

2021 Title X Regulations: What's New?

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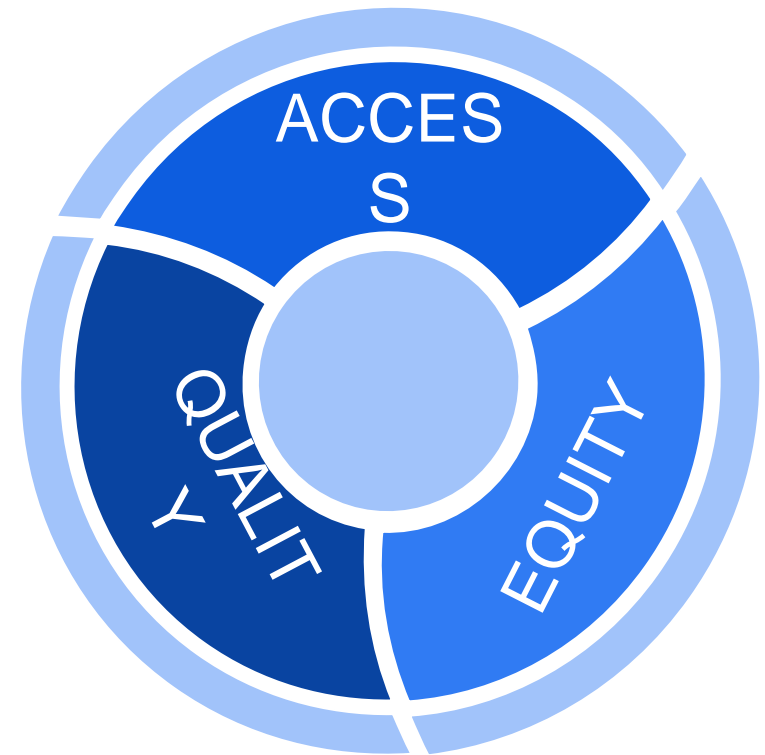
2021 Regulations

- Went into effect on November 4, 2021
- Repealed the 2019 regulations, readopted 2000 regulations with revisions
- Reinforce the program's central tenets of **quality, equity, and dignity** for all individuals who seek Title X services and modernizes the more than 50-year-old program to better reflect the current healthcare system



Key Provisions

- Pregnancy options counseling and referrals
- Separation of family planning and abortion services
- Method access
- Telehealth
- Income verification
- Information and education (I&E) materials review
- Confidentiality





Pregnancy options counseling and referrals: what do the 2021 regulations require?

Non-directive pregnancy options counseling



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Staff must provide non-directive pregnancy options counseling

Title X providers are required to:

- Offer pregnant clients the opportunity to be provided information and counseling regarding *each of these options*:
 - (A) Prenatal care and delivery;
 - (B) Infant care, foster care, or adoption; and
 - (C) Pregnancy termination.
- *Provide neutral, factual information and nondirective counseling on each of the options, and, referral upon request, except with respect to any option(s) about which the pregnant client indicates they do not want information and counseling.*

Referrals for abortion services

Staff must provide referral for abortion upon request

A Title X project may (upon request from the client) provide a referral for abortion, which may include *providing a patient with the name, address, telephone number, and other relevant factual information (such as whether the provider accepts Medicaid, charges, etc.)* about an abortion provider.

The project may not take further *affirmative* action (such as negotiating a fee reduction, making an appointment, providing transportation) to secure abortion services for the patient.

Sample Policy Template



Nondirective Counseling and Referral Sample Policy Template

[SAMPLE TEMPLATE]

[INSERT AGENCY NAME AND LOGO]

FAMILY PLANNING PROGRAM POLICY AND PROCEDURES

Nondirective Counseling and Referral

Title X projects must not provide abortion as a method of family planning (42 CFR 59.5 (a)(5)).

Title X projects must offer pregnant clients the opportunity to be provided information and counseling regarding each of the following options (42 CFR 59.5 (a)(5)(i))”

- Prenatal care and delivery;
- Infant care, foster care, or adoption; and
- Pregnancy termination.

If requested to provide such information and counseling, Title X projects must provide neutral, factual information and nondirective counseling on each of the options, and, referral upon request, except with respect to any option(s) about which the pregnant client indicates they do not wish to receive such information and counseling (42 CFR 59.5 (a)(5)(ii)).

| Policy Title | Nondirective Counseling and Referral |
|-----------------|--|
| Effective Date | |
| Revision Dates | |
| Review Due Date | |
| References | Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs (pgs. 4–20) https://www.cdc.gov/reproductivehealth/contraception/qfp.htm Code of Federal Regulations 42 CFR 59.5 (a)(5)(i-ii) https://www.ecfr.gov/current/title-42/chapter-I/subchapter-D/part-59 |
| Approved by | |
| Signature | |
| Approved Date | |

Purpose: The purpose of this policy is to describe (*insert Agency Name*) process for ensuring grantee and subrecipient compliance with the requirements that the project: 1) will not provide abortion as a method of family planning and 2) will offer pregnant clients the opportunity to be provided information and counseling regarding: prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination. This policy also describes the process by which, if requested to provide such information and counseling, (*insert Agency Name*) will provide neutral, factual information and nondirective counseling on each of the options, and, referral upon request.

Note: The RHNTC can provide direct grantee technical assistance (TA) related to developing nondirective counseling and referral policies and resources as a result of recent or anticipated changes to state laws. To request TA, contact the RHNTC.

Policy: [Agency may want to include the following]

[SAMPLE TEMPLATE]

- Abortion will not be provided as a method of family planning.
- Pregnant clients will be offered the opportunity to be provided **information and counseling** regarding each of the following options:
 - a. Prenatal care and delivery;
 - b. Infant care, foster care, or adoption; and
 - c. Pregnancy termination.(42 CFR § 59.5(a)(5))
- If requested to provide such information and counseling, staff at the service site will provide neutral, factual information and nondirective counseling on each of the options (except with respect to any option(s) about which the pregnant client indicates they do not wish to receive such information and counseling).
 - a. **Referral** for additional services (e.g. for prenatal care, delivery, infant care, foster care, adoption, or pregnancy termination) will be made **upon request** (42 CFR § 59.5(a)(5)).
 - b. When a client requests referral for pregnancy termination/abortion, they will be given a name, address, and telephone number. Staff will not take further affirmative action (such as negotiating a fee reduction, making an appointment, providing transportation) to secure abortion services for the client (65 Fed. Reg. 41281 (July 3, 2000)).
 - c. Where a referral to another provider who might perform an abortion is medically indicated because of the client’s condition or the condition of the fetus (such as where the woman’s life would be endangered), such a referral by a Title X project is not prohibited by section 1008 and is required by 42 CFR § 59.5(b)(1). The limitations on referrals do not apply in cases in which a referral is made for medical indications (65 Fed. Reg. 41281 (July 3, 2000)).
- Subrecipients and/or service sites will have written policies or procedures that detail how pregnant clients will be offered the opportunity to be provided information and nondirective counseling.

Procedure: [Agency may want to include the following]

- Description of which staff will provide non-directive options counseling at the service site (e.g. clinical services providers (MD/NP/CNM/PA), nurses, or service site staff)
- Description of referral workflow for different types of referral
 - a. Note: Referrals for abortion services must comply with Title X regulations as summarized in the above sample policy
- Where staff will be able to locate up-to-date referral names and contact information.
 - b. What source will be used for information about resources? (e.g., AbortionFinder.org)
- Description of the legal status of abortion in your state
 - a. There is currently no federal protection for abortion access. Some states have legal protections in place that will ensure that abortion remains legal, while other states have banned or severely restricted abortion.
 - b. Pregnant clients that request a referral for pregnancy termination may benefit from general information about the status of abortion access in your state, if it is impacted by restrictions.

<https://rhntc.org/resources/nondirective-counseling-and-referral-sample-policy-template>



What about separation of family planning and abortion services?

Separate and distinct

Title X recipients are required to ensure that non-Title X abortion activities are **separate and distinct** from Title X project activities. Where recipients conduct abortion activities that are not part of the Title X project and would not be permissible if they were, the recipient must ensure that the Title X-supported project is separate and distinguishable from those other activities.

Separation of services

Separation of Title X from abortion activities does not require separate recipients or even a separate health facility.

Separate bookkeeping entries alone will not satisfy the spirit of the law. Mere technical allocation of funds, attributing federal dollars to non-abortion activities, is not a legally supportable avoidance of section 1008. **Certain kinds of shared facilities are permissible, so long as it is possible to distinguish between the Title X supported activities and non-Title X abortion-related activities:**

- a common waiting room is permissible, as long as costs are properly pro-rated;
- common staff is permissible, so long as salaries are properly allocated, and all abortion related activities of the staff members are performed in a program which is entirely separate from the Title X project;
- a hospital offering abortions for family planning purposes and also housing a Title X project is permissible, as long as the abortion activities are sufficiently separate from the Title X project; and
- maintenance of a single file system for abortion and family planning patients is permissible, so long as costs are properly allocated.

**What has resonated
with or surprised you
about these
provisions?**

**What questions do you
have about these
provisions?**



What are other key provisions of the 2021 regulations?

Method access

Sites that do not offer a broad range of methods on-site must provide a prescription to the client for their method of choice or referrals, as requested

Telehealth services

The 2021 regulations codify the allowability of telehealth for Title X family planning services

Title X providers must: provide for medical services related to family planning (including consultation by a clinical services provider, examination, prescription and continuing supervision, laboratory examination, contraceptive supplies), *in person or via telehealth*, and necessary referral to other medical facilities when medically indicated, and provide for the effective usage of contraceptive devices and practices.

Income verification

Income verification must not impede access.

Title X providers are required to:

- Take reasonable measures to verify client income, without burdening clients from low-income families.
- Recipients that have lawful **access to other valid means of income verification** because of the client's participation in another program may use those data rather than re-verify income or rely solely on clients' self-report.
- If a client's income cannot be verified after reasonable attempts to do so, charges are to be **based on the client's self-reported income.**

Q&A



INCLUSIONS*

- » Wages, salaries, tips, bonuses, other payments for personal services, etc.
- » Taxable interest
- » Dividends
- » Taxable refunds, credits, or offsets of state and local income taxes. There are some exceptions—refer to Form 1040 instructions
- » Alimony (or separate maintenance payments) received
- » Business income (or loss)
- » Capital gain (or loss)
- » Other gains (or losses) such as assets used in a trade or business that were exchanged or sold
- » Taxable amount of individual retirement account (IRA) distributions, including simplified employee pension and a savings incentive match plan for employees IRAs
- » Taxable amount of pension and annuity payments
- » Rental real estate, royalties, partnerships, S corporations, trusts, etc.
- » Farm income (or loss)

- » Unemployment compensation and workers' compensation payments
- » Taxable amount of Social Security benefits
- » Other income (includes prizes and awards; gambling, lottery or raffle winnings; jury duty fees; Alaska Permanent fund dividends; reimbursements for amounts deducted in previous years; income from the rental of property if not in the business of renting such property; and income from an activity not engaged in for profit)

EXCLUSIONS

- » Child support¹
- » Money or property that was inherited, willed, or given as a gift
- » Life insurance proceeds received as a result of someone's death
- » Foster care payments
- » Non-cash benefits (such as public housing, Medicaid, and nutrition assistance)

**List adapted from [IRS Form 1040](#) income.*

<https://rhntc.org/resources/defining-family-income-title-x-charges-billing-and-collections-job-aid>

Information and education (I&E) materials review



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The project shall provide for the review and approval of informational and educational materials (**print and electronic**) developed or made available under the project by an Advisory Committee prior to their distribution, to assure that the materials are suitable for the population or community to which they are to be made available and the purposes of Title X of the Act.

Q&A

Q. Do social media posts on platforms such as Facebook, Twitter, and Instagram need to go through the I&E materials review process?

A. No. While I&E materials shared on social media must undergo an I&E Advisory Committee approval process, social media posts themselves do not require I&E Advisory Committee approval and are instead subject to the Title X agency's social media policy.

<https://rhntc.org/resources/ie-materials-review-frequently-asked-questions-faq>

I&E materials review cont.



Size: The committee shall consist of **no fewer than five members and up to as many members** the recipient determines, except that this provision may be waived by the Secretary for good cause shown.

Function: In reviewing materials, the Advisory Committee shall:

- (i) Consider the educational, cultural, and diverse backgrounds of individuals to whom the materials are addressed;
- (ii) Consider the standards of the population or community to be served with respect to such materials;
- (iii) Review the content of the material to assure that the information is *factually correct, medically accurate, culturally and linguistically appropriate, inclusive, and trauma informed*;
- (iv) Determine whether the material is suitable for the population or community to which is to be made available; and
- (v) Establish a written record of its determinations

Confidentiality protections



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- Reaffirms that information about individuals receiving services must be held confidential and must not be disclosed without the individual's documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality
- Clarifies that reasonable efforts must be made to collect charges *without jeopardizing client confidentiality*
- Adds new requirement that clients must be informed of any potential for disclosure of their confidential health information
- Reaffirms it is **unallowable** to
 - Require consent of parents/guardians in order to provide services to minors
 - Notify parents/guardians before or after minors request/receive services

Clinical services providers



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Enables a broader range of clinical services providers* to direct Title X services and provide consultation for medical services.

*Clinical services provider includes physicians, physician assistants, nurse practitioners, certified nurse midwives, and registered nurses with an expanded scope of practice who are trained and permitted by state-specific regulations to perform all aspects of the user (male and female) physical assessments recommended for contraceptive, related preventive health, and basic infertility care

Title X providers must:

- Provide that family planning medical services will be performed **under the direction of a clinical services provider**, with services offered within their scope of practice and allowable under state law, and with special training or experience in family planning.
- Provide for medical services related to family planning including **consultation by a clinical services provider...**

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with or surprised you
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Definitions & Terms

Definition: Health equity

Defines **health equity** as “when all persons have 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”

Reinforces that Title X services should be equitable

Definition: Family planning services



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Family planning services: Family planning services include a broad range of medically approved services, which includes Food and Drug Administration (FDA)-approved contraceptive products and natural family planning methods, for clients who want to prevent pregnancy and space births, pregnancy testing and counseling, assistance to achieve pregnancy, basic infertility services, sexually transmitted infection (STI) services, and other preconception health services.

Definitions: Client-centered & culturally and linguistically appropriate



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Requires provision of “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.”

Client-centered care is respectful of, and responsive to, individual client preferences, needs, and values; client values guide all clinical decisions.

Culturally and linguistically appropriate services are respectful of and responsive to the health beliefs, practices and needs of diverse patients.

Definitions: Inclusive and trauma-informed

Inclusive is when *all people are fully included and can actively participate in and benefit from family planning*, including, but not limited to, individuals who belong to underserved communities, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

Trauma-informed means a program, organization, or system that is trauma-informed *realizes the widespread impact of trauma and understands potential paths for recovery; recognizes the signs and symptoms of trauma* in clients, families, staff, and others involved with the system; and *responds* by fully integrating knowledge about trauma into policies, procedures, and practices, and seeks to actively resist re-traumatization.

Definitions: Adolescent-friendly health services



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Adolescent-friendly health services are services that are accessible, acceptable, equitable, appropriate and effective for adolescents.



Any final surprises or reflections on what you've heard?

**What remaining
questions do you have
about the 2021 Title X
regulations?**

References

[eCFR :: 42 CFR Part 59 Subpart A -- Project Grants for Family Planning Services](#)

[2021 Title X Final Rule SUMMARY](#)

[2021 Title X Final Rule: Summary of Revisions and Technical Corrections in the 2021 Rule Compared to the 2000 Rule | HHS Office of Population Affairs](#)

[65 Fed. Reg. 41281 \(July 3, 2000\) | Provision of Abortion-Related Services in Family Planning Services Projects](#)

[Dobbs v. Jackson Women's Health Organization U.S. Supreme Court Decision: Impact on Title X Program: QUESTIONS & ANSWERS FOR TITLE X RECIPIENTS](#)

Resource List

- [Nondirective Counseling and Referral Sample Policy Template](#)
- [Defining Family Income for Title X Charges, Billing, and Collections Job Aid](#)
- [I&E Materials Review Frequently Asked Questions \(FAQ\)](#)
- [I&E Materials Review Toolkit](#)