



Abortion and Title X: What Health Care Providers Need to Know

What is Title X?

Title X (“title ten”) is a part of the United States Public Health Service Act. It is a federal program devoted solely to providing family planning services. It was first enacted in 1970 with broad bipartisan support. The program provides federal funds for project grants to public and private non-profit organizations for the provision of family planning information and services. Community-based providers including Planned Parenthood affiliates, university health centers, independent clinics, hospitals, public and non-profit agencies, and state and local health departments are eligible for Title X funds. The majority of Title X clients are low-income, uninsured, and do not qualify for Medicaid.

What types of services does Title X fund?

Title X funds may be used to pay for gynecological examinations and basic lab tests; and screening services for STDs, HIV, breast cancer, cervical cancer, high blood pressure, and anemia. Title X funds may also be used for contraceptive information and services, pregnancy testing, and community outreach. Since the inception of Title X, a statutory prohibition against the use of Title X funds for abortion has existed in Section 1008 of the law. It states that no Title X funds can be used “in programs where abortion is a method of family planning.”¹

How are Title X funds distributed?

Title X is administered by the Department of Health and Human Services (HHS). Federal funds are given to approximately 80 regional grantees that distribute the funds locally to Title X projects and continue to monitor the projects. To receive funds Title X projects, their directors, and employees must agree to abide by federal guidelines and rules that outline and limit the approved uses of the funds. Clinics that receive Title X funds can, and do, use funds from other sources as well. These include a variety of other federal programs that may fund family planning, as well as state and local sources. In fact clinics receiving Title X funding obtain, on average, one-quarter of their revenues from the program.²

What do the federal guidelines require?

Title X projects must be open to all individuals regardless of race, religion, and income level. Title X services must be completely voluntary. The statute explicitly states that obtaining family planning services may not be made a condition for the receipt of other public benefits. Fees for services are based on the client’s income. Services must be confidential, and **all clients, including teenagers, can access confidential services.** However, to the extent possible, the project is required to encourage teens to talk to their parents about the confidential services they use. Title X requires that clients visiting clinics for contraceptive care be offered related preventive health services as well. As a result, the program regulations and official guidelines specify a wide range of services to be delivered to clients at Title X-supported clinics including blood pressure evaluation, breast examinations, pelvic examinations, Pap tests, and sexually transmitted disease (STD) and HIV testing, as indicated.

Can my Title X project give out information about abortion?

Yes. For example, if a client were to request counseling about abortion, a Title X project should give non-directive information such as factual, medically accurate brochures, fact sheets, web addresses, or other non-biased resources.

What if a client requests a referral for an abortion?

If requested, Title X facilities may provide abortion referrals. A referral consists of a name, address, telephone number, and other “relevant factual information,” such as what insurance is accepted. **Affirmative actions such as obtaining consent for the abortion, arranging for transportation, negotiating a reduction in the fee, or arranging/scheduling the procedure are prohibited.** If the referral is made for medical indications, these limitations on referrals do not apply.³ Title X project staff are always allowed under the regulations to give the phone number for the National Abortion Federation hotline (1-800-772-9100) to a woman asking for an abortion referral.

If a facility receiving Title X funding also provides abortion services, can they make a referral to their own facility?

If a facility receiving Title X funding is itself an abortion provider, it may make what is known as a “self-referral.” In 2000, when the final regulations were promulgated, fewer than five percent of Title X recipients were abortion providers. Nevertheless, some of these recipients may be the only

abortion providers in their service area, making “self-referrals” a necessity. HHS will continue to monitor the issue of self-referrals for collusion, but has not seen it as a problem in the past.⁴

What about the “gag rule” on abortion information?

From 1970 to 1988, federal regulations allowed personnel at Title X projects to provide complete, uncensored information including non-directive abortion counseling. In 1988, HHS issued regulations revising their interpretation of Section 1008, the longstanding statutory prohibition against using Title X funds to “promote abortion.” These revised regulations implemented the “gag rule” which prohibited the discussion of abortion as a family planning option. Although never actually enforced nationwide, the “gag rule” also prohibited referrals to abortion providers and required a physical and financial separation of abortion-related activities from Title X activities. The “gag rule” was challenged by many Title X recipients, but was ultimately upheld by the United States Supreme Court.⁵ In 1993, President Clinton rescinded the rule and initiated a new rulemaking process that was finalized in 2000. These rules largely return to the pre-1988 interpretations of Section 1008.

Although a great deal of misinformation persists about Title X, the language of the federal law is absolutely clear; **women who request options counseling must be given information about carrying a pregnancy to term, adoption, and abortion, and a referral to an abortion provider if requested.**⁶

Has the Bush administration reinstated the “gag rule”?

The “gag rule” has not been reinstated. Currently, a policy known as the “global gag rule” is in effect. This restriction is tied to **international** family planning funds distributed by the United States. The “global gag rule” is similar to the previous Title X restrictions in that it prohibits recipients from advocating for abortion rights or providing abortion services. However, the “global gag rule” goes a step further by denying funds to organizations which use **private funds to fund or advocate for abortion**. So far, legal challenges have been unsuccessful.

If the Bush administration seeks to reinstate the domestic “gag rule,” HHS would first publish draft rules in the Federal Register, and then decide to revise or implement based on comments received. Congress could also pass legislation creating a “gag rule.”

What is the Weldon Amendment?

The Weldon Amendment is a provision attached to the current federal funding legislation for Title X. This provision would allow health care providers to continue to receive federal funding while refusing to give patients information regarding abortion and abortion care, even in cases of rape and incest. Providers could also ignore state laws requiring the dispersal of abortion information, and in some cases referrals under this Amendment. The Amendment would strip funding from states that “discriminate” against Title X recipients by “forcing” them to provide accurate medical information to patients. Because the Amendment is worded broadly and regulations have not been created, it may even allow Title X recipients to refuse to provide emergency contraception or referrals to survivors of rape.

Has the Weldon Amendment been challenged?

The National Family Planning and Reproductive Health Association (NFPRHA) filed a lawsuit to block the Weldon Amendment in December 2004. In September 2005 a federal court ruled against NFPRHA and in November 2006 a federal appeals court ruled that NFPRHA lacked standing to challenge the provision.

The state of California also filed a lawsuit to prevent enforcement of the Weldon Amendment because it would interfere with California’s state laws securing a woman’s constitutional right to an emergency abortion without impermissible government interference. That case is currently pending.

What can health care providers in Title X projects say about abortion?

The discussion of options for an unplanned pregnancy must be non-directive. Pregnant women must be given the opportunity to receive information on all options, including abortion. If the client requests information about abortion, Title X clinics may provide “as much factual, neutral information about any option, including abortion, as they consider warranted by the circumstances, but may not steer or direct clients toward selecting any option, including abortion, in providing options counseling.”⁷ If a client indicates that she does not want information and counseling on any particular option, that decision must be respected.

If my Title X facility becomes an abortion provider, what requirements exist?

Title X recipients must be able to demonstrate through financial records, protocols, procedures, and other means that Title X funding does not go toward the provision, promotion, or encouragement of abortion as a method of family planning. The requirement of physical separation, required by the “gag rule” and by pre-1988 interpretations, was dropped in the revised regulations.

However, it is clear that separate bookkeeping entries alone do not meet the separation requirements of Title X. Violations of Section 1008 are determined by analyzing whether the prohibited activity is a part of the project funded by Title X. For example, a common waiting room or filing system is allowed as long as costs are pro-rated. Common staff is permissible so long as salaries are allocated and all abortion-related activities are performed in a program which is entirely separate from the Title X project.⁸ Essentially, abortion-related activities must be easily distinguishable from Title X-funded activities.

It is important to keep in mind that Title X is administered regionally and that different regions and regulators might have different interpretations of the principles of separation.

Can my facility or organization still advocate against restrictions on abortion?

Yes. However, no Title X funds can go towards advocacy efforts such as lobbying, providing speakers to promote “the use of abortion as a method of family planning,” using legal action to make abortion available, or developing or disseminating materials that advocate for abortion in family planning contexts. However, HHS recognizes that this prohibition does not encompass neutral, factual information that grantees are permitted to provide in the counseling context. It is also permissible for Title X projects to be dues-paying members of abortion advocacy groups, so long as legitimate, Title X program-related reasons exist for the affiliation.

Where can I find additional information about Title X?

The Office of Population Affairs of the U.S. Department of Health and Human Services oversees Title X and has a web site at: opa.osophs.dhhs.gov. Additional information about Title X is available from several organizations including:

- National Family Planning and Reproductive Health Association (NFPRHA) – www.nfprha.org
- Guttmacher Institute – www.guttmacher.org
- Planned Parenthood Federation of America (PPFA) – www.ppfa.org

References

¹ 42 USCS § 300a-6.

² Alan Guttmacher Institute, *Policies in Brief*, “Title X: Three Decades of Accomplishment,” January 2001.

³ 64 F.R. 41281 (“Provision of Abortion-Related Services in Family Planning Services Projects”).

⁴ 65 F.R. 41270 at 41275. (“Standards of Compliance for Abortion-Related Services in Family Planning Services Projects”).

⁵ *Rust v. Sullivan*, 500 U.S. 173 (1991).

⁶ 42 C.F.R. 59.5(a)(5).

⁷ 65 F.R. 41270 at 41273.

⁸ 65 F.R. 41281.

For More Information

For information or referrals to qualified abortion providers, call the National Abortion Federation's toll-free hotline: 1-800-772-9100. Weekdays, 8:00 a.m. - 9:00 p.m. Saturdays 9:00 a.m. - 5:00 p.m. Eastern time.

National Abortion Federation
1660 L Street NW, Suite 450
Washington, DC 20036
202-667-5881
www.prochoice.org

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