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Title X Family Planning Program: 2021 Final 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 October 7, 2021, *Federal Register*, the Department of Health and Human Services (HHS) published a final rule, “Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services” (see <https://go.usa.gov/xMfQy>). Among other things, it revokes the Trump Administration’s 2019 final rule, “Compliance With Statutory Program Integrity Requirements” (see <https://go.usa.gov/xEdTp>; see also CRS In Focus IF11142, *Title X Family Planning Program: 2019 Final Rule*). The 2021 final rule, effective November 8, 2021, largely reinstates regulations that were in effect prior to 2019, with some revisions (see <https://go.usa.gov/xM6Cx>).

Title X’s FY2022 competitive grant announcement requires applicants to comply with the new rule. Projects are anticipated to start on April 1, 2022 (see <https://go.usa.gov/xMHVq>).

Several states seek to halt the rule’s implementation. (*Ohio v. Becerra*, U.S. District Court for the Southern District of Ohio, case no. 1:21-cv-675, <https://go.usa.gov/xenXG>.)

Overview of the 2021 Final Rule

This section summarizes selected regulatory changes made by the 2021 final rule.

Services for Pregnant Clients

2019 rule. The 2019 rule added a new requirement that Title X projects refer all pregnant clients to “medically necessary prenatal health care.” Title X projects could 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 permitted, but did not require, the above-mentioned list to include some primary care providers who also perform abortions. Neither the list nor the project staff could identify providers who perform abortions. The 2019 rule generally prohibited projects from referring patients for abortion as a method. The rule permitted physicians and advanced practice providers to give nondirective pregnancy counseling, which could include nondirective counseling on abortion.

2021 rule. The 2021 rule revokes the above 2019 regulatory provisions, restoring pre-2019 requirements that

Title X projects offer pregnant clients information and nondirective counseling on each of the following options: prenatal care and delivery; infant care, foster care, or adoption; and abortion (unless clients indicate they do not want such information or counseling). Projects are required to provide referrals upon client request, including abortion referrals.

A footnote in the 2021 rule notes, “[p]roviders may separately be covered by federal statutes protecting conscience.” The 2021 rule’s preamble states, “objecting individuals and grantees will not be required to counsel or refer for abortions in the Title X program in accordance with applicable federal law.”

The 2021 rule removes the restriction, added in 2019, that only physicians and advanced practice providers may provide nondirective counseling. (Thus registered nurses, for example, can potentially provide such counseling.)

Physical Separation from Abortion Activities

By statute, Title X funds may not be used in projects where 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.)

2019 rule. The 2019 rule added a requirement that Title X projects maintain physical separation from certain prohibited activities, including providing, referring clients to, encouraging, promoting, or advocating for abortion. For example, the rule required separate facilities, staff, and accounting and medical records for these activities. Title X funds could not be used to build infrastructure for prohibited abortion-related activities.

2021 rule. The 2021 rule removes the physical separation requirement and the infrastructure provision. It restores pre-2019 guidance that grantees’ Title X project activities and their non-Title-X abortion activities be “separate and distinct”; they may share a facility, staff, and records system “so long as it is possible to distinguish between the Title X supported activities and non-Title X abortion-related activities,” for example, through allocating and prorating costs (see <https://go.usa.gov/xMHQ9>).

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).

2019 rule. 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 documentation requirements: certain minors' medical records had to indicate sexual partners' ages, and projects had to document, for each minor, either (1) specific actions taken to encourage family participation or (2) the specific reason why family participation was not encouraged.

2021 rule. The 2021 rule revokes the above regulatory provisions that were added in 2019. The 2021 rule adds a provision that Title X projects may not require parental consent and may not notify a parent or guardian that a minor has requested or received Title X family planning services. Title X projects must still follow statutory requirements on services to minors.

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's Title X project can support local organizations and clinics throughout the state.

2019 rule. A participating entity or service site could offer a single or limited number of family planning methods, as long as the entire project offered "a broad range" of family planning methods and services.

2021 rule. The 2021 rule requires projects to offer a broad range of "medically approved" family planning methods and services. (Pre-2019 regulations included the phrase "medically approved," and the 2019 rule removed it.) The 2021 rule adds 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 prescription for the client's method of choice or referrals to another provider, as requested. The rule adds language that Title X services may be provided "in person or via telehealth."

Client Payment for Services

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 predated the 2019 rule.

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 could not get job-based contraception coverage due to their employer's religious or moral objection.

2021 rule. The 2021 rule removes the provision added in 2019 on discounts for clients whose employers object to contraceptive coverage.

The rule adds new provisions on 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 reverifying 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 2021 rule adds 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."
- a definition of *health equity* that affords "all persons 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."
- a revision of HHS's list of criteria for evaluating grant applications, for example, by adding "ability of the applicant to advance health equity."
- a requirement that Advisory Committees that review educational and informational materials should be broadly representative of, and should consider the diversity of, the communities served.

The rule also requires projects to "provide services in a manner that does not discriminate against any client based on religion, race, color, national origin, disability, age, sex, sexual orientation, gender identity, sex characteristics, number of pregnancies, or marital status."

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