

Summary of the 2019 Draft Title X Family Planning Program Final Rule

On February 22, 2019, the US Department of Health and Human Services (HHS) posted a draft version of the HHS-approved final rule for the Title X family planning program. The 2019 draft final rule not only reintroduces provisions of a Reagan-era Title X rule known as the “domestic gag” rule, but it expands those provisions and introduces numerous new and harmful requirements and restrictions.

Collectively, the provisions of the 2019 draft final rule will damage the nation’s family planning program and severely diminish, rather than increase, the public health benefits from the limited funding available to it. Although the draft final rule in many ways is designed to target abortion-related activities and entities that provide abortion care, it is not limited to such activities and/or providers and would have far-reaching implications for all Title X-funded entities, the services they provide, and the ability of patients to receive the confidential family planning and related sexual health care they seek.

Despite hundreds of thousands of comments opposing the proposed version of the rule and explaining the significant harms that finalizing the rule would cause, the draft final rule provides no coherent rationale nor any evidence for why this rule is needed; fails to consider the substantial harms it would cause to Title X providers, their patients, and the Title X program itself; is vague and internally inconsistent in many respects; does not properly consider or estimate the significant costs that would result from the rule’s implementation; and includes provisions that exceed HHS’s statutory authority and conflict with governing law, including not only Title X but also Congress’s yearly appropriations mandate that all Title X pregnancy counseling be nondirective.

Undermines the standard of care: The 2019 draft final rule weakens the ability of the Title X program to achieve its central mission of making modern methods of acceptable and effective contraception available to all who desire them. It eliminates “medically approved” from the longstanding regulatory requirement that projects provide “a broad range of acceptable and effective medically approved family planning methods,” and replaces the cautionary, caveat language of the current regulations with a more permissive, even encouraging, directive that opens the door to funding Title X projects that refuse to offer a broad range of FDA-approved contraceptive methods.

Eliminates pregnancy options counseling as a requirement in the nation’s family planning program: The 2019 draft final rule eliminates the long-standing legal and ethical requirement for nondirective options counseling (prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination) in the event a patient has a positive pregnancy test. The draft final rule also goes on to limit the delivery of pregnancy options counseling to doctors and advanced practice providers, which does not reflect how counseling is often delivered in the Title X system. Under this rule, neither registered nurses nor licensed clinical social workers would be allowed to counsel.

Coerces all pregnant patients to receive prenatal care referrals, regardless of their wishes: The 2019 draft final rule prohibits abortion referrals and requires that all pregnant people must be referred for prenatal care, regardless of their wishes. The draft final rule details that providers may not refer for abortion or “take any other affirmative action to assist a patient to secure an abortion,” detailing that in instances when a patient requests an abortion referral, the provider may only share a nondelineated list of comprehensive primary care health providers, which may or may not provide abortion care.

Undermines confidentiality and trust: The 2019 draft final rule threatens patient confidentiality, particularly for minors, by increasing pressure on Title X-funded entities to compel adolescent patients to share information about who they have sex with and include their parents in their family planning care, with all efforts documented in detail and subject to HHS oversight. The draft final rule also forces providers to violate their professional judgment and risks damaging the patient-provider relationship by requiring providers to encourage minors to involve their parents in their family planning decisions in circumstances when the provider has good reason to believe that doing so would be harmful to the minor.

Imposes onerous physical and financial separation requirements: The 2019 draft final rule imposes onerous physical separation and enhanced financial separation requirements on Title X-funded entities that would have a significant chilling effect on and prevent a wide variety of otherwise-permissible activities paid for with non-Title X funds.

Gives HHS unchecked discretion to disqualify applicants: The 2019 draft final rule changes the criteria for awarding Title X grants and gives HHS broad, seemingly unchecked discretion to disqualify applicants before the competitive review process even begins if the agency deems them to not have sufficiently described how they will satisfy every requirement of the regulation.

Gives HHS unclear, expanded oversight powers and imposes unnecessary obligations on Title X grantees: The 2019 draft final rule seeks to give HHS unprecedented information and regulatory authority regarding Title X subrecipients.