NUESTRO TEXAS: AN ANALYSIS OF THE 84TH TEXAS LEGISLATIVE SESSION

Nuestro Texas is a human rights campaign calling for reproductive health access for all women, without distinction as to geographic location, ethnicity, race, economic class, or immigration status. The National Latina Institute for Reproductive Health (NLIRH) and the Center for Reproductive Rights (CRR) launched the campaign in 2012 in response to the devastating 2011 cuts to family planning that resulted in the closure of 76 specialized family planning clinics statewide, and following the release of a fact-finding report documenting the impact of these funding cuts for Latinas in the Lower Rio Grande Valley.

In January 2015, the Nuestro Texas campaign published a policy blueprint—Nuestro Texas: A Reproductive Justice Agenda for Latinas—a human rights policy agenda that provides a vision for a better Texas and includes concrete steps for restoring access to reproductive health services for the Latinas in rural and underserved areas. Consistent with the recommendations therein, this legislative summary provides analysis on the major policy outcomes impacting Texas Latinas following the 84th Texas Legislative Session.

INCREASED FUNDING FOR FAMILY PLANNING SERVICES

This session, the recommendation by Nuestro Texas and that of other advocates to substantially increase family planning funding to match the growing demand for publicly supported family planning services and supplies was heard and implemented. The General Appropriations Bill of the 84th Legislature, HB 1, funded state women’s services at $261 million in All Funds, a $50 million increase over the previous budget cycle. The newly appropriated funds will go to fund the three existing women’s health programs: Expanded Primary Health Care (EPHC), Family Planning Program, and the Texas Women’s Health Program (TWHP). Yet, even with increase in funding, only three in 10 of these women currently receive the services they need.1

Additional programmatic changes resulting from HB 1 include the move of both the EPHC and the Family Planning program from the Texas Department of State Health Services (DSHS) to the Texas Health and Human Services Commission (HHSC), where the TWHP is currently situated. While this restructuring places all three women’s health programs under the authority of HHSC, it falls short of achieving the ambitious consolidation goals for women’s health programming recommended by the Texas Sunset Advisory Commission. It should be noted that a post-session report by the Texas Sunset Advisory Committee directs HHSC and DSHS to consolidate the Texas Women’s Health and Expanded Primary Care programs at HHSC, while leaving the Family Planning program unchanged.2 Additionally, this report calls for the creation of a Women’s Health Advisory Committee to provide recommendations to HHSC on the consolidation of women’s health programs.3 Still, many questions remain about how the additional $50 million will be allocated, and exactly how and when any consolidation will begin.
Though we applaud the increase of $50 million, any women’s health and family planning programming, either under the current system or the proposed consolidation, needs a more substantial increase in funding to match the growing demand for publicly supported family planning services and supplies. In 2012, the first full year following the devastating cuts to family planning funding, Texas met only 13% of the need for publicly funded contraception—half what it had satisfied just two years earlier. And this need is not evenly distributed. For example, the number of Texas Latinas in need of publicly funded contraception is 1.6 times that of non-Hispanic whites and 3.2 times that of blacks. Therefore, rigorous monitoring of any consolidation will be required to ensure funds reach the women most in need, regardless of the program they are allocated to. Nuestro Texas is hopeful the newly created Women’s Health Advisory Committee will help to serve this function.

**INCREASED ACCESS TO CONTRACEPTIVES**

The 84th Texas Legislature took steps to increase access to all contraceptives approved by the U.S. Food and Drug Administration (FDA), including the most effective form of contraceptives known as long-acting reversible contraceptives (LARCs). The budget stipulation that “DSHS expeditiously implement program policies to increase access to long acting contraceptives, develop provider education and training to increase access to the most effective forms of contraception...” is a positive step forward. Nuestro Texas has noted that Texas has more women in need of publicly subsidized contraception than any other state, except California, and it ranks last among all states in the percentage of women whose need is met by the state’s publicly funded family planning clinics.

Documentation in the Lower Rio Grande Valley by the Nuestro Texas campaign, and additional research by the Texas Policy Evaluation Project, has shown a strong preference in the Latina community for LARC methods such as IUDs. Despite this preference, there continues to be an unmet demand for highly effective postpartum contraception in Texas, particularly among Latinas. It is critical that Texas support the ability for all women to have information and access to comprehensive contraception options in order to choose the form of contraception that suits their individual needs. Additionally, training of providers to counsel women about all forms of FDA-approved contraceptives is especially needed considering the loss of specialized family planning providers following the 2011 budget cuts and provider qualification requirements.

**REDUCING ACCESS TO BREAST AND CERVICAL CANCER SCREENING**

In partnership with the Center for Disease Control and Prevention, the Texas Breast and Cervical Cancer Services Program (BCCS) has been providing life-saving breast and cervical cancer screenings to uninsured and underinsured Texas women
since 1991. In a surprising rebuke to this successful partnership, the 84th Texas legislature chose to limit the number of providers who can participate in the BCCS program. HB 1 requires that participating providers must also be eligible to participate in TWHP. The legislature created the state-funded TWHP in 2011 in order to avoid federal rules requiring Texas to allow Planned Parenthood to serve as a qualified Medicaid provider. With this latest move, Texas once again excluded Planned Parenthood from receiving state funds to provide necessary women’s health services.

HB 1 stipulates that if DSHS is unable to locate a sufficient number of eligible providers in a certain region, the department may compensate other local providers for the provision of breast and cervical cancer screening services. This means that Planned Parenthood may be able to remain a BCCS provider in some rural and underserved areas of the state, such as the Lower Rio Grande Valley. However, HB 1 does not define what constitutes “a sufficient number of eligible providers,” nor does it define “region.” When defining these terms, **DSHS should ensure that areas of the state that are medically underserved do not experience a disruption in service.**

Nuestro Texas has called for preserving access to cervical cancer screening programs because such programs are especially critical for Latinas and all women living in border areas who are more likely to contract and die from this preventable disease. In Texas, the incidence of cervical cancer is 17% higher than the national average, and Texas Latinas have a higher incidence rate of cervical cancer than their white or black peers.\(^1\) Moreover, women living in counties bordering the Texas-Mexico border are 31% more likely to die of cervical cancer compared to women living in non-border counties.\(^2\)

Significant questions remain about whether other providers will be able to increase capacity to cover the 10% of women currently served by Planned Parenthood through the BCCS program. As a recent report by the HHSC revealed, the disruption to the family planning provider network caused by the exclusion of Planned Parenthood from the TWHP resulted in a 25% reduction in clients served in the two years following the policy change.\(^3\) **Filling the gap left by Planned Parenthood in the BCCS program will require the state to dramatically improve its provider training and recruitment efforts in order not to see a similar disruption of cancer screening services.**

**DECREASING ACCESS TO EVIDENCE-BASED SEXUALITY EDUCATION**

The 84th Texas Legislature moved further away from the Nuestro Texas recommendation that sexuality education include medically accurate information—a change that would bring state policy in line with the beliefs of a strong majority of Texans. Current Texas law gives public schools discretion on whether to provide sexuality education instruction and requires that if schools elect to provide that instruction, it must be abstinence-based.\(^4\)

Instead, this legislature narrowed the pool of acceptable sex education curriculum by including an additional requirement that a qualified abstinence education program must now adhere to all eight components of an abstinence education program under Section 510(b)(2), Social Security Act (42 U.S.C. Section 710(b)).\(^5\) This policy change limits the DSHS Abstinence Education program to funding only those programs that comply with each of the federal A through H guidelines outlined in the Social Security Act section 510(b)(2). Unfortunately, this budget amendment will alter the DSHS Abstinence Education program’s focus on proven effective programs to include content that is medically inaccurate and biased.

**The lack of a requirement that sexuality education programs, if provided, be rooted in medically accurate, comprehensive, unbiased, and culturally competent information subjects students to false or misleading sexuality education.**\(^6\) Abstinence-only policies disproportionately impact Latinas, who are less likely than white women to receive any formal instruction on methods of birth control before age 18.\(^7\) They are also less likely than white or black women the same age to receive any formal instruction before age 18 on how to say no to sex.\(^8\) Given the lack of access
to critical sexuality education, Latina youth in Texas are also more likely than white Texas women to have a repeat birth.\textsuperscript{19} Although reported sexual activity of Latina youth is not significantly different than that of their white counterparts, Latina youth have significantly lower rates of contraceptive use and higher pregnancy rates.\textsuperscript{20}

**RESTRICTING ABORTION ACCESS FOR MINORS AND IMMIGRANTS**

Nuestro Texas calls for the repeal of harmful abortion restrictions to ensure full access to abortion rights as an integral part of all Texans’ reproductive rights. Yet, a total of 30 abortion-related bills were filed during the 84\textsuperscript{th} Texas Legislative Session, the majority of which would have resulted in decreased access to abortion care.\textsuperscript{21} HB 3994 was passed into law and signed by Governor Abbott on July 8, 2015. This significant overhaul of the existing judicial bypass system will have a significant impact on access to abortion care for abused and neglected minors and for people who lack certain identification cards in Texas.

**HB 3994 contains four provisions that will especially harm Latina minors.** First, it raises the standard of evidence required for a minor to prove she needs a judicial bypass for an abortion. Second, it removes the requirement that the judge must rule immediately, changing it from two business days to five. Third, it removes the stipulation that if not ruled upon immediately, the application is deemed granted, meaning failure to rule could effectively become a denial of the application. And fourth, it limits appeals to be heard only by the judge who issued the original denial, making it unlikely that minors will prevail on appeal. In addition, by making it easier to determine the identity of the presiding judge, HB 3994 could dissuade judges from taking up these cases at all out of fear of political retribution and harassment.

Additionally, **HB 3994 creates barriers to abortion care for immigrant women.** HB 3994 would enact an unconstitutional “abortion ID” requirement that could serve as a backdoor abortion ban for the most vulnerable Texans. HB 3994 presumes everyone seeking an abortion is a minor until they provide “proof of identity and age.” Those lacking such forms of identification will be forced to procure it at risk of delaying critical and time-sensitive care. As such, this requirement will impact the most vulnerable communities including undocumented women, low-income women and survivors of human trafficking. Many undocumented women lack any form of identification at all, as they lose their official identification documents during their journey to the United States. Others may have their identification cards stolen, or even destroyed by an abusive partner. Still others may hold an expired passport or voter identification card from their birth countries, but cannot risk returning to their home countries to procure new ones.
FAILING TO COVER THE UNINSURED

The 84th Texas Legislature failed to close the “coverage gap” despite the introduction of a dozen bills aimed at covering the over one million Texans who earn too much to qualify for Medicaid under the state’s extremely restrictive Medicaid eligibility standards ($3,958 for a family of three, or 20% of the federal poverty level) but earn too little to afford private insurance on the marketplace exchanges, even with federal tax subsidies. Latino/as are disproportionately represented among those in the coverage gap. Currently, of the more than one million Texans who are in the coverage gap, approximately 600,000 are Latinos.

For many years now, Texas has had the highest rate of uninsured residents of any state. Texas therefore had the most to gain by expanding Medicaid under the ACA. Instead, legislators opposed to Medicaid expansion held a March press conference stating unequivocally that any expansion of Medicaid was off the table and would not even merit a public hearing. The U.S. Department of Health and Human Services estimates that Texas’ decision to forego substantial federal matching funding to expand Medicaid will cost the state $270 billion between 2014 and 2023.

Despite the state’s failure to close the coverage gap for all uninsured Texans, the Texas Sunset Advisory Commission directed HHSC to study the feasibility of automatically transitioning new mothers in Medicaid who would otherwise not be eligible for Medicaid into the newly consolidated women’s health program. This would be a positive step which would enable new mothers to avoid disruption to the reproductive health care they receive following the birth of their child.

RESTRICTING THE RIGHTS OF IMMIGRANTS AND MILITARIZING THE BORDER

The Texas Women’s Healthcare Coalition estimates that the Texas Legislature would need to allocate an additional $265m per year to women’s prevention and wellness services in order to meet the demand for such services among Texas women. The 84th Texas Legislature provided one-fifth of that amount by increasing funding for women’s health care services by $50 million. Meanwhile, it appropriated $800m for “border security.” Contributing approximately $310 million towards the total appropriated for border security is HB 11, a bill that further militarizes the border, encourages racial profiling, and promotes fear in immigrant communities.

Such a significant investment in border security is not consonant with the gradual reduction in crime in South Texas in recent years. More concerning, however, is the provision allowing for the hiring of additional state troopers and the authorization of the Department of Public Safety to provide unspecified “assistance” to the federal government at internal checkpoints. The increased militarization of the Texas border raises fear among immigrants about traveling outside their communities. Documentation by Nuestro Texas has found that the ubiquitous presence of border patrol agents and internal immigration checkpoints on Texas roads places additional obstacles to undocumented women seeking necessary health care. Undocumented women in South Texas are landlocked and cannot travel north to get the health care they may need due to internal immigration checkpoints. But checkpoints also create barriers for Latinas who are residents and citizens. Given the dearth of family planning providers in the Rio Grande Valley, many women pool their resources for gas money, schedule their medical appointments for the same day, and carpool to the nearest health clinic so as to make the long trip more affordable. HB 11 may encourage racial profiling at federal checkpoints to stop and detain those seeking medical care while traveling within border areas of the United States.
MOVING FORWARD

We concluded the Texas 84th Legislative session with some advancements and much more work left to do. Improvements to reproductive health include increased funding for family planning services, better access to FDA-approved contraceptives, and the potential for increased health care coverage for new moms. However, many of the policies enacted by this legislature fell short of the Nuestro Texas campaign’s vision of full access to reproductive health services for the Latinas in rural and underserved areas. Instead, the 84th Texas Legislature enacted policies that will disproportionately harm this population. These include reduced access to breast and cervical cancer screenings, restrictions on abortion for the most vulnerable women, decreasing medically accurate sexuality education, failing to close the coverage gap, and militarizing the border.

The Texas Latina Advocacy Network of the National Latina Institute for Reproductive Health will continue to organize those most impacted by detrimental policy decisions, as well as build a culture of resilience where women not only learn about reproductive health but also how to claim their human rights. Leveraging the Nuestro Texas reports and utilizing the human rights framework to build a more inclusive movement, the Texas Latinas are mobilizing a multi-generational activist base and will continue to hold government actors accountable to their human rights obligations.
Unmet Demand for Highly Effective Postpartum Contraception in Texas


3. Id.


5. Id. at 13.


9. Joseph Potter et al., Unmet Demand for Highly Effective Postpartum Contraception in Texas, 90 CONTRACEPTION 488, 491 (2014) (finding that both Hispanic women who reported wanting another child at some point in the future or were unsure about it and women who reported not wanting additional children were more likely to have an interest in or prefer a LARC method of contraception when compared to their non-Hispanic female counterparts); see also Nuestro Texas, supra note 1, at 28.


11. The Henry J. Kaiser Family Foundation (KFF), State Health Facts – Cervical Cancer Incidence Rate per 100,000 Women (2009), http://kff.org/other/state-indicator/cervical-cancer-rate/ (last accessed Dec. 2, 2014); KFF, State Health Facts – Cervical Cancer Incidence Rate per 100,000 Women by Race/Ethnicity (2009), http://kff.org/other/state-indicator/cervical-cancer-rate-by-race/ (last accessed Dec. 2, 2014) (showing rates of 12.4 per 100,000 Latina women, compared to 9.3 per 100,000 white women and 10.4 per 100,000 black women).


15. Id. See also Section 510(b)(2), Social Security Act (42 U.S.C. Section 710(b)), available at http://www.ssa.gov/OP_Home/ssact/title05/0510.htm, outlining all eight components of an abstinence education program. (A) has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity; (B) teaches abstinence from sexual activity outside marriage as the expected standard for all school age children; (C) teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems; (D) teaches that a mutually faithful monogamous relationship in context of marriage is the expected standard of human sexual activity; (E) teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects; (F) teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child’s parents, and society; (G) teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and (H) teaches the importance of attaining self-sufficiency before engaging in sexual activity.


17. CDC, Teenagers in the United States: Sexual Activity, Contraceptive Use, and Childbearing, 2002, 23 VITAL & HEALTH STAT. 1, 37 (Dec. 2004), http://www.cdc.gov/nchs/data/dseries/sr_23/sr23_024.pdf (showing 35.4 percent of Latina women did not receive this instruction, as compared to 27.8 percent of white women).

18. Id. at 36 (showing 18.6 percent of Latina women did not receive this instruction, as compared to 13.2 percent of white women and 15.6 percent of black women).


20. John Santelli et al., Changing Behavioral Risk for Pregnancy Among High School Students in the United States, 1991-2007, 45 J. OF ADOLESCENT HEALTH 25-32 (July 2009); Centers for Disease Control & Prevention (CDC), Youth Risk Behavior Surveillance System, Texas 2013 Results, http://ncdd.cdc.gov/YouthOnline/App/Default.aspx?SID=HS (select question “ever sexual intercourse,” “current sexual activity,” “condom use,” or “no birth control use” for Texas in 2013; filter to “female” only; choose column variable “race”; and compare “Hispanic” and “White”) (last accessed Dec. 3, 2014) (showing no statistically significant difference between Texas Latina girls and non-Hispanic white girls in sexual behavior but showing statistically significant differences in condom use and in whether they used any method of contraception to prevent pregnancy the last time they had sex); see also Kost, U.S. Teenage Pregnancies, Births and Abortions, supra note 97, at 20 (showing Texan Latina teens had a pregnancy rate of 98 per 1,000 pregnancies in 2010 compared to 45 per 1,000 for their non-Hispanic white teen counterparts).


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