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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science

Provision of Abortion-Related Services in Family Planning Services Projects

AGENCY: Office of Population Affairs, OPHS, DHHS.

ACTION: Notice.

SUMMARY: This notice informs the public of the policies and interpretations relating to the statutory requirement that no funds appropriated under Title X of the Public Health Service Act be used in programs in which abortion is a method of family planning.

FOR FURTHER INFORMATION CONTACT: Denese O. Shervington, Office of Population Affairs, (301) 594-4001.

SUPPLEMENTARY INFORMATION: On February 5, 1993, the Department of Health and Human Services published in the Federal Register a notice of proposed rulemaking that proposed to revise the regulations at 42 CFR Part 59, Subpart A. Subpart A of Part 59 sets forth the program requirements applicable to grantees under section 1001 of the Public Health Service (PHS) Act, 42 U.S.C. 300, et seq. The notice of proposed rulemaking proposed to revise that subpart by readopting the program regulations as they existed prior to February 2, 1988. This action would have the effect of revoking the regulations published on February 2, 1988, commonly known as the "Gag Rule," which set forth standards for the compliance by such grantees with section 1008 of that Act, 42 U.S.C. 300a-6.

The February 5, 1993 notice of proposed rulemaking also proposed to reinstitute the pre-1988 policies and interpretations regarding compliance with section 1008. 58 FR 7464. As explained in the notice of proposed rulemaking, those policies and interpretations derived from previous opinions of the Department concerning section 1008. To promote more useful public comment in the rulemaking process, the Department subsequently made available a more detailed summary of the policies and interpretations and reopened the public comment period. 58 FR 34042 (June 23, 1993).

A number of public comments on the prior policies and interpretations were obtained during the reopened comment period, and the public comments received during both comment periods were generally focused on the prior policies and interpretations rather than on the proposed regulatory language. The Department has modified its prior interpretations in several particulars based in part on the public comment received. These modifications, and the grounds therefor, are described in the preamble to the final rules published on this date in the rules section of the Federal Register. The policies and interpretations, as so modified, are set out in the summary statement below. The summary below is also reorganized from the summary statement made available for public comment, for purposes of clarification.

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Program Policies Regarding the Title X National Family Planning Program and the
Section 1008 Abortion Prohibition

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advocating abortion within Title X program activities, or failing to preserve sufficient separation between Title X program activities and abortion-related activities.

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Pregnant women should be offered information and counseling regarding their pregnancies. Those requesting information on options for the management of an unintended pregnancy are to be given non-directive counseling on the following alternative courses of action, and referral upon request:

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The Title X project is the set of activities the grantee agreed to perform in the relevant grant documents as a condition of receiving Title X funds. A grant applicant may include both project and nonproject 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 grantees 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 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, 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; 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. A grantee may demonstrate that prohibited abortion-related activities are not part of the Title X project by various means, including counseling and service protocols, intake and referral procedures, material review procedures, and other administrative procedures.

Dated: Nov 22, 1999



Denese O. Shervington
Deputy Assistant Secretary for Population Affairs

DEPARTMENT OF HEALTH AND HUMAN SERVICES

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Dated: Nov 22, 1999



Denese O. Shervington
Deputy Assistant Secretary for Population Affairs



**Executive Office of the President of the United States
Office of Management and Budget**

*Office of Information and Regulatory Affairs
Human Resources and Housing Branch
New Executive Office Building
Room 10235
Washington, DC 20503*

FAX TRANSMITTAL

FAX: 202-395-6974
DATE: 3/24/2000
TO: Heather Howard
FROM: Allison Eyd

Total number of pages (Including Transmittal Sheet): 18 pgs.
Recipient's Fax Number: 6-2578
Recipient's Telephone Number: 6-7263

Comments: Pursuant to your request:

- 1) pending draft guidance;
- 2) pre-1988 Title X rule; &
- 3) pre-1988 program guidance republished
for comment in June 1993

BILLING CODE: 4160-M

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Denese O. Shervington
Deputy Assistant Secretary for Population Affairs

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ATTACHMENT B

Federal Register / Vol. 45, No. 108 / Tuesday, June 3, 1980 / Rules and Regulations

PART 59—GRANTS FOR FAMILY PLANNING SERVICES

Subpart A—Project Grants for Family Planning Services

Sec.

- 59.1 To what programs do these regulations apply?
- 59.2 Definitions.
- 59.3 Who is eligible to apply for a family planning services grant?
- 59.4 How does one apply for a family planning services grant?
- 59.5 What requirements must be met by a family planning project?
- 59.6 What procedures apply to assure the suitability of informational and educational material?
- 59.7 What criteria will the Department of Health and Human Services (HHS) use to decide which family planning services projects to fund and in what amount?
- 59.8 How is a grant awarded?
- 59.9 For what purposes may grant funds be used?
- 59.10 What other HHS regulations apply to grants under this subpart?
- 59.11 Confidentiality.
- 59.12 Inventions or discoveries.
- 59.13 Additional conditions.

Authority: The provisions of this Subpart A are issued under sec. 8(c), 84 Stat. 1507, 42 U.S.C. 300a-4; sec. 8(c), 84 Stat. 1506, 42 U.S.C. 300.

Subpart A—Project Grants for Family Planning Services

§ 59.1 To what programs do these regulations apply?

The regulations of this subpart are applicable to the award of grants under section 1001 of the Public Health Service Act (42 U.S.C. 300) to assist in the establishment and operation of voluntary family planning projects. These projects shall consist of the educational, comprehensive medical, and social services necessary to aid individuals to determine freely the number and spacing of their children.

§ 59.2 Definitions.

As used in this subpart:

"Act" means the Public Health Service Act, as amended.

"Family" means a social unit composed of one person, or two or more persons living together, as a household.

"Low income family" means a family whose total annual income does not exceed 100 percent of the most recent Community Services Administration Income Poverty Guidelines (45 CFR 1060.2). "Low-income family" also includes members of families whose annual family income exceeds this amount, but who, as determined by the

project director, are unable, for good reasons, to pay for family planning services. For example, unemancipated minors who wish to receive services on a confidential basis must be considered on the basis of their own resources.

"Nonprofit," as applied to any private agency, institution, or organization, means that no part of the entity's net earnings benefit, or may lawfully benefit, any private shareholder or individual.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

"State" means one of the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, Northern Marianas, or the Trust Territory of the Pacific Islands.

§ 59.3 Who is eligible to apply for a family planning services grant?

Any public or nonprofit private entity in a State may apply for a grant under this subpart.

§ 59.4 How does one apply for a family planning services grant?

(a) Application for a grant under this subpart shall be made on an authorized form.

(b) An individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of the grant, including the regulations of this subpart, must sign the application.

(c) The application shall contain—
(1) a description, satisfactory to the Secretary, of the project and how it will meet the requirements of this subpart;

(2) a budget and justification of the amount of grant funds requested;

(3) a description of the standards and qualifications which will be required for all personnel and for all facilities to be used by the project; and

(4) such other pertinent information as the Secretary may require.

§ 59.5 What requirements must be met by a family planning project?

(a) Each project supported under this part must:

(1) Provide a broad range of acceptable and effective medically approved family planning methods (including natural family planning methods) and services (including infertility services and services for adolescents). If an organization offers only a single method of family planning, such as natural family planning, it may

participate as part of a project as long as the entire project offers a broad range of family planning services.

(2) Provide services without subjecting individuals to any coercion to accept services or to employ or not to employ any particular methods of family planning. Acceptance of services must be solely on a voluntary basis and may not be made a prerequisite to eligibility for, or receipt of, any other service, assistance from or participation in any other program of the applicant.¹

(3) Provide services in a manner which protects the dignity of the individual.

(4) Provide services without regard to religion, race, color, national origin, handicapping condition, age, sex, number of pregnancies, or marital status.

(5) Not provide abortions as a method of family planning.

(6) Provide that priority in the provision of services will be given to persons from low-income families.

(7) Provide that no charge will be made for services provided to any person from a low-income family except to the extent that payment will be made by a third party (including a Government agency) which is authorized to or is under legal obligation to pay this charge.

(8) Provide that charges will be made for services to persons other than those from low-income families in accordance with a schedule of discounts based on ability to pay, except that charges to persons from families whose annual income exceeds 250 percent of the levels set forth in the most recent CSEA Income Poverty Guidelines (45 CFR 1060.2) will be made in accordance with a schedule of fees designed to recover the reasonable cost of providing services.

¹Section 208 of Pub. L. 94-63 states: "Any (1) officer or employee of the United States, (2) 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 (3) person who receives, under any program receiving Federal assistance, compensation for service, who conspires or endeavors to cause 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."

(9) If a third party (including a Government agency) is authorized or legally obligated to pay for services, all reasonable efforts must be made to obtain the third-party payment without

application of any discounts. Where the cost of services is to be reimbursed under title XIX or title XX of the Social Security Act, a written agreement with the title XIX or title XX agency is required.

(10)(i) Provide that if an application relates to consolidation of service areas or health resources or would otherwise affect the operations of local or regional entities, the applicant must document that these entities have been given, to the maximum feasible extent, an opportunity to participate in the development of the application. Local and regional entities include existing or potential subgrantees which have previously provided or propose to provide family planning services to the area proposed to be served by the applicant.

(ii) Provide an opportunity for maximum participation by existing or potential subgrantees in the ongoing policy decisionmaking of the project.

(11) Provide for an Advisory Committee as required by § 59.6. (b) In addition to the requirements of subsection (a) of this section, each project must meet each of the following requirements unless the Secretary determines that the project has established good cause for its omission. Each project must:

(1) Provide for medical services related to family planning (including physician's consultation, examination, prescription, and continuing supervision, laboratory examination, contraceptive supplies) and necessary referral to other medical facilities when medically indicated, and provide for the effective usage of contraceptive devices and practices.

(2) Provide for social services related to family planning, including counseling, referral to and from other social and medical service agencies, and any ancillary services which may be necessary to facilitate clinic attendance.

(3) Provide for informational and educational programs designed to (i) achieve community understanding of the objectives of the program, (ii) inform the community of the availability of services, and (iii) promote continued participation in the project by persons to whom family planning services may be beneficial.

(4) Provide for orientation and inservice training for all project personnel.

(5) Provide services without the imposition of any durational residency requirement or requirement that the patient be referred by a physician.

(6) Provide that family planning medical services will be performed under the direction of a physician with special training or experience in family planning.

(7) Provide that all services purchased for project participants will be

authorized by the project director or his designee on the project staff.

(8) Provide for coordination and use of referral arrangements with other providers of health care services, local health and welfare departments, hospitals, voluntary agencies, and health services projects supported by other Federal programs.

(9) Provide that if family planning services are provided by contract or other similar arrangements with actual providers of services, services will be provided in accordance with a plan which establishes rates and methods of payment for medical care. These payments must be made under agreements with a schedule of rates and payment procedures maintained by the grantee. The grantee must be prepared to substantiate that these rates are reasonable and necessary.

(10) Provide, to the maximum feasible extent, an opportunity for participation in the development, implementation, and evaluation of the project by persons broadly representative of all significant elements of the population to be served, and by others in the community knowledgeable about the community's needs for family planning services.

§ 59.5 What procedures apply to assure the suitability of informational and educational material?

(a) A grant under this section may be made only upon assurances satisfactory to the Secretary that the project shall provide for the review and approval of informational and educational materials developed or made available under the project by an Advisory Committee prior to their distribution, to assure that the materials are suitable for the population or community to which they are to be made available and the purposes of title X of the Act. The project shall not disseminate any such materials which are not approved by the Advisory Committee.

(b) The Advisory Committee referred to in subsection (a) of this section shall be established as follows:

(1) *Size.* The Committee shall consist of no fewer than five but not more than nine members, except that this provision

may be waived by the Secretary for good cause shown.

(2) *Composition.* The Committee shall include individuals broadly representative (in terms of demographic factors such as race, color, national origin, handicapped condition, sex, and age) of population or community for which the materials are intended.

(3) *Function.* In reviewing materials, the Advisory Committee shall:

(i) Consider the educational and cultural backgrounds of individuals to whom the materials are addressed;

(ii) Consider the standards of the population or community to be served with respect to such materials;

(iii) Review the content of the material to assure that the information is factually correct;

(iv) Determine whether the material is suitable for the population or community to which it is to be made available; and

(v) Establish a written record of its determinations.

§ 59.7 What criteria will Health and Human Services use to decide which family planning services projects to fund and in what amount?

(a) Within the limits of funds available for these purposes, the Secretary may award grants for the establishment and operation of those projects which will in the Department's judgment best promote the purposes of section 1001 of the Act, taking into account:

(1) The number of patients and, in particular, the number of low-income patients to be served;

(2) The extent to which family planning services are needed locally;

(3) The relative need of the applicant;

(4) The capacity of the applicant to make rapid and effective use of the Federal assistance;

(5) The adequacy of the applicant's facilities and staff;

(6) The relative availability of non-Federal resources within the community to be served and the degree to which those resources are committed to the project; and

(7) The degree to which the project plan adequately provides for the requirements set forth in these regulations.

(b) The Secretary shall determine the amount of any award on the basis of his estimate of the sum necessary for the performance of the project. No grant may be made for less than 80 percent of the project's costs, as so estimated, unless the grant is to be made for a

Federal Register / Vol. 45, No. 108 / Tuesday, June 3, 1980 / Rules and Regulations

project which was supported, under section 1001, for less than 90 percent of its costs in fiscal year 1975. In that case, the grant shall not be for less than the percentage of costs covered by the grant in fiscal year 1975.

(c) No grant may be made for an amount equal to 100 percent of the project's estimated costs.

§ 59.9 How is a grant awarded?

(a) The notice of grant award specifies how long HHS intends to support the project without requiring the project to re compete for funds. This period, called the project period, will usually be for 3 to 5 years.

(b) Generally the grant will initially be for 1 year and subsequent continuation awards will also be for 1 year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by HHS that continued funding is in the best interest of the Government.

(c) Neither the approval of any application nor the award of any grant commits or obligates the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

§ 59.9 For what purpose may grant funds be used?

Any funds granted under this subpart shall be expended solely for the purpose for which the funds were granted in accordance with the approved application and budget, the regulations of this subpart, the terms and conditions of the award, and the applicable cost principles prescribed in Subpart Q of 45 CFR Part 74.

§ 59.10 What other HHS regulations apply to grants under this subpart?

Attention is drawn to the following HHS Department-wide regulations which apply to grants under this subpart. These include:

42 CFR Part 80—PHS Informal Grant Appeals Procedure

45 CFR Part 16—Department Grant Appeals Process

45 CFR Part 19—Limitation on Payments or Reimbursements for Drugs

45 CFR Part 74—Administration of Grants

45 CFR Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services' Implementation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and Procedures for Hearings Under Part 80

45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

45 CFR Part 90—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance.

42 CFR Part 122, Subpart E—Health System Agency Reviews of Certain Proposed Uses of Federal Health Funds.

§ 59.11 Confidentiality.

All information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual's consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals.

§ 59.12 Inventions or discoveries.

(a) A project grant award is subject to the regulations of HHS as set forth in 45 CFR Parts 8 and 9, as amended. These regulations shall apply to any activity of the project for which grant funds are used, whether the activity is part of an approved project or is an unexpected byproduct of that project.

(b) The grantee and the Secretary shall take appropriate measures to assure that no contracts, assignments, or other arrangements inconsistent with the grant obligation are continued or entered into and that all personnel involved in the grant activity are aware of and comply with such obligations.

§ 59.12 Additional conditions.

The Secretary may, with respect to any grant, impose additional conditions prior to or at the time of any award, when in the Department's judgment these conditions are necessary to assure or protect advancement of the approved program, the interests of public health, or the proper use of grant funds.

(FR Doc. 80-10733 Filed 6-3-80; 8:41 am)

BILLING CODE 4110-04-M

Memorandum

JUN 24 1993

Date
From Acting Deputy Assistant Secretary for Population Affairs
Subject Federal Register Notice Informing the Public of the Pre-1988
Title X Abortion Policies and Extending the Public Comment
Period for 45 days -- ACTION
To Regional Health Administrators
Regions I-X

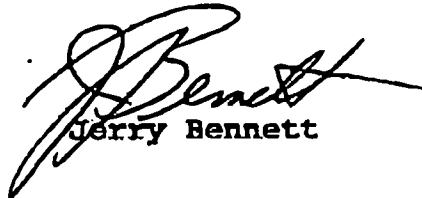
Attached is a copy of a recent Federal Register notice that:

- (1) Informs the public of the availability of a statement of the pre-1988 abortion policies governing the Title X family planning projects, and
- (2) Reopens for an additional 45 days the comment period established under the February 5, 1993 notices that suspended the "gag rule" and proposed to return the Title X program to standards that were operative prior to 1988.

The initial comment period closed on April 6; however, in response to requests from the public for further information on the prior policies and to obtain helpful public comment, we have chosen to extend the comment period.

Also, as the notice states, attached is a copy of the pre-1988 abortion policy summary statement which you are to make available at the regional office for public inspection and copying during normal business hours. A copy will also be available at central office. A copy of the policy statement may be provided to persons requesting such a copy either at the time of on-site inspection or by telephone request. Written comments received by the Department in response to the February 5, 1993, Federal Register notice and comments received under this extension will continue to be available for public inspection during normal business hours at central office.

If you have any questions or require more information, please call me.


Jerry Bennett

Attachments (2)

- (1) June 18, 1993 Federal Register Notice
- (2) DHHS Policies Regarding the Title X National Family Planning Program and the Section 1008 Abortion Prohibition

*Guidance
Preamble*

Department of Health and Human Services
Policies regarding the Title X National Family Planning Program
and the Section 1008 Abortion Prohibition

Section 1008 of the Title X statute states: "None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning." It has been the position of the Department since 1971 that this prohibition applies not only to the performance of abortion by a Title X project, but also to the conduct of certain abortion-related activities by the project. On the other hand, it has also been the Department's position that the prohibition does not apply to all the activities of a Title X grantee, but only to those within the Title X project. This statement sets out more specifically the Department policy in existence prior to the imposition of the 1988 "Gag Rule" with regard to implementation of §1008.

*proposed
guidance
re-gag
rule*

In general, the Department views §1008 as prohibiting Title X programs from engaging in activities which promote or encourage abortion as a method of family planning.

- o However, §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.
- o 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 does not fall afoul of §1008.

Thus, it has been held that a Title X project may not provide services that directly facilitate the use of abortion as a method of family planning. Actions prohibited in a Title X project include 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, 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.

Abortion Counseling and Referral

Although the Department in 1988 acted to prohibit options counseling and referral in Title X projects, the Department has since returned to the standards of the 1981 Title X Guidelines, which state:

Pregnant women should be offered information and counseling regarding their pregnancies. Those requesting information on options for the management of an unintended pregnancy are to be given non-directive counseling on the following alternative courses of action, and referral upon request:

- o Prenatal care and delivery
- o Infant care, foster care, or adoption
- o Pregnancy termination.

Limitations on Abortion Counseling and Referral

- o A Title X project may not provide pregnancy counseling which promotes abortion or encourages persons to obtain abortion.
- o However, the project may advise patients of all medical options and the accompanying risks.
- o A Title X project may, consistent with §1008, provide a "mere referral" for abortion. "Mere referral" means providing a patient with the name, address, and/or telephone number of an abortion provider, without further affirmative action to secure the services.
- o However, 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 §1008 and is required by 42 CFR 59.5(b)(1). The "mere referral" limitation does not apply in cases in which a referral is required by medical indications.

Advocacy Activities

- o 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 tend to encourage or promote a favorable attitude toward abortion as a method of family planning.
- o However, 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).
- o A Title X project may also discuss abortion as a backup method of family planning in a discussion of relative risks of various methods of contraception.

It should be noted that the advocacy limitations described here refer to the Title X project, and not to non-project activities supported by the Title X grantee.

Separation

Non-Title X abortion activities must be separate and distinct from Title X project activities.

- o Where a grantee-conducts abortion activities that are not part of the Title X project and would not be permissible if they were, the grantee must ensure that the Title X-supported project is separate and distinguishable from those, other activities.
- o The Title X project is the set of activities the grantee agreed to perform in the relevant grant documents as a condition of receiving Title X funds.
- o 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 compliance problem is created.

- o Separation of Title X from abortion activities does not require separate grantees 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 §1008.
- o A common waiting room has likewise been held to be permissible, as long as the costs are properly prorated and no impermissible materials are present.
- o Similarly, 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.
- o 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.
- o Maintenance of a single file system for abortion and family planning patients is permissible, so long as costs are properly allocated.

- o What must be looked at is whether the abortion element in a program of family planning services bulks so large and is so intimately related to all aspects of the program as to make it difficult or impossible to separate the eligible and non-eligible items of cost.
- o Whether a violation of §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.

 Date 20 May 1993
Jerry Bennett
Acting Deputy Assistant Secretary
for Population Affairs

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new language

handicapping condition, age, sex, number of pregnancies, or marital status.

(5) Not provide *[or promote or encourage]* abortion as a method of family planning. A

project must:

(i) Offer pregnant women the opportunity to be provided information and counseling regarding:

(A) Prenatal care and delivery;

(B) Infant care, foster care, or adoption; and

(C) Pregnancy termination.

If requested to provide such information and counseling, provide neutral, factual information and nondirective counseling, and appropriate referral on request, on each of the options, except for any options that the pregnant woman indicates that she does not wish to receive information and counseling about.

(ii) Ensure that project funds are not used for, and project activities are separate and distinct from, any non-title X activities of the grantee that provide or promote or encourage abortion as method of family planning.

(6) Provide that priority in the provision of services will be given to persons from low-income families.

(7) Provide that no charge will be made for services provided to any persons from a low-income family except to the extent that payment will be made by a third party (including a government agency) which is authorized to or is under legal obligation to pay this charge.

(8) Provide that charges will be made for services to persons other than those from low-income families in accordance with a schedule of discounts based on ability to pay, except that charges to persons from families whose annual income exceeds 250 percent of the levels set

in



FACSIMILE

From the Immediate Office of the Secretary Executive Secretariat

To: Allison EydFax#: 395-6974 395-5167Re: Draft language for discussion at tomorrow'sDate: mtg. onPages: including this cover sheet the GAGFrom the desk of: Rule

☒ LaVarne Burton
☐ Sandy Bart
☐ Kimberly Harold
☐ Christy Quigley
☐ Mirtha Beadle
☐ Scott Boule
☐ LaJuana Caldwell
☐ Carlos Cano
☐ Sean Donohue
☐ Neleen Bisenger
☐ Lorraine Fishback
☐ Johnathan Frieber

☐ Jackie White
☐ John Gallivan
☐ Carlos McCormick
☐ Martina Varnado
☐ Ann White
☐ Melvin Whitfield
☐ Other _____

Page 6

Comments: _____

U.S. Department of Health and Human Services
Immediate Office of the Secretary- Executive Secretariat

200 Independence Avenue SW
Washington, DC 20201
Fax: 205-8870 or 205-2135

For the reasons set out in the preamble, subpart A of part 59 of title 42, Code of Federal Regulations, is hereby revised to read as follows:

PART 59 - Grants for Family Planning Services

Subpart A - Project Grants for Family Planning Services

Sec.

- 59.1 To what programs do these regulations apply?
- 59.2 Definitions.
- 59.3 Who is eligible to apply for a family planning services grant?
- 59.4 How does one apply for a family planning services grant?
- 59.5 What requirements must be met by a family planning project?
- 59.6 What procedures apply to assure the suitability of informational and educational material?
- 59.7 What criteria will the Department of Health and Human Services use to decide which family planning services projects to fund and in what amount?
- 59.8 How is a grant awarded?
- 59.9 For what purposes may grant funds be used?
- 59.10 What other HHS regulations apply to grants under this subpart?
- 59.11 Confidentiality.
- 59.12 Additional conditions.

Subpart B - [Reserved]

Subpart C - Grants for Family Planning Service Training

- 59.201 Applicability.
- 59.202 Definitions.
- 59.203 Eligibility.
- 59.204 Application for a grant.
- 59.205 Project requirements.
- 59.206 Evaluation and grant award.
- 59.207 Payments.
- 59.208 Use of project funds.
- 59.209 Civil rights.
- 59.210 Inventions or discoveries
- 59.211 Publications and copyright.
- 59.212 Grantee accountability.
- 59.213 [Reserved]
- 59.214 Additional conditions.
- 59.215 Applicability of 45 CFR part 74.

AUTHORITY: 42 U.S.C. 300a-4.

Subpart A - Project Grants for Family Planning Services

Sec.

- 59.1 To what programs do these regulations apply?
- 59.2 Definitions.
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- 59.9 For what purposes may grant funds be used?
- 59.10 What other HHS regulations apply to grants under this subpart?
- 59.11 Confidentiality.
- 59.12 Additional conditions.

§ 59.1 To what programs do these regulations apply?

The regulations of this subpart are applicable to the award of grants under section 1001 of the Public Health Service Act (42 U.S.C. 300) to assist in the establishment and operation of voluntary family planning projects. These projects shall consist of the educational, comprehensive medical, and social services necessary to aid individuals to determine freely the number and spacing of their children.

§ 59.2 Definitions.

As used in this subpart:

“Act” means the Public Health Service Act, as amended.

“Family” means a social unit composed of one person, or two or more persons living together, as a household.

“Low income family” means a family whose total annual income does not exceed 100 percent of the most recent Poverty Guidelines issued pursuant to 42 U.S.C. 9902(2). “Low-income family” also includes members of families whose annual family income exceeds this

amount, but who, as determined by the project director, are unable, for good reasons, to pay for family planning services. For example, unemancipated minors who wish to receive services on a confidential basis must be considered on the basis of their own resources.

"Nonprofit," as applied to any private agency, institution, or organization, means that no part of the entity's net earnings benefit, or may lawfully benefit, any private shareholder or individual.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

"State" includes, in addition to the several States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the U.S. Virgin Islands, American Samoa, the U.S. Outlying Islands (Midway, Wake, et al.), the Marshall Islands, the Federated States of Micronesia and the Republic of Palau.

§59.3 Who is eligible to apply for a family planning services grant?

Any public or nonprofit private entity in a State may apply for a grant under this subpart.

§59.4 How does one apply for a family planning services grant?

- (a) Application for a grant under this subpart shall be made on an authorized form.
- (b) An individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of the grant, including the regulations of this subpart, must sign the application.
- (c) The application shall contain -
 - (1) A description, satisfactory to the Secretary, of the project and how it will meet the requirements of this subpart;

- (2) A budget and justification of the amount of grant funds requested;
- (3) A description of the standards and qualifications which will be required for all personnel and for all facilities to be used by the project; and
- (4) Such other pertinent information as the Secretary may require.

§59.5 What requirements must be met by a family planning project?

- (a) Each project supported under this part must:
 - (1) Provide a broad range of acceptable and effective medically approved family planning methods (including natural family planning methods) and services (including infertility services and services for adolescents). If an organization offers only a single method of family planning, it may participate as part of a project as long as the entire project offers a broad range of family planning services.
 - (2) Provide services without subjecting individuals to any coercion to accept services or to employ or not to employ any particular methods of family planning. Acceptance of services must be solely on a voluntary basis and may not be made a prerequisite to eligibility for, or receipt of, any other services, assistance from or participation in any other program of the applicant. ^{1/}
 - (3) Provide services in a manner which protects the dignity of the individual.
 - (4) Provide services without regard to religion, race, color, national origin,

^{1/}Section 205 of Pub. L. 94-63 states: "Any (1) officer or employee of the United States, (2) 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 (3) 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."

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handicapping condition, age, sex, number of pregnancies, or marital status.

(5) Not provide ~~or promote or encourage~~ abortion as a method of family planning. A project must:

(i) Offer pregnant women the opportunity to be provided information and counseling

regarding: (A) Prenatal care and delivery;
(B) Infant care, foster care, or adoption; and

(C) Pregnancy termination.

If requested to provide such information and counseling, provide neutral, factual information and nondirective counseling, ~~and appropriate referral on request,~~ on each of the options, except for any options ^{about which} that the pregnant woman indicates that she does not wish to receive information and counseling about.

(ii) Ensure that project funds are not used for, and project activities are separate and distinct from, any non-title X activities of the grantee that provide or promote or encourage abortion as method of family planning.

(6) Provide that priority in the provision of services will be given to persons from low-income families.

(7) Provide that no charge will be made for services provided to any persons from a low-income family except to the extent that payment will be made by a third party (including a government agency) which is authorized to or is under legal obligation to pay this charge.

(8) Provide that charges will be made for services to persons other than those from low-income families in accordance with a schedule of discounts based on ability to pay, except that charges to persons from families whose annual income exceeds 250 percent of the levels set forth in the most recent Poverty Guidelines issued pursuant to 42 U.S.C. 9902(2) will be made in

Draft Language

accordance with a schedule of fees designed to recover the reasonable cost of providing services.

(9) If a third party (including a Government agency) is authorized or legally obligated to pay for services, all reasonable efforts must be made to obtain the third-party payment without application of any discounts. Where the cost of services is to be reimbursed under title XIX, XX, or XXI of the Social Security Act, a written agreement with the title XIX, XX or XXI agency is required.

(10)(i) Provide that if an application relates to consolidation of service areas or health resources or would otherwise affect the operations of local or regional entities, the applicant must document that these entities have been given, to the maximum feasible extent, an opportunity to participate in the development of the application. Local and regional entities include existing or potential subgrantees which have previously provided or propose to provide family planning services to the area proposed to be served by the applicant.

(ii) Provide an opportunity for maximum participation by existing or potential subgrantees in the ongoing policy decisionmaking of the project.

(11) Provide for an Advisory Committee as required by §59.6.

(b) In addition to the requirements of paragraph (a) of this section, each project must meet each of the following requirements unless the Secretary determines that the project has established good cause for its omission. Each project must:

(1) Provide for medical services related to family planning (including physician's consultation, examination prescription, and continuing supervision, laboratory examination, contraceptive supplies) and necessary referral to other medical facilities when medically indicated, and provide for the effective usage of contraceptive devices and practices.

(2) Provide for social services related to family planning, including counseling,

referral to and from other social and medical services agencies, and any ancillary services which may be necessary to facilitate clinic attendance.

(3) Provide for informational and educational programs designed to -

(i) Achieve community understanding of the objectives of the program;

(ii) Inform the community of the availability of services; and education.

(iii) Promote continued participation in the project by persons to whom family planning services may be beneficial.

(4) Provide for orientation and in-service training for all project personnel.

(5) Provide services without the imposition of any durational residency requirement or requirement that the patient be referred by a physician.

(6) Provide that family planning medical services will be performed under the direction of a physician with special training or experience in family planning.

(7) Provide that all services purchased for project participants will be authorized by the project director or his designee on the project staff.

(8) Provide for coordination and use of referral arrangements with other providers of health care services, local health and welfare departments, hospitals, voluntary agencies, and health services projects supported by other federal programs.

(9) Provide that if family planning services are provided by contract or other similar arrangements with actual providers of services, services will be provided in accordance with a plan which establishes rates and method of payment for medical care. These payments must be made under agreements with a schedule of rates and payment procedures maintained by the grantee. The grantee must be prepared to substantiate, that these rates are reasonable and necessary.

(10) Provide, to the maximum feasible extent, an opportunity for participation in the development, implementation, and evaluation of the project by persons broadly representative of all significant elements of the population to be served, and by others in the community knowledgeable about the community's needs for family planning services.

§59.6 What procedures apply to assure the suitability of informational and educational material?

(a) A grant under this section may be made only upon assurance satisfactory to the Secretary that the project shall provide for the review and approval of informational and educational materials developed or made available under the project by an Advisory Committee prior to their distribution, to assure that the materials are suitable for the population or community to which they are to be made available and the purposes of title X of the Act. The project shall not disseminate any such materials which are not approved by the Advisory Committee.

(b) The Advisory Committee referred to in paragraph (a) of this section shall be established as follows:

(1) Size. The Committee shall consist of no fewer than five but not more than nine members, except that this provision may be waived by the Secretary for good cause shown.

(2) Composition. The Committee shall include individuals broadly representative (in terms of demographic factors such as race, color, national origin, handicapped condition, sex, and age) of the population or community for which the materials are intended.

(3) Function. In reviewing materials, the Advisory Committee shall:

(i) Consider the educational and cultural backgrounds of individuals to whom the materials are addressed;

(ii) Consider the standards of the population or community to be served with respect to such materials:

(iii) Review the content of the material to assure that the information is factually correct;

(iv) Determine whether the material is suitable for the population or community to which is to be made available; and

(v) Establish a written record of its determinations.

§59.7 What criteria will the Department of Health and Human Services use to decide which family planning services projects to fund and in what amount?

(a) Within the limits of funds available for these purposes, the Secretary may award grants for the establishment and operation of those projects which will in the Department's judgment best promote the purposes of section 1001 of the Act, taking into account:

(1) The number of patients, and, in particular, the number of low-income patients to be served;

(2) The extent to which family planning services are needed locally;

(3) The relative need of the applicant;

(4) The capacity of the applicant to make rapid and effective use of the federal assistance;

(5) The adequacy of the applicant's facilities and staff;

(6) The relative availability of non-federal resources within the community to be served and the degree to which those resources are committed to the project; and

(7) The degree to which the project plan adequately provides for the requirements set forth in these regulations.

(b) The Secretary shall determine the amount of any award on the basis of his estimate of the sum necessary for the performance of the project. No grant may be made for less than 90 percent of the project's costs, as so estimated, unless the grant is to be made for a project which was supported, under section 1001, for less than 90 percent of its costs in fiscal year 1975. In that case, the grant shall not be for less than the percentage of costs covered by the grant in fiscal year 1975.

(c) No grant may be made for an amount equal to 100 percent for the project's estimated costs.

§59.8 How is a grant awarded?

(a) The notice of grant award specifies how long HHS intends to support the project without requiring the project to recompute for funds. This period, called the project period, will usually be for three to five years.

(b) Generally the grant will initially be for one year and subsequent continuation awards will also be for one year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by HHS that continued funding is in the best interest of the government.

(c) Neither the approval of any application nor the award of any grant commits or obligates the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

§59.9 For what purpose may grant funds be used?

Any funds granted under this subpart shall be expended solely for the purpose for which the funds were granted in accordance with the approved application and budget, the regulations of this subpart, the terms and conditions of the award, and the applicable cost principles prescribed in 45 CFR Part 74 or Part 92, as applicable.

§59.10 What other HHS regulations apply to grants under this subpart?

Attention is drawn to the following HHS Department-wide regulations which apply to grants under this subpart. These include:

37 CFR Part 401- Rights to inventions made by nonprofit organizations and small business firms under government grants, contracts, and cooperative agreements

42 CFR Part 50, Subpart D - Public Health Service grant appeals procedure

45 CFR Part 16 - Procedures of the Departmental Grant Appeals Board

45 CFR Part 74 - Uniform administrative requirements for awards and subawards to institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations; and certain grants and agreements with states, local governments and Indian tribal governments

45 CFR Part 80 - Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81 - Practice and procedure for hearings under Part 80 of this Title

45 CFR Part 84 - Nondiscrimination on the basis of handicap in programs and activities receiving or benefitting from Federal financial assistance

45 CFR Part 91 - Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

45 CFR Part 92 - Uniform administrative requirements for grants and cooperative agreements to
state and local governments

§59.11 Confidentiality.

All information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual's ^{documented} consent, except as ~~may be~~ necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals.

§59.12 Additional conditions.

The Secretary may, with respect to any grant, impose additional conditions prior to or at the time of any award, when in the Department's judgment these conditions are necessary to assure or protect advancement of the approved program, the interests of public health, or the proper use of grant funds.

consistent w/ new privacy reg

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handicapping condition, age, sex, number of pregnancies, or marital status.

(5) Not provide *[or promote or encourage]* abortion as a method of family planning. A project must:

(i) Offer pregnant women the opportunity to be provided information and counseling regarding:

(A) Prenatal care and delivery;

(B) Infant care, foster care, or adoption; and

(C) Pregnancy termination.

If requested to provide such information and counseling, provide neutral, factual information and nondirective counseling, and appropriate referral on request, on each of the options, except for any options that the pregnant woman indicates that she does not wish to receive information and counseling about.

(ii) Ensure that project funds are not used for, and project activities are separate and distinct from, any non-title X activities of the grantee that provide or promote or encourage abortion as method of family planning.

(6) Provide that priority in the provision of services will be given to persons from low-income families.

(7) Provide that no charge will be made for services provided to any persons from a low-income family except to the extent that payment will be made by a third party (including a government agency) which is authorized to or is under legal obligation to pay this charge.

(8) Provide that charges will be made for services to persons other than those from low-income families in accordance with a schedule of discounts based on ability to pay, except that charges to persons from families whose annual income exceeds 250 percent of the levels set

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science

Provision of Abortion-Related Services in Family Planning Services Projects

AGENCY: Office of Population Affairs, OPHS, DHHS.

ACTION: Notice.

SUMMARY: This notice informs the public of the policies and interpretations relating to the statutory requirement that no funds appropriated under Title X of the Public Health Service Act be used in programs in which abortion is a method of family planning.

FOR FURTHER INFORMATION CONTACT: Denese O. Shervington, Office of Population Affairs, (301) 594-4001.

SUPPLEMENTARY INFORMATION: On February 5, 1993, the Department of Health and Human Services published in the Federal Register a notice of proposed rulemaking that proposed to revise the regulations at 42 CFR Part 59, Subpart A. Subpart A of Part 59 sets forth the program requirements applicable to grantees under section 1001 of the Public Health Service (PHS) Act, 42 U.S.C. 300, et seq. The notice of proposed rulemaking proposed to revise that subpart by readopting the program regulations as they existed prior to February 2, 1988. This action would have the effect of revoking the regulations published on February 2, 1988, commonly known as the "Gag Rule," which set forth standards for the compliance by such grantees with section 1008 of that Act, 42 U.S.C. 300a-6.

The February 5, 1993 notice of proposed rulemaking also proposed to reinstitute the pre-1988 policies and interpretations regarding compliance with section 1008. 58 FR 7464. As explained in the notice of proposed rulemaking, those policies and interpretations derived from previous opinions of the Department concerning section 1008. To promote more useful public comment in the rulemaking process, the Department subsequently made available a more detailed summary of the policies and interpretations and reopened the public comment period. 58 FR 34042 (June 23, 1993).

A number of public comments on the prior policies and interpretations were obtained during the reopened comment period, and the public comments received during both comment periods were generally focused on the prior policies and interpretations rather than on the proposed regulatory language. The Department has modified its prior interpretations in several particulars based in part on the public comment received. These modifications, and the grounds therefor, are described in the preamble to the final rules published on this date in the rules section of the Federal Register. The policies and interpretations, as so modified, are set out in the summary statement below. The summary below is also reorganized from the summary statement made available for public comment, for purposes of clarification.

Accordingly, to provide guidance to grantees in order to promote uniform administration of the program and facilitate grantee compliance with the policies and interpretations that are being reinstituted in conjunction with the final regulations adopted on this date, provided below is a summary of the program policies and interpretations that relate to section 1008 of the PHS Act.

Program Policies Regarding the Title X National Family Planning Program and the
Section 1008 Abortion Prohibition

Section 1008 of the Title X statute, 42 U.S.C. 300a-6, states: "None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning." This prohibition applies not only to the performance of abortion by a Title X project, but also to the conduct of certain abortion-related activities by the project. However, the prohibition does not apply to all the activities of a Title X grantee, but only to those within the Title X project. This statement summarizes the Department policies and interpretations in existence prior to the imposition of the 1988 "Gag Rule" with regard to implementation of section 1008, as modified following the rulemaking of 1993.

1. General principles. In general, 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 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. According to the 1981 Title X Guidelines:

Pregnant women should be offered information and counseling regarding their pregnancies. Those requesting information on options for the management of an unintended pregnancy are to be given non-directive counseling on the following alternative courses of action, and referral upon request:

- o Prenatal care and delivery
- o Infant care, foster care, or adoption
- o Pregnancy termination.

There are limitations on what abortion counseling and referral is permissible under the statute: (a) a Title X project may not provide pregnancy 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; (b) a Title X project may provide a referral for abortion. A referral 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; and (c) 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.

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 a backup method of family planning 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 a grantee conducts abortion activities that are not part of the Title X project and would not be permissible if they were, the grantee 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 bulks so large and is so intimately related to all aspects of the program as 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 grantee agreed to perform in the relevant grant documents as a condition of receiving Title X funds. A grant applicant may include both project and nonproject 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 grantees 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 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, 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; ✦ 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. A grantee may demonstrate that prohibited abortion-related activities are not part of the Title X project by various means, including counseling and service protocols, intake and referral procedures, material review procedures, and other administrative procedures.

Dated: *Nov 22, 1999*



Denese O. Shervington
Deputy Assistant Secretary for Population Affairs

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handicapping condition, age, sex, number of pregnancies, or marital status.

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(ii) Ensure that project funds are not used for, and project activities are separate and distinct from, any non-title X activities of the grantee that provide or promote or encourage abortion as method of family planning.

(6) Provide that priority in the provision of services will be given to persons from low-income families.

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(8) Provide that charges will be made for services to persons other than those from low-income families in accordance with a schedule of discounts based on ability to pay, except that charges to persons from families whose annual income exceeds 250 percent of the levels set

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