



Title X Rule Changes Protect the Unborn and Increase Health Care Options

Connor Semelsberger, MPP and Patrina Mosley, M.A.

Background

- In 1988, President Ronald Reagan issued new regulations for the Title X family planning grant program created by Congress during the Nixon administration. The Title X statute prohibits abortion as a method of family planning. Reagan's regulations require recipients of the grant to have complete physical and financial separation from any abortion services performed by the recipient, and prohibit recipients from referring for abortion.¹
- President George H.W. Bush's administration defended these regulations, which were ultimately upheld in the Supreme Court decision, *Rust vs. Sullivan* in 1991.² In this ruling, the Court gave "substantial deference" to the administration responsible for enforcing the Title X program.
- However, in 1993, President Clinton issued new regulations for Title X which made several critical changes, most notably:
 - Allowed for co-location of Title X activities and their abortion services, including shared accounting and common personnel. This opened the door for organizations to receive funding even if they provided abortions at the same location, without there being any need for separate financial accounts or personnel.
 - Not only removed President Reagan's prohibition on abortion referrals, but actually made it a requirement that *Title X recipients must provide abortion referrals. This is in direct violation of federal laws protecting conscience rights.*³
- Despite Congressional urging, President George W. Bush's administration did not rescind Clinton's regulations. The Obama administration also maintained the Clinton regulations. Consequently, the regulations governing Title X have not changed since Clinton issued his regulations in 1993.
- On May 22, 2018, the Trump administration proposed Title X rule changes known as the *Protect Life Rule*, and on March 4, 2019 published final rule changes in the Federal Register.
 - There are several changes from the proposed rule to the final rule. Most notably, the final rule prescribes that nondirective counseling can be provided by physicians, practitioners, and nurses with advanced degrees, rather than just physicians.
 - The final rule also says that accountability measures mandated by the rule change will only apply to grant recipients and subrecipients, not contractors of the grant recipients.
- Several key provisions of the rule are set to go into effect at later dates. **However, the final dates are subject to change because of ongoing legal challenges that are blocking the full implementation of the final rule.**
 - Compliance with the financial separation requirements and the prohibition on abortion referrals are set to go into effect on July 2, 2019.

- Compliance with the physical separation requirements are set to go into effect on March 4, 2020.

Benefits of the *Protect Life Rule*

- The new regulations put in place a prohibition on co-location of Title X programs with abortion providers. For a program to receive Title X funds, they cannot provide, promote, or refer for abortions. Because money is fungible, this ensures that taxpayer dollars are not sent to programs where they end up subsidizing the abortion industry.
- Trump's regulations also remove the abortion referral requirement put in place by Clinton's administration. This opens the door for pro-life and faith-based organizations to apply for Title X funds. Additionally, the new regulations prohibit Title X recipients from making abortion referrals, though they allow for non-directive counseling at the patient's request.
- Trump's new regulations will not only decrease government subsidizing of the abortion industry via the Title X program, but it will also emphasize that abortion is not, and should not be, a form of family planning as the Title X statute says. The new regulations maintain the federal government's neutral position on abortion funding and ensure that taxpayer dollars are no longer entangled with the abortion industry, something which 60 percent of American voters want.
- Not a single cent will be cut from the \$286 million Congress has appropriated for Title X. The new regulations only separate abortion from the federally funded Title X family planning program.
- The new Title X regulations could make a significant dent in Planned Parenthood's government funding. Of the \$286.45 million dollars appropriated to Title X, \$60 million on average is sent to Planned Parenthood, making it the abortion chain's second largest funding stream. Changing the regulations would ensure that no clinic that provides abortion services would be eligible, unless they keep their abortion physically and financially separate from the federal program.
- Not every Planned Parenthood clinic that receives Title X funding has abortion on site; therefore, they could still qualify for the funds. However, even those Planned Parenthood clinics that did receive Title X money would no longer be able to refer for abortions, rendering them less likely to apply for the family planning grants. We saw this happen when President Trump reinstated the Mexico City Policy in 2017. Rather than abide by the policy, International Planned Parenthood Federation instead opted to not apply for funding.
- The new regulations also put in place policies requiring Title X programs to comply with state mandatory reporting laws regarding rape and abuse. Title X programs are also required to comply with parental notification laws and encourage parental involvement.

Legal Challenges to the *Protect Life Rule*

- In March of 2019, California, Washington, and Oregon, along with 19 other states and the District of Columbia, filed a lawsuit against Secretary Azar of the Department of Health and Human Services (HHS) to challenge Title X's *Protect Life Rule*.⁴ The federal district courts in all three states issued a preliminary injunction which halted the implementation of the Rule across the United States. HHS appealed the district courts' decision by asking the U.S. Court of Appeals for the

Ninth Circuit (9th Circuit) to lift the preliminary injunction and allow the rule to be implemented while the lawsuit continues.

- On appeal, a 9th Circuit panel consolidated the three lawsuits and heard them as one. The panel overturned the preliminary injunction and stated that the Final Rule should be implemented while the lawsuit continues. While this outcome was encouraging, the 9th Circuit has another opportunity to prevent the implementation of the *Protect Life Rule* as the Courts decide the merits of the case.

How the *Protect Life Rule* Complies with Relevant Statutes

- Section 1008 of the Title X statute mandates that abortion cannot be used as a method of family planning.⁵ Therefore, no Title X funds can be utilized to perform or promote abortions. By requiring physical and financial separation and by preventing abortion referrals except for medical emergencies, the *Protect Life Rule* faithfully adheres to the provisions of section 1008.
- An annual appropriations rider that was first introduced in 1996 and a Title X rule change published in 2000 requires Title X clinics to provide non-directive counseling on all pregnancy options.⁶ The *Protect Life Rule* does not violate this non-directive counseling requirement because prohibiting abortion referrals does not impact family planning counseling.
- Opponents of the *Protect Life Rule* argue that it violates the Affordable Care Act statute (42 U.S.C. 18114) that prohibits HHS from implementing any regulation that interferes with a health care provider's ability to share the full range of treatment options.⁷ However, the *Protect Life Rule* requires non-directive counseling which allows doctors to discuss all relevant health care options as well as the risks and side effects associated with each one.
- The Hyde-Weldon Amendment provides a conscience provision in federal law explicitly designed to bar federal funds from being used by a federal agency that requires abortion performance or referral against one's conscience.⁸ Unlike the Clinton Regulations which required abortion referrals, the *Protect Life Rule* is in compliance with the Hyde-Weldon Amendment.

Greater Diversity of Grantees and Partners Under Rule Change

As a result of the change in Title X regulations, there will be an increased diversity of health care providers available for women to choose from in the federal family planning program. By prohibiting abortion referrals and changing the selection criteria for grant proposals, the new regulation ensures that faith-based and pro-life groups can also apply for Title X funding without compromising their beliefs on abortion. The regulation change will encourage groups who previously could not apply for Title X funds to do so, and it would encourage states who receive Title X funds to subgrant the money to organizations dedicated to providing family planning options to women that do not include abortion services.

Some of the types of health centers that can access Title X family planning funds despite not offering abortion services or abortion referrals are Federally Qualified Health Centers, Rural Health Centers and Pregnancy Resource Centers, thereby offering a broader array of health services to women.

1. Federally Qualified Health Centers (FQHCs)

FQHCs, or community health centers,⁹ offer comprehensive primary care on-site to an underserved area or population¹⁰ and do not perform abortions. Here, women and families can access both family planning services and primary health care seamlessly. FQHCs are required to provide comprehensive services, offer a sliding fee scale, and serve patients regardless of their ability to pay. Federally Qualified Health Centers are the primary organizations receiving a government grant under the Health Center Program Section 330 of the Public Health Service (PHS) Act.

Number of sites: 1,373 health center grantees that operate **11,056** service sites.¹¹

Persons served: FQHCs served over 27 million patients in 2017.¹²

Services: Primary health care services, preventative services that include voluntary family planning services, well-child services,¹³ and enabling services such as outreach and transportation.¹⁴

Funding: Grant funding under the Health Center Program Section 330 of the Public Health Service (PHS) Act, Medicaid, Medicare, private insurance, patient fees, and other resources.¹⁵

- **Health Center Program Look-Alikes (LAs)**¹⁶

Look-alike community health centers “were established to maximize access to care for medically underserved populations and communities.” These health centers provide all services as required by the Health Center Programs statute. Look-alikes are eligible to purchase discounted drugs through the 340B Federal Drug Pricing Program. LAs may also access National Health Service Corps providers.¹⁷

Funding: LAs do not receive federal funding under the Health Center Program statute. However, LAs are eligible to apply to the Centers for Medicare and Medicaid for reimbursement under similar FQHC Medicare and Medicaid payment methodologies.

Service sites: 56 Look-alike clinic locations as of 2017.¹⁸

2. Rural Health Centers (RHCs)

Rural Health Centers were established to overcome health care barriers in non-urban and underserved areas. RHCs meet all the medical service requirements of the Health Center Program statute as well as offering services that extend beyond those typically offered in primary care settings.¹⁹ Enabling services, such as transportation, are provided to facilitate access by either bringing patients to care or bringing care to patients.²⁰ Health centers that are approved as RHCs may not be concurrently approved as FQHCs, and vice versa.²¹

Persons served: 1 in 5 of all U.S. rural residents.²²

Number of sites: Approximately 4,100 RHCs are servicing non-urban and underserved areas.²³

Funding: RHCs can receive special Medicare and Medicaid reimbursements.²⁴

- There are **over 15,000** health centers (11,056 FQHCs service sites, 4,100 RHCs, and 56 LAs) that are already meeting the needs of women and families who could consider Title X grant funds. All these centers can be found on **GetYourCare.org**.

3. Pregnancy Resource Centers (PRCs)

Pregnancy Resource Centers are life-affirming centers that are already active in providing care for women and youth, which fulfills some of the various priorities of Title X's "positive family planning" program.²⁵ PRCs do not perform or refer for abortions, but women who may be experiencing an unexpected pregnancy are met with care and free material resources. PRCs provide services such as free pregnancy tests, pregnancy options, material resources such as baby clothes and child items, sexual risk avoidance education, parenting courses, and life skills training. Some centers offer specific medical services such as STD/STI testing and treatment, medical consultations, and ultrasound capability. PRCs offer their care for free, and some medical PRCs offer their care at little or no cost.²⁶

Number of sites: 2,752 center locations nationwide.²⁷

Persons served: In 2017, PRCs provided nearly 2 million people, primarily women and youth in the United States, with free services.²⁸

Services:

- **STI/STD Testing:** In 2017, 678 locations provided STI/STD testing; 487 provided STI/STD testing and treatment.²⁹
- **Referrals:** PRCs refer patients to community agencies and programs such as Women Infants & Children (WIC). PRCs also expose women to key education interventions spanning into childbirth, breastfeeding, nutrition, sudden infant death syndrome (SIDS), unintentional and intentional injury prevention, child safety seat instruction, and parenting.³⁰
- **Options Consultation:** With the client's permission, a peer counselor/client advocate will offer to discuss the client's three legal options: giving birth and raising the child, giving birth and making an adoption plan for the child, and abortion. Education on parenting options is offered on single motherhood, co-parenting, and marriage.³¹
- **Medical Services:** Medical pregnancy centers provide services under the supervision and direction of licensed physicians that comply with state laws and medical standards. Some of these services include obstetrical medical care and nursing, ultrasonography, labor coaching, lactation consulting, midwife services, health education, nutrition consulting, childbirth classes, grief/bereavement counseling, and social work.³²
- **Ultrasounds:** In 2017, 1,944 PRC locations offered free ultrasounds with over 400,100 performed.³³
- **Prenatal Education:** PRCs provide education on prenatal care, self-care during pregnancy, the importance of eating well and getting exercise, stress reduction, avoiding smoking and alcohol, bonding with the baby, and coping with morning sickness or discomfort during pregnancy.³⁴
- **Post-Abortion Care:** After-abortion recovery, support, and education have become a core outreach at PRCs. In 2017, 1,987 PRCs provided after-abortion care to 24,141 people (23,578 women and 563 men).³⁵
- **Parenting Classes:** Classes are offered in child development, safety and injury prevention, nutritional counseling, bonding, family rules, positive discipline strategies, communication

skills, anger management, financial management, and hygiene. In 2017, a total of 2,275 PRCs offered parenting education servicing 295,900 moms and dads.³⁶

- **SRA Education:** More than 1 million students attended community-based sexual risk avoidance (SRA) education presentations at PRCs in 2017.³⁷
- **Life Classes:** Classes are also offered to strengthen the development and resilience of moms-in-training, broaching strategies for stress management, job skills training, continuing education, marriage and relationship education, relationship boundaries, and conflict resolution.³⁸

Funding:

- At least 90 percent of total funding for PRCs is raised locally at the community level.³⁹
- Eighty-six percent of PRCs receive no public funding. Only 14 percent (364 centers) received federal or state funding at some level in 2017.⁴⁰
- In 2017, 400,100 hours of free services were contributed by credentialed nurse sonographers and registered diagnostic medical sonographers at PRCs.⁴¹
- In 2017, 67,400 volunteers served PRCs, including an estimated 7,500 medical professionals who volunteered their time and skills.⁴²

Connor Semelsberger, MPP is the Legislative Assistant for Family Research Council in Washington, D.C.

Patrina Mosley, M.A. is the Director of Life, Culture, and Women's Advocacy at Family Research Council.

The authors thank former Legislative Assistant Kelly Marcum and legal intern Mary Jayne Caum for their contributions to this paper.

¹ *Federal Register* 53, no. 21 (February 2, 1988): 2944-2946, accessed June 19, 2018, <https://archive.org/stream/federalregister53aunit#page/n1694/mode/1up>.

² *Rust v. Sullivan*, 500 U.S. 173 (1991), Opinion of the Court, accessed June 19, 2018, <https://www.law.cornell.edu/supct/html/89-1391.ZO.html>.

³ *Federal Register* 42, §§ 59.5 (a)(5)(i)(C), "A [Title X] project must... [o]ffer pregnant women the opportunity to be provided information and counseling regarding... [p]regnancy termination," <http://www.hhs.gov/opa/pdfs/42-cfr-59-b.pdf>.

⁴ *Oregon v. Azar*, Complaint, No. 6:19-cv-00317-MC (D. Or. Mar. 5, 2019), https://ag.ny.gov/sites/default/files/oregon_v.azar_title_x_complaint.pdf.

⁵ "Title X - Population Research and Voluntary Family Planning Programs," U.S. Department of Health and Human Services, https://www.hhs.gov/opa/sites/default/files/title-x-statute-attachment-a_0.pdf.

⁶ *Federal Register* 65, no. 128 (July 3, 2000): 41281-41282, accessed July 8, 2019, <https://www.federalregister.gov/documents/2000/07/03/00-16759/provision-of-abortion-related-services-in-family-planning-services-projects>.

⁷ "2 U.S. Code § 18114. Access to therapies," Legal Information Institute - Cornell Law School, accessed July 8, 2019, <https://www.law.cornell.edu/uscode/text/42/18114>.

⁸ "Background: Hyde/Weldon Conscience Protection Amendment in the Labor/HHS Appropriations Bill," U.S. Conference of Catholic Bishops, http://www.usccb.org/cs_upload/7585_1.pdf.

⁹ "FQHCs are safety net providers that primarily provide services typically furnished in an outpatient clinic. FQHCs include community health centers, migrant health centers, health care for the homeless health centers, public housing primary care centers, and health center program "look-alikes." They also include outpatient health programs or facilities operated by a tribe or tribal organization or by

an urban Indian organization.” “Federally Qualified Health Center,” Centers for Medicare & Medicaid Services, January 2018, <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/fqhcfactsheet.pdf>.

¹⁰ Medically Underserved Area, Medically Underserved Populations. “Health Center Program Terms and Definitions,” Health Resources & Services Administration, <https://www.hrsa.gov/sites/default/files/grants/apply/assistance/Buckets/definitions.pdf>.

¹¹ “2017 National Health Center Data,” Health Resources & Services Administration, accessed March 4, 2019, <https://bphc.hrsa.gov/uds/datacenter.aspx>. Each FQHC may operate multiple health clinics known as “FQHC Service Sites” where healthcare is provided. These FQHCs operate multiple health clinics (FQHC Service Sites) where health care is provided. “Key Health Center Data by State, 2017,” National Association of Community Health Centers, <http://www.nachc.org/wp-content/uploads/2018/08/Key-Health-Center-Data-by-State-2018FINAL.pdf>.

¹² “2017 National Health Center Data.”

¹³ Public Health Service Act (42 U.S.C. §254b), accessed March 4, 2019, <http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title42-section254b&num=0&edition=prelim>. Basic health services include health services related to family medicine, internal medicine, pediatrics, obstetrics, or gynecology that are furnished by physicians and where appropriate, physician assistants, nurse practitioners, and nurse midwives.

¹⁴ Ibid.; “Enabling Services,” “Health Center Program Terms and Definitions,” Health Resources & Services Administration, <https://www.hrsa.gov/sites/default/files/grants/apply/assistance/Buckets/definitions.pdf>

¹⁵ “What is a Health Center?” Health Resources & Services Administration, accessed March 4, 2019, <https://bphc.hrsa.gov/about/what-is-a-health-center/index.html>.

¹⁶ “Health Center Program Look-Alikes,” Health Resources & Services Administration, accessed March 4, 2019, <https://bphc.hrsa.gov/programopportunities/lookalike/index.html>.

¹⁷ Ibid.

¹⁸ “2017 National Health Center Data.”

¹⁹ “Removing Barriers to Care: Community Health Centers in Rural Areas,” National Association of Community Health Centers, http://www.nachc.org/wp-content/uploads/2015/06/Rural_FS_1013.pdf.

²⁰ Ibid.; “Enabling Services,” “Health Center Program Terms and Definitions.”

²¹ “Medicare Benefit Policy Manual - Chapter 13,” Centers for Medicare & Medicaid Services, <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c13.pdf>.

²² “Health Center Program: Impact and Growth,” Health Resources & Services Administration, accessed March 4, 2019, <https://bphc.hrsa.gov/about/healthcenterprogram/index.html>.

²³ “Removing Barriers to Care: Community Health Centers in Rural Areas.”

²⁴ “Rural Health Clinics (RHCs),” Rural Health Information Hub, accessed March 4, 2019, <https://www.ruralhealthinfo.org/topics/rural-health-clinics>.

²⁵ “Fiscal Year 2019 Program Priorities,” U.S. Department of Health & Human Services, accessed March 4, 2019, <https://www.hhs.gov/opa/title-x-family-planning/about-title-x-grants/program-priorities/index.html>.

²⁶ “A Legacy of Life & Love,” Pregnancy Center Service Report, Third Edition, 2018, <https://s27589.pcdn.co/wp-content/uploads/2018/09/A-Half-Century-of-Hope-A-Legacy-of-Life-and-Love-FULL.pdf>, 11, 13.

²⁷ Ibid., 8.

²⁸ Ibid.

²⁹ Ibid., 8, 19.

³⁰ Ibid., 20.

³¹ Ibid., 26.

³² Ibid., 13.

³³ Ibid., 16.

³⁴ Ibid., 25.

³⁵ Ibid., 35.

³⁶ Ibid., 29, 30.

³⁷ Ibid., 8.

³⁸ Ibid., 30.

³⁹ Ibid., 65.

⁴⁰ Ibid.

⁴¹ Ibid., 8; “Pro-life Pregnancy Centers Served 2 Million People, Saved Communities \$161M in 2017,” Charlotte Lozier Institute, September 5, 2018, accessed March 4, 2019, <https://lozierinstitute.org/pro-life-pregnancy-centers-served-2-million-people-saved-communities-161m-in-2017/>.

⁴² “A Legacy of Life & Love,” 8.