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Title X Family Planning Program: 2021 Proposed Rule

The Title X Family Planning Program (Title X) is the only domestic federal program dedicated solely to family planning and related preventive health services. The program provides competitive grants to public and nonprofit agencies to establish and maintain family planning projects (also called Title X projects).

In the April 15, 2021, *Federal Register*, the Department of Health and Human Services (HHS) published a proposed rule, “Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services” (<https://go.usa.gov/xHWMb>). Among other things, it would reverse several changes made by the Trump Administration’s 2019 final rule currently in effect, “Compliance With Statutory Program Integrity Requirements” (<https://go.usa.gov/xEdTp>, see also CRS In Focus IF11142, *Title X Family Planning Program: 2019 Final Rule*).

For example, Title X projects are currently prohibited from making abortion referrals; the proposed rule would restore a pre-2019 requirement that projects provide an abortion referral if requested by the client. Currently Title X projects must be physically separate from certain abortion-related activities. The proposed rule would remove this physical separation requirement that was added by the 2019 rule.

Overview of the 2021 Proposed Rule

This section summarizes selected regulatory changes that would be made by the 2021 proposed rule.

Services for Pregnant Clients

Current regulations. The 2019 rule added a new requirement that Title X projects refer all pregnant clients to “medically necessary prenatal health care.” Title X projects are allowed to refer pregnant clients to social services and adoption agencies, provide pregnancy health information, and provide a list of comprehensive primary health care providers, including prenatal care providers. The 2019 rule permits, but does not require, the above mentioned list to include some primary care providers who also perform abortions. Neither the list nor project staff may identify providers who perform abortions. The 2019 rule generally prohibits projects from referring patients for abortion as a method of family planning. The rule permits physicians and advanced practice providers to give nondirective pregnancy counseling, which may include nondirective counseling on abortion.

Proposed rule. The proposed rule would remove the above regulatory provisions, restoring pre-2019 requirements that Title X projects offer pregnant clients information and nondirective counseling on each of these options: prenatal care and delivery; infant care, foster care, or adoption; and

abortion (unless a client indicates that they do not want information or counseling about particular options). Projects would also be required to provide referrals upon client request, including abortion referrals. The *preamble* to the proposed rule states that “individuals and grantees with conscience objections will not be required to follow the proposed rule’s requirements regarding abortion counseling and referral.” (The proposed rule itself does not specify this exception.)

The proposed rule would also remove the restriction, added in 2019, that only physicians and advanced practice providers may provide nondirective counseling. (Thus registered nurses, for example, could potentially provide such counseling under the proposed rule.)

Physical Separation from Abortion Activities

By statute, Title X funds may not be used in projects in which abortion is a method of family planning, and Title X funds “shall not be expended for abortions.” (42 U.S.C. 300a-6; P.L. 116-260, Division H, Title II).

Current regulations. The 2019 rule added a requirement that Title X projects maintain physical separation from certain prohibited activities, including providing, referring, encouraging, promoting, or advocating for abortion. For example, the rule requires separate facilities (including exam and waiting rooms, entrances and exits, and websites), staff, accounting and medical records, and workstations for these activities. Title X funds cannot be used to build infrastructure for prohibited abortion-related activities.

Proposed rule. The proposed rule would remove the physical separation requirement and the infrastructure provision. Using Title X funds to provide abortion would still be prohibited by statute.

Services to Minors

Title X statute requires grantees to encourage family participation in minors’ decisions to seek family planning services. Title X projects also must counsel minors on how to resist attempted coercion into sexual activity and must comply with all state and local laws on notification or reporting of child abuse, child molestation, sexual abuse, rape, and incest (42 U.S.C. 300(a); P.L. 116-260, Division H, Title II, §207 and §208).

Current regulations. The 2019 rule added a requirement that projects conduct a preliminary screening of any minor client with a sexually transmitted disease, pregnancy, or any suspicion of abuse in order to rule out victimization. The rule also added new documentation requirements: certain minors’ medical records must indicate their sexual partners’

ages, and Title X projects must document, for each minor, either (1) the specific actions taken to encourage family participation or (2) the specific reason why family participation was not encouraged.

Proposed rule. The proposed rule would remove the above regulatory provisions that were added in 2019. Title X projects would still have to follow statutory requirements on services to minors. The proposed rule would add a provision that these projects annually train individuals who serve Title X clients on the reporting and notification of child abuse, child molestation, sexual abuse, rape, incest, intimate partner violence, and human trafficking. Training would also cover interventions, strategies, and referrals to improve the client's safety and current situation.

Range of Family Planning Services

A Title X grantee can undertake a Title X project that has several participating entities and service sites. For example, a state-agency grantee can have a Title X project that supports local organizations and clinics throughout the state.

Current regulations. A participating entity or service site may offer a single or limited number of family planning methods, as long as the entire project offers "a broad range" of family planning methods and services.

Proposed rule. The proposed rule would require that projects offer a broad range of "medically approved" family planning methods and services. (The phrase "medically approved" was included in pre-2019 regulations and was removed by the 2019 rule.) The proposed rule would also add a requirement for service sites that do not offer a broad range of family planning methods and services. Such sites must be able to "provide a referral to the client's method of choice and the referral must not unduly limit the client's access to their method of choice."

Client payment for Services

Current regulations. Clients with income at or below 100% of the federal poverty guidelines (FPL) do not pay for care. Clients with income higher than 100% and up to 250% FPL are charged on a sliding discount scale. Clients with income higher than 250% FPL are charged fees designed to recover the reasonable cost of services. If a third party (such as Medicaid or a private health insurer) is authorized or legally obligated to pay for a client's services, all reasonable efforts must be made to obtain third-party payment without discounts. Clients who the Title X project director determines are unable, "for good reasons," to pay for family planning are also eligible for free or discounted services. For unemancipated minors who request confidential services, discounts are based on the minor's own income. The above provisions predate the 2019 rule.

The 2019 rule added a provision allowing Title X project directors to use the "good reasons" exception to offer free or discounted contraceptive services to certain clients who cannot get job-based contraception coverage due to their employer's religious or moral objection.

Proposed rule. The proposed rule would remove the provision added in 2019 on discounts for clients whose employers object to contraceptive coverage.

The proposed rule would also add several new provisions regarding payment for services:

- Clients' family income should be assessed before charging copayments or additional fees.
- Insured clients at or below 250% FPL should not pay more in copayments or additional fees than they would pay under the discount schedule.
- Title X projects should take "reasonable measures" to verify income without burdening low-income clients. Grantees with access to other valid income verification data, because the client participates in another program, may use those data instead of re-verifying or relying on self-reported income. If income cannot be verified after reasonable attempts, charges are to be based on self-reported income.
- Grantees must make "reasonable efforts" to collect charges without jeopardizing confidentiality. Grantees must inform clients of potential disclosures of confidential information if the client is covered through another person's insurance policy. (Private health insurers often send policyholders "explanations of benefits" that describe services charged to their policy.)

Equity

The proposed rule would add equity provisions, such as

- a requirement that projects provide services "in a manner that is client-centered, culturally and linguistically appropriate, inclusive, and trauma-informed; protects the dignity of the individual; and ensures equitable and quality service delivery consistent with nationally recognized standards of care."
- define *health equity* as "when every person has the opportunity to attain their full health potential and no one is disadvantaged from achieving this potential because of social position or other socially determined circumstances."
- revise HHS's list of criteria for evaluating grant applications, for example, by adding "ability of the applicant to advance health equity."
- require that Advisory Committees that review educational and informational materials should be broadly representative of, and should consider the diversity of, the communities served.

Proposed Rule Timeline

Public comments on the proposed rule were due May 17, 2021. After reviewing and considering comments, HHS plans to promulgate a final rule by fall 2021, to be effective in time for the program's FY2022 competitive funding announcement, which HHS expects to issue in December 2021 (<https://go.usa.gov/xH89p>).

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