Title X Family Planning Program
Title X New Rule
Today we will cover:

- The Timeline of the New Title X Rule
- New Abortion Related Rules
  - Clear Physical and Financial Separation of Title X
  - Options Counseling
- Example Script for Referrals
- Changes to the Medical History Form
- Mandatory Referrals
- Referrals Outside of the Provider’s Scope
- Mandatory State and Federal Reporting Requirements\Medical History Form
- Encouraging Family Involvement
- Changes to the Client Education and Counseling Checklist
- Example Script for the Encouragement of Family Involvement
- Lack of Insurance Contraceptives Coverage
The Timeline of the New Title X Rule

• June 1, 2018: The US Department of Health Human Services (HHS) officially published their notice to a proposed rulemaking.

• March – June 2019: Despite multiple states and various federal agencies filing numerous injunctions attempting to dismiss or delay implementation, the final rule went into effect and compliance was required, except for the physical-separation requirements.

• September 18, 2019: The Statement and Supporting Evidence with Compliance Requirements from WV FPP was due.

• March 4, 2020: The Statement and Supporting Evidence for Physical Separation between Title X Services and Abortion Services from WV FPP is due.
Referrals:

“A Title X project may not perform, promote, refer for, or support abortion as a method of family planning.”

42 CFR 59.14(a).

The patient may receive:

- A list of licensed, qualified comprehensive primary health care providers (including prenatal care providers).
- Referral to social services or adoption agencies.
- Information on having a healthy pregnancy.
Abortion Related Rules

• Options counseling:

  Nondirective pregnancy counseling is no longer required but can still be given, when provided by physicians or advanced practice providers. 42 CFR 59.14(b)(1)(i)

  “Advanced practice providers” include:
  - Physician’s Assistants (PA)
  - Advanced Practice Registered Nurses (APRN)
  - Certified nurse practitioner (CNP)
  - Clinical Nurse Specialist (CNS)
  - Certified Registered Nurse Anesthetist (CRNA)
  - Certified Nurse-Midwife (CNM)
## Example Script for Referrals

<table>
<thead>
<tr>
<th>New/Revised Requirement</th>
<th>Example Script and Additional Information</th>
<th>Applicable Staff</th>
<th>Documentation</th>
</tr>
</thead>
</table>
| Requires meaningful encouragement of parent/child communication in family planning decisions and requires documentation of such encouragement. | To meet this requirement, it may be helpful to have a conversation with the client like the following.  

“It can be helpful to have a trusted adult that you can talk to about things like dating, relationships, and pregnancy prevention. These topics can be challenging and sometimes confusing. Having someone you can talk to can be really helpful.”  

“If you are nervous about having a conversation with a trusted adult, I can help you start that conversation if you would like.” | • Nursing staff  
• Clinical service providers  
• Counselors  
• Other relevant staff | • Counseling and Education Checklist form  
• Electronic Health Record or Paper Chart  

Form or progress notes will include documentation for why counseling was not provided, if applicable. |
| Prohibits the use of Title X funds to perform, promote, refer for, or support abortion as a method of family planning. | Referral policies prohibit referral for abortion as a method of family planning; referral for abortion is permitted in cases of medical emergencies or when pregnancy resulted from rape or incest.  

If a client requests referral or information for abortion, nondirective counseling on abortion may be provided by physicians or advanced practice providers. If a client requests a referral for an abortion as a family planning method, the clinical service provider may state, “I will provide you some information on providers who serve pregnant women. Reach out to these providers to learn about the services they provide.”  

Front desk, nursing, or counseling staff who receive calls or questions about abortion referrals may state, “Although abortion falls outside the scope of our program under federal law, I can offer you a list of providers that serve pregnant women and you can contact them directly to learn about the services they provide.” | • Clinical service providers  
• Front Desk Staff  
• Nursing staff  
• Counselors  

Please note change with which professionals are permitted to provide counseling on abortion services under the Title X Final Rule. | • Ensure relevant staff are trained on new rules and training dates and employees are recorded.  
• Keep referral lists current, comprehensive, and non-indicative of abortion services. |
## Client Education and Counseling Checklist

### Basic Family Planning Education

- Provided family planning counseling & method options

### Family Planning Counseling

#### Method-Specific Counseling

- A. Effective use of contraceptive method(s)
- B. Possible side effects/complications
- C. How to discontinue the method selected
- D. Planned return schedule/follow-up visits
- E. Emergency telephone number
- F. Location where emergency services can be obtained
- G. Referral for additional services as needed

### Counseling for Minors

- A. Family participation in decision of minors to seek family planning services
  - Counseling was not given due to indications of rape, incest, or abuse
- B. How to resist coercive attempts to engage in sexual activities

### Pregnancy Options Counseling (if indicated)

- A. Negative test result
  - Information on availability of family planning services
- B. Positive Test Result
  - Non-directive options counseling recommended but not required

### Date

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WVDHHR/PH/OMCFH/DPWII/FP/LS61/8-19
Mandatory Referrals

• “Because Title X funds are intended only for family planning, once a client served by Title X project is medically verified as pregnant, she shall be referred to a health care provider for medically necessary prenatal health care.” 42 CFR 59.14(b)(1).

• “In cases in which emergency care is required, the Title X project shall only be required to refer the client immediately to an appropriate provider of medical services needed to address the emergency.” 42 CFR 59.14(b)(2).
“A Title X project must be organized so that it is physically and financially separate, as determined in accordance with the review established in this section, from activities which are prohibited under section 1008 of the Act and §§ 59.13, 59.14, and 59.16 of these regulations from inclusion in the Title X program. In order to be physically and financially separate, a Title X project must have an objective integrity and independence from prohibited activities. Mere bookkeeping separation of Title X funds from other monies is not sufficient. The Secretary will determine whether such objective integrity and independence exist based on a review of facts and circumstances.” 42 CFR 59.15
“Ensure transparency in the delivery of services by reporting the following information in grant applications and all required reports: Detailed description of the extent of the collaboration with subrecipients, referral agencies, and any individuals providing referral services, in order to demonstrate a seamless continuum of care for clients...” 42 CFR 59.5(a)(13)(ii).
• Each site must have a referral list with site details for those who may be used for a specialty referral source (prenatal services, infertility services, primary care, etc.)

• The Quality Assurance Monitoring Team will ensure that each site has either the FPP’s referral list filled out or their own that covers the specialty types listed on the FPP’s list.

• The site must have a partnership with their referral sites.

• The program must know the closest Nexplanon, intrauterine device (IUD), and sterilization providers through the FPP if they are unable to provide these services onsite.
(a) Title X projects shall comply with all State and local laws requiring notification or reporting of child abuse, child molestation, sexual abuse, rape, incest, intimate partner violence or human trafficking (collectively, “State notification laws”).

(b) A project may not receive funds under this subpart unless it provides appropriate documentation or other assurance satisfactory to the Secretary that it:

(1) Has in place and implements a plan to comply with State notification laws. Such plan shall include, at a minimum, policies and procedures that include:
(i) A summary of obligations of the project or organizations and individuals carrying out the project under State notification laws, including any obligation to inquire about or determine the age of a minor client or of a minor client's sexual partner(s).

(ii) Timely and adequate annual training of all individuals (whether or not they are employees) serving clients for, or on behalf of, the project regarding State notification laws; policies and procedures of the Title X project and/or provider with respect to notification and reporting of child abuse, child molestation, sexual abuse, rape, incest, intimate partner violence and human trafficking; appropriate interventions, strategies, and referrals to improve the safety and current situation of the patient; and compliance with State notification laws.”

(iii) Protocols to ensure that every minor who presents for treatment is provided counseling on how to resist attempts to coerce them into engaging in sexual activities;”

42 CFR 59.17(a)(b)(1)(i)(ii)(iii)
 Notification and Acknowledgement of Receipt of Title X Required Components

The following are excerpts highlighting important requirements from the Program Requirements for Title X Funded Family Planning Projects Version 1.0 April 2014 and Title X of the PHS Act, 42 C.F.R., Part 56, as amended by the Final Rule (Compliance with Statutory Provisions: Integrity Requirements):

- Family planning services are to be provided solely on a voluntary basis. Clients cannot be coerced to accept services or to use or not use any particular method of family planning.

- A client’s acceptance of family planning services must not be a prerequisite to eligibility for, or receipt of, any other services, assistance from, or participation in any other program that is offered by the grantee or subrecipient.

- Any staff administering family planning services may be subject to prosecution if they coerce or try to coerce any person to undergo an abortion or sterilization procedure.

- Services must be provided without regard to religion, race, color, national origin, disability, age, sex, number of pregnancies, or marital status.

- Services must be provided without the imposition of any durational residency requirement or requirement that the client be referred by a physician.

- Provide staff must encourage family participation in the decision of minors to seek family planning services and ensure that the patient record documents the specific actions taken to encourage such family participation or the specific reason why family participation was not encouraged, like you suspect the patient is a victim of child abuse or incest. Staff must also ensure client understanding that neither family participation nor parental knowledge or consent is required.

- Provide staff must provide counseling for minors on how to resist coercion into engaging in sexual activities.

- Staff must comply with Federal State requirements for reporting or notification of child abuse, child molestation, sexual abuse, rape or incest, intimate partner violence, or human trafficking.

- Information obtained by the project staff about an individual receiving service may not be disclosed without the individual’s documented consent, except as required by law or as may be necessary to provide services to the individual, with appropriate safeguards for confidentiality. Information may otherwise be disclosed only in summary, statistical, or other form that does not identify the individual.

- Provider staff should be sensitive to, and able to deal effectively with, the cultural and ethnic characteristics of the client populations which they serve.

I hereby acknowledge that I have read the federally required information above, as well as the current WV Family Planning Program Guidelines. I also acknowledge that I have received training on these topics, as required and provided by the WV Family Planning Program. I have documentation at my clinic site that certifies training for all employees with access to Family Planning clients. I have had the opportunity to discuss these requirements and ask questions of Family Planning Program staff. I further acknowledge that I have a clear understanding of my responsibilities as it relates to these documents and my obligation to follow these mandates.

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WVDHHR/BPH/OMCF/DPvH/FPP/10-2016
WV Code § 49-2-803. Persons mandated to report suspected abuse and neglect; requirements:

(a) Any medical, dental, or mental health professional, Christian Science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer or law-enforcement official, humane officer, member of the clergy, circuit court judge, family court judge, employee of the Division of Juvenile Services, magistrate, youth camp administrator or counselor, employee, coach or volunteer of an entity that provides organized activities for children, or commercial film or photographic print processor who has reasonable cause to suspect that a child is neglected or abused, including sexual abuse or sexual assault, or observes the child being subjected to conditions that are likely to result in abuse or neglect shall immediately, and not more than 24 hours after suspecting this abuse or neglect, report the circumstances to the Department of Health and Human Resources. In any case where the reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report to the State Police and any law-enforcement agency having jurisdiction to investigate the complaint. Any person required to report under this article who is a member of the staff or volunteer of a public or private institution, school, entity that provides organized activities for children, facility, or agency shall also immediately notify the person in charge of the institution, school, entity that provides organized activities for children, facility, or agency, or a designated agent thereof, who may supplement the report or cause an additional report to be made: Provided, That notifying a person in charge, supervisor, or superior does not exempt a person from his or her mandate to report suspected abuse or neglect.
WV Code § 49-2-809. Reporting procedures:

(a) Reports of child abuse and neglect pursuant to this article shall be made immediately to the department of child protective services by a method established by the department: Provided, That if the method for reporting is web-based, the Department of Health and Human Resources shall maintain a system for addressing emergency situations that require immediate attention and shall be followed by a written report within 48 hours if so requested by the receiving agency. The state department shall establish and maintain a 24-hour, seven-day-a-week telephone number to receive calls reporting suspected or known child abuse or neglect.

(b) A copy of any report of serious physical abuse, sexual abuse, or assault shall be forwarded by the department to the appropriate law-enforcement agency, the prosecuting attorney, or the coroner or medical examiner"s office. All reports under this article are confidential. Reports of known or suspected institutional child abuse or neglect shall be made and received as all other reports made pursuant to this article.
WV Code § 61-8B-2. Lack of consent:
(a) Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without the consent of the victim.
(b) Lack of consent results from:
   (1) Forcible compulsion;
   (2) Incapacity to consent; or
   (3) If the offense charged is sexual abuse, any circumstances in addition to the forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.
(c) A person is deemed incapable of consent when such person is:
   (1) Less than sixteen years old;
   (2) Mentally defective;
   (3) Mentally incapacitated;
   (4) Physically helpless; or
   (5) Subject to confinement or supervision by a state or local government entity, when the actor is a person prohibited from having sexual intercourse, or causing sexual intrusion or sexual contact pursuant to subsections (a) and (b) of section ten of this article.
• The person who has concerns or has had a disclosure must report. They may not hand the information to a superior or anyone else to report.

• Anyone who reports has legal protections. Any person who reports in good faith shall be immune from any civil or criminal liability.

• Mandatory reporters have no more than 24 hours to call the West Virginia Child Abuse and Neglect Hotline, the centralized intake hotline for Child Protective Services, at 1-800-352-6513.

• Some information they may ask for:
  o Victim demographic information
  o Type of abuse or neglect suspected
  o Location of the victim and caregivers
  o Does the perpetrator have access to the victim?
  o General functioning of victim and caregivers
  o Any safety threats for first responders

• If the reporter suspects that the child suffered serious physical abuse, sexual abuse, or sexual assault, they must also report to the State Police and any law-enforcement agency having jurisdiction to investigate the complaint.
Reporting Tips

• Things would report for:
  • Physical abuse
  • Neglect
  • Sexual abuse
  • Sexual exploitation
  • Imminent danger:
    o Trauma inflicted by parents, guardians, sibling, babysitters, or caretaker(s)
    o Nutritional deprivation
    o Substantial emotional injury
    o Inadequate treatment of serious illness or disease
    o Guardian’s abuse of alcohol or drugs impairing their parenting
Liabilities and Consequences

WV Code § 49-2-812. Failure to report; penalty.

(a) Any person, official or institution required by this article to report a case involving a child known or suspected to be abused or neglected, or required by section eight hundred nine of this article to forward a copy of a report of serious injury, who knowingly fails to do so or knowingly prevents another person acting reasonably from doing so, is guilty of a misdemeanor and, upon conviction, shall be confined in jail not more than ninety days or fined not more than $5,000, or both fined and confined.

(b) Any person, official or institution required by this article to report a case involving a child known or suspected to be sexually assaulted or sexually abused, or student known or suspected to have been a victim of any non-consensual sexual contact, sexual intercourse or sexual intrusion on school premises, who knowingly fails to do so or knowingly prevents another person acting reasonably from doing so, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than six months or fined not more than $10,000, or both.
“(iv) Commitment to conduct a preliminary screening of any minor who presents with a sexually transmitted disease (STD), pregnancy, or any suspicion of abuse, in order to rule out victimization of a minor” 42 CFR 59.17(b)(1)(iv)
### Red Flags and Indicators

**General Indicators of Human Trafficking**

- Shares a scripted or inconsistent history
- Is unwilling or hesitant to answer questions about the injury or illness
- Is accompanied by an individual who does not let the patient speak for themselves, refuses to let the patient have privacy, or who interprets for them
- Evidence of controlling or dominating relationships (excessive concerns about pleasing a family member, romantic partner, or employer)
- Demonstrates fearful or nervous behavior or avoids eye contact
- Is resistant to assistance or demonstrates hostile behavior
- Is unable to provide his/her address
- Is not aware of his/her location, the current date, or time
- Is not in possession of his/her identification documents
- Is not in control of his or her own money
- Is not being paid or wages are withheld

**Labor Trafficking Indicators**

- Has been abused at work or threatened with harm by an employer or supervisor
- Is not allowed to take adequate breaks, food, or water while at work
- Is not provided with adequate personal protective equipment for hazardous work
- Was recruited for different work than he/she is currently doing
- Is required to live in housing provided by employer
- Has a debt to employer or recruiter that he/she cannot pay off

**Sex Trafficking Indicators**

- Patient is under the age of 18 and is involved in the commercial sex industry
- Has tattoos or other forms of branding, such as tattoos that say, “Daddy,” “Property of...,” “For sale,” etc.
- Reports an unusually high numbers of sexual partners
- Does not have appropriate clothing for the weather or venue
- Uses language common in the commercial sex industry

This publication was made possible in part through Grant Number 90ZY0102 from the Office on Trafficking in Persons, Administration for Children and Families, U.S. Department of Health and Human Services (HHS). Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the Office on Trafficking in Persons, Administration for Children and Families, or HHS.
“(2) Maintains records to demonstrate compliance with each of the requirements set forth in paragraph (b)(1) of this section, including which:

(i) Indicate the age of minor clients;
(ii) Indicate the age of the minor client's sexual partners if such age is an element of a State notification law under which a report is required; and
(iii) Document each notification or report made pursuant to such State notification laws.”

42 CFR 59.17(b)(2)
(a) A person is guilty of sexual assault in the first degree when:
(1) The person engages in sexual intercourse or sexual intrusion with another person and, in so doing:
   (i) Inflicts serious bodily injury upon anyone; or
   (ii) Employs a deadly weapon in the commission of the act; or
(2) The person, being fourteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is younger than twelve years old and is not married to that person.

§ 61-8B-5. Sexual assault in the third degree.
(a) A person is guilty of sexual assault in the third degree when:
(1) The person engages in sexual intercourse or sexual intrusion with another person who is mentally defective or mentally incapacitated; or
(2) The person, being sixteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is less than sixteen years old and who is at least four years younger than the defendant and is not married to the defendant.
§ 61-8B-7. Sexual abuse in the first degree.
(a) A person is guilty of sexual abuse in the first degree when:
(1) Such person subjects another person to sexual contact without their consent, and the lack of consent results from forcible compulsion; or
(2) Such person subjects another person to sexual contact who is physically helpless; or
(3) Such person, being fourteen years old or more, subjects another person to sexual contact who is younger than twelve years old.

(a) A person is guilty of sexual abuse in the third degree when he subjects another person to sexual contact without the latter's consent, when such lack of consent is due to the victim's incapacity to consent by reason of being less than sixteen years old.
(b) In any prosecution under this section it is a defense that:
(1) The defendant was less than sixteen years old; or
(2) The defendant was less than four years older than the victim.
# Medical History Form

**DATE:**

**SOCIAL SECURITY NUMBER:**

**NAME:**

**DATE OF BIRTH:** / / 

**AGE:**

**CURRENT MEDICATIONS:** (prescriptions and over-the-counter)

**ALLERGIES:** (list any medicines, foods, latex, etc. that you are allergic to and the reaction you have)

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<th>HISTORY (‘all that apply’)</th>
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<td>Thyroid disease</td>
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<td>Breast cancer or other breast problems</td>
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<td>Heart disease or abnormal heart conditions</td>
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<td>High blood pressure</td>
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**Blood clot to leg (DVT) or Lung Clamp (PE)**

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<td>Cancer</td>
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<td>Lung problems</td>
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<td>Liver disease/Hepatitis</td>
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<td>Kidney/Bladder problems</td>
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<td>Diabetes</td>
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<td>Ovarian or Uterine Cancer</td>
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<td>Endometriosis</td>
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<td>Fibroids/Ovarian Cysts</td>
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**Vaginal infections**

| Sexually transmitted diseases: HIV/ Hepatitis B Virus | |
| Alcohol use | |
| Drug use    | |
| Tobacco use | |
| Breast implants | |

**In the past 48 hours, have you been treated for an infecion, sore throat, upper respiratory or skin infection?**

**Immunizations up to date?**

| Blood transfusion or exposure to blood products? | |

**PREGNANCY HISTORY:**

- Number of pregnancies
- Age first pregnancy
- Age last pregnancy
- Number of miscarriages
- Complications

**CONTRACEPTIVE HISTORY:**

- Current birth control method
- Any problems
- Do you want to continue your present birth control method?

**MENSTRUAL/Sexual History:**

- First day of last menstrual period
- Are you on a regular period?
- Are you on a Pill, Intrauterine Device, or Contraceptive Ring?
- Severe cramping
- Age when period started
- Pain or bleeding with intercourse
- Number of sexual partners (lifetime)
- Are you currently having sex with more than one person?

**PAP HISTORY:**

- Ever had an abnormal Pap smear?
- Date
- Last Pap smear date:

**MEN:**

- Are you currently having sex with more than one person?
- Do you use condoms?
- Undiagnosed problems?

**PERSONAL HISTORY:**

- Does your partner use injectable drugs?
- Does your partner have a history of STD/HIV/Hepatitis B Virus?
- Do you have sex with men who are bisexual?
- If you are 25, what was the age of your sexual partner(s)?

**PARTNER HISTORY:** (female and male clients)

- Have you ever been hit, slapped, kicked, shaken or hurt by anyone?
- Is there anyone who makes you feel unsafe now?
- Has anyone pressured you to perform a sexual act?
- Have you ever been forced to have sex?
“Each project supported under this part must...Encourage family participation in the decision to seek family planning services; and, with respect to each minor patient, ensure that the records maintained document the specific actions taken to encourage such family participation (or the specific reason why such participation was not encouraged).” (42 CFR 59.5(a)(14)).

“...documentation of such encouragement is not to be required if the Title X provider has documented in the medical record:
(i) That it suspects the minor to be the victim of child abuse or incest; and
(ii) That it has, consistent with, and if permitted or required by, applicable State or local law, reported the situation to the relevant authorities.”
42 CFR 59.2(1)(i)(ii)
# Changes to the Client Education and Counseling Checklist

## WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF MATERNAL, CHILD AND FAMILY HEALTH
FAMILY PLANNING PROGRAM

### CLIENT EDUCATION AND COUNSELING CHECKLIST

**Client Name:**

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<thead>
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<th>BASIC FAMILY PLANNING EDUCATION:</th>
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<td>(Initial Medical Visit or as indicated)</td>
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- Provided family planning counseling & method options

### FAMILY PLANNING COUNSELING:

#### Method-Specific Counseling:

A. Effective use of contraceptive method(s)  
B. Possible side effects/complications  
C. How to discontinue the method selected  
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<tr>
<td>parent/child</td>
<td>pregnancy prevention. These topics can be challenging and sometimes confusing. Having someone you can talk</td>
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<td>communication in family</td>
<td>to can be really helpful.”</td>
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<td>planning decisions and</td>
<td>“If you are nervous about having a conversation with a trusted adult, I can help you start that conversation</td>
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<td>requires documentation</td>
<td>if you would like.”</td>
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<td>of such encouragement.</td>
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<tr>
<td>Prohibits the use of</td>
<td>Referral policies prohibit referral for abortion as a method of family planning; referral for abortion</td>
<td>• Clinical service providers • Front Desk Staff • Nursing staff • Counselors</td>
<td>• Ensure relevant staff are trained on new rules and training dates and employees are recorded. • Keep referral lists current, comprehensive, and non-indicative of abortion services.</td>
</tr>
<tr>
<td>Title X funds to</td>
<td>is permitted in cases of medical emergencies or when pregnancy resulted from rape or incest. If a client</td>
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<td>perform, promote,</td>
<td>requests referral or information for abortion, nondirective counseling on abortion may be provided by</td>
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<td>refer for, or support</td>
<td>physicians or advanced practice providers. If a client requests a referral for an abortion as a family</td>
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<td>abortion as a method of</td>
<td>planning method, the clinical service provider may state, “I will provide you some information on</td>
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<td>family planning.</td>
<td>providers who serve pregnant women. Reach out to these providers to learn about the services they provide.”</td>
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<td></td>
<td>Front desk, nursing, or counseling staff who receive calls or questions about abortion referrals may state,</td>
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<td>“Although abortion falls outside the scope of our program under federal law, I can offer you a list of</td>
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<td>providers that serve pregnant women and you can contact them directly to learn about the services they</td>
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<td>provide.”</td>
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</table>
“For the purposes of considering payment for contraceptive services only, where a woman has health insurance coverage through an employer that does not provide the contraceptive services sought by the woman because the employer has a sincerely held religious or moral objection to providing such coverage, the project director may consider her insurance coverage status as a good reason why she is unable to pay for contraceptive services. In making that determination, the project director must also consider other circumstances affecting her ability to pay, such as her total income.”

42 CFR 59.2(2)
The Family Planning Program will host identical calls on October 15th at 9 am and 2 pm to answer any questions sites may have about implementing the new rule or the new forms. This is not a required call but is available if any one has any questions.