

CRS Report for Congress

Title X (Public Health Service Act) Family Planning Program

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Title X (Public Health Service Act) Family Planning Program

Summary

The federal government provides grants for voluntary family planning services through the Family Planning Program, Title X of the Public Health Service Act, codified at 42 U.S.C. § 300 to § 300a-6. The program, enacted in 1970, is the only domestic federal program devoted solely to family planning and related preventive health services. Title X is administered through the Office of Population Affairs (OPA) under the Office of Public Health and Science in the Department of Health and Human Services (DHHS). It receives its funding through appropriations for the Health Resources and Services Administration (HRSA) in DHHS.

Although the authorization for Title X ended with FY1985, funding for the program has continued to be provided through appropriations bills for the Departments of Labor, Health and Human Services, and Education, and Related Agencies (Labor-HHS-Education). The Title X program received \$300 million for FY2008, 6% more than the FY2007 level of \$283.1 million.

On September 30, 2008, the President signed P.L.110-329, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009. P.L.110-329 provides temporary FY2009 funding, at the FY2008 funding level, through March 6, 2009. For FY2009, the President's budget requested \$300 million, the same as the FY2008 level. The Senate-reported Labor-HHS-Education Appropriations bill (S. 3230; S.Rept. 110-410) would also provide \$300 million for Title X in FY2009.

The law (42 U.S.C. § 300a-6) prohibits the use of Title X funds in programs where abortion is a method of family planning. According to OPA, family planning projects that receive Title X funds are closely monitored to ensure that federal funds are used appropriately and that funds are not used for prohibited activities such as abortion. The prohibition on abortion does not apply to all the activities of a Title X grantee, but only to activities that are part of the Title X project. A grantee's abortion activities must be "separate and distinct" from the Title X project activities.

Several bills addressing Title X have been introduced in the 110th Congress. The Prevention First Act (S. 21/H.R. 819) and the Reducing the Need for Abortion and Supporting Parents Act (H.R. 1074) would authorize Title X appropriations of \$700 million for FY2008 and "such sums as may be necessary for each subsequent fiscal year." Other introduced bills include H.R. 104 and H.R. 5968, which would require assurances that family planning projects will provide pamphlets with adoption centers' contact information; S. 351 and H.R. 4133, which would prohibit Title X grants to abortion-performing entities; H.R. 1095, which would prohibit federal spending for any family planning activities; H.R. 2134, which would require parental notification before providing certain family planning services to minors; and H.Con.Res. 232, which would express the sense of Congress that confidentiality mandates for minors should be removed from Title X and Medicaid family planning programs.

Contents

Title X Program Administration and Covered Services	1
Funding	3
FY2009 Funding Proposals	3
FY2008 Appropriations	4
Abortion and Title X	6
Teenage Pregnancy and Title X	8
Planned Parenthood and Title X	9
Legislation in the 110 th Congress	9
Bills: Reauthorization	9
Bills: Abortion Restrictions	10
Bills: Elimination of Title X Funds	10
Bills: Adoption Promotion	11
Bills: Information on Pregnancy Support Services	11
Bills: Parental Notification	11
Amendments to FY2008 Appropriations Bills	12
Summary of Title X of the Public Health Service Act	16

List of Tables

Table 1. Title X Family Planning Program Appropriations	6
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Title X (Public Health Service Act) Family Planning Program

Title X Program Administration and Covered Services

Title X is administered through the Office of Population Affairs (OPA) under the Office of Public Health and Science in the Department of Health and Human Services (DHHS). It receives its funding through the appropriation for the Health Resources and Services Administration. OPA administers three types of project grants under Title X: family planning services;¹ family planning personnel training;² and family planning service delivery improvement research grants.³

Grants for family planning services fund contraceptive services and supplies, and related preventive health services, such as infertility services; natural family planning methods; special services to adolescents; adolescent abstinence counseling; breast and cervical cancer screening and prevention; and sexually transmitted disease (STD) and HIV prevention education, counseling, testing, and referral.⁴ Priority for the provision of these services is to be given to lower-income families; grantees may use a sliding fee schedule for determining client contributions for care, but grantees may not charge low-income persons for care. The services must be provided “without coercion and with respect for the privacy, dignity, social, and religious beliefs of the individuals being served.”⁵

Grants for family planning personnel training are to be used to train staff and “to improve utilization and career development of paraprofessional and paramedical manpower in family planning services, particularly in rural areas.”⁶ Staff are trained through 10 regional general training programs, one national clinical training program, one national training center, and one national training program focused on improving Title X services for males.⁷ The family planning service delivery improvement

¹ *Catalog of Federal Domestic Assistance (CFDA)* 93.217, [<http://www.cfda.gov>].

² *CFDA* 93.260

³ *CFDA* 93.974

⁴ DHHS, OPA, *Program Priorities*, at [<http://www.hhs.gov/opa/familyplanning/policyplanningeval/programpriorities/index.html>].

⁵ *CFDA* 93.217

⁶ *CFDA* 93.260

⁷ DHHS, HRSA, *Fiscal Year 2009 Justification of Estimates for Appropriations* (continued...)

research grants are to be used to develop studies to improve the delivery of family planning services. These research grants target projects that enhance effectiveness and efficiency of the service delivery system.

Title X clinics provide confidential screening, counseling, and referral for treatment. In this regard, OPA has indicated that the program is committed to maintaining the integration of HIV-prevention services in all family planning clinics, particularly in areas where racial and ethnic minorities are disproportionately affected.⁸ OPA provides supplemental funding for grants to help Title X projects implement the Centers for Disease Control and Prevention's "Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health Care Settings."⁹ OPA has also affirmed that Title X's HIV/AIDS education activities should incorporate the "ABC" message: "extramarital abstinence" (A); "be faithful in marriage or committed relationships" (B); and "correct and consistent condom use" (C).¹⁰

In 2006, Title X grantees reported that 5% of their clients were male.¹¹ Common services that family planning agencies offer to males include condom provision, STD counseling, contraceptive counseling, and STD treatment and testing.¹²

Ninety percent of Title X funds are used for clinical services.¹³ At the start of FY2008, there were 88 Title X family planning services grantees. Such grantees included 43 state or local health departments, 6 territorial health departments, 10 Planned Parenthood affiliates, and 29 other nonprofit organizations, such as

⁷ (...continued)

Committees, p. 249, at <ftp://ftp.hrsa.gov/about/budgetjustification09.pdf>.

⁸ DHHS, OPA, *HIV Prevention and Integration in Family Planning*, at [<http://www.hhs.gov/opa/initiatives/hivprevention/>].

⁹ Centers for Disease Control and Prevention (CDC), "Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings," *MMWR Recommendations and Reports*, vol. 55, no. RR-14 (September 26, 2006), pp. 1-17, at [<http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm>]. See also CDC, *HIV Testing in Healthcare Settings*, at [<http://www.cdc.gov/hiv/topics/testing/healthcare/>].

¹⁰ DHHS, OPA, *Key Issues*, at [<http://www.hhs.gov/opa/familyplanning/policyplanningeval/keyissues/keyissues.html>].

¹¹ *Family Planning Annual Report: 2006 National Summary*, February 2008, p. 9, at [<http://www.hhs.gov/opa/familyplanning/toolsdocs/FPAR2006NatlSum.pdf>].

¹² "Services for Men at Publicly Funded Family Planning Agencies, 1998-1999," *Perspectives on Sexual and Reproductive Health*, vol. 35, no. 5, September/October 2003. DHHS, OPA/Office of Family Planning, *FY 2003 Office of Family Planning Male Grantees Program Summaries*, at [<http://www.hhs.gov/opa/familyplanning/grantees/maleinvolvement/>].

¹³ DHHS, HRSA, *Fiscal Year 2009 Justification of Estimates for Appropriations Committees*, pp. 249, 286.

hospitals, community health centers, family planning councils and universities.¹⁴ Title X grantees can provide family planning services directly or they can delegate Title X monies to other agencies to provide services. Although there are no matching requirements for grants, regulations specify that no clinics may be fully supported by Title X funds.¹⁵ Title X provides services through more than 4,400 clinics nationwide.¹⁶

In FY2006, Title X served 4.992 million clients, primarily low-income women and adolescents. Ninety percent of clients had incomes at or below 200% of the federal poverty level. For many clients, Title X clinics are their only continuing source of health care.¹⁷ In 2006, the latest year for which data is available, 61% of Title X clients had no health insurance.¹⁸

More information on the Title X program, including regional contacts, can be found on the Internet at [<http://www.hhs.gov/opa/familyplanning/>].

Funding

Although the program is administered by OPA, funding for Title X activities is provided through the Health Resources and Services Administration (HRSA) in DHHS. Authorization of appropriations expired at the end of FY1985, but the program has continued to be funded through appropriations bills for the Departments of Labor, Health and Human Services, and Education, and Related Agencies (Labor-HHS-Education).

FY2009 Funding Proposals

On September 30, 2008, the President signed P.L.110-329, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009. It provides temporary FY2009 funding, at the FY2008 funding level, through March 6, 2009. Under the continuing resolution, funds are made available under the same authority and conditions provided during FY2008.

On July 8, 2008, the Senate Appropriations Committee reported its proposed bill for FY2009 Labor-HHS-Education appropriations (S. 3230; S.Rept. 110-410).

¹⁴ DHHS, HRSA, *Fiscal Year 2009 Justification of Estimates for Appropriations Committees*, p. 249. Email correspondence between the author and Maurice Huguley, Office of the Assistant Secretary for Legislation, U.S. Department of Health and Human Services, October 30, 2007.

¹⁵ 42 C.F.R. 59.7(c)

¹⁶ DHHS, HRSA, *Fiscal Year 2009 Justification of Estimates for Appropriations Committees*, p. 249. A searchable directory of Title X providers is at [http://www.opaclearinghouse.org/db_search.asp].

¹⁷ DHHS, HRSA, *Fiscal Year 2009 Justification of Estimates for Appropriations Committees*, pp. 249, 252.

¹⁸ *Family Planning Annual Report: 2006 National Summary*, February 2008, p. 21.

It would provide \$300.0 million for Title X, the same as the FY2008 funding level and the President's Budget Request.¹⁹ The bill repeats previous years' language requiring grantees to certify that they encourage "family participation" when minors decide to seek family planning services, and to certify that they counsel minors on how to resist attempted coercion into sexual activity. The bill also repeats a clarification that family planning providers are not exempt from state notification and reporting laws on child abuse, child molestation, sexual abuse, rape, or incest.²⁰ In S.Rept. 110-410, the Senate Appropriations Committee instructs that family planning funds be distributed to regional offices within 60 days of the appropriation bill's enactment. The report also states the committee's intention that "the regional offices should retain the authority for the review, award and administration of family planning funds, in the same manner and timeframe as in fiscal year 2006." In addition, the committee intends that at least 90% of appropriated Title X funds, as well as any remaining year-end funds, should be spent on clinical services.

On February 4, 2008, the President submitted the FY2009 Budget, which requested \$300.0 million for Title X, the same as the FY2008 funding level. The Budget Justification explained that the program would continue to seek ways "to increase efficiencies" in the face of increasing medical care prices, and to "increase competition" for funds, targeting areas that lack access to family planning services. The Budget Justification noted, "Rising costs of medical care will make it difficult to maintain service delivery at FY2008 levels." The Administration expected the proposed FY2009 level to fund services to 4.985 million clients and to avert 978,000 unintended pregnancies (compared with serving an expected 5.000 million clients and preventing an expected 981,000 unintended pregnancies in FY2008).²¹

FY2008 Appropriations

On December 26, 2007, the President signed the Consolidated Appropriations Act, 2008 (P.L. 110-161), which provided \$300.0 million for Title X in FY2008, 6% more than the FY2007 level of \$283.1 million. This figure includes the act's across-the-board reduction of 1.747% for items in the Labor-HHS-Education division.²²

The FY2008 Consolidated Appropriations Act repeated previous years' language that Title X funds not be spent on abortions, that all pregnancy counseling be nondirective, and that funds not be spent on "any activity (including the publication or distribution of literature) that in any way tends to promote public

¹⁹ S.Rept. 110-410, p. 59.

²⁰ S. 3230 as placed on Senate Calendar, July 8, 2008, §§ 209-210.

²¹ DHHS, HRSA, *Fiscal Year 2009 Justification of Estimates for Appropriations Committees*, pp. 249-252.

²² The Consolidated Appropriations Act (P.L. 110-161) Division G, on Labor-HHS-Education appropriations, includes an across-the-board reduction of 1.747% to accounts, items, programs, projects, and activities in the bill text and the Explanatory Statement narrative, with some exceptions (Title V, § 528).

support or opposition to any legislative proposal or candidate for public office.”²³ The law also repeated language requiring grantees to certify that they encourage “family participation” when minors decide to seek family planning services, and to certify that they counsel minors on how to resist attempted coercion into sexual activity.²⁴ The law also repeated a clarification that family planning providers are not exempt from state notification and reporting laws on child abuse, child molestation, sexual abuse, rape, or incest.²⁵

The FY2008 Consolidated Appropriations Act’s Explanatory Statement stated that in implementing the act, agencies should be guided by language and instructions in H.Rept. 110-231 and S.Rept. 110-107.²⁶ In S.Rept. 110-107, the Senate Appropriations Committee instructed that family planning funds be distributed to regional offices within 60 days of the appropriation bill’s enactment. The report also stated the committee’s intention that “the regional offices should retain the authority for the review, award and administration of family planning funds, in the same manner and timeframe as in fiscal year 2006.” In addition, the committee intended that at least 90% of appropriated Title X funds, as well as any remaining year-end funds, should be spent on clinical services.²⁷

²³ P.L. 110-161, Division G, Title II.

²⁴ P.L. 110-161, Division G, Title II, sec. 210. A recent evaluation of family involvement strategies found that “Barriers to parental participation are quite pronounced, with logistics, psychosocial factors, relationship dynamics and cultural issues among the obstacles.” See RTI International, *An Assessment of Parent Involvement Strategies in Programs Serving Adolescents: Interim Report*, 2006, at [http://www.rti.org/pubs/assess_parent.pdf]; and DHHS, HRSA, *Fiscal Year 2009 Online Performance Appendix*, p. 156, at [<ftp://ftp.hrsa.gov/about/performanceappendix09.pdf>].

²⁵ P.L. 110-161, Division G, Title II, sec. 211. The DHHS Office of Inspector General recently reviewed OPA’s activities to address state reporting requirements. It found that “OPA has informed and periodically reminds Title X grantees of their responsibilities” regarding these requirements, and that OPA addresses state reporting requirements in its site visits and reviews of grantees. See DHHS, Office of the Inspector General, *Federal Efforts to Address Applicable Child Abuse and Sexual Abuse Reporting Requirements for Title X Grantees*, Report no. OEI-02-03-00530, April 25, 2005, at [<http://oig.hhs.gov/oei/reports/oei-02-03-00530.pdf>].

²⁶ *Consolidated Appropriations Act, 2008 Committee Print of the House Committee on Appropriations on H.R. 2764/Public Law 110-161*, pp. 1461-1462, at [<http://www.gpoaccess.gov/congress/house/appropriations/08conappro.html>].

²⁷ S.Rept. 110-107, pp.62-63.

Table 1. Title X Family Planning Program Appropriations
(in millions)

FY	Appropriation	FY	Appropriation	FY	Appropriation
1971	\$6.0	1984	\$140.0	1997	\$198.5
1972	\$61.8	1985	\$142.5	1998	\$203.5
1973	\$100.6	1986	\$136.4	1999	\$215.0
1974	\$100.6	1987	\$142.5	2000	\$238.9
1975	\$100.6	1988	\$139.7	2001	\$253.9
1976	\$100.6	1989	\$138.3	2002	\$265.0
1977	\$113.0	1990	\$139.1	2003	\$273.4
1978	\$135.0	1991	\$144.3	2004	\$278.3
1979	\$135.0	1992	\$149.6	2005	\$286.0
1980	\$162.0	1993	\$173.4	2006	\$282.9
1981	\$161.7	1994	\$180.9	2007	\$283.1
1982	\$124.2	1995	\$193.3	2008	\$300.0
1983	\$124.1	1996	\$192.6	2009	^a

Sources: FY1971-FY2005: Department of Health and Human Services, Office of Population Affairs, [<http://www.hhs.gov/opa/about/budget/>]; FY2006: Senate Appropriations Committee, S.Rept. 109-287 (p. 325); FY2007-FY2008: *Consolidated Appropriations Act, 2008 Committee Print of the House Committee on Appropriations on H.R. 2764/Public Law 110-161*, p. 1793, at [<http://www.gpoaccess.gov/congress/house/appropriations/08conappro.html>]; FY2009: DHHS, HRSA, *Fiscal Year 2009 Justification of Estimates for Appropriations Committees*, p. 249; Senate Appropriations Committee, S.Rept. 110-410 (p. 59).

- a. Continuing resolution P.L.110-329, signed into law September 30, 2008, provides temporary funding at the FY2008 level through March 6, 2009. The President's FY2009 Budget requested \$300.0 million for Title X. The Senate-reported Labor-HHS-Education bill (S. 3230; S.Rept. 110-410) would provide \$300.0 million for Title X in FY2009.

Abortion and Title X

The law prohibits the use of Title X funds in programs where abortion is a method of family planning.²⁸ On July 3, 2000, OPA released a final rule with respect to abortion services in family planning projects.²⁹ The rule updated and revised

²⁸ 42 U.S.C. § 300a-6. In addition, so-called "Hyde amendments" to Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations bills have also restricted federal abortion funding. For more background, see CRS Report RL33467, *Abortion: Legislative Response*, by Jon O. Shimabukuro and Karen J. Lewis.

²⁹ "Standards of Compliance for Abortion-Related Services in Family Planning Services Projects," 65 *Federal Register* 41270, July 3, 2000, and "Provision of Abortion-Related Services in Family Planning Services Projects," 65 *Federal Register* 41281, July 3, 2000.

regulations that had been in effect since 1988.³⁰ The major revision revoked the “gag rule,” which restricted family planning grantees from providing abortion-related information. The regulation at 42 C.F.R. § 59.5 had required, and continues to require, that abortion not be provided as a method of family planning. The July 3, 2000 rule amended the section to add the requirement that a project must give pregnant women the opportunity to receive information and counseling on each of the following options: prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination. If the woman requests such information and counseling, the project must give “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 woman indicates she does not wish to receive such information and counseling.”

According to OPA, family planning projects that receive Title X funds are closely monitored to ensure that federal funds are used appropriately and that funds are not used for prohibited activities such as abortion. The prohibition on abortion does not apply to all the activities of a Title X grantee, but only to activities that are part of the Title X project. The grantee’s abortion activities must be “separate and distinct” from the Title X project activities.³¹ Safeguards to maintain this separation include (1) careful review of grant applications to ensure that the applicant understands the requirements and has the capacity to comply with all requirements; (2) independent financial audits to examine whether there is a system to account for program-funded activities and non-allowable program activities; (3) yearly comprehensive reviews of the grantees’ financial status and budget report; and (4) periodic and comprehensive program reviews and site visits by OPA regional offices.

It is unclear exactly how many Title X clinics also provide abortions through their non-Title X activities. In 2004, following appropriations conference report directions, DHHS surveyed its Title X grantees on whether their clinic sites also provided abortions with non-federal funds.³² Grantees were informed that responses were voluntary and “without consequence, or threat of consequence, to non-responsiveness.” The survey did not request any identifying information. DHHS mailed surveys to 86 grantees and received 46 responses. Of these, nine indicated that at least one of their clinic sites (17 clinic sites in all) also provided abortions with non-federal funds, and 34 indicated that none of their clinic sites provided abortions with non-federal funds; three responses had no numerical data or said the information was unknown.

³⁰ 42 C.F.R. Part 59, “Grants for family planning services.”

³¹ 65 *Federal Register* 41281-41282, July 3, 2000.

³² DHHS, *Report to Congress Regarding the Number of Family Planning Sites Funded Under Title X of the Public Health Service Act That Also Provide Abortions with Non-Federal Funds*, 2004. The DHHS was directed to conduct the survey by FY2004 appropriations conference report H.Rept. 108-401, pp. 800-801.

Title X supporters argue that family planning reduces unintended pregnancies, thereby reducing abortion.³³ On the other hand, Title X critics argue that federal funds should be withheld from any organization that performs or promotes abortions, such as the Planned Parenthood Federation of America. These critics argue that if a family planning program is operated by an organization that also performs abortions, the implicit assumption and the message to clients is that abortion is a method of family planning.³⁴

Teenage Pregnancy and Title X

In 2006, 25% of Title X clients were aged 19 or younger.³⁵ Critics argue that by funding Title X, the federal government is implicitly sanctioning nonmarital sexual activity among teens. These critics argue that a reduced teenage pregnancy rate could be achieved if family planning programs emphasized efforts to convince teens to delay sexual activity, rather than efforts to decrease the percentage of sexually active teens who become pregnant.³⁶ (See CRS Report RS20873, *Reducing Teen Pregnancy: Adolescent Family Life and Abstinence Education Programs*, by Carmen Solomon-Fears, for a broader discussion of teen pregnancy.)

The program's supporters, on the other hand, argue that the Title X program should be expanded to serve more people in order to reduce the rate of unintended pregnancies. According to DHHS, in FY2005, Title X family planning services helped avert more than 254,000 unintended teen pregnancies.³⁷ Supporters of expanding family planning services argue that the United States has a higher teen pregnancy rate than some countries (such as Sweden) where a similar percentage of

³³ An example of this argument can be found in U.S. Senate, Committee on Appropriations, Subcommittee on Departments of Labor, Health and Human Services, and Education, and Related Agencies, *Threat to Title X and Other Women's Health Services*, Hearing, 104th Cong., 1st sess., August 10, 1995. S.Hrg. 104-416 (Washington: GPO, 1996), pp. 16-21. See also Rachel Benson Gold, "Title X: Three Decades of Accomplishment," *The Guttmacher Report on Public Policy*, vol. 4, no. 1 (February 2000), p. 7. According to DHHS, in FY2006, Title X family planning services helped avert 975,080 unintended pregnancies (DHHS, HRSA, *Fiscal Year 2009 Justification of Estimates for Appropriations Committees*, p. 252).

³⁴ An example of these arguments can be found in *Threat to Title X and Other Women's Health Services*, pp. 22-35.

³⁵ *Family Planning Annual Report: 2006 National Summary*, February 2008, p. 9.

³⁶ An example of these arguments can be found in *Threat to Title X and Other Women's Health Services*, pp. 22-35.

³⁷ DHHS, HRSA, *Fiscal Year 2008 Justification of Estimates for Appropriations Committees*, p. 429, at [ftp://ftp.hrsa.gov/about/budgetjustification08.pdf](http://ftp.hrsa.gov/about/budgetjustification08.pdf). See also the discussion of publicly funded family planning services in "Programs to Reduce Unintended Pregnancy," in The Institute of Medicine, *The Best Intentions: Unintended Pregnancy and the Well-Being of Children and Families* (Washington: National Academy Press, 1995), p. 220, at [http://www.nap.edu/catalog.php?record_id=4903].

teens are sexually active, in part because U.S. teens use contraception less consistently.³⁸

Planned Parenthood and Title X

In May 2003, the General Accounting Office (GAO; now named the Government Accountability Office) updated a report on federal funds provided to several nonprofit organizations and their affiliates involved in health-related activities during FY2001.³⁹ The report provided information on the Planned Parenthood Federation of America, the Population Council, the International Planned Parenthood Federation, the Alan Guttmacher Institute, Advocates for Youth, and the Sexuality Information and Education Council of the United States (SIECUS). Information was collected from each organization with respect to their expenditure of federal funds. Only Planned Parenthood and the Alan Guttmacher Institute reported spending Title X funds.

Planned Parenthood operates through a national office and 103 affiliates. Affiliates participating in Title X receive funds directly and indirectly from other Title X grantees, such as their state or local health departments. Planned Parenthood also operates more than 860 local health centers.⁴⁰ The Alan Guttmacher Institute is an affiliate of the Planned Parenthood Federation and provides policy analysis and conducts research. According to the GAO report, in FY2001 Planned Parenthood spent \$58.7 million of Title X funds, and the Alan Guttmacher Institute spent \$315,320 of such funds; together this amounts to approximately 23% of Title X appropriations for that year.

Legislation in the 110th Congress

Several bills on the Title X program have been introduced in the 110th Congress.

Bills: Reauthorization

S. 21/H.R. 819, the Prevention First Act, was introduced in the Senate January 4, 2007, and in the House February 5, 2007. These companion bills would authorize

³⁸ An example of these arguments can be found in *Threat to Title X and Other Women's Health Services*, pp. 16-21. See also Jacqueline E. Darroch, et al., "Differences in Teenage Pregnancy Rates Among Five Developed Countries: The Roles of Sexual Activity and Contraceptive Use," *Family Planning Perspectives*, vol. 33, no. 6 (November/December 2001), pp. 244-251.

³⁹ U.S. General Accounting Office, *Federal Funds: Fiscal Year 2001 Expenditures by Selected Organizations Involved in Health-Related Activities*, GAO-03-527R, May 16, 2003, at [<http://www.gao.gov/cgi-bin/getrpt?GAO-03-527R>]. This report has not been updated.

⁴⁰ *Planned Parenthood Services*, at [<http://www.plannedparenthood.org/issues-action/birth-control/access-to-condoms/reports/pp-services-17317.htm>].

Title X appropriations of \$700 million for FY2008 and “such sums as may be necessary for each subsequent fiscal year.” S. 21 was referred to the Senate Committee on Health, Education, Labor, and Pensions. H.R. 819 was referred to the House Committees on Energy and Commerce, Ways and Means, and Education and Labor.

H.R. 1074, the Reducing the Need for Abortion and Supporting Parents Act, was introduced in the House February 15, 2007. One of its provisions would authorize Title X appropriations of \$700 million for FY2008 and “such sums as may be necessary for each subsequent fiscal year.” H.R. 1074 was referred to the House Committees on Energy and Commerce, Ways and Means, and Education and Labor.

Bills: Abortion Restrictions

S. 351, the Title X Family Planning Act, was introduced January 22, 2007. It would prohibit Title X funds from going to entities that perform abortions or whose subgrantees perform abortions, except in certain physician-certified cases where the woman is “in danger of death unless an abortion is performed.” This prohibition would not apply to hospitals, unless the hospital subgrants to a non-hospital entity that performs abortions. S. 351 would require Title X grant applicants to certify that they and their subgrantees adhere to the abortion prohibition. It would also require the DHHS to provide Congress with an annual list of Title X grantees that perform abortions; if an entity appears on the list, it would be ineligible for subsequent fiscal year Title X funds unless it certifies that it no longer performs abortions. S. 351 was referred to the Senate Committee on Health, Education, Labor, and Pensions.

H.R. 4133, the Title X Abortion Provider Prohibition Act, was introduced November 9, 2007. The bill would prohibit Title X assistance to any entity unless it certifies that it will not perform, nor provide funds to any other entity that performs, an abortion during the period of assistance. The prohibition would not apply to hospitals, unless the hospital provides funds to a non-hospital entity that performs an abortion. The bill has exceptions for abortions performed in cases of rape, incest against a minor, or certain physician-certified cases where the woman is “in danger of death unless an abortion is performed.” H.R. 4133 would also require the DHHS Secretary to provide Congress an annual report listing, for each entity receiving a Title X grant: information on any abortions it performed, the date that it last certified that it would not perform abortions, and any other entities to which it makes available funds received through Title X grants. H.R. 4133 was referred to the House Committee on Energy and Commerce.

Bills: Elimination of Title X Funds

H.R. 1095, the Taxpayers’ Freedom of Conscience Act, was introduced February 15, 2007. It would prohibit federal officials from expending federal funding for “any population control or population planning program or any family planning activity (including any abortion procedure), irrespective of whether such program or activity is foreign or domestic.” H.R. 1095 was referred to the House Committees on Foreign Affairs and Energy and Commerce.

H.R. 6712, America's Commitment to Veterans Act of 2008, was introduced July 31, 2008. Its official title is "To provide for increased funding for veterans health care for fiscal year 2009 by transferring funds from the Legal Services Corporation and certain title X family planning funds, and for other purposes." For FY2009, H.R. 6712 would transfer all funds appropriated for voluntary family planning projects under Title X, to the "Medical Services" appropriation account within the Department of Veterans Affairs. H.R. 6712 was referred to the House Committees on Veterans' Affairs, the Judiciary, and Energy and Commerce.

Bills: Adoption Promotion

H.R. 104, the Adoption Information Act, was introduced January 4, 2007. An identical bill, H.R. 5968, was introduced May 5, 2008. They would require the DHHS Secretary to annually prepare, update, and distribute to each Title X service grantee pamphlets listing contact information for all adoption centers in the state where services are provided. Title X service projects would be required to provide "assurances satisfactory to the Secretary" that they will (1) give the pamphlet to each family planning client at the time the person inquires about services, (2) orally inform the client that the pamphlet is from DHHS and has a comprehensive list of adoption centers in the state, and (3) give the client "an opportunity to read the pamphlet." H.R. 104 and H.R. 5968 were referred to the House Committee on Energy and Commerce.

Bills: Information on Pregnancy Support Services

H.R. 7091, the Care for Life Act of 2008, was introduced September 25, 2008. The bill would "encourage and assist women throughout pregnancy by providing services that will alleviate the financial, social, emotional, and other difficulties that may otherwise lead to an abortion." H.R. 7091 would express the sense of Congress that Title X clients should be aware of services available to assist them throughout pregnancy and following childbirth. One of the bill's provisions would require the DHHS Secretary to develop and implement a public outreach campaign to Title X facilities to provide information on pregnancy support services. H.R. 7091 was referred to the House Committees on Energy and Commerce, Ways and Means, and Education and Labor.

Bills: Parental Notification

H.R. 2134, the Parent's Right to Know Act of 2007, was introduced May 3, 2007. It would prohibit Title X service providers from providing contraceptive drugs or prescription devices to a minor unless one of the following criteria is met: (a) the provider has notified a parent or guardian in writing at least five business days earlier, (b) the minor has a parent or guardian's written consent, (c) the minor is emancipated, or (d) a court has directed that the minor may receive the contraceptive drugs or prescription devices. Each Title X provider would be required to annually certify compliance with these requirements. H.R. 2134 was referred to the House Committee on Energy and Commerce.

H.Con.Res. 232, “It is the Sense of the Congress that the confidentiality mandates for minors should be removed from family planning services programs operating under Title X of the Public Health Services Act and Medicaid,” was introduced October 10, 2007. It notes that Title X services “were extended to minors under the age of 16 as a result of the United States Supreme Court decision in *Carey v. Population Services International*;⁴¹ consequently, Title X clinics can provide minors with free contraceptives without a parent’s knowledge or consent.” H.Con.Res. 232 was referred to the House Committee on Energy and Commerce.

Amendments to FY2008 Appropriations Bills

Proposed during Senate consideration of the FY2008 Labor-HHS-Education Appropriations bill (H.R. 3043), S.Amdt. 3330 would have prohibited the bill’s funds (including Title X funds) from going to any grantees who perform abortions or whose subgrantees perform abortions, except in certain physician-certified cases where the woman is “in danger of death unless an abortion is performed.” The prohibition would not have applied to hospitals, unless the hospital subgrants to a non-hospital entity that performs abortions. S.Amdt. 3330 was defeated by roll call vote on October 18, 2007.

Also during Senate consideration of the FY2008 Labor-HHS-Education Appropriations bill (H.R. 3043) in October 2007, several floor amendments pertaining to Title X were submitted but no further action was taken.

- S.Amdt. 3329 would have prohibited the bill’s funds from going to Planned Parenthood “for any purpose” under Title X.
- S.Amdt. 3392 would have amended Title X to require funding recipients to annually report on and certify their compliance with state reporting requirements on child abuse, child molestation, sexual abuse, rape, and incest. Recipients found not complying with state reporting requirements would have lost Title X eligibility for three subsequent years.
- S.Amdt. 3413, S.Amdt. 3421, S.Amdt. 3422, S.Amdt. 3423, S.Amdt. 3424, and S.Amdt. 3425 would have prohibited the bill’s funds (including Title X funds) from going to local education agencies that allow birth control distribution to certain minors without a parent’s or guardian’s separate, prior, written consent.

During House consideration of the FY2008 Labor-HHS-Education Appropriations bill (H.R. 3043), two floor amendments pertaining to Title X were offered.

⁴¹ 431 U.S. 678 (1977). The case is discussed briefly in Kenneth R. Thomas, ed., “Privacy after Roe: Informational Privacy, Privacy of the Home or Personal Autonomy?,” *United States Constitution, Analysis and Interpretation*, 2005, [http://www.crs.gov/products/conan/Amendment14/topic_S1_4_17_3.html].

- H.Amdt. 594 would have prohibited the bill's funds from going to Planned Parenthood "for any purpose" under Title X. H.Amdt. 594 was offered and subsequently defeated by roll call vote on July 19, 2007.
- H.Amdt. 554 would have prohibited Title X funds to providers that in the previous 36 months had violated state notification and reporting laws related to child abuse, child molestation, sexual abuse, rape, or incest. H.Amdt. 554 was offered and subsequently withdrawn by unanimous consent on July 18, 2007.

The FY2008 Labor-HHS-Education appropriations law (P.L. 110-161, Division G) contained a provider conscience clause, which does not explicitly mention Title X, but which could potentially conflict with Title X regulations on abortion referrals, according to some critics. Sometimes referred to as the Weldon Amendment, the clause states that "None of the funds made available in this Act may be made available to a Federal agency or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions."⁴² The Weldon Amendment was originally adopted as part of the FY2005 Labor-HHS-Education appropriations law, and has been attached to each subsequent Labor-HHS-Education appropriations law.⁴³

Some have argued that the Weldon Amendment potentially conflicts with regulations that require Title X family planning services projects to give pregnant women the opportunity to receive information, counseling, and referral upon request for several options including "pregnancy termination."⁴⁴ The regulation states that if the woman requests such information and counseling, the project must

⁴² Consolidated Appropriations Act, 2008, P.L. 110-161, Division G, Departments Of Labor, Health And Human Services, and Education, and Related Agencies Appropriations Act, 2008, §508(d), 121 Stat. 1844.

⁴³ P.L.108-447, Division F, §508(d), 118 Stat. 3163 (FY2005); P.L. 109-149, § 508(d), 119 Stat. 2879 (FY2006). Under P.L.110-5, §2, 121 Stat. 8, FY2007 appropriations were subject to the same conditions as during FY2006.

⁴⁴ Examples of this argument appear in "Weldon Amendment," *Congressional Record*, daily edition, vol. 151, no. 51 (April 25, 2005), p. S4222; and "Federal Refusal Clause," *Congressional Record*, daily edition, vol. 151, no. 52 (April 26, 2005), p. S425. The National Family Planning and Reproductive Health Association (NFPRHA), many of whose members provide Title X services, filed a lawsuit challenging the Weldon Amendment in the U.S. District Court for the District of Columbia. The court found that "While Weldon may not provide the level of guidance that NFPRHA or its members would prefer, may create a conflict with pre-existing agency regulations, and may impose conditions that NFPRHA members find unacceptable, none of these reasons provides a sufficient basis for the court to invalidate an act of Congress in its entirety." Upon appeal, the U.S. Court of Appeals for the District of Columbia Circuit found that the plaintiff lacked the standing to challenge the Weldon Amendment. See *National Family Planning and Reproductive Health Association, Inc., v. Alberto Gonzales, et al.*, 468 F.3d 826 (D.C. Cir. 2006), and 391 F. Supp. 2d 200, 209 (D.D.C. 2005).

give “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 woman indicates she does not wish to receive such information and counseling.”⁴⁵

Proposed Rule on Provider Conscience

In the August 26, 2008 *Federal Register*, DHHS proposed the rule “Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law.”⁴⁶ The rule’s stated purpose is to provide for the implementation and enforcement of several conscience clause laws (including the Weldon Amendment) that “protect the rights of health care entities/entities, both individuals and institutions, to refuse to perform health care services to which they may object for religious, moral, ethical, or other reasons.”⁴⁷

The proposed rule states that entities carrying out DHHS health service programs shall not require individuals “to perform or assist in the performance of any part of a health service program or research activity funded by the Department if such service or activity would be contrary to his religious beliefs or moral convictions.”⁴⁸ The proposed rule defines “assist in the performance” as participating in any activity with a “reasonable connection” to the objectionable procedure or health service, including “counseling, referral, training, and other arrangements” for the procedure or health service.⁴⁹

The proposed rule would require certain recipients and subrecipients of DHHS funds, including recipients of grants under the Public Health Service Act, to certify that they will not discriminate against entities for refusing to assist in the performance of abortion or sterilization. These recipients and subrecipients would also have to certify that they “will not require involvement in procedures that violate an individual’s conscience as part of any part of any health service program.”⁵⁰ The proposed rule does not explicitly mention contraception or the Title X program.

DHHS solicited public comments on the proposed rule.⁵¹ In these comments, some critics argued that the proposed rule could affect Title X clients’ access to

⁴⁵ 42 C.F.R. 59.5(a)(5).

⁴⁶ U.S. Department of Health and Human Services, “Ensuring that Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices In Violation of Federal Law,” 73 *Federal Register* 50274-50285, August 26, 2008, at [<http://edocket.access.gpo.gov/2008/pdf/E8-19744.pdf>].

⁴⁷ 73 *Federal Register* 50282.

⁴⁸ 73 *Federal Register* 50283.

⁴⁹ 73 *Federal Register* 50282.

⁵⁰ 73 *Federal Register* 50284.

⁵¹ Comments may be viewed at [<http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=HHS-OS-2008-0011>].

requested abortion counseling or referrals. Title X grantees are currently required to provide pregnant women, upon request, nondirective counseling and referrals on several options including abortion.⁵² In its comment, the Guttmacher Institute argued that the regulation could allow Title X grantees to ignore this requirement: “If DHHS is going to undercut this important, long-standing requirement, it has an obligation to indicate how it will ensure that every Title X client will be able to receive the counseling and referrals to which they are entitled if individual providers and whole programs, even states, are allowed to refuse.”⁵³ Similarly, the ACLU argued that the proposed rule could potentially “permit entities that perform pregnancy tests to seek Title X funding even if they refuse to provide information and counseling.”⁵⁴

Some commenters also argued that the proposed rule could make it more difficult for Title X clients to obtain contraception. For example, the National Family Planning and Reproductive Health Association argued that “the rule provides no guidance about whether it is impermissible ‘discrimination’ for a Title X family planning clinic that serves primarily women seeking contraceptive services not to hire a receptionist because she refuses to make contraceptive appointments or a nurse because he refuses to provide contraceptive services?”⁵⁵ The ACLU wrote: “the Proposed Rule may make it difficult for Title X clinics to ensure that their staff is willing to participate in the primary purpose of the Title X program, namely the provision of contraceptive services. Moreover, the Rule, depending on how it is interpreted, could make it easier for entities that refuse to provide women with contraceptive services to compete for scarce family planning resources.”⁵⁶

Other commenters supported the proposed rule by arguing that health care practitioners are not likely to specialize in areas (such as family planning) where they object to the vast majority of the work, and that problems of access to contraception “can be solved by measures far short of forcing health care practitioners to violate their conscience.”⁵⁷

⁵² 42 C.F.R. 59.5(a)(5).

⁵³ Letter from Sharon L. Camp, President and CEO, Guttmacher Institute, to DHHS, September 24, 2008, at [<http://www.guttmacher.org/media/resources/2008/09/24/GuttmacherInstitute-re-ConscienceRegulation.pdf>].

⁵⁴ Letter from Caroline Fredrickson, Director, Washington Legislative Office, American Civil Liberties Union (ACLU), Louise Melling, Director, Reproductive Freedom Project, ACLU, and Vania Leveille, Washington Legislative Office, ACLU, et al. to DHHS, September 25, 2008, at [http://www.aclu.org/images/asset_upload_file467_36942.pdf].

⁵⁵ Letter from Mary Jane Gallagher, President and CEO, National Family Planning and Reproductive Health Association, to Michael Leavitt, Secretary, DHHS, September 25, 2008, at [<http://www.nfprha.org/images/contraception%20regs/NFPRHA%20Comments%20FINAL%209%2025%2008.pdf>].

⁵⁶ Letter from Caroline Fredrickson, Director, Washington Legislative Office, American Civil Liberties Union (ACLU), Louise Melling, Director, Reproductive Freedom Project, ACLU, and Vania Leveille, Washington Legislative Office, ACLU, et al. to DHHS, September 25, 2008, at [http://www.aclu.org/images/asset_upload_file467_36942.pdf].

⁵⁷ An example of this argument can be found in Letter from Kevin Hasson, President, The (continued...)

More background about the proposed rule is in the CRS Report RL34703, *The History and Effect of Abortion Conscience Clause Laws*, by Jon O. Shimabukuro. As of November 21, 2008, DHHS has not yet published a final rule on provider conscience.

Summary of Title X of the Public Health Service Act

Below is a summary of Title X of the Public Health Service Act, codified at 42 U.S.C. § 300 to § 300a-6, Population Research and Voluntary Family Planning Programs:

Section 1001. Project Grants and Contracts for Family Planning Services

The Secretary may make grants to and enter into contracts with public or nonprofit private entities to assist in the establishment and operation of voluntary family planning projects to offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents). Entities which receive grants or contracts must encourage family participation in their projects.

Section 1002. Formula Grants to States for Family Planning Services

The Secretary may make grants to state health authorities to assist in planning, establishing, maintaining, coordinating, and evaluating family planning services. The state health authority must have an approved state plan for a coordinated and comprehensive program of family planning services.

Section 1003. Training Grants and Contracts

The Secretary may make grants to public or nonprofit private entities and enter into contracts with public or private entities and individuals to provide the training for personnel to carry out family planning service programs.

Section 1004. Research

The Secretary may conduct and make grants to public or nonprofit private entities and enter into contracts with public or private entities and individuals for projects for research in the biomedical, contraceptive development, behavioral, and program implementation fields related to family planning and population.

Section 1005. Informational and Educational Materials

The Secretary may make grants to public or nonprofit private entities and enter into contracts with public or private entities and individuals to assist in developing

⁵⁷ (...continued)

Becket Fund for Religious Liberty, to DHHS, September 26, 2008, at [<http://www.becketfund.org/files/e2e1b.pdf>].

and making available family planning and population growth information (including educational materials) to all persons desiring such information.

Section 1006. Regulations and Payments

The Secretary may promulgate regulations and must determine the conditions for making payments to grantees to assure that such grants will be effectively utilized for the purposes they were made.

Grantees must assure that (1) priority will be given to the furnishing of services to persons from low-income families; and (2) no charge will be made in such project or program for services provided to any person from a low-income family except to the extent that payment will be made by a third party (including a government agency) which is authorized or is under legal obligation to pay the charge.

The Secretary must be satisfied that informational or educational materials developed or made available under the grant or contract will be suitable for the purposes of this title and for the population or community to which they are to be made available.

In the case of any grant or contract under Section 1001, such assurances shall provide for the review and approval of the suitability of such materials, prior to their distribution, by an advisory committee established by the grantee or contractor in accordance with regulations.

Section 1007. Voluntary Participation

The acceptance by any individual of family planning services or family planning or population growth information (including educational materials) shall be voluntary and shall not be a prerequisite to eligibility for or receipt of any other service or assistance from, or to participation in, any other program of the entity or individual that provided such service or information.

Section 1008. Prohibition of Abortion

None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.