimately fall back on care from Baltimore as a provider of last resort, are left to either divert funds from other critical services, provide unethical Title X care or no Title X care at all. Every day that these providers engage in the directive and coercive counseling required by the Rule erodes the trust of potential Baltimore patients. Every missed diagnosis of cancer or sexually transmitted infection, and every unintended pregnancy resulting from the lack of family planning services, is a unique and irreparable harm. As the Fourth Circuit has held, "the human aspects of the needs of a plaintiff in declining health" are "[o]f particular significance in balancing the competing

interests" in a stay of proceedings. *Williford*, 715 F.2d at 127-28. The longer this state of affairs continues, the greater the harm.[1]

2. Millions of men, women, and adolescents nationwide also stand to suffer from this Court's delay. If this Court enters final judgment for Baltimore on any one of its Administrative Procedure Act claims, the Court "shall" hold the Rule unlawful and set it aside, 5 U.S.C.A. § 706 (2), resulting in vacatur and removal from the Code of Federal Regulations. Vacatur would protect men, women, and children nationwide, as well as national networks of Title X clinics, such as the National Family Planning and Reproductive Health Association, and Planned Parenthood Federation of America, both of which have asserted that they too are being irreparably harmed in other lawsuits. *See* Pls.-Appellees' Answering Br. at 43-46, *Nat'l Family Planning & Reprod. Health Ass'n v. Azar* (9th Cir. No. 19-35394), 2019 WL 2902643; Pls.-Appellees' Answering Br. at 51-54, *Oregon v. Azar* (9th Cir. No. 19-35386), 2019 WL 2902639.

3. Defendants will suffer no prejudice at all from continuing to litigate this case in the normal course. Defendants concede that they do not anticipate this case will involve discovery or a trial and indeed affirmatively argue that the issues in this case are purely legal. *Baltimore I,*

[1] On appeal Defendants claimed that a Maryland statute, Md. Code. Ann., Health-Gen. § 13-3402 (2019), will provide state funding to make up for Title X funding withheld because of the Rule. *Baltimore II*, Defs.' Resp. Opp'n Reh'g *En Banc* at 7-8, ECF 35. But Defendants are wrong for three reasons. *First*, because a 12-month gap must separate a Maryland mandatory appropriations' enactment and its appearance in the budget, the statute does not apply until FY 2021 (beginning July, 2020), Op. Md. Att'y Gen., *Letter to Director, Dep't of Fiscal Services* (Jan. 13, 1994) (mandatory appropriations must be "enacted before July 1 of the fiscal year *which precedes the fiscal [year]* to which the requirement applies") (emphasis added); *see also id.*, *Letter to Delegate Leopold* (Apr. 6, 2005), *Letter to Delegate Leopold* (Mar. 18, 2005); Op. Att'y Gen., *Letter to Director, Dep't of Fiscal Services* (Jan. 13, 1994) (all attached as Exhibit B). *Second*, the mandate only requires a Governor to *propose* the funding—the Governor can choose to veto such appropriations by line-item, *see* Md. Const. art. II § 17; art. III § 52(2), (8); *Panitz v. Comptroller of the Treasury*, 232 A.2d 891, 893-95 (Md. 1967). *Third*, the statute provides that the Governor must only propose the amount of funding that Maryland received in Title X funds during the prior year (from July 2019-2020) which in this case will likely be zero.

Defs.' Memo. Supp. Mot. Stay Proceedings at 7, ECF 62-1 ("Defs.' Stay Br."). The bare requirement that a party brief purely legal issues in a district court is not a harm at all, and certainly not the kind of severe hardship that would warrant a stay. Defendants ignore the Supreme Court's straightforward holding that, where there is "even a fair possibility" of damage to Baltimore, Defendants, as the moving party, "must make out *a clear case of hardship or inequity* in being required to go forward. *Landis*, 299 U.S. at 254-55 (emphasis added). Defendants have not even *alleged* "hardship" or "inequity" if this case proceeds in its ordinary course to final resolution on the merits. Nor could they. Defendants have repeatedly represented to this and other courts that *they* are harmed by "uncertainty" and "confusion" about the ultimate fate of the rule. *See, e.g.*, *Baltimore I*, Defs.' Memo. Supp. Mot. Stay Prelim. Inj. at 8-11, ECF 49-1. The quickest—and indeed only—way to cure that harm is for this lawsuit to proceed toward final resolution.

4. Defendants' assertion that Baltimore is necessarily unharmed by delay because the Court of Appeals stayed the preliminary injunction, Defs.' Stay Br. at 7, is nonsense. The panel order—again, issued without opinion—says nothing about its rationale or how it balanced the preliminary injunction factors in this case. Pending now and ripe for decision is Baltimore's Emergency Petition for En Banc Review of the panel's decision to stay this Court's injunction. *See Baltimore II*, Mot. For Reh'g, ECF 27-1; Defs.' Resp. Opp. Reh'g, ECF 36; Reply Supp. Reh'g, ECF 43.

B. Staying the Case In Favor of Defendants' Meritless Interlocutory Appeal Will Maximize The Waste of Judicial Resources, Not Minimize It

1. If this Court rules in Baltimore's favor on *any* issue at summary judgment, Defendants' interlocutory appeal of the preliminary injunction will have been a costly sideshow. And that is overwhelmingly likely to happen. A stay pending the results of that interlocutory appeal—

through briefing possibly all the way to the United States Supreme Court—would therefore *maximize* the waste of judicial and party resources in this case, not minimize them. If this Court reaches final judgment before the interlocutory appeal is resolved, it is likely to save judicial resources by mooting the wasteful interlocutory appeal. Because the outcome of the appeal of the preliminary injunction will not control the ultimate outcome of this case, the interests of judicial economy—the only justification for this stay offered by Defendants—would be disserved by grinding proceedings in this case to a halt while Defendants exhaust their interlocutory appeal of a preliminary holding concerning a small subset of Baltimore's claims.

2. For the reasons this Court gave in granting Baltimore's motion for preliminary injunction, Baltimore is likely to win the interlocutory appeal of this Court's holding that the Rule likely violates the Non-Interference Mandates and Nondirective Mandates. As this Court held, the Rule's limitation on providers' ability to provide appropriate abortion referrals in particular "reflects a government policy to circumvent and ignore the ACA Non-Interference Mandate, . . . [by] creat[ing] unreasonable barriers for patients to obtain appropriate medical care, interfering with communications between the patient and health care provider, and restricting full disclosure, which violates the principles of informed consent." *Baltimore I*, Op. at 17-18, ECF 43; *id.* (citing AMA Comment 1-3 (expressing "concern[] that the proposed changes . . . would undermine patients' access to high-quality medical care and information [and] dangerously interfere with the patient-physician relationship and . . . physicians' ethical obligations, . . . and jeopardize public health")). Similarly, as this Court acknowledged, the Final Rule is likely to violate the Nondirective Mandate, because the restrictions on providers' ability to refer patients for abortions "are coercive, not 'nondirective,'" as is "[r]equiring providers to

refer a patient to prenatal health care even when the patient has expressly stated that she does not want prenatal care." *Id.* at 20.

3. Baltimore is *also* likely to win at summary judgment on several claims that will not be affected by the resolution of the interlocutory appeal. Eight of Baltimore's ten claims are not even under consideration by the Fourth Circuit, including its claims that the Rule is (1) arbitrary and capricious because inadequately justified, Count VII, Compl. ¶¶ 203-16, ECF 1; (2) arbitrary and capricious because it is objectively unreasonable, Count VIII, Compl. ¶¶ 217-21; and (3) invalid because it was issued in violation of procedural requirements, Count IX, Compl. ¶¶ 222-31, as well as *all* of Baltimore's constitutional claims.

3.a. The interlocutory appeal will have no impact on the central questions at issue in the arbitrary and capricious claim. As this Court already noted, the agency cannot rely on *Rust* to defend its arbitrary and capricious claim:

> [S]imply because the Supreme Court in Rust found that the then-Secretary had amply justified the change in interpretation with a reasoned analysis, does not mean that the current Secretary has also done so. The ensuing changes in the societal landscape and in the law over the past 30 years means that HHS cannot rely on the same justifications as it did in 1988.

Baltimore I, Op. at 17-18. Instead, Baltimore is likely to succeed in showing that the Rule is arbitrary and capricious because HHS: (1) nowhere explains why the current regulations are inadequate for compliance with § 1008 and produces *no* evidence of misuse of funds over the past *half-century* and fails to explain the adoption of a rule that directly contradicts prior agency conclusions of fact and law, *see FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); (2) fails to take into account the "serious reliance interests" created by the previous policy for which it is required to provide an even "more detailed justification" than would suffice for a new policy created on a blank slate, *see, e.g.*, *Encino Motorcars*, 136 S. Ct. at 2126; *Fox Television*,

556 U.S. at 515; (3) drastically underestimates the costs of the new policy and the number of sites that will be affected, *compare* 84 Fed. Reg. 7,782, *with, e.g.*, Planned Parenthood Federation of America Comment at 32, HHS-OS-2018-0008-198841, http://bit.ly/2Dg5UYi; and (4) failed to consider any of the serious harms to public health that the Rule will cause, as explained by the country's leading medical groups, *see, e.g.*, American Medical Association, HHS-OS-2018-0008-179739, http://bit.ly/2Zexyyi; American College of Obstetricians and Gynecologists, HHS-OS-2018-0008-179339, http://bit.ly/2ZjlEDt; American College of Physicians, HHS-OS-2018-0008-184400, https://bit.ly/2Yd6jCs; American Academy of Family Physicians, HHS-OS-2018-0008-102966, https://bit.ly/2SEl2VQ; American Academy of Nursing, HHS-OS-2018-0008-106624, https://bit.ly/2Yd6opK; American Academy of Pediatrics, HHS-OS-2018-0008-181588, https://bit.ly/32OLd0I; Planned Parenthood Federation of America, HHS-OS-2018-0008-198841, http://bit.ly/2Dg5UYi. A stay of proceedings pending an appeal that will have no impact on the ultimate outcome of this claim simply delays an orderly and timely resolution of this matter.

3.b. Nor will the interlocutory appeal impact Baltimore's other claims, on which Baltimore is also likely to succeed. To take one example, the Rule likely requires remand to the agency because HHS failed to hold open the comment period long enough to ensure meaningful public participation in the rulemaking. As has become clear now that the Administrative Record has been produced, HHS engaged in massive procedural irregularities—including omitting the Rule from the Unified Regulatory Agenda, failing to engage in any meaningful public outreach prior to issuing the Rule, and fast-tracking the Rule through OMB in only two weeks. *See* HHS-OS-2018-0008-204437, http://bit.ly/2JJiF1h, (letter from Sens. Hassan and Harris cataloguing procedural irregularities). Defendants have argued extensively that regulated parties failed to

raise the Non-Interference Mandate during the rulemaking and therefore their challenges under that provision are waived. *E.g.*, Defs.' Stay Br at 4. But numerous parties told HHS that the public needed more than the 60-day comment period to investigate HHS's statutory authority to issue the Rule in light of the fact that parties had no way of knowing in advance of the comment period that the Rule was about to be issued. *See* HHS-OS-2018-0008-204437, http://bit.ly/2JJiF1h. The Rule's severe procedural irregularities are likely to warrant vacatur and a remand to the agency to open a new comment period.

3.c. Baltimore also brought other statutory and constitutional claims that are likely to succeed at summary judgment. At minimum, there is no way to know their strength because the Court has had no briefing and argument with respect to any of those claims. That Baltimore did not move for preliminary injunctive relief on all of its claims is not evidence of their likelihood of success, *see* Defs.' Stay Br. at 5, especially where, as here, Baltimore won a preliminary injunction on the basis of two of the three claims it brought.

4. The interlocutory appeal will not even definitively settle the claims that *are* in front of the Fourth Circuit because these claims are being decided only in the context of this Court's grant of a preliminary injunction. For example, the issue of waiver of the Noninterference Mandate could be impacted after full review of the Administrative Record. That Record—which Defendants did not file until *after* their appeal of the court's preliminary injunction order to the Fourth Circuit, *Baltimore I*, ECF No. 57—reveals HHS's actual knowledge and explicit consideration of the Non-Interference Mandate during the rulemaking process.[2]

[2] A file titled README.txt (Attached as Exhibit C) explained where to find "studies that HHS consulted upon to develop and draft the final rule." That list, in turn included the Non-Interference Mandate (i.e. ACA § 1554) and the Nondirective Mandate in the 1996 Appropriations Act.

5. Finally, Defendants note that a pending appeal "need not 'settle every question of law' to justify a stay," Defs.' Stay Br. at 5 (quoting *Landis*, 299 U.S. at 256), but ignore the *Landis* Court's holding that a stay of proceedings pending appeal of even a potentially relevant ruling exceeded the "limits of fair discretion" in that case, with the Court emphasizing that "the burden of making out the justice and wisdom of a departure from the beaten track lay heavily on" the movants for a stay. 299 U.S. at 256-57. Defendants have not come close to carrying their burden here.

CONCLUSION

For the reasons set forth above, Baltimore respectfully requests that the court deny Defendants' Motion for Stay of Proceedings Pending Appeal.

Dated: July 31, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 31, 2019, I filed the foregoing with the Clerk of the Court using the ECF System which will send notification of such filing to the registered participants identified on the Notice of Electronic Filing.

/s/ Andrew Tutt
Andrew T. Tutt

Exhibit A

From: Foley, Diane (HHS/OASH) <Diane.Foley@hhs.gov>
Sent: Monday, July 15, 2019 4:05 PM
To: OS OPHS OPA (OPHS) <OPA@hhs.gov>
Subject: 2019 Title X Final Rule

Good afternoon,

We are looking forward to the next few days together. I am hoping to have the opportunity to meet most of you throughout the course of the meeting and hear firsthand about the excellent services you are providing to the clients in your project areas.

We are aware that many of you have been frustrated with the lack of guidance given to you regarding the 2019 Title X Final Rule that was posted earlier this year. The timing of the national grantee meeting will allow us to provide direction to you as well as hopefully answer your questions face to face rather than over the phone or on a webinar.

Attached please find the statement approved by HHS today. This will be explained in more detail during the national grantee meeting. We look forward to working with you to continue to provide quality family planning services to those clients who need it.

Sincerely,

Diane Foley MD, FAAP

Deputy Assistant Secretary

Office of Population Affairs

Office of the Assistant Secretary for Health/HHS

Phone: 240-453-2826 (office-direct)

OPA | OFFICE OF POPULATION AFFAIRS

Compliance With Statutory Program Integrity Requirements

Earlier this year, district courts in California, Maryland, Oregon, and Washington issued preliminary injunctions preventing the U.S. Department of Health and Human Services (HHS) from enforcing the March 2019 Final Rule, titled *Compliance With Statutory Program Integrity Requirements*. Among other things, the Final Rule ensures statutory compliance with Section 1008 of Title X, which states, "None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning."

Motions panels in the Fourth and Ninth Circuit stayed the injunctions, but plaintiffs in the Ninth Circuit cases filed motions for an administrative stay of the Ninth Circuit's stay order. On July 11, 2019, an *en banc* panel of the Ninth Circuit denied those requests for an administrative stay and made clear that the order staying the injunctions remained in effect. By denying those motions, the *en banc* Ninth Circuit—along with the Fourth Circuit and a federal district court in Maine that recently denied another motion for a preliminary injunction—has made clear that HHS may begin enforcing the Final Rule. Consistent with those rulings, HHS shall now require compliance with the Final Rule.

As set forth in the Final Rule, compliance with the physical-separation requirements in the Final Rule is required by March 4, 2020, and the Rule's grant-application criteria will apply to the next competitive- or continuation-award applications due after July 2, 2019. The Final Rule established that compliance with the financial-separation requirements, and certain reporting, assurance, and provision-of-service requirements, was required by July 2, 2019. All other requirements were set to take effect on May 3, 2019, but the prior preliminary injunctions, including two nationwide injunctions, prevented HHS from enforcing those provisions.

Compliance with the requirements of the Final Rule, except for the physical-separation requirements, is therefore required as of Monday, July 15, 2019.

Exhibit B

J. JOSEPH CURRAN, JR.
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January 13, 1994

Mr. William S. Ratchford, II, Director
Department of Fiscal Services
90 State Circle
Annapolis, Maryland 21401

Dear Mr. Ratchford:

This is in response to your request for advice of counsel concerning a mandated appropriation. In your letter, you asked if a 1992 law requires the Governor to include an appropriation for the State Reserve Fund in the Budget for Fiscal Year 1995. Although it has been suggested that the Governor could satisfy the requirement of the 1992 law by proposing a deficiency appropriation for Fiscal Year 1994, it is my view that that 1992 law clearly requires that the appropriation be included in the Budget for Fiscal Year 1995.

In 1978 the Executive Budget Amendment of the State Constitution was amended to allow the General Assembly to enact legislation requiring the Governor to include a minimum level of funding for a program in a future budget. Md. Const., Art. III, Sec. 52(11) and (12). Such a law must have been enacted before July 1 of the fiscal year which preceeds the fiscal to which the requirement applies. This office has understood that such a law must prescribe a dollar amount or an objective basis from which a level of funding can easily be computed. 64 Opinions of the Attorney General 108, 110 (1980). It has also been understood that the requirement that the Governor include an appropriation in the Budget does not preclude the General Assembly from exercising its constitutional power to strike or reduce the amount. 64 Opinions of the Attorney General 45, 50 (1980).

In the 1992 regular session the General Assembly enacted the Budget Reconciliation Act for Fiscal Year 1993. Ch. 269, Laws of Maryland, 1992. Section 12(b) of this law provided, as follows:

> "For Fiscal Year 1995 only, the Governor shall include an appropriation to the Revenue Stabilization Account of the State Reserve Fund established under §7-311 of the State Finance and Procurement Article, in an amount equivalent to the unappropriated general fund surplus as of June 30, 1993, including any revenues derived from the sales and use tax collected from out-of-state vendors for mail-order purchases made by consumers in the State (commonly referred to as National Bellas Hess sales). The amount appropriated under this section shall be in addition to any amount required to be appropriated under §7-311 of the State Finance and Procurement Article."

This provision of law took effect June 1, 1992. Sec. 38. Thus, this provision was enacted before July 1 of the Fiscal Year (1994) preceding the fiscal year to which it applies, i.e. 1995. Moreover, it specifically provides that the appropriation is to be made "for Fiscal Year 1995 only." Finally, it prescribes an objective basis from which the amount may be computed. Accordingly, there can be no doubt that it mandates the Governor to include the requisite amount in the Budget for Fiscal Year 1995. This requirement would not be satisfied if the requisite amount were included as a deficiency appropriation for Fiscal Year 1994.

Very truly yours,

Richard E. Israel

Richard E. Israel
Assistant Attorney General

REI:ss

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The Attorney General of Maryland
Office of Counsel to the General Assembly

April 6, 2005

The Honorable John R. Leopold
213 Lowe House Office Building
Annapolis, Maryland 21401-1991

Dear Delegate Leopold:

I write to provide clarification of my letter of March 18, 2005 regarding House Bill 1015. The March 18 letter addressed, in part, the issue of when certain reimbursements from the State to the counties would be required under Tax Property Article § 9-104(a-1). The letter correctly noted that "HB 1015 would not require the Governor to include . . . funds as a deficiency appropriation in the Budget Bill now under consideration." However, the last sentence of the letter stated that "The deficiency appropriation would be in the fiscal year 2007 Budget Bill presented in January, 2006." That language may have created the impression that the deficiency appropriation would constitute a mandated appropriation for fiscal year 2006 under Article III, § 52(11) of the Constitution. Under § 52(11) the General Assembly may only mandate spending "by a law which will be in effect during the fiscal year covered by the Budget and which was enacted before July 1 of the fiscal year prior to that date . . .". A deficiency appropriation proposed in the Fiscal Year 2007 Budget Bill would be designed to provide an appropriation in the Fiscal Year 2006 Budget, i.e., the Budget now under consideration. Under § 52(11), the General Assembly could not mandate that appropriation for Fiscal Year 2006 through a law enacted this Session. Thus, although the Governor may provide for a deficiency appropriation meeting the obligations of HB 1015 for Fiscal Year 2006 in the Fiscal Year 2007 Budget Bill, he is not be obligated to do so.

Sincerely,

Bonnie A. Kirkland
Assistant Attorney General

Leopold

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March 18, 2005

The Honorable John R. Leopold
213 Lowe House Office Building
Annapolis, Maryland 21401-1991

Dear Delegate Leopold:

You have requested advice concerning the application of Tax-Property Article(TP), § 9-104(a-1) to House Bill 1015, as amended by the Ways and Means Committee. Specifically, you have asked whether current § 9-104(a-1)(3) amounts to a funding mandate under the Maryland Constitution, Article III, § 52, and, if so, when the required reimbursement from the State to the counties would be effective.

House Bill 1015, as amended by the Ways and Means Committee, in part, alters the definition of "total real property tax" so as to modify the application of the limitation on the assessed value of a dwelling used for calculating the homestead property tax credit under TP, § 9-105. The effect of this change will be to increase, in some cases, the property tax credits granted by the counties.

Tax - Property (TP),§ 9-104(a-1) provides

(1) The homeowners' tax credit under this section is a State-funded program.

(2) It is the intent of the General Assembly that:

(i) the State shall appropriate sufficient funds to reimburse the full amount of tax credits granted under this section; and

(ii) the State, and not the local governments, shall bear the burden of any insufficiency of funds to fully reimburse the counties for property tax credits under this section.

(3) For any fiscal year, if State appropriations for reimbursement of tax credits under this section do not provide sufficient funds to fully reimburse the counties for tax credits granted under this section, the

> Governor shall include in the budget bill for the next fiscal year a deficiency appropriation to provide the additional funds to fully reimburse the counties.

Under the Executive Budget Amendment, the General Assembly may enact legislation which requires the Governor to include a level of funding for a program. Md. Const., Art. III, Sec. 52(11) and (12). However, the legislation must prescribe a dollar amount or objective basis from which the level of funding may be computed. 65 *Opinions of the Attorney General* 108, 110 (1980). Moreover, the legislation can apply to a particular fiscal year only if it was enacted before July 1 of the preceding fiscal year. *See* Sec. 52(11) and (12).

As the annual Budget Bill is considered before the property tax rate is even levied, the initial appropriation to reimburse the counties for the credit is necessarily an estimate. However, once the rate is levied, the individual tax bills are computed and the credit is applied, it can be determined whether the funds appropriated are sufficient to reimburse the counties for their loss of revenue. If there are insufficient funds, this can only be addressed in a deficiency appropriation. As the Governor's authority to include a deficiency appropriation in the Budget can be implied from his general responsibility for the States finances under the Budget Amendment, the limitations of that amendment are equally applicable, including the provision on mandated appropriations. Thus, because the level of funding needed to fully reimburse the counties can be determined with exactitude from objective criteria , it is my view that TP, § 9-104(a-1)(3) amounts to a funding mandate.

House Bill 1015 has an effective date of June 1, 2005, and applies to all taxable years beginning after June 30, 2005. Thus, it will apply during fiscal year 2006. If the appropriation for fiscal year 2006 is determined to be insufficient, under TP, § 9-104(a-1), HB 1015 would not require the Governor to include the needed funds as a deficiency appropriation in the Budget Bill now under consideration. This is so because the deficiency appropriation would be for fiscal year 2006, which begins July 1, 2005, and the bill would not have been enacted prior to July 1 of the preceding fiscal year, *i.e.* before July 1, 2004. The deficiency appropriation would be in the fiscal year 2007 Budget Bill presented in January, 2006.

Sincerely,

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April 3, 2019

The Honorable Lawrence J. Hogan, Jr.
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401

RE: House Bill 1407, "Budget Reconciliation and Financing Act of 2019"

Dear Governor Hogan:

We have reviewed and hereby approve for constitutionality and legal sufficiency House Bill 1407, "Budget Reconciliation and Financing Act of 2019" ("BRFA"). While we approve the bill, we write to address three provisions that we believe raise concerns under the State Constitution's one subject requirement. Two of the provisions involve funding mandates, and although they do not result in any increase in State expenditures, we believe their inclusion in the BRFA is questionable. Moreover, to the extent that one of those provisions mandates a deficiency appropriation, we caution that mandating funding through a deficiency appropriation may be inconsistent with Article III, § 52. The third provision, which adds a notice requirement for certain projects to be included in the State's Consolidated Transportation Program ("CTP"), has only a tenuous connection to the State budget.

Though it is our view that these provisions are not clearly unconstitutional, we recommend that the General Assembly reenact the provisions next session to cure any potential constitutional defect.[1] If these provisions were challenged and a court were to find any of them unconstitutional, it is our view that each of the provisions would be severable from the remainder of the bill.

[1] We apply a "not clearly unconstitutional" standard of review for the bill review process. 71 *Opinions of the Attorney General* 266, 272 n.11 (1986).

The One Subject Requirement

Article III, § 29 of the Maryland Constitution provides, in relevant part, that "every Law enacted by the General Assembly shall embrace but one subject." This constitutional provision traditionally has been given a "liberal" reading so as not to interfere with or impede legislative action. *MCEA v. State*, 346 Md. 1, 13 (1997). At the same time, the liberal reading of the one subject requirement was "never intended to render the Constitutional requirement meaningless … ." *Delmarva Power v. PSC*, 371 Md. 356, 369 (2002).

Generally speaking, an act meets the one subject requirement if its provisions are "germane" to the same subject matter. *Migdal v. State*, 358 Md. 308, 317 (2000); *Porten Sullivan Corp. v. State*, 318 Md. 387, 407 (1990). In this context, "germane" means "in close relationship, appropriate, relative, [or] pertinent." *Id.* Two matters can be regarded as a single subject because of a direct connection between them or because they each have a direct connection to a broader common subject. For purposes of assessing how closely connected and interdependent the provisions of a bill may be, the "notions of connection and interdependence may vary with the scope of the legislation involved." *MCEA*, 346 Md. at 14 (quoting *Porten Sullivan*, 318 Md. at 407). Moreover, "a measure that begins life as a comprehensive one, and then has additional details inserted may survive a § 29 attack more readily than an originally narrow bill which becomes a very broad one." *Porten Sullivan*, 318 Md. at 407.

When analyzing the BRFA for compliance with the one subject requirement, this Office "generally has considered whether the various provisions of the bill deal with the single subject of balancing the budget and adjusting the finances of State and local government." Bill Review Letter on Senate Bill 187 of 2018; *see also* Bill Review Letter on Senate Bill 172 of 2014 (the purpose of the BRFA is "to balance the State operating budget and provide for the financing of State and local government"); Letter to William S. Ratchford, II from AAG Richard E. Israel, April 1, 1993 ("one-subject of adjusting the finances of State and local government").

As we noted in our bill review letter on last year's BRFA:

> The BRFA typically includes provisions that enhance revenues and reduce current and future year expenditures. These provisions often take the form of fund transfers, the elimination, reduction, or suspension of mandated spending, and revenue raising measures. Provisions that reduce revenues

> or increase State expenditures arguably run counter to the primary purpose of the BRFA, and the inclusion of such provisions in the BRFA raises constitutional concerns.

Given the historical purpose of the BRFA, we have consistently advised that funding mandates typically are not an appropriate subject for the BRFA. Bill Review Letter on House Bill 152 of 2017; Bill review Letter on Senate Bill 172 of 2014; Bill Review Letter on House Bill 147 of 2005. A BRFA provision that creates a new funding mandate or increases the amount of an existing mandate is the most difficult to defend, as the effect of the provision is counter to the primary purpose of the BRFA – to balance the State budget. Nonetheless, we have recognized that funding mandates are "more defensible" when they are legislative reactions to a budget action taken by the Executive, either in the Budget Bill or the BRFA. Bill Review Letter on Senate Bill 187 of 2018; Bill Review letter on House Bill 152 of 2017.

Provisions in the 2019 BRFA

This year's BRFA was initiated by the General Assembly in reaction to anticipated General Fund revenue write-downs following the submission of the Governor's budget. The Department of Legislative Services anticipated "a revenue write-down of about $200 million across fiscal 2019 and 2020." Fiscal Note on House Bill 1407 of 2019, First Reader. According to the Department of Legislative Services, a write-down of that magnitude would "require about $200 million of legislative actions, including $150 million of structural actions, to attain the Spending Affordability Committee goals." *Id.* The actual revenue write-down reported by the Board of Revenue Estimates amounted to a $138 million reduction for Fiscal Year 2019 and a $130.5 million reduction for Fiscal Year 2020.

As introduced, the BRFA included provisions that enhance special fund revenues and authorize certain special fund expenditures for the purpose of offsetting General Fund cuts; reduce mandated General Fund expenditures; reduce Fiscal Year 2019 General Fund appropriations; and enhance Fiscal Year 2020 General Fund revenues with certain projected and unappropriated "nonwithholding income tax revenues" that otherwise would have been deposited into a special fund.

As noted above, we have identified three provisions in the BRFA that raise concerns in light of the one subject requirement of Article III, § 29 of the Maryland Constitution, one of which also raises an issue under Article III, § 52 to the extent the provision mandates a deficiency appropriation.

Mandated Funding for Cost-of-Living Adjustments in the Fiscal Year 2021 Budget

Under current law, a portion of projected and unappropriated "nonwithholding income tax revenues" are to be deposited in the Fiscal Responsibility Fund ("FRF") at the end of Fiscal Year 2020, and at the end of each subsequent fiscal year, to the extent those revenues are not needed to support General Fund appropriations or to maintain a balance in the Revenue Stabilization Account ("RSA") at or above six percent of estimated General Fund revenues. State Finance and Procurement Article ("SFP") § 7-329.[2] The Governor must include in the Budget Bill for the second following fiscal year an appropriation equal to the amount in the FRF for public school capital projects, including projects at public institutions of higher education. SFP § 7-330(g) and (j). Thus, the Governor's budget submission for Fiscal Year 2022, for example, must include an appropriation for public school capital projects equal to the amount of nonwithholding income tax revenues, if any, that were deposited into the FRF at the end of Fiscal Year 2020 pursuant to SFP § 7-329.

The BRFA amends SFP § 6-104(e) so that, for Fiscal Year 2020, a greater share of projected nonwithholding income tax revenues is credited to the State's General Fund. The bill also amends SFP § 7-329 so that the nonwithholding income tax revenues not distributed to the General Fund are deposited in the FRF, rather than being allocated between the RSA and the FRF. It is our understanding that projected revenues to the FRF for Fiscal Year 2020 would decrease modestly as a result of these BRFA provisions.

The BRFA also amends SFP §§ 7-329 and 7-330 to provide that any nonwithholding income tax revenues allocated to the FRF at the end of Fiscal Year 2020 are to be used to fund a cost-of-living adjustment ("COLA") of up to 2 percent beginning July 1, 2020,[3] for permanent employees of the Executive Branch of State government who are in certain bargaining units. Pursuant to new SFP § 7-330(i)(3), the Governor must include in the Budget Bill submitted at the 2021 session an appropriation equal to the amount distributed

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[2] The RSA is one of four accounts that make up the State Reserve Fund, SFP § 7-309, and its purpose is to retain State revenues for future needs and reduce the need for future tax increases by moderating revenue growth, SFP § 7-311. Certain unappropriated nonwithholding income tax revenues not needed to support General Fund appropriations are to be deposited into the RSA until the balance of the RSA equals six percent of the estimated General Fund revenues for the fiscal year, after which any remaining nonwithholding income tax revenues are to be allocated between the RSA and the FRF. SFP § 7-329(b) though (d). "Nonwithholding income tax revenues" represent the State share of income tax quarterly estimated and final payments with returns made by individuals. SFP § 6-104(a)(1).

[3] July 1, 2020, is the start of State Fiscal Year 2021.

to FRF for the purpose of funding the COLA. The effect of these provisions is that the General Assembly has, for one year, replaced an existing funding mandate (for public school projects) with a new funding mandate of a slightly lesser amount (for State employee COLAs).

Although these provisions, collectively, result in a modest reduction of future mandated expenditures, the reallocation of funding does not serve the BRFA's primary purpose of balancing the State budget. The budget balancing is achieved by the amendment to SFP § 6-104(e), which results in additional estimated revenues accruing to the General Fund for Fiscal Year 2020. The reallocation of funding to State employee COLAs is independent of the amendment to SFP § 6-104(e), is not related to any other provision in the BRFA, and does not itself serve to balance the budget.

As we have noted before, funding mandates in the BRFA are the types of provisions that are the most difficult to defend. This position "is consistent with one of the underlying purposes of the one subject rule – to protect the Governor's veto power." Bill Review Letter on House Bill 152 of 2017. We recognize that the new funding mandate for employee COLAs, however, is more defensible given that it replaces an existing mandate and does not increase State expenditures. In light of this, it is our view that, although there is a legitimate question about inclusion of this provisions in the BRFA, the provision mandating funding for COLAs is not clearly unconstitutional under the one subject requirement of Article III, § 29.

We also write to comment on the funding mandate to the extent it requires the Governor to include funding for COLAs in the Fiscal Year 2022 Budget Bill as a deficiency appropriation for Fiscal Year 2021.

Article III, § 52 requires that the Governor, in January each year, submit to the General Assembly "a Budget for the next ensuing fiscal year." § 52(3). The budget "shall contain a complete plan of proposed expenditures and estimated revenues for said fiscal year and shall show the estimated surplus or deficit of revenues at the end of the preceding fiscal year." *Id.* The Governor shall submit the budget to the presiding officers of each House, along with a Budget Bill containing all of the proposed appropriations of the budget. § 52(5). Thus, in describing the Governor's constitutional obligation to submit a budget and a Budget Bill, Article III, § 52 speaks to the budget plan for "the next ensuing fiscal year."

Subsections (11) and (12) detail how the Governor is to develop that budget plan. "For the purpose of making up the Budget, the Governor shall require from the proper State

officials ... such itemized estimates ... as directed by the Governor. An estimate for a program required to be funded by a law which will be in effect during the fiscal year covered by the Budget and which was enacted before July 1 of the fiscal year prior to that date shall provide a level of funding not less than that prescribed in the law." § 52(11). The Governor has broad discretion to revise the spending estimates for State agencies, but the Governor may not reduce any estimate below the level of funding prescribed by a law "which will be in effect during the fiscal year covered by the Budget, and which was enacted before July 1 of the fiscal year prior thereto." § 52(12).

Based on these provisions, there is a legitimate argument that the Governor's constitutional obligation to "include a level of funding not less than that prescribed in ... law" relates only to the spending estimates for the next fiscal year, and the General Assembly, therefore, cannot mandate that the Governor include in the budget submission a minimum level of funding as a deficiency appropriation. We note, however, that there are existing statutory provisions that require the Governor to include deficiency appropriations in the budget under certain circumstances. *See, e.g.,* Tax-Property Article § 9-104(b)(3) (requiring a deficiency appropriation to fully reimburse counties for the homeowners' tax credit if the initial appropriation is insufficient); Education Article §§ 16-305(e)(4) and 16-508(d) (requiring a deficiency appropriation under certain circumstances to support services at community colleges for students enrolled in an English for Speakers of Other Languages program). Moreover, we recognize that the long accepted practice of Governors including deficiency appropriations in the Budget Bill is not expressly authorized by Article III, § 52 but is essentially an implied power derived from the Governor's general responsibilities over State finances under that constitutional provision. As such, it can be reasonably argued that the limitations of the Executive Budget Amendment, including those involving mandated appropriations, are equally applicable to this implied authority to provide for deficiency appropriations.

Though we have reservations about the General Assembly's authority to mandate funding through a deficiency appropriation, for the above reasons we cannot say the BRFA provision, to the extent it purports to mandate a deficiency appropriation, is clearly unconstitutional.[4] However, to address any question about the provision's constitutional validity – under Article III, § 52 and the one subject requirement of Article III, § 29 – we recommend that the General Assembly reenact the provision through stand-alone

[4] We note that the BRFA provision does not contravene the timing restrictions regarding funding mandates in Article III, Sec. 52(11) and (12) because the provision does not mandate funding in the Fiscal Year 2020 budget.

legislation during the 2020 session for the purpose of funding a COLA in Fiscal Year 2022.[5]

Town of Forest Heights Local Impact Funding

A conference committee amendment to the BRFA alters the allocation of video lottery terminal revenues distributed as local impact grants under State Government Article ("SG") § 9-1A-31 by requiring the distribution of $120,000 to the Town of Forest Heights. While this reallocation of funding does not result in any increase in State expenditures, it does not serve the primary purpose of balancing the State budget. Moreover, it does not appear to be related to any other provision in the BRFA or to any action taken in the Budget Bill. While it is our view that the provision is not clearly unconstitutional, we believe its inclusion in the BRFA is questionable under the one subject rule. Accordingly, we recommend that the General Assembly reenact this provision through stand-alone legislation next session.

We also note that, pursuant to Article III, § 52(11) and (12) of the Maryland Constitution, the General Assembly may not mandate an appropriation for the next fiscal year - i.e., for the fiscal year that is the subject of the budget then under consideration. Accordingly, the amendments to SG § 9-1A-31 cannot establish a funding mandate for the next fiscal year, and the Governor, therefore, is not required to provide an appropriation to support the distribution to the Town of Forest Heights in Fiscal Year 2020, though it is our view that he may, in his discretion, authorize the distribution.

Certification of Notice Requirement - Consolidated Transportation Program

The third provision, which relates to the State's Consolidated Transportation Program ("CTP"), amends Transportation Article § 2-103.1(c)(6) to add an additional requirement for the inclusion of a major capital project in the construction program of the CTP. Specifically, it requires that an entity making a request for inclusion of a project provide a "certification that all members of the legislative delegation of the county in which the project is located have been notified."

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[5] Because the balance in the FRF will not be known until after the Fiscal Year 2021 budget is submitted, the FRF fund balance could not serve as a measure for establishing the prescribed amount of funding for the Fiscal Year 2021 budget submission. This is likely why the BRFA provision mandates the funding in the Fiscal Year 2022 budget submission as a deficiency appropriation for Fiscal Year 2021.

This provision does not serve the purpose of balancing the budget, and it is not related to any other provision in the BRFA or action taken on the Budget Bill. There is, of course, a general connection between the State budget and the BRFA provision in that the certification of notice requirement relates to projects for which an entity requests State funding. However, given that the purpose of the provision – to notify legislators of funding requests – is only indirectly related to the formulation of the budget, we believe the connection likely is too tenuous to satisfy the Constitution's one subject requirement. Accordingly, as with the other provisions highlighted in this letter, we recommend that the General Assembly reenact it in standalone legislation next session.

Sincerely,

Brian E. Frosh
Attorney General

BEF/DWS/kd

cc: The Honorable John C. Wobensmith
Chris Shank
Victoria L. Gruber

Exhibit C

1. README.txt

HHS-OS-2018-000 Public Comments Archive
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This DVD set contains an archive of public comments submitted in response to Notice of Proposed Rule Making, “Compliance with Statutory Program Integrity Requirements" Agency/Docket Number: HHS-OS-2018-0008

The submitted comments and their attachments are collated in PDF format, in 44 parts, named "01.pdf" through "44.pdf" in the "data" folder. A new part was started when the page count reached approximately 10,000 or the file size reached approximately 500MB, whichever limit came first.

The "master-index" files in the "data" folder contain a list of the comments. For each comment in the master index, the "Part" column tells you which PDF file contains the comment, and the "File" column contains a list of comment and any attachments for this record. To find a comment or attachment, open the correct PDF file given by the "Part" number and then navigate to the bookmark given by the "File" column.

"master-index.html" contains hyperlinks in the File column that take you directly to the correct bookmark in the correct PDF file, if your software is setup to handle these kinds of links.

A folder called "Studies" includes in a zip file the text of studies that HHS consulted upon to develop the draft and final rule.

If you received this archive on two DVDs, it is best to copy the "data" folder from both DVDs to a single workspace folder on your computer or file server, so you can keep the entire data set in one place.

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	Source Description	Citation
	Proposed Rules, Notices, Memorandum	
1	1993 Title X Proposed Rule	Standards of Compliance for Abortion-Related Services in Family Planning Service Projects, 58 FR 7464 (Feb 5, 1993).
2	2018 Title X Proposed Rule	Compliance With Statutory Program Integrity Requirements, 83 FR 25502 (proposed June 1, 2018) (to be codified at 42 CFR Part. 59).
3	Clinton Memo_The Title X Gag Rule	The Title X "Gag Rule", 58 FR 7455 (Feb. 5, 1993).
4	2000 Notice	Provision of Abortion-Related Services in Family Planning Service Projects, 65 FR 41281, 41282 (July 3, 2000).
5	House Joint Resolution	Title X Requirements by Project Recipients in Selecting Subrecipients, Pub. L. 115-23, April 13, 2017, 131 Stat. 89.
6	E.O. on Regulatory Planning and Review	E.O. 12866 on Regulatory Planning and Review (September 30, 1993).
7	E.O. on Improving Regulation and Regulatory Review	E.O. 13563 on Improving Regulation and Regulatory Review (January 18, 2011).
8	E.O. on Federalism	E.O. 13132 on Federalism (August 4, 1999).
9	E.O. on Reducing Regulation and Controlling Regulatory Costs	E.O. 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).
10	E.O. on The Family	E.O. 12606 on The Family (Sept. 2, 1987).
	Final Rules	
11	1971 Title X Regulations	36 FR 18465 (Dec. 15, 1971).
12	1980 Title X Regulations	45 FR 37436 (Jun. 3, 1980).
13	1988 Title X Regulations (FR)	Statutory Prohibition on Use of Appropriated Funds in Programs Where Abortion is a Method of Family Planning; Standard of Compliance for Family Planning Services Projects, 553 FR 2922 (Feb. 2, 1988).
14	2000 Title X Regulations / Preamble 65 FR 41270	Standards of Compliance for Abortion-Related Services in Family Planning Services Projects, 65 FR 41270 (July 3, 2000).
15	2000 Title X Regulations 59.1-59.12	Standards of Compliance for Abortion-Related Services in Family Planning Services Projects, 42 CFR 59.1-59.12.
16	2016 Title X Regulations	Compliance With Title X Requirements by Project Recipients in Selecting Subrecipients, 81 FR 91852 (Dec. 19, 2016).
17	Religious Exemptions and Accommodations for Coverage of Certain Preventive Services under the ACA	Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act, 83 FR 57536 (Nov. 15, 2018).
18	Religious Exemption Criteria	Religious exemptions in connection with coverage of certain preventive services, 45 CFR 147.132 (2019).

19	Moral Exemption Criteria	Moral exemptions in connection with coverage of certain preventive health services, 45 CFR 147.133 (2019).
20	Religious or moral accomodation criteria	Accommodations in connection with coverage of certain preventive health services, 45 CFR 147.131.
21	2008 Conscience Regulation	Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law, 73 FR 78072, 78087 (Dec. 19, 2008).
22	Conscience Rule in Health Care	Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 83 FR 3880 (Jan. 26, 2018).
23	Conscience Protection (FR)	Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws, 76 FR 9968 (Feb. 23, 2011).
24	HHS funding agency review of merit of proposals	45 CFR 75.204 (2015).
25	HHS awarding agency review of risk posed by applicants	45 CFR 75.205 (2016).
26	Notices of funding opportunities	45 CFR 75.203 (2016).
	Statutes / Appropriations	
27	PHS Act	42 U.S.C. 300(a).
28	Coverage of preventive health services	42 U.S.C. 300gg-13(a)(4).
29	Affordable Care Act	Sec. 1001, Pub. L. 111-148, 124 Stat. 119, 131.
30	1970 Public Health Safety Act	Pub. L. 91-572, 84 Stat. 1504.
31	Health Centers	42 U.S.C. 254b.
32	Infant Adoption Awareness Grants	42 U.S.C. 254c-6.
33	Church Amendments	42 U.S.C. 300a-7.
34	Coats-Snowe Amendment	42 U.S.C. 238n(a).
35	Community Service Block Grant Program	42 U.S.C.A. 9902.
36	Grants Regarding Infant Adoption Awareness	Sec. 1201, Pub. L. 106-310, 114 stat 1101.
37	Weldon Amendment (inserted in Appropriations)	Consolidated Appropriations Act, 2018, Pub. L. 115-141, Div. H, sec. 507(d), 132 Stat. 348, 764.
38	Weldon Amendment (inserted in Appropriations)	Consolidated Appropriations Act, 2017, Pub, L. 115-31, Div. 507(d), 131 Stat. 135, 562.
39	1981 Appropriations Act	Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, sec. 931(b)(1), 95 Stat. 357, 570 (“HHS Appropriations Act 1981”).
40	1996 Appropriations Act	Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104-134, sec. 104, 110 Stat. 1321 (“HHS Appropriations Act 1996").

41	1998 Appropriations Act	Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1998, Pub. L. 105-78, sec. 212, 111 Stat. 1467, 1495 ("HHS Appropriations Act 1998").
42	1999 Appropriations Act	Department of Health and Human Services Appropriations Act, 1999, Pub. L. 105-277, Title II, sec. 219, 112 Stat. 2681, 2681-363 (1998).
43	2016 Appropriations Act	Consolidated Appropriations Act, 2016, Pub. L. 114-113, Div. H, Title II, 129 Stat. 2242, 2602 ("HHS Appropriations Act 2016").
44	2017 Appropriations Act	Consolidated Appropriations Act, 2017, Pub. L. 115-31, Div. H, Title II, 131 Stat. 135, 521 ("HHS Appropriations Act 2017").
45	2018 Appropriations Act	Consolidated Appropriations Act, 2018, Pub. L. 115-141, Div. H, Title II, 132 Stat. 348, 716 ("HHS Appropriations Act 2018").
46	2019 Appropriations Act	Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Pub. L. 115-245, Div. B, sec. 207, 132 Stat. 2981, 3070 ("HHS Appropriations Act 2019").
47	Freedom of Access to Clinic Entrances	18 U.S.C. 248.
48	Unfunded Mandates Reform Act	Unfunded Mandates Reform Act, 1995, Pub. L. 104-4, Title II, sec. 202(a), 109 Stat. 48, 64 (1995).
49	Paperwork Reduction Act of 1995	44 U.S.C. 3501-3520.
50	The Congressional Review Act	5 U.S.C. 804(2).
51	Regulatory Flexibility Act (RFA)	5 U.S.C 601.
52	Poverty Line	42 U.S.C. 9902(2).
	Legislative Materials	
53	Conference Report	H.R. Rep. No 91-1667, at 8-9 (1970) (Conf. Rep.)
54	Congressional Record	138 Cong. Rec. H2822, 1992 WL 86830.
55	Constitution	Art. 1, sec. 8, cl. 1.
56	Senate Report	S. Rep. No 63, 94 Cong., 1st sess.65-66 (1975), reprinted in 1975 US Code Cong. & Admin News 469, 528.
57	Congressional Record	143 Cong. Rec. H7053-7053 (daily ed. Sept. 9, 1997).
	Case Law	
58	Rust v. Sullivan	Rust v. Sullivan, 500 U.S. 173 (1991).
59	Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc	Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984).
60	Harris v. McRae	Harris v. McRae, 448 U.S. 297 (1980).
61	Roe v. Wade	Roe v. Wade, 410 U.S. 113 (1973).
62	NIFLA	Nat'l Inst. of Family & Life Advocates v. Becerra, 138 S. Ct. 2361 (2018).
	Miscellaneous Materials	

63	GAO	GAO, No. HRD–82–106, Restrictions on Abortion and Lobbying Activities in Family Planning Programs Need Clarification, at 22 (Sept. 24, 1982), https://www.gao.gov/assets/140/138760.pdf.
64	Lozier	Foster, *Profit. No Matter What, 2017 Report on Publicly Available Audits of Planned Parenthood Affiliates and State Family Planning Programs* , Charlotte Lozier Institute Special Report Series 3 (Jan. 4, 2017), https://lozierinstitute.org/profit-no-matter-what.
65	DEA	U.S. Department of Justice Drug Enforcement Diversion Control Division, *Mid-Level Practitioners Authorization by State* , Drug Enforcement Administration, https://www.deadiversion.usdoj.gov/drugreg/practioners/index.html.
66	NCSBN	National Council of State Boards of Nursing, *APRNS in the U.S,* https://www.ncsbn.org/aprn.htm.
67	AANP	American Association of Nurse Practitioners, *What's a Nurse Practitioner (NP)?* , https://www.aanp.org/about/all-about-nps/whats-a-nurse-practitioner
68	NCBI	Cathrine S. Bishop, *Advanced Practitioners Are Not Mid-Level Providers,* J Adv Pract Oncol, (Sept. 1, 2012), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4093350/
69	Forbes	Jacquelyn Corley, *Advanced-Practice Providers Are Key to America's healthcare Future* , Forbes, (Mar. 16, 2017), https://www.forbes.com/sites/realspin/2017/03/16/advanced-practice-providers-are-key-to-americas-healthcare-future/#3d25c1f95998.
70	Guttmacher	Guttmacher Institute, New Clarity for the U.S. Abortion Debate: A Steep Drop in Unintended Pregnancy Is Driving Recent Abortion Declines, (March 18, 2016), https://www.guttmacher.org/gpr/2016/03/new-clarity-us-abortion-debate-steep-drop-unintended-pregnancy-driving-recent-abortion .
71	Guttmacher	Megan L. Kavanaugh and Jenna Jerman, Contraceptive method use in the United States: trends and characteristics between 2008, 2012 and 2014, Guttmacher Institute, 97 Contraception 1:14-21 (Jan. 2018), https://www.contraceptionjournal.org/article/S0010-7824(17)30478-X/fulltext.
72	FDA	FDA News Release, FDA allows marketing of first direct-to-consumer app for contraceptive use to prevent pregnancy, (Aug. 10, 2018), https://www.fda.gov/newsevents/newsroom/pressannouncements/ucm616511.htm.

73	NCBI_Fertility Awareness Methods	Shawn Malarcher, et. al., Fertility Awareness Methods: Distinctive Modern Contraceptives, 4 Global Health: Science and Practice 13, 13 (2016), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4807745/pdf/013.pdf.
74	Family Planning Annual Report	Fowler et al., *Family Planning Annual Report: 2017 National Summary* (Aug. 2018), https://www.hhs.gov/opa/sites/default/files/title-x-fpar-2017-national-summary.pdf.
75	The National Council for Adoption	The National Council For Adoption, *NCFA's Infant Adoption Awareness Training Program – A Successful Model* , 193.
76	ASPE HHS	U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs (Nov. 15, 2018, 9:51 a.m.), https://aspe.hhs.gov/poverty-guidelines.
77	Title-X-2014-Program-Requirements	Program Requirements for Title X Funded Family Planning Projects, Health and Human Services, 12 (April 2014), https://www.hhs.gov/opa/sites/default/files/Title-X-2014-Program-Requirements.pdf.
78	Census	Jessica Semega et al., *Income and Poverty in the United States: 2016,* U.S. Census Bureau, (Sept. 12, 2017), https://www.census.gov/library/publications/2017/demo/p60-259.html.
79	Census	U.S. Census Bureau, Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2016, (2017), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk.
80	FDA, Enforcement Story Archive	FDA, Enforcement Story Archive, (August 7, 2003), https://www.fda.gov/iceci/enforcementactions/enforcementstory/enforcementstoryarchive/ucm106947.htm.
81	FDA, Birth Control	FDA, Birth Control, (March 6, 2018), https://www.fda.gov/ForConsumers/ByAudience/ForWomen/FreePublications/ucm313215.htm.
82	HRSA, Women's Preventive Services Guidelines, Health Resources & Services Administration	HRSA, Women's Preventive Services Guidelines, Health Resources & Services Administration, (October 2017), https://www.hrsa.gov/womens-guidelines-2016/index.html.
83	Wildsmith on The Health of Women who Receive Title X-Supported Family Planning Services	Elizabeth Wildsmith et al., The Health of Women who Receive Title X-Supported Family Planning Services, Child Trends, 1 (Dec. 1, 2013), https://www.childtrends.org/publications/thehealth-of-women-who-receive-title-x-supportedfamily-planning-services.

84	U.S. Supreme Court Amici Curiae Brief of the American Academy of Pediatrics,	U.S. Supreme Court Amici Curiae Brief of the American Academy of Pediatrics, California, the American College of Obstetricians and Gynecologists, et al., NIFLA, No. 16-1140 (U.S. Ct) (filed Feb. 27, 2018).
85	Dittus on Parental Monitoring and Its Associations with Adolescent Sexual Risk Behavior	Patricia Dittus et al., Parental Monitoring and Its Associations with Adolescent Sexual Risk Behavior: A Meta-analysis, 136 Pediatrics e1587-99 (2015).
86	Tianji Cai on The School Contextual Effect of Sexual Debut on Sexual Risk-Taking: A Joint Parameter Approach	Tianji Cai et al., The School Contextual Effect of Sexual Debut on Sexual Risk-Taking: A Joint Parameter Approach, J Sch Health. 2018; 88: 200-207 (2018). library.nih.gov/pubmed/29gov.ezproxyhhs.nihlibrary.nih.gov/pubmed/29399838 or https://www.ncbi.nlm.nih.gov/pubmed/29399838.
87	Nagahawatte on Poverty, Maternal Health, and Adverse Pregnancy Outcomes	Tanya Nagahawatte and Robert L. Goldenberg, *Poverty, Maternal Health, and Adverse Pregnancy Outcomes* , 1136 Ann. N.Y. Acad. Sci. 80, pincite (2008), https://www.ncbi.nlm.nih.gov/pubmed/17954684.
88	Hamad on Poverty, Pregnancy, and Birth Outcomes	Rita Hamad and David H. Rehkopf, Poverty, Pregnancy, and Birth Outcomes: Earned Income Tax Credit, 29(5) Paediatr Perinat Epidemiol 444-452, Jul. 24, 2015. PMCID: PMC4536129.
89	Guttmacher, Abortion incidence and service availability in the United States, 2014	Rachel K. Jones and Jenna Jerman, *Abortion incidence and service availability in the United States, 2014* , 49 Guttmacher Institute Perspectives on Sexual and Reproductive Health 17, 19 (Jan. 17, 2017), https://www.guttmacher.org/journals/psrh/2017/01/abortion-incidence-and-service-availability-united-states-2014.
90	Guttmacher, Abortion incidence and service availability in the United States, 2008	Rachel K. Jones and Kathryn Kooistra, *Abortion incidence and access to services in the United States, 2008* , 43 Guttmacher Institute Perspectives on Sexual and Reproductive Health 41, 46 (Jan. 10, 2011), https://www.guttmacher.org/sites/default/files/pdfs/pubs/psrh/full/4304111.pdf.
91	Guttmacher, Abortion incidence and service availability in the United States, 2011	Rachel K. Jones and Jenna Jerman, *Abortion incidence and service availability in the United States, 2011* , 46 Guttmacher Institute Perspectives on Sexual and Reproductive Health 3, 6 (Feb. 3, 2014), https://www.guttmacher.org/sites/default/files/article_files/abortion_incidence_in_the_united_states_2011.pdf.
92	OPA, 2016 Sustainability Assessmen	OPA, 2016 Sustainability Assessment: The Title X program (Feb. 2017).
93	National Institute of Justice, Causes and Consequences of Intimate Partner Violence	Office of Justice Programs, *Causes and Consequences of Intimate Partner Violence, National Institute of Justice* (Oct. 24, 2007), https://www.nij.gov/topics/crime/intimate-partner-violence/Pages/causes.aspx

94	HHS OIG, Letter on Federal Efforts to Address Applicable Child Abuse and Sexual Abuse Reporting Requirements for Title X Grantees	HHS OIG, OEI-02-03-00530, *Letter on Federal Efforts to Address Applicable Child Abuse and Sexual Abuse Reporting Requirements for Title X Grantees* (Apr. 25, 2005), https://www.hhs.gov/opa/sites/default/files/child-abuse-reporting-requirements.pdf.
95	Guttmacher, Moving forward. Family planning in the era of health reform	Sonfield, A., Hasstedt, K., Gold, R. B., Moving forward. Family planning in the era of health reform, Guttmacher Institute (March 2014), https://www.guttmacher.org/report/moving-forward-family-planning-era-health-reform.
96	Guttmacher, Stronger Together-Medicaid, Title X Bring Different Strengths to Family Planning Effort	Gold, R. B., *Stronger Together: Medicaid, Title X Bring Different Strengths to Family Planning Effort* , 10 Guttmacher Institute Policy Review 13, pincite (May 17, 2007), https://www.guttmacher.org/gpr/2007/05/stronger-together-medicaid-title-x-bring-different-strengths-family-planning-effort.
97	Bureau of Labor Statistics, Occupational Employment and Wage Statistics	Bureau of Labor Statistics, *Occupational Employment and Wage Statistics*, (May 2016), https://www.bls.gov/oes/2016/may/oesnat.htm.
98	Office of Personnel Management, Salary Table 2016	Office of Personnel Management, *Salary Table 2016-DCB*, (Jan. 2016), https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2016/DCB.pdf.
99	Freedom2Care 2011 Poll	The Christian Medical Association and Freedom2Care poll of May 3, 2011, found that 82% of medical professionals "said it was either 'very' or 'somewhat' likely that they personally would limit the scope of their practice of medicine if conscience rules were not in place. This was true of 81% of medical professionals who practice in rural areas and 86% who work full-time serving poor and medically-underserved populations . . . 91% agreed, 'I would rather stop practicing medicine altogether than be forced to violate my conscience.'").
100	Freedom2Care 2009 Poll	In a 2009 poll, 88% of adults said it was very or somewhat important that they share moral beliefs with their health care providers. *See* CMA Comment at 5.
101	Angela Napili, Title X (Public Health Service Act) Family Planning Program	Angela Napili, *Title X (Public Health Service Act) Family Planning Program* , Congressional Research Service (Aug. 31, 2017), https://fas.org/sgp/crs/misc/RL33644.pdf.
102	Fallon E. Chipidza, F. E. et al., Impact of the Doctor-Patient Relationship	Fallon E. Chipidza, F. E. *et al.* , Impact of the Doctor-Patient Relationship, *The Primary Care Companion for CNS Disorders* 17(5) (Oct. 22, 2015), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4732308.

103	Scheppers, E. et al., Potential Barriers to the Use of Health Services Among Ethnic Minorities	Scheppers, E. *et al.* , Potential Barriers to the Use of Health Services Among Ethnic Minorities: A Review, *Family Practice* (23):325, 343 (June 1, 2006), https://academic.oup.com/fampra/article/23/3/325/475515.
104	Family Planning Annual Report (2016)	Fowler et al., Family Planning Annual Report: 2016 National Summary 7 (Aug. 2017), https://www.hhs.gov/opa/sites/default/files/title-x-fpar2016-national.pdf.
105	OMB Memorandum	Office of Management and Budget, Memorandum from Jacob Lew, Dir., To Heads of Executive Departments, Agencies, & Independent Establishments Assessment of Federal Regulations and Policies on Families (Jan. 26, 1999), https://www.fws.gov/policy/library/rglew.pdf
106	American College of Obstetricians and Gynecologists Clinical Recommendations Contraception	Clinical Recommendations Contraception, American College of Obstetricians and Gynecologists, (2018), https://www.womenspreventivehealth.org/recommendations/contraception.
107	Dordt College Order	*Dordt Coll.* v. *Burwell* , No. 5:13-cv-04100 (N.D. Iowa order filed June 12, 2018)
108	Catholic Benefits Order	*Catholic Benefits Ass'n* LCA v. *Hargan* , No. 5:14-cv-00240-R (W.D. Okla. Order filed Mar. 7, 2018)

PL 111-148, March 23, 2010, 124 Stat 119

UNITED STATES PUBLIC LAWS

111th Congress - Second Session

Convening January 05, 2010

Additions and Deletions are not identified in this database.
Vetoed provisions within tabular material are not displayed
Vetoes are indicated by ~~Text~~ ;
stricken material by ~~**Text**~~ .

PL 111–148 [HR 3590]
March 23, 2010
PATIENT PROTECTION AND AFFORDABLE CARE ACT

An Act Entitled The Patient Protection and Affordable Care Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

<< 42 USCA § 18001 NOTE >>

(a) SHORT TITLE.--This Act may be cited as the "Patient Protection and Affordable Care Act".

(b) TABLE OF CONTENTS.--The table of contents of this Act is as follows:

Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services shall publish on the Internet website of the Department of Health and Human Services, a list of all of the authorities provided to the Secretary under this Act (and the amendments made by this Act).
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<< 42 USCA § 18113 >>

SEC. 1553. PROHIBITION AGAINST DISCRIMINATION ON ASSISTED SUICIDE.

(a) IN GENERAL.--The Federal Government, and any State or local government or health care provider that receives Federal financial assistance under this Act (or under an amendment made by this Act) or any health plan created under this Act (or under an amendment made by this Act), may not subject an individual or institutional health care entity to discrimination on the basis that the entity does not provide any health care item or service furnished for the purpose of causing, or for the purpose of assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing.

(b) DEFINITION.--In this section, the term "health care entity" includes an individual physician or other health care professional, 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.

(c) CONSTRUCTION AND TREATMENT OF CERTAIN SERVICES.--Nothing in subsection (a) shall be construed to apply to, or to affect, any limitation relating to--

(1) the withholding or withdrawing of medical treatment or medical care;

(2) the withholding or withdrawing of nutrition or hydration;

(3) abortion; or

(4) the use of an item, good, benefit, or service furnished for the purpose of alleviating pain or discomfort, even if such use may increase the risk of death, so long as such item, good, benefit, or service is not also furnished for the purpose of causing, or the purpose of assisting in causing, death, for any reason.

(d) ADMINISTRATION.--The Office for Civil Rights of the Department of Health and Human Services is designated to receive complaints of discrimination based on this section.

<< 42 USCA § 18114 >>

SEC. 1554. ACCESS TO THERAPIES.

Notwithstanding any other provision of this Act, the Secretary of Health and Human Services shall not promulgate any regulation that--

(1) creates any unreasonable barriers to the ability of individuals to obtain appropriate medical care;

(2) impedes timely access to health care services;

(3) interferes with communications regarding a full range of treatment options between the patient and the provider;

(4) restricts the ability of health care providers to provide full disclosure of all relevant information to patients making health care decisions;

(5) violates the principles of informed consent and the ethical standards of health care professionals; or

(6) limits the availability of health care treatment for the full duration of a patient's medical needs.
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<< 42 USCA § 18115 >>

SEC. 1555. FREEDOM NOT TO PARTICIPATE IN FEDERAL HEALTH INSURANCE PROGRAMS.

No individual, company, business, nonprofit entity, or health insurance issuer offering group or individual health insurance coverage shall be required to participate in any Federal health insurance program created under this Act (or any amendments made by this Act), or in any Federal health insurance program expanded by this Act (or any such amendments), and there shall be no penalty or fine imposed upon any such issuer for choosing not to participate in such programs.

SEC. 1556. EQUITY FOR CERTAIN ELIGIBLE SURVIVORS.

<< 30 USCA § 921 >>

(a) REBUTTABLE PRESUMPTION.--Section 411(c)(4) of the Black Lung Benefits Act (30 U.S.C. 921(c)(4)) is amended by striking the last sentence.

<< 30 USCA § 932 >>

(b) CONTINUATION OF BENEFITS.--Section 422(l) of the Black Lung Benefits Act (30 U.S.C. 932(l)) is amended by striking ", except with respect to a claim filed under this part on or after the effective date of the Black Lung Benefits Amendments of 1981".

<< 30 USCA § 921 NOTE >>

(c) EFFECTIVE DATE.--The amendments made by this section shall apply with respect to claims filed under part B or part C of the Black Lung Benefits Act (30 U.S.C. 921 et seq., 931 et seq.) after January 1, 2005, that are pending on or after the date of enactment of this Act.