

## Shoring Up Reproductive Autonomy: Title X's Foundational Role

By Kinsey Hasstedt

The Title X national family planning program was established in 1970 with the express intent of addressing inequities in access to contraceptive and related services. Title X has always prioritized serving patients who are low income, uninsured, young or otherwise disadvantaged, helping them advance their right to exercise power over their own reproductive decisions.

Title X cannot on its own guarantee any individual's ability to exercise reproductive autonomy or realize their own reproductive intentions, including whether and when to use contraception, become pregnant and give birth or parent. Yet, for nearly 50 years, the program has affirmed and promoted people's reproductive autonomy by supporting safety-net health centers in providing high-quality family planning information and services that center the individual and are delivered free from coercion, violence or retribution.

However, in part because it serves as a cornerstone of reproductive autonomy in the United States, Title X has long been a target of many social conservatives. The program has come under intensified attack by the Trump administration, which is seeking to subvert the program's intent and integrity. In doing so, the administration and its allies have demonstrated unabashed antipathy for individuals' access to patient-centered reproductive health services and their right to exercise reproductive autonomy.

**Title X's programmatic standards are essential to its value as a catalyst of reproductive autonomy.**

Many of the laws, regulations, programmatic

### HIGHLIGHTS

- *The Title X national family planning program provides patient-centered information and services that advance individuals' reproductive autonomy.*
- *Title X's value in helping people exercise their own decisions on contraceptive use, pregnancy and childbirth must be defended and even expanded in the face of current attacks.*

guidelines and clinical recommendations that govern the implementation of the Title X program have shaped its ability to both protect and advance people's ability to realize their own reproductive goals.

**Contraceptive choice.** Title X affirms individuals' right to choose whichever contraceptive methods, if any, best fit their needs and preferences. The Title X statute demands that all patient services be voluntary; that standard is implemented in part by requiring providers to offer a "broad range of acceptable and effective family planning methods and related preventive health services."<sup>1</sup> A long-standing regulatory requirement that "medically approved" methods be among the broad range of available options has helped ensure that Title X sites keep pace with contraceptive advances—and that the program's predominantly low-income patients have access to the same options available to individuals with greater resources.<sup>2</sup> In addition, Title X's grants are critical to making the program's mandate of contraceptive choice a reality for patients, because clinics can use these funds to help keep methods in stock, train clinicians and pay for the often extensive

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contraceptive counseling patients want and need (see “Why Family Planning Policy and Practice Must Guarantee a True Choice of Contraceptive Methods,” 2017).

**Informed consent.** Title X standards are also designed to ensure that patients have the ability to make fully informed decisions about and truly consent to their own reproductive health care. Indeed, the very principle of informed consent centers on an individual’s well-being and right to self-determination (see “Unbiased Information on and Referral for All Pregnancy Options Are Essential to Informed Consent in Reproductive Health Care,” 2018). For patients considering whether to use contraception, or deciding which method or combination of methods to use, seeking information from a Title X–supported site has long meant knowing the provider will deliver individually tailored counseling. For pregnant patients, Title X has long guaranteed that a provider will offer comprehensive, factual and unbiased information on any and all options, including parenting, adoption and abortion: The patient, not the clinician, gets to decide which options to discuss. And if the patient wants or is in need of medical services not offered by that provider, Title X has ensured they are given timely referrals.

**Confidentiality.** For decades, Title X has guaranteed confidentiality for all patients receiving its services. This protection is particularly important for those insured as dependents on someone else’s health plan, including adolescents, young adults, and individuals experiencing or threatened by intimate partner violence (see “Why We Cannot Afford to Undercut the Title X National Family Planning Program,” 2017). Title X regulations and guidelines have specifically addressed the needs of adolescent patients, making clear that Title X–supported providers cannot notify or require the consent of a minor’s parents or guardians before or after receiving family planning care (see “Ensuring Adolescents’ Ability to Obtain Confidential Family Planning Services in Title X,” 2018).

**Evidence-based standards of care.** All of these provisions are supported by evidence-based clinical recommendations that Title X providers are

expected to adhere to (see “More than a Pack of Pills: The Many Components and Health Benefits of Quality Family Planning,” 2014). These recommendations were formally published in 2014 and have been regularly updated by the Centers for Disease Control and Prevention and the Office of Population Affairs, which administers the Title X program.<sup>3</sup> The standards affirm the principles of contraceptive choice, informed consent and confidentiality. They also address how to deliver the many services that a patient seeking family planning care might request, including contraceptive services and supplies, pregnancy testing and counseling, guidance on becoming pregnant, basic infertility services, preconception health care, services to prevent or detect reproductive cancers, and STI screening and treatment. Adherence to these clinical standards helps ensure that everyone who walks through the door of a Title X–supported provider receives information and care that solicits and is responsive to their individual circumstances, and can help them realize their reproductive goals.

**The Trump administration is seeking to transform Title X from an agent of reproductive autonomy to a tool of government-sponsored reproductive coercion.** Specifically, President Trump and his allies are trying to undermine Title X’s programmatic standards by altering the types of entities and services that are eligible for Title X funding and seeking to overhaul the regulations that govern the program (see “Title X Under Attack—Our Comprehensive Guide,” 2019). The administration is attempting to direct Title X funds to ideologically motivated entities, steer patients toward certain contraceptive options (such as fertility awareness–based methods) at the expense of contraceptive choice, interfere with patients’ decisions about pregnancy (by promoting childbirth and adoption, and denying abortion information and referrals), and weaken confidentiality protections, particularly for adolescents.

Accordingly, the fight against the Trump administration’s efforts represents a vigorous defense of the importance of the standards at the heart of the Title X program. Multiple family planning providers and state attorneys general have filed lawsuits against the administration’s

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new regulations—often referred to as the Title X gag rule—with backing from numerous other stakeholders, including the Guttmacher Institute.<sup>4</sup>

So far, these arguments have been viewed favorably by four different federal district courts, each of which issued court orders in the spring of 2019 stopping the Title X gag rule from going into effect and affirming that it would undermine the program’s standards and obstruct patients’ reproductive decision making.

For instance, U.S. District Judge Michael McShane in Oregon highlighted the fundamental importance of Title X’s nondirective pregnancy options counseling, including referral, declaring that the gag rule “is the very definition of directive counseling” and that it “mandates that providers provide medical information that patient does not need and, almost certainly, does not request.”<sup>5</sup> Judge McShane further concluded that the rule “prevents low-income women from making an informed and independent medical decision.”<sup>5</sup>

Similarly, U.S. District Judge Edward Chen in California noted that the gag rule “compels providers to present [pregnancy] options in a coercive manner and pushes patients to pursue one option over another,” thus not allowing individual patients to “take an active role in processing their experiences and identifying the direction of the interaction,” as the administration purports to define nondirective counseling in the preamble of the gag rule.<sup>2,6</sup> Judge Chen further found that the rule would hinder Title X–supported providers’ mission to promote individuals’ access to high-quality family planning care.

In his order, U.S. District Judge Stanley Bastian in Washington emphasized that the rule is “inconsistent with ethical, comprehensive, and evidence-based health care.”<sup>7</sup> His order further found that the rule “likely violates the central purpose of Title X, which is to equalize access to comprehensive, evidence-based, and voluntary family planning.”<sup>7</sup> And in his order, U.S. District Judge Richard Bennett in Maryland repeatedly found the rules to be “coercive, not ‘nondirective.’”<sup>8</sup> Finally, the judges detailed how—inappropriately inserting the government

into provider-patient relationships and forcing providers to violate their medical ethics—the rule would force many qualified providers to leave the Title X program, thus denying individuals access to contraceptive care.<sup>5–7</sup>

Unfortunately, all four of those rulings were put on hold by three-judge panels of the Ninth Circuit and Fourth Circuit Courts of Appeals, which at least temporarily allowed the gag rule to go into effect.<sup>9</sup> As of July 17, 2019, litigation continued but the Office of Population Affairs was enforcing the rule.

### **Title X’s responsibility to promote reproductive autonomy must be upheld and expanded.**

The robust defense of Title X demonstrated through current litigation is a welcome validation of the program’s ability both to make family planning care more accessible and, especially, to ensure that such care advances reproductive autonomy, rather than becoming an obstacle to it.

At the same time, Title X supporters and service providers should continue to be forward-looking and strive to understand how the program might even better serve its patients’ reproductive autonomy. A 2018 report by the Guttmacher-Lancet Commission on Sexual and Reproductive Health and Rights set forth an actionable agenda for what ensuring reproductive autonomy on a global scale would require.<sup>10</sup> This evidence-based report details how people’s health depends on the realization of their human rights; emphasizes every individual’s rights of bodily integrity, privacy and personal autonomy; and calls for unfettered access to “the information, resources, services, and support necessary to achieve” this vision, “free from discrimination, coercion, exploitation, and violence.”<sup>10</sup>

Clearly, there is a role for Title X to play in realizing this vision here in the United States. For example, within Title X, the program could measure the degree to which it helps individual patients realize their reproductive autonomy by utilizing newly developed patient-centered measures of autonomy and quality of care.<sup>11,12</sup> These types of patient-centered measures may be even more important if entities not committed to providing nondirective, comprehensive family planning services begin receiving Title X funds.

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Title X could also be a key resource in broader U.S. efforts to advance individuals' autonomous reproductive decision making. This might include redoubling efforts for family planning providers outside of Title X, such as federally qualified health centers and private clinicians' offices, to adopt the program's evolving clinical standards of care. It could also include ensuring that Title X's programmatic standards are included in federal-level legislation advancing universal health coverage.<sup>13</sup> Thus, the current attacks on Title X constitute a direct assault on the human rights of not only Title X patients, but on the rights of low-income and otherwise marginalized individuals across the United States. ■

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