

ABORTION PROHIBITION POLICY

Section 1008 of the federal Title X statute, 42 USC 300a-6, states “None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning”. On July 3, 2000, the Federal Register (Volume 65 Number 128) issued a summary of the regulatory requirements and interpretations that relate to Section 1008. All Title X agencies are required to adhere to these requirements and interpretations. The summary is reproduced as follows:

1. **General Principles:** Section 1008 prohibits Title X Programs from engaging in activities which promote or encourage abortion as a method of family planning. However, Section 1008 does not prohibit the funding under Title X of activities which have only a possibility of encouraging or promoting abortion; rather, a more direct nexus is required. The general test is whether the immediate effect of the activity in question is to promote or encourage the use of abortion as a method of family planning. If the immediate effect of the activity in question is essentially neutral, then it is not prohibited by the statute. Thus, a Title X Project may not provide services that directly facilitate the use of abortion as a method of family planning, such as providing transportation for an abortion, explaining and obtaining signed abortion consent forms from clients interested in abortions, negotiating a reduction in fees for an abortion, and scheduling or arranging for the performance of an abortion, promoting or advocating for an abortion within Title X Program activities, or failing to preserve sufficient separation between Title X Program activities and abortion-related activities.

2. **Abortion Counseling and Referral:** Under 42 CFR 59.5 (a) (5), a Title X Project must not provide abortion as a method of family planning. However, a project must offer pregnant women the opportunity to be provided information and counseling regarding each of the following options:

- (A) Prenatal care and delivery;
- (B) Infant care, foster care, or adoption;
- (C) Pregnancy termination.

If requested to provide such information and counseling, the project must provide neutral, factual information and non-directive counseling on each of the options, and referral on request, except with respect to any option(s) about which the pregnant woman indicates that she does not wish to receive such information and counseling.

However, there are limitations on what abortion counseling is permissible under the statute. A Title X Project may not provide pregnancy options counseling which promotes abortion or encourages persons to obtain abortions, although the project may provide patients with complete, factual information about all medical options and the accompanying risks and benefits. While a Title X Project may provide a referral for an abortion, which may include providing the patient with the name, address, telephone

number, and other relevant factual information (such as whether the provider accepts Medicaid, charges, etc.) about an abortion provider, 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. Where a referral to another provider who might perform an abortion is medically indicated because of the patient's condition or the condition of the fetus (such as the woman's life would be in danger), such a referral by a Title X Project is not prohibited by Section 1008 and is required by 42 CFR 59.5 (b) (1). The limitations on referrals do not apply in cases in which a referral is made for medical indications.

3. **Advocacy Activities:** A Title X Project may not promote or encourage the use of Abortion as a method of family planning through advocacy activities such as providing speakers to debate in opposition to anti-abortion speakers, bringing legal action to liberalize statutes relating to abortion, or producing and/or showing films that encourage or promote a favorable attitude toward abortion as a method of family planning. Films that present only neutral, factual information about abortion are permissible. A Title X Project may be a dues paying participant in a national abortion advocacy organization, so long as there are other legitimate program-related reasons for the affiliation (such as access to certain information or data useful to the Title X Project. A Title X Project may also discuss abortion as an available alternative when a family planning method fails in a discussion of relative risks of various methods of contraception.

4. **Separation:** Non-Title X abortion activities must be separate and distinct from Title X project activities. Where an agency conducts abortion activities that are not part of the Title X Project and would not be permissible if they were, the agency must ensure that the Title X supported project is separate and distinguishable from those other activities. What must be looked at is whether the abortion element in a program of family planning services is so large and so intimately related to all aspects of the program is to make it difficult or impossible to separate the eligible and non-eligible items of cost.

The Title X Project is the set of activities the agency agreed to perform in the relevant grant documents as a condition of receiving Title X funds. A grant applicant may include both project and non-project activities in its grant application, and, so long as these are properly distinguished from each other and prohibited activities are not reflected in the amount of the total approved budget, no problem is created. Separation of Title X from abortion activities does not require separate agencies or even a separate health care facility, but separate bookkeeping entries alone will not satisfy the spirit of the law. Mere technical allocation of funds, attributing federal dollars to non-abortion activities, is not a legally supportable avoidance of Section 1008.

Certain kinds of shared facilities are permissible, so long as it is possible to distinguish between the Title X supported activities and non Title X abortion-related activities: (A) a common waiting room is permissible, as long as the costs are properly pro-rated, (B) common staff is permissible, as long as salaries are properly allocated and all abortion related activities of the staff members are performed in a program which is entirely

separate from the Title X Project; (C) a hospital offering abortions for family planning purposes and also housing a Title X Project is permissible, as long as the abortion activities are sufficiently separate from the Title X Project; and (D) maintenance of a single file system for abortion and family planning patients is permissible, so long as costs are properly allocated.

Whether a violation of Section 1008 has occurred is determined by whether the prohibited activity is part of the funded project, not by whether it has been paid for by federal or non-federal funds. An agency may demonstrate that prohibited abortion-related activities are not part of the Title X Project by various means, including counseling and services protocols, intake and referral procedures, material review procedures, and other administrative procedures.