

Top Line Summary of 2018 Notice of Proposed Rulemaking for Title X Family Planning Program

On June 1, 2018, the US Department of Health and Human Services (HHS) officially published a notice of proposed rulemaking (“2018 NPRM”)¹ for the Title X family planning program.² The 2018 NPRM not only reintroduces the majority 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 2018 NPRM would undermine the high-quality standards of care in Title X and discourage and prevent highly qualified, trusted family planning providers from participating in the Title X program. Although the 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 seek and receive high-quality, confidential family planning and sexual health care.

Specifically, the 2018 NPRM, at a minimum:

- **Undermines the standard of care:** The 2018 NPRM appears to permit Title X projects to refuse to provide the broad range of contraceptive methods that have been a core part of Title X-funded services since the program’s inception.
- **Eliminates nondirective options counseling:** The 2018 NPRM eliminates the long-standing requirement for nondirective options counseling and prohibits abortion referral, but requires all pregnant people to be referred for prenatal care and/or social services, regardless of their wishes.
- **Undermines trust:** The 2018 NPRM directs Title X-funded entities to withhold full and accurate medical information from patients.
- **Attempts to give HHS unchecked discretion to disqualify applicants:** The 2018 NPRM changes the criteria for awarding Title X grants and attempts to give HHS broad, seemingly unchecked discretion to disqualify applicants before any objective merits panel review if the agency deems them to not have sufficiently described how they will satisfy every requirement of “the regulation.”
- **Undermines confidentiality:** The 2018 NPRM threatens patient confidentiality, particularly for minors, in ways that could cause many patients to avoid seeking care in Title X settings.

¹ The 2018 NPRM was released May 29, and formally published in the *Federal Register* on June 1. The proposed rule has a comment period open through July 31, 2018. <https://www.gpo.gov/fdsys/pkg/FR-2018-06-01/pdf/2018-11673.pdf>. “Compliance With Statutory Program Integrity Requirements.” 83 *Federal Register* 106 (June 1, 2018), p. 25502.

² Title X of the Public Health Service Act, Sections 1001 to 1008 (42 U.S.C. §§300 to 300a-6).

- **Adds costly and misguided reporting requirements:** The 2018 NPRM adds extensive new reporting requirements by grantees about their networks, and by health centers about the actions they take with their patients and about the patients themselves.
- **Prohibits activities related to abortion:** The 2018 NPRM creates vague and confusing standards prohibiting more than a dozen activities associated with abortion, such as that a Title X project may not “present,” “support,” or even “promote a favorable attitude toward” abortion as a method of family planning.
- **Requires physical and financial separation:** The 2018 NPRM imposes onerous physical 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.
- **Makes counseling on abortion difficult, if not impossible:** The broad prohibitions and vague standards created by the 2018 NPRM related to abortion, combined with the proposed rule’s physical separation requirements, would make it difficult, if not impossible, for Title X providers to counsel on abortion.
- **Redefines “low-income”:** The 2018 NPRM would explicitly enable and may require Title X-funded entities to provide free contraceptive services to women, regardless of income, whose employers provide insurance coverage but object, contrary to the Affordable Care Act, to that coverage including contraception.
- **Attempts to give HHS expanded oversight powers and grantees expanded responsibilities for the actions of subrecipients and referral providers:** The 2018 NPRM seeks to give HHS unprecedented information and regulatory authority regarding Title X subrecipients and other care partners and asserts new control over how Title X grantees contract with their subrecipients and health centers.
- **Places an inappropriate emphasis on comprehensive primary care:** The 2018 NPRM unnecessarily and inappropriately seems to require that Title X providers prioritize comprehensive primary health care either by providing such services onsite or by having robust referral linkages with primary care providers in close physical proximity to the Title X-funded health center. HHS is pursuing this requirement even though primary care is not a permissible use of Title X funds and the best referrals for Title X patients are not necessarily defined merely by physical proximity.

A more detailed analysis of the 2018 NPRM is available at www.nationalfamilyplanning.org.