



## 1.2 PROHIBITION OF ABORTION

### POLICY:

Title X recipients must:

Not provide abortion as a method of family planning as part of the Title X project. (Section 1008, PHS Act; Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, 138 Stat. 652 (2024); 42 CFR § 59.5(a)(5))

Prohibit providing 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 abortion within Title X program activities, or failing to preserve sufficient separation between Title X program activities and abortion-related activities. (65 Fed. Reg. 41281 (July 3, 2000))

Prohibit promoting or encouraging 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. (65 Fed. Reg. 41281, 41282 (July 3, 2000))

Ensure that non-Title X abortion activities are separate and distinct from Title X project activities. Where recipients conduct abortion activities that are not part of the Title X project and would not be permissible if they were, the recipient 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 as to make it difficult or impossible to separate the eligible and noneligible items of cost. The Title X project is the set of activities the recipient 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 recipients or even a separate health 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

Effective Date: September 2025

Last Reviewed: August 2025, August 2024, July 2023

Next Scheduled Review: August 2026



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: i. a common waiting room is permissible, as long as the costs properly pro-rated, ii. common staff is permissible, so 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, iii. 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 iv. maintenance of a single file system for abortion and family planning patients is permissible, so long as costs are properly allocated. (65 Fed. Reg. 41281, 41282 (July 3, 2000))

A Title X project may not provide pregnancy options counseling which promotes abortion or encourages persons to obtain abortion, 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 abortion, which may include providing a 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. (65 Fed. Reg. 41281 (July 3, 2000))

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 where the woman's life would be endangered), 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. (65 Fed. Reg. 41281 (July 3, 2000)).

Section 205 of Pub. L. 94-63 states: "Any person who receives, under any program receiving Federal assistance, compensation for services, who coerces or endeavors to coerce any person to undergo an abortion or sterilization procedure by threatening such person with the loss of, or disqualification for the receipt of, any benefit or service under a program receiving Federal financial assistance shall be fined not more than \$1,000 or imprisoned for not more than one year, or both."

42 U.S.C. 300a-8 provides that any officer or employee of the United States, officer or employee of any State, political subdivision of a State, or any other entity, which administers or supervises the administration of any program receiving Federal financial assistance, or person who receives, under any program receiving Federal assistance, compensation for services, who coerces or endeavors to coerce any person to undergo an abortion or sterilization procedure by threatening such person with the loss of, or disqualification for the receipt of, any benefit or service under a program receiving Federal financial assistance shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.



**PROCEDURE:**

Subrecipients must:

- Offer pregnant clients the opportunity to be provided information and counseling regarding each of the following options:
  - Prenatal care and delivery
  - Infant care, foster care, or adoption; and
  - Pregnancy termination
    - If requested to provide such information and counseling, provide neutral, factual information and nondirective counseling on each option, and referral upon request, except with respect to any option(s) about which the pregnant client indicates they do not wish to receive such information and counseling.

ND FPP will require documentation from subrecipients/service sites to ensure compliance with this policy.

Administrative policies at service sites prohibit the site from providing abortion as a method of family planning part of the Title X project.

ND FPP includes language in subrecipient contracts addressing these requirements.

Financial documentation at service sites demonstrates that Title X funds are not used for abortion services.

**RESOURCES:**

ND DHHS FPP Family Planning Statement of Understanding

<https://www.hhs.nd.gov/sites/www/files/documents/DHS%20Legacy/FAMILYPLANNINGSTATEMENTOFUNDERSTANDING.pdf>

Title X Program Handbook

<https://opa.hhs.gov/sites/default/files/2025-03/title-x-program-handbook-dec-2024.pdf>