

Updated November 16, 2021

Title X Family Planning Program

Introduction

The Title X Family Planning Program (Title X) was enacted in 1970 as Title X of the Public Health Service Act (PHS Act). Title X provides grants to public and nonprofit agencies for family planning services, research, and training. The Office of Population Affairs (OPA) within the Department of Health and Human Services (HHS) administers Title X, which is the only domestic federal program dedicated solely to family planning and related preventive health services.

In the March 4, 2019 *Federal Register*, HHS published a final rule that, among other things, prohibited Title X projects from referring clients for abortion as a method of family planning. It also required physical separation between Title X projects and certain abortion-related activities. (CRS In Focus IF11142, *Title X Family Planning Program: 2019 Final Rule*.) The 2019 final rule took effect in all states except Maryland, where it was enjoined.

In the October 7, 2021 *Federal Register*, HHS published a final rule that, among other things, revokes the 2019 final rule in its entirety. For example, it requires Title X projects to provide an abortion referral if requested by the client and removes the physical separation requirement (see <https://go.usa.gov/xMfQy>). The 2021 rule took effect November 8, 2021.

Overview of Title X

What Is the Federal Funding Level? The Consolidated Appropriations Act, 2021 (P.L. 116-260) provided \$286.5 million in FY2021 discretionary funding for Title X. The Extending Government Funding and Delivering Emergency Assistance Act (P.L. 117-43) continues funding for most discretionary HHS programs, including Title X, through December 3, 2021 (or until full-year funding is appropriated), at the same rate, and under the same authority and conditions, as P.L. 116-260. Additionally, the American Rescue Plan Act (P.L. 117-2) provided Title X with \$50 million in mandatory funding for FY2021, with funds to remain available until expended.

What Clinical Services Are Provided? The 2021 rule requires Title X projects to provide “a broad range of acceptable and effective medically approved family planning methods (including natural family planning methods) and services (including pregnancy testing and counseling, assistance to achieve pregnancy, basic infertility services, STI services, preconception health services, and adolescent-friendly health services).” Title X clinical guidelines are at <https://go.usa.gov/xEdm6>.

Does Title X Fund Abortions? Since Title X’s establishment in 1970, the PHS Act has prohibited using Title X funds in programs where abortion is a method of

family planning (42 U.S.C. § 300a-6). In addition, annual appropriations laws state that Title X funds “shall not be expended for abortions.”

According to the 2021 final rule’s preamble, the program is reinstating guidance published in the July 3, 2000 *Federal Register* (see <https://go.usa.gov/xMfP5>). This guidance requires that a grantee’s Title X project activities and its non-Title X abortion activities be “separate and distinct”; they may share a common facility, a common waiting room, common staff, and a common 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.

Must Title X projects provide abortion referrals upon client request? The 2021 rule restores 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.

Program guidance states that abortion referrals may include providing relevant factual information (such as the abortion provider’s phone number, address, and charges), but “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” (see <https://go.usa.gov/xMGgv>).

The 2021 rule’s preamble states that “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.” A footnote in the final rule notes that “[p]roviders may separately be covered by federal statutes protecting conscience.”

What Do Clients Pay? Persons 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 scale based on their ability to pay. Clients with income higher than 250% FPL are charged fees designed to recover the reasonable cost of providing services. (In 2021, in the 48 contiguous states and the District of Columbia, the poverty guidelines for an individual is an annual income of \$12,880; for families of two or more persons, \$4,540 is added to the annual income figure for each additional person.)

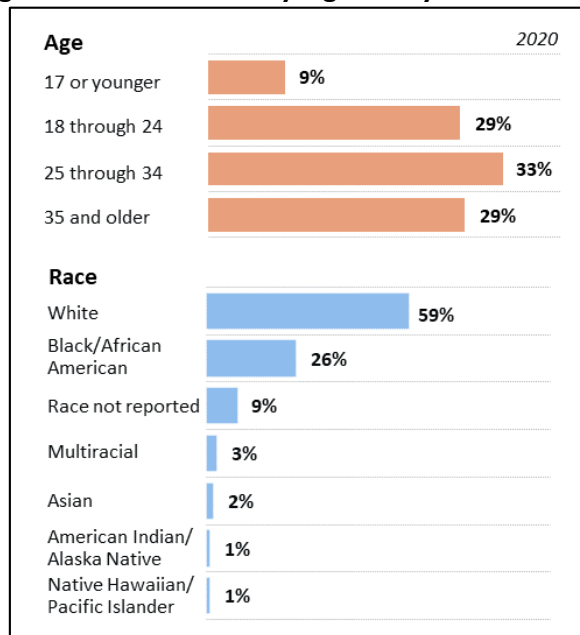
For unemancipated minors who request confidential services, eligibility for discounts is based on the minor's own income.

Are There Special Requirements for Services to Minors? Title X statute requires grantees, “[t]o the extent practical,” to encourage family participation. However, all Title X services are confidential, including services to minors. The 2021 final rule states 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.

Annual appropriations laws state that Title X providers are not exempt from state notification and reporting laws on child abuse, child molestation, sexual abuse, rape, or incest. Title X providers must counsel minors on how to resist attempted coercion into sexual activity.

Who Are Title X Clients? In 2020, Title X served 1.5 million clients (50% fewer than in 2019 and 61% fewer than in 2018). Of those clients, 86% were female, 66% had incomes at or below FPL, 84% had incomes at or below 200% FPL, and 39% were uninsured. The Guttmacher Institute found that in 2015-2019, 60% of contraceptive clients said their Title X clinic was their usual source of broader health care over the past year. **Figure 1** provides demographic data.

Figure 1. Title X Clients by Age and by Race



Source: CRS using data from HHS, *Title X Family Planning Annual Report: 2020 National Summary*, pp. 14, 17, <https://go.usa.gov/xMNPJ>.

Notes: 35% of clients (all races) identified as Latino/Hispanic. Percentages may not sum to 100% due to rounding.

Legislative Mandates

What Title X Provisions Are in the Most Recent Appropriations Law? The Consolidated Appropriations Act, 2021 (P.L. 116-260) included requirements on the use of Title X funds that are similar to provisions included in previous years' appropriations laws:

- Title X funds cannot be spent on abortions.
- All pregnancy counseling must be nondirective.
- Funds cannot be spent on “any activity (including the publication or distribution of literature) that in any way tends to promote public support or opposition to any legislative proposal or candidate for public office.”
- Grantees must certify that they encourage family participation when minors seek services.
- Grantees must certify that they counsel minors on how to resist attempted coercion into sexual activity.
- Family planning providers are not exempt from state notification and reporting laws on child abuse, child molestation, sexual abuse, rape, or incest.

These requirements are in addition to statutory mandates in Title X of the PHS Act, which, among other things, require family planning participation to be voluntary and prohibit the use of Title X funds in programs where abortion is a method of family planning.

Other Family Planning Programs

Do Other Federal Programs Fund Family Planning?

Although Title X is the only federal domestic program primarily focused on family planning, other programs also finance family planning, among their other services. These programs include Medicaid, the Health Center Program under Section 330 of the PHS Act, Maternal and Child Health Block Grants, Social Services Block Grants, and Temporary Assistance for Needy Families. In FY2015, Medicaid accounted for 75% of U.S. public family planning expenditures (including federal, state, and local government spending), whereas Title X accounted for 10% (see <https://www.guttmacher.org/report/public-funding-family-planning-abortion-services-fy-1980-2015>).

Are Private Health Plans Required to Cover Family Planning Services? Federal law generally requires health insurance issuers and employment-based health plans to cover FDA-approved contraceptives for women (see <https://go.usa.gov/x7xg2>). Regulations issued in 2018 exempt employers that have religious or moral objections to providing contraceptive coverage. See CRS Report R45928, *The Federal Contraceptive Coverage Requirement: Past and Pending Legal Challenges*. In 2020, following legal challenges by a number of states, the Supreme Court upheld the 2018 rules as authorized by the Affordable Care Act (*Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020)). However, litigation continues in the lower courts on other grounds.

COVID-19

How Has the COVID-19 Pandemic Affected Title X?

Title X clinics continue to operate during the pandemic, incorporating strategies such as telehealth, curbside services, and providing a one-year supply of oral contraceptives. According to the *Family Planning Annual Report (FPAR)*, Title X served 1.5 million clients in 2020, compared to 3.1 million in 2019 and 3.9 million in 2018. FPAR estimated that 37% of the decrease since 2018 was due to the pandemic, whereas 63% was due to providers leaving the program after the 2019 rule's implementation.

Angela Napili, Senior Research Librarian

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.