What the Trump Administration's Final Regulatory Changes Mean for Title X

Kinsey Hasstedt,Guttmacher Institute
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Today, March 4th, the Trump administration published in the *Federal Register* a final rule making changes to the federal regulations governing the Title X national family planning program, just over a week after preliminarily releasing it on the Department of Health and Human Services Office of Population Affairs' website. When it was proposed in June 2018, this sweeping regulatory overhaul elicited more than 500,000 public comments, including calls for the administration to abandon its intended changes. The Guttmacher Institute was among those expressing opposition to the administration's attempt to sabotage this program on which four million people rely for high-quality family planning care each year. Others opposing the rule included health care providers of all stripes, public health associations, legal and ethical experts, reproductive justice advocates, policymakers and many others.

Despite this wide-ranging concern for the integrity of Title X, the administration finalized its proposed rule with relatively minor changes and clarifications. Such disregard for the potential harm to providers and patients underscores that this rule is intended not to advance individuals' reproductive health and well-being, but rather to serve as a key component of the Trump administration's broader ideological agenda. If implemented, the final rule would impose coercive standards of care on patients, subvert the nationwide network of family planning providers that Title X supports, and diminish access to affordable care.

Coercive counseling

As in the proposed version, the final rule eliminates Title X's long-standing requirement that all pregnant patients be offered nondirective pregnancy options counseling, including information about parenting, adoption and abortion. Eliminating this requirement summarily dismisses the evidence-informed clinical recommendations for providing high-quality family planning care that govern Title X—a move that defies medical standards and logic. Pregnant patients seeking abortion counseling could simply be denied such information. And for providers committed to offering unbiased, factual abortion counseling, the final rule limits such counseling to physicians or "advanced practice providers"; that latter category is defined to include only those with "at least a graduate level degree" and excludes highly trained providers who also play an important role in delivering counseling in Title X settings, such as registered nurses, public health nurses, health educators and clinical social workers.

The administration declines to meaningfully define what kind of "nondirective" counseling would be deemed acceptable, instead saying it will clarify in future guidance. In the meantime,

the rule promotes confusion: The preamble emphasizes that providers cannot "promote, encourage or advocate" for abortion, and the final regulatory text prohibits "any counseling…as an indirect means of encouraging or promoting abortion as a method of family planning." Taken together with the rule's stated intent to expand the administration's auditing and enforcement authority, these restrictions could have a damaging "chilling effect" on providers.

The final rule even more blatantly prohibits abortion referrals than did the proposed version. The rule repeals Title X's long-standing requirement to offer referral for all pregnancy options, and instead permits providers either to refuse a patient's request for abortion referral or to offer an intentionally misleading list of comprehensive primary care sites. That list would have to include prenatal care providers, and may or may not include some who also offer abortion. Neither the list nor clinic staff would be allowed to denote those abortion providers in any way. Together, these counseling and referral restrictions would dramatically undermine Title X patients' right to make informed decisions about their own reproductive health care.

Moreover, the rule mandates that all pregnant patients at Title X sites be referred for prenatal care, regardless of their wishes. The administration asserts that "prenatal referrals are required and medically necessary for the health of the pregnant mother, as well as the unborn baby." This language again belies the administration's inappropriately ideological motivation. While appropriate prenatal care is indeed recommended for individuals who choose to carry a pregnancy to term, those who decide to terminate their pregnancies need information on and referral for abortion services. Individuals' pregnancy needs are not one-size-fits-all, and these coercive provisions undermine Title X's until-now bedrock commitment to patients' voluntary receipt of services and patients' trust in providers.

The rule would have a particularly troubling impact among the disproportionately low-income, uninsured, young and otherwise marginalized individuals who rely on Title X–supported providers and services and who have faced a long history of reproductive coercion by the federal government and other public entities.

Subverting the nationwide provider network

The rule is designed to fundamentally shift the composition of sites supported by Title X in a number of ways. The rule seeks to force providers that offer abortion using non–Title X funds from the program, by imposing unnecessary and stringent requirements for physical and financial separation of Title X–funded activities from abortion-related services. Given the extensive degree to which such separation would be required, the rule stands to deny Title X funding not just to individual health centers, but also to entire agencies operating multiple health centers where only some offer abortion. Moreover, while the rule undoubtedly targets abortion providers, the wide range of services that fall under the administration's construct of prohibited abortion-related activities stand to impact the Title X provider network as a whole.

These restrictions will impact Planned Parenthood affiliates, which serve 41% of women obtaining contraceptive care from Title X sites, as well as many other highly qualified providers across the country will also be affected. For example, Maine Family Planning—long the state's sole Title X grantee and a critical source of family planning care—has announced a

legal challenge to stop the rule's implementation, as has the National Family Planning and Reproductive Health Association, which represents Title X family planning providers nationwide.

The rule also finalizes a preference for primary care–focused providers over those focused on reproductive health services, despite considerable evidence and clearly articulated concerns from primary care providers that these sites cannot serve as the sum total of the nation's family planning safety net—particularly under the rule's harmful counseling and referral restrictions.

Moreover, the rule deletes current Title X grant criteria emphasizing the "adequacy of the applicant's facilities and staff" in delivering family planning care. It includes new criteria that promote the inclusion of entities new to Title X, specifically those proposing "innovative ways to provide services to unserved or underserved communities," and a "broad range of diverse subrecipients." These new criteria may seem innocuous, however, the preamble offers further insight into the types of providers intended to benefit most from these changes: entities and individual providers that "refuse" to offer abortion counseling and referrals due to religious or moral objections, and sites that "offer a single method or limited methods—including providers that might do so for reasons of conscience." The rule is encouraging participation from entities that prioritize their own religious or moral beliefs over patient-centered care, at the expense of skilled family planning providers committed to delivering evidence-based care.

Reducing, not increasing, access to care

Taken together, the rule's changes threaten patients' voluntary choice of contraceptive methods—despite the administration's claims to the contrary. The preamble argues that shifting the composition of the Title X network will help address "gaps" in access to care, and that "increasing client choices among family planning clinics and methods in a project is likely to decrease unintended pregnancies, not increase them, because clients are more likely to visit clinics that respect their views and beliefs and to use methods that they desire and that fit their individual circumstances." These assertions have several fundamental flaws.

First, the current Title X network is demonstrably effective in minimizing gaps in service, supporting sites where publicly funded contraceptive care is needed most. In 2015, 64% of U.S. counties had at least one safety-net family planning center supported by Title X, and 90% of women in need of publicly funded family planning care lived in those counties. And in 21% of all counties, a Title X site was the only health center delivering publicly funded contraceptive care to at least 10 women annually.

Second, the administration is twisting what it means to ensure patients have a meaningfully broad range of contraceptive options. Individuals' ability to obtain the methods that are best for them and successfully avoid pregnancy depends not just on having a provider nearby, but also on the range of options available at those sites. Directing Title X funds away from reproductive health–focused providers—74% of which offer a full range of contraceptive methods onsite—and toward ideologically motivated single-method providers would sharply diminish patients' access to a broad range of options. And while the rule clarifies that contraceptive methods are expected to be provided as part of a Title X project, it repeals the requirement that "medically

approved" methods be among the broad range of options available, to the dismay of many provider organizations.

Third, current regulations have helped ensure that Title X providers are delivering care specifically intended to meet all patients' unique desires and medical needs. For those who want natural family planning instruction or supplies, 93% of Title X sites report offering them. And the most common reason women obtaining care at Title X sites that specialize in reproductive health report going to that provider instead of somewhere else is feeling that staff treat them respectfully.

Additionally, the rule finalizes requirements specific to adolescent patients that provider groups worry would compromise adolescents' willingness to seek sexual and reproductive health care from Title X–supported providers. For instance, clinicians would have to document their efforts to encourage all minors to involve parents or guardians in their decision making—or document why such participation was not encouraged. And any minor who has an STI or is pregnant would be subject to unnecessary interrogation, a requirement that stigmatizes sexually active adolescents and threatens their trust in providers.

What's next?

The rule's publication in the *Federal Register* started a 60-day clock until provisions of the rule start going into effect. However, numerous provider groups, state attorneys general and others are suing the Trump administration over the legality of the rule and to stop its implementation. So exactly how this rule's impact will play out, and when, will ultimately depend on what the courts have to say. Regardless, the Trump administration's intent remains clear: to fundamentally undermine the Title X program, and diminish its demonstrated ability to deliver high-quality family planning care to millions of people each and every year.