
TITLE X CONSISTENCY AND TRANSPARENCY ACT

Model Legislation & Policy Guide
For the 2010 Legislative Year



Changing Law to Protect Human Life, State by State

INTRODUCTION

There are several tools that states can use to limit and exercise control over who receives state family planning and other similar funding, eliminating indirect subsidies to and unintentional support of abortion.

For example, a state may prohibit the “commingling” of state funding with other sources of funding used to provide, refer for, or counsel on behalf of abortions. In the same vein, a state can also require the segregation of staff, facilities, and administrative support services between segments of a business providing family planning and other state-supported services and those providing abortions, abortion referrals, or abortion counseling. These restrictions and limitations are similar to those imposed on recipients of federal Title X funding (federal family planning funding).

A few states, such as Missouri and Texas¹ have already placed significant limitations on recipients of federal and state family planning funding administered by state officials. In 2003, Planned Parenthood unsuccessfully challenged the limitations imposed in Texas. Earlier that year, the Texas legislature had diverted about \$13 million away from clinics that provided abortions and abortion-related services. In response, Texas Health Commissioner Eduardo Sanchez sent out a letter to Planned Parenthood and other state abortion clinics ordering them to cease providing abortions or face a loss of state funding. Ultimately, both Missouri and Texas prevailed in legal challenges to the funding limitations.

In total, 18 states currently place restrictions on recipients of state family planning funding.

Drawing on the experiences in Missouri and Texas, AUL has drafted the “Title X Consistency and Transparency Act.” For more information or drafting assistance, please contact AUL’s Legislative Coordinator (312) 568-4717 or Legislation@AUL.org.

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¹ See *Planned Parenthood of Mid-Missouri & Eastern Kansas, Inc. v. Dempsey*, 167 F.3d 458 (8th Circuit 1999) and *Planned Parenthood v. Sanchez*, 403 F.3d 324 (5th Circuit 2005).

TITLE X CONSISTENCY AND TRANSPARENCY ACT

HOUSE/SENATE BILL No. _____
By Representatives/Senators _____

[Drafter’s Note: This Act may be introduced independently or, alternatively, as part of a state Appropriations Act or budgetary rider.]

Section 1. Title.

This Act may be known and cited as the “Title X Consistency and Transparency Act.”

Section 2. Legislative Findings and Purposes.

- (a) The [Legislature] of the State of [Insert name] finds that:
- (1) The State of [Insert name] voluntarily participates in several federal programs that provide funds for family planning services. Among these programs are Title X of the “Public Health Service Act,” which provides project grants to public and private agencies for family planning services, and Title XX of the “Social Security Act,” which provides block grants to the states for social services, including family planning.
 - (2) The regulations for Title X specify that funds may not be used to finance abortions or abortion-related activity. Specifically, Title X provides that “none of the funds appropriated ... shall be used in programs where abortion is a method of family planning.” 42 U.S.C. §300a-6.
 - (3) Title XX funds may not be used for the provision of medical care. Moreover, any Title XX funds used to match Title X funds may not be used to finance abortions or abortion-related activity.
 - (4) In addition to federal family planning funds, the State of [Insert name] also provides state-originated funds under [Insert reference to any direct state subsidies, grants, or other allocations for family planning services, education, etc.] for family planning.
 - (5) The [Insert state name] Department of Health [or other appropriate state department or agency] appropriates and distributes both federal and state funds

for family planning services to [“*family planning contractors*” or other appropriate term].

- (6) [Insert reference(s) to applicable state law(s)] prohibits the use of public funds for elective abortion: abortions performed in cases not involving rape, incest, or threats to the life of the mother [or insert specific exemption language from applicable state law].
 - (7) Left unrestricted or unregulated, federal and state funds for family planning services can, in some cases, effectively and indirectly subsidize contractors, individuals, organizations, or entities performing or inducing abortions, referring for abortions, or counseling in favor of abortions through shared administrative costs, overhead, employee salaries, rent, utilities, and various other expenses.
 - (8) When a State appropriates public funds to establish a program it is entitled to define the limits of that program. *Rust v. Sullivan*, 500 U.S. 173, 194 (1991).
 - (9) The decision not to fund abortion places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy. *Rust v. Sullivan*, 500 U.S. 173, 201 (1991).
 - (10) It is permissible for a State to engage in unequal subsidization of abortion and other medical services to encourage alternative activity deemed in the public interest. *Rust v. Sullivan*, 500 U.S. 173, 201 (1991).
 - (11) Requiring abortion-related activity to be completely separate from other activities that receive state funding in no way denies any right to engage abortion-related activities. *Rust v. Sullivan*, 500 U.S. 173, 198 (1991).
- (b) It is the intent of the [Legislature] that no federal family planning funds appropriated or dispersed by this State shall be used to pay the direct or indirect costs (including, but not limited to, administrative costs or expenses, overhead, employee salaries, rent, and telephone and other utilities) of abortion procedures, abortion referrals, or abortion counseling provided by [“*family planning contractors*” or other appropriate term] and that these activities are not to be subsidized, either directly or indirectly, by those funds.
- (c) It is also the intent of the [Legislature] that no state family planning funds appropriated or dispersed pursuant to [Insert reference(s) to specific state statute(s) regarding family planning

funds and/or state family planning policies or programs], shall be appropriated to or distributed to individuals, organizations, entities, or affiliates of individuals, organizations, or entities that perform, induce, refer for, or counsel on behalf of elective abortions.

(d) The [Legislature]’s purpose in enacting this funding law is to ensure that family planning funds are used for family planning services and not to subsidize, directly or indirectly, elective abortions.

(e) The [Legislature], through this Act, is not seeking to enact any impermissible prohibition upon the ability of family planning contractors [*or other appropriate term*] or other individuals, organizations, or entities to continue providing abortion services using their own funds and with no direct or indirect federal or state family planning funds.

(f) Further, with respect to federal family planning funds, the Legislature is not seeking to prohibit all contracting with contractors, individuals, organizations, or entities that may provide abortion services using other independent sources of funds. For example under existing federal law, in order to receive family planning funds under Title X, a family planning contractor may form and maintain completely separate and distinct affiliates (*e.g.*, by dividing its operations into “family planning affiliates” and “abortion services affiliates”). *Planned Parenthood of Mid-Missouri & Eastern Kansas, Inc. v. Dempsey*, 167 F.3d 458 (8th Circuit 1999) and *Planned Parenthood v. Sanchez*, 403 F.3d 324 (5th Circuit 2005).

(g) Finally, this Act is not directed at primary conduct of physicians or individual healthcare providers.

Section 3. Definitions.

As used in this Act only:

(a) “**Abortion**” means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with the knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:

- (1) Save the life or preserve the health of an unborn child;
- (2) Remove a dead unborn child caused by spontaneous abortion; or

- (3) Remove an ectopic pregnancy.

Further, an “**elective abortion**” means an abortion performed for reasons other than rape, incest, or threats to the life of the mother [*or insert specific exemption language from state law*].

(b) “**Affiliate**” means an organization that owns or controls, or is owned or controlled, in whole or in part, by the other; related by shareholdings or other means of control; or a subsidiary, parent, or sibling corporation.

(c) “**Associate**” means enter into any written or oral contract or agreement with another contractor, individual, organization, or entity that provides, induces, refers for, or counsels on behalf of abortions; exert any degree of ownership of or control over another contractor, individual, organization, or entity that provides, induces, refers for, or counsels on behalf of abortions; or own, direct, or control shares in another contractor, individual, organization, or entity that provides, induces, refers for, or counsels on behalf of abortions.

(d) “**Department**” means the [*Insert state name*] Department of Health [*or insert name of responsible Department or agency*].

(e) “**Family planning contractor**” and “**contractor**” mean an individual, organization, or entity that enters into a contract or agreement with the [*Department of Health or other responsible department or agency*] to receive funds for and provide family planning services.

(f) “**Family planning services**” means a range of acceptable methods to prevent, delay, space, or otherwise time pregnancy, including natural family planning methods and infertility services. Family planning services do not include abortion, abortion referrals, or counseling in favor of abortion.

(g) “**Federal family planning funds**” means any federal money appropriated or dispersed by any state official, branch, department, or agency, in whole or in part, for family planning services, including (but not limited to) funds under Title X, Title XX, or other federal money accepted by the state, in whole or in part, for family planning services.”

(h) “**State family planning funds**” means funds dispersed under [*Insert references to specific state statute(s) regarding state family planning funds or state family planning policies or programs*].

Section 4. Prohibitions on Use of Funds.

(a) No federal or state family planning funds shall be used by contractors of the Department to pay the direct or indirect costs (including, but not limited to, administrative costs and expenses, overhead, employee salaries, rent, and telephone and other utilities) of performing, inducing, referring for, or counseling in favor of abortion procedures.

(b) No state family planning funds shall be granted, appropriated, or distributed to contractors or affiliates of contractors that perform, induce, refer for, or counsel in favor of elective abortions.

Section 5. Limited Waiver.

If the Department concludes that compliance with subsection 4(b) would result in a significant reduction in family planning services in any public health region of the State, the Department may waive the requirements of subsection 4(b) for the affected region to the extent necessary to avoid a significant reduction in family planning services to the region. This waiver shall expire on *[Insert appropriate year, date, or time period]*, and no waiver shall extend beyond that date.

Section 6. Mandatory Certification of Compliance.

(a) A family planning contractor, individual, organization, or entity applying for federal family planning funds appropriated and distributed by the Department must certify in writing on forms provided by the Department that it will not, directly or indirectly, use the funds to perform, induce, refer for abortion, or counsel in favor of abortions. Recipients of federal family planning funds through the Department will annually submit a written certification of continued compliance. Funds shall not be granted to any family planning contractor, individual, organization, or entity until the required certification has been received.

(b) A family planning contractor, individual, organization, or entity applying for state family planning funds must certify in writing on forms provided by the Department that it will not perform, induce, refer for, or counsel in favor of elective abortions and will not associate with, contract with, or provide financial or other support to individuals, organizations, or entities performing, inducing, referring for, or counseling in favor of elective abortions. Recipients of state family planning funds through the Department will annually submit a written certification of continued compliance. Funds shall not be granted to any family planning contractor, individual, organization, or entity until required certification has been received.

(c) The Department shall include in its financial audit a review of the use of appropriated federal and state funds to ensure compliance with this Act.

Section 7. Failure to Comply/Recoupment of Funds.

(a) A family planning contractor that receives any family planning funds and is found not to be in compliance with the requirements of this Act will be enjoined from receiving any future family planning funds and will be liable to return to the State the full amount of family planning funds received.

(b) Both the Office of the Attorney General and the Office of the District Attorney for the county in which the violation occurred may institute a legal action to enforce recoupment, collection, or reimbursement of family planning funds.

Section 8. Penalties for Failure to Comply.

(a) In addition to any and all remedies available under the common or statutory law of this State, failure to comply with the requirements of this Act shall:

- (1) Enjoin the family planning contractor, individual, organization, or entity from eligibility to receive any future family planning funds; and
- (2) Require the family planning contractor, individual, organization, or entity to reimburse the State the full amount of family planning funds received through the Department.

(b) Any violation of this Act may subject the family planning contractor, individual, organization, or entity to a civil penalty or fine up to *[Insert appropriate amount]* imposed by the *[Insert name of Department of Health or other appropriate state department or agency]*.

(c) Both the Office of the Attorney General and the Office of the District Attorney for the county in which the violation occurred may institute a legal action to enforce collection of civil penalties or fines.

Section 9. Construction.

(a) Nothing in this Act shall be construed as creating or recognizing a right to abortion.

(b) Nothing in this Act shall be construed as creating or recognizing a right to funds for family planning services.

Section 10. Right of Intervention.

The Legislature, by joint resolution, may appoint one or more of its members, who sponsored or cosponsored this Act in his or her official capacity, to intervene as a matter of right in any case in which the constitutionality of this law is challenged.

Section 11. Severability.

Any provision of the Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability in which event such provision shall be deemed severable here from and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

Section 12. Effective Date.

This Act takes effect on *[Insert appropriate date]*.

More detailed information about state limitations on abortion funding can be found in AUL's annual publication *Defending Life 2009: A State by State Legal Guide to Abortion, Bioethics, and the End of Life*.

Defending Life 2009 is available online at AUL.org or for purchase at Amazon.com.

For further information regarding this or other AUL policy guides, please contact:

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