



**Case No. 2023-00237-FOIA-PHS**

**February 3, 2023**

***Sent via email:***

Hart Wood  
American Oversight  
[foia@americanoversight.org](mailto:foia@americanoversight.org)

Dear Mr. Wood:

This letter is the final response to your December 13, 2022, Freedom of Information Act (FOIA) request. Specifically, you requested the following records: *“All final formal or informal assessments, reports, analysis, recommendations, or guidance (including memoranda and other written products) prepared by your office or otherwise provided to your agency by other offices or independent experts, regarding any projected or actual public health impacts of potential or actual new state abortion restrictions affected by the U.S. Supreme Court decision in Dobbs v. Jackson Women’s Health Organization. Please provide all responsive records from May 17, 2021, through the date the search is conducted. (Date Range for Record Search: From 5/17/2021 To 12/13/2022)”*.

The Office of Population Affairs (OPA) conducted a search for records responsive to your request and located 35 pages of responsive record. After a careful review of these pages, I have determined to release 33 pages to you in its entirety, and I am further releasing two pages in parts, with portions redacted, pursuant to Exemption (b)(6) of the FOIA (5 U.S.C. §552).

FOIA exemption (b)(6) permits a federal agency to withhold information and records about individuals in “personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” The definition of “similar files” has historically been broadly interpreted to include a wide variety of files, and the United States Supreme Court has held that Congress intended the term “similar files” to be interpreted broadly, rather than narrowly. I have analyzed these records and find they meet the threshold requirement of this exemption. Additionally, I have reviewed and weighed the public interest in disclosure of this information against the privacy interest in nondisclosure and found that the privacy interest outweighs the public’s interest in disclosure.

If you believe the information withheld should not be exempt from disclosure, or this response constitutes an adverse determination, you may appeal. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency’s decision.

Please mark the correspondence, “Freedom of Information Act Appeal.” Your appeal must be transmitted within 90 days from the date of receipt of this letter to:

Ms. Carol Maloney  
Deputy Agency Chief FOIA Officer  
U.S. Department of Health and Human Services  
Office of the Assistant Secretary for Public Affairs  
[HHS.ACFO@hhs.gov](mailto:HHS.ACFO@hhs.gov)

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact the HHS FOIA Public Liaison for assistance at:

HHS FOIA/PA Public Liaison  
FOI/Privacy Acts Division  
Assistant Secretary for Public Affairs (ASPA)  
Office of the Secretary (OS)  
U.S. Department of Health and Human Services (HHS)  
Telephone: (202) 690-7453  
E-mail: [HHS\\_FOIA\\_Public\\_Liaison@hhs.gov](mailto:HHS_FOIA_Public_Liaison@hhs.gov)

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services  
National Archives and Records Administration  
Telephone: 202-741-5770  
Toll-Free: 1-877-684-6448  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)

There are no charges in this instance because the billable costs are less than our threshold of \$25.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'Arianne Perkins', written over a light blue rectangular background.

Arianne Perkins  
Director, Initial FOIA Requests  
FOI/Privacy Acts Division

Enclosure(s): Responsive records



Office of  
Population Affairs

# *Dobbs v. Jackson Women's Health Organization U.S. Supreme Court Decision: Impact on TPP Program*

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QUESTIONS & ANSWERS FOR TEEN PREGNANCY  
PREVENTION (TPP) RECIPIENTS

Updated October 2022

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**HHS Office of Population Affairs**

Web: [opa.hhs.gov](http://opa.hhs.gov) | Email: [opa@hhs.gov](mailto:opa@hhs.gov)

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The questions and answers included below aim to provide guidance and clarification from OPA for TPP recipients regarding the impact of the U.S. Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* on the TPP Program.

## Questions & Answers Issued October 2022

### 1. Does this decision have a direct impact on our TPP funding?

The Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* has no direct impact on the funding for the Teen Pregnancy Prevention Program. Funding for the TPP Program is dependent upon Congress passing, and the President signing, an appropriations bill that gives HHS funding and legal authority to operate the TPP program.

### 2. Does the *Dobbs* decision have an impact on the content we can deliver in our TPP projects?

Since the TPP Program does not provide abortions, the decision in *Dobbs* and resulting passage of state laws does not likely have a direct impact on TPP grants. However, it is important for TPP grantees to remain aware of the relevant state and local laws to monitor if there may be an impact on the information a TPP grantee may be able to provide young people or providers. Any concerns about your local response and the ability to implement your project, as planned, should be discussed immediately with your Project Officer.

### 3. What additional guidance can we share with our youth that might be in need of services if abortions are illegal in our state?

TPP grantees should continue to provide medically accurate and factual content to the youth they serve. TPP grantees should also continue to provide referrals and linkages to supportive services if this was an approved part of their grant project. However, it is important for TPP grantees to remain aware of the relevant state and local laws and monitor if there is any impact on the TPP grant project. If a TPP Tier 1 grantee determines an adaptation needs to be made to an evidence-based program, they should refer to OPA's [adaptation guidance](#) on MAX.gov and discuss further with their OPA Project Officer.

### 4. What if abortion is illegal in the state we serve but a youth participant asks for a referral? Can we share referrals and resources for services in other states?

Yes, TPP recipients should continue to provide whatever information and referrals they had been providing to recipients prior to the decision in *Dobbs*. However, it is important for TPP grantees to remain aware of the relevant state and local laws and monitor if there is any impact on the TPP grant project. [AbortionFinder](#)<sup>1</sup> is a publicly available resource for grantees looking to connect youth with services out of state.

### 5. The closest Title X clinic is not in our state. Are we able to provide referrals to program participants across state lines?

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<sup>1</sup> Note that the inclusion of external hyperlinks does not constitute endorsement or recommendation by the U.S. Government or HHS of the linked web resources or the information, products, or services contained therein. HHS does not exercise any control over the content on external sites. You will be subject to that site's privacy policy when you visit the external site.

The questions and answers included below aim to provide guidance and clarification from OPA for TPP recipients regarding the impact of the U.S. Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* on the TPP Program.

Yes. Neither the TPP program nor the Title X program is a state-based grant program or includes a durational residency requirement. TPP grantees should provide referrals, if a part of their approved grant project, to organizations that offer coordinated, multi-modal, youth-friendly, and trauma-informed services to meet the needs of their population.

**6. Are there any plans for additional funding for community-based TPP in the event that states stop allowing sexual health education in public schools?**

TPP recipients can use their *current* TPP funding to provide information, education, and services in any setting in which they are able to reach their target population. This includes community-based settings. Recipients are encouraged to do a continuous review of the needs of their identified community to determine how and where to best serve youth, which is not limited to solely implementing in a school setting. If a grantee is considering expanding outside of the original scope of their approved project, they should contact their OPA Project Officer immediately and discuss an amendment. Change in scope must be approved by the grants management officer prior to any change taking effect.

**7. Are there any informational or educational resources/webinars that you would suggest we share with our community partners and stakeholders?**

Recipients are encouraged to share the “Dear Colleague” letter from Jessica Swafford Marcella, our Deputy Assistant Secretary for Population Affairs (DASPA) and the Director of the Office of Adolescent Health, with their partners. Recipients are also encouraged to continuously update their partners on the information shared through these and future Q&As. All of this content is available on MAX.gov under “Guidance”.

Finally, see table below for a few other helpful resources<sup>2</sup>:

Resource	Use To...
<a href="https://reproductiverights.gov">reproductiverights.gov</a>	Know your rights to reproductive health care
<a href="#">Clinic Locator Database</a>	Find a Title X family planning clinic
<a href="https://rhntc.org">rhntc.org</a>	Access free Title X Training &TA resources, events, and request TA
<a href="#">Sex and HIV Education State Requirements</a>	Track and compare state sex and HIV education mandates
<a href="#">State Contraception Policies</a>	Track and compare state policies on contraception
<a href="#">State Legislation Tracker</a>	Track legislation that impacts sexual and reproductive health
<a href="#">AbortionFinder</a>	Locate providers for referrals and track state-by-state policy

**8. Can we receive some support in how to communicate with youth about what the *Dobbs* decision means and how it may impact them?**

<sup>2</sup> Note that the inclusion of external hyperlinks does not constitute endorsement or recommendation by the U.S. Government or HHS of the linked web resources or the information, products, or services contained therein. HHS does not exercise any control over the content on external sites. You will be subject to that site's privacy policy when you visit the external site.

The questions and answers included below aim to provide guidance and clarification from OPA for TPP recipients regarding the impact of the U.S. Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* on the TPP Program.

Yes, your RHNTC grantee liaison is available to assist you. Please reach out to your liaison directly for more information. If you need help identifying your grantee liaison, please contact your OPA Project Officer.

**9. Given the disproportionate impact of the *Dobbs* decision on people of color, do you see an increased focus on equity and social determinants of health as it relates to our TPP work this year and moving forward?**

OPA's three key priorities related to the TPP program and the provision of sexual and reproductive health education for young people and families continue to be bolstering access, advancing equity, and ensuring quality. Through the current TPP work we do, recipients are encouraged to fully explore and understand the underlying issues contributing to disparities in teen pregnancy and work to address these issues through their grant projects.

**10. How does the guidance that TPP grantees should refer clients to Title X clinics apply when a Title X recipient is also a TPP grantee?**

TPP recipients should continue to provide whatever linkages and referrals they had been providing prior to the decision in *Dobbs*. This does not change whether a TPP recipient is or is not also a Title X recipient. In the event an organization is a TPP and Title X grant recipient, a Title X recipient is required to provide clients with counseling and a referral for an abortion upon request.

Per the 2021 Title X rule, Title X recipients are required to offer pregnant clients the opportunity to be provided information and counseling regarding each of the following options: prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination. If requested to provide such information and counseling, provide neutral, factual information and nondirective counseling on each of the options, and referral upon request, except with respect to any option(s) about which the pregnant client indicates they do not wish to receive such information and counseling. (42 CFR § 59.5(a)(5))

The questions and answers included below aim to provide guidance and clarification from OPA for TPP recipients regarding the impact of the U.S. Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* on the TPP Program.

## Questions & Answers Issued June 2022

**1. Who should TPP recipients contact with questions about the impact of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*?**

For questions related to the impact of the *Dobbs* on their TPP projects, TPP recipients should contact their respective OPA project officers. For questions about *Dobbs* outside the scope of their TPP projects, recipients should contact their private counsel.

**2. Given the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*, are TPP recipients still allowed to provide factual information about abortion if it is a part of the TPP program content?**

Yes, TPP recipients should continue to provide all factual information about abortion if it is a part of the TPP program content.

**3. Given the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*, are TPP recipients still allowed to provide youth receiving TPP programs with a referral to an abortion provider if they ask for such a referral?**

Yes, TPP recipients should continue to provide whatever information they had been providing to recipients prior to the decision in *Dobbs*.

**4. How can I find a Title X provider near my TPP program?**

The Title X Family Planning Clinic Locator is available at <https://opa-fpclinicdb.hhs.gov/>. The Title X Family Planning Clinic Locator provides information on family planning clinics that offer a broad range of family planning and preventive health services, including the location of the clinic, specific services available, and clinic contact information. You can use the Locator to search for clinics by state or by specific address or zip code.

**5. Given the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*, are Title X recipients still allowed to provide counseling to clients about abortion?**

Not only are Title X recipients **allowed**, but per the 2021 Title X rule, Title X recipients are **required** to offer pregnant clients the opportunity to be provided **information and counseling** regarding each of the following options: prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination. If requested to provide such information and counseling, provide neutral, factual information and nondirective counseling on each of the options, **and referral upon request**, except with respect to any option(s) about which the pregnant client indicates they do not wish to receive such information and counseling. (42 CFR § 59.5(a)(5))

**6. Given the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*, are Title X recipients still allowed to provide clients with counseling and a referral for an abortion?**

The questions and answers included below aim to provide guidance and clarification from OPA for TPP recipients regarding the impact of the U.S. Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* on the TPP Program.

Not only are Title X recipients **allowed**, but per the 2021 Title X rule, Title X recipients are **required** to offer pregnant clients the opportunity to be provided **information and counseling** regarding each of the following options: prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination. If requested to provide such information and counseling, provide neutral, factual information and nondirective counseling on each of the options, **and referral upon request**, except with respect to any option(s) about which the pregnant client indicates they do not wish to receive such information and counseling. (42 CFR § 59.5(a)(5))

However, there are limitations on what abortion counseling and referral is permissible under the statute. A Title X project may not provide pregnancy options 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. And, while a Title X project may provide a referral for abortion, which 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. (65 Fed. Reg. 41281 (July 3, 2000))

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. (65 Fed. Reg. 41281 (July 3, 2000)).

**7. Can Title X grantees accept referrals from clients living in a different state from where the service site is located?**

Yes, Title X recipients can provide services for clients living outside of the community and state that the service site is located in. Title X recipients are required to provide services without the imposition of any durational residency requirement. (42 CFR § 59.5(b)(5))

**8. Can Title X recipients make referrals for a client to a provider in a different state?**

There are no geographic limits for Title X recipients making referrals for their clients.

Title X recipients are required to provide for coordination and use of referrals and linkages with primary healthcare providers, other providers of healthcare services, local health and welfare departments, hospitals, voluntary agencies, and health services projects supported by other federal programs, **who are in close physical proximity to the Title X site, when feasible**, in order to promote access to services and provide a seamless continuum of care. (42 CFR § 59.5(b)(8))

Title X recipients have flexibility to refer clients for services across state lines if necessary.

**9. Can Title X recipients provide pregnancy counseling via telehealth?**

The questions and answers included below aim to provide guidance and clarification from OPA for TPP recipients regarding the impact of the U.S. Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* on the TPP Program.

Yes, Title X recipients are required to provide for medical services related to family planning (including consultation by a clinical services provider, examination, prescription and continuing supervision, laboratory examination, contraceptive supplies), **in person or via telehealth**, and necessary referral to other medical facilities when medically indicated, and provide for the effective usage of contraceptive devices and practices. (42 CFR § 59.5(b)(1))

**10. What is Title X's requirement on maintaining client confidentiality?**

As detailed in 42 CFR § 59.10(a), the Title X program requires that 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 that does not identify particular individuals. Reasonable efforts to collect charges without jeopardizing client confidentiality must be made. Recipients must inform the client of any potential for disclosure of their confidential health information to policyholders where the policyholder is someone other than the client. (42 CFR § 59.10(a))



Office of  
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# ***Dobbs v. Jackson Women's Health Organization U.S. Supreme Court Decision: Impact on TPP Program***

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QUESTIONS & ANSWERS FOR TEEN PREGNANCY  
PREVENTION (TPP) RECIPIENTS

June 2022

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### General Questions

**1. Who should TPP recipients contact with questions about the impact of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*?**

For questions related to the impact of the *Dobbs* on their TPP projects, TPP recipients should contact their respective OPA project officers. For questions about *Dobbs* outside the scope of their TPP projects, recipients should contact their private counsel.

**2. Given the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*, are TPP recipients still allowed to provide factual information about abortion if it is a part of the TPP program content?**

Yes, TPP recipients should continue to provide all factual information about abortion if it is a part of the TPP program content.

**3. Given the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*, are TPP recipients still allowed to provide youth receiving TPP programs with a referral to an abortion provider if they ask for such a referral?**

Yes, TPP recipients should continue to provide whatever information they had been providing to recipients prior to the decision in *Dobbs*.

### Collaboration between TPP and Title X Providers

**4. How can I find a Title X provider near my TPP program?**

The Title X Family Planning Clinic Locator is available at <https://opa-fpclinicdb.hhs.gov/>. The Title X Family Planning Clinic Locator provides information on family planning clinics that offer a broad range of family planning and preventive health services, including the location of the clinic, specific services available, and clinic contact information. You can use the Locator to search for clinics by state or by specific address or zip code.

**5. Given the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*, are Title X recipients still allowed to provide counseling to clients about abortion?**

Not only are Title X recipients **allowed**, but per the 2021 Title X rule, Title X recipients are **required** to offer pregnant clients the opportunity to be provided **information and counseling** regarding each of the following options: prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination. If requested to provide such information and counseling, provide neutral, factual information and nondirective counseling on each of the options, **and referral upon request**, except with respect to any option(s) about which the pregnant client indicates they do not wish to receive such information and counseling. (42 CFR § 59.5(a)(5))

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**6. Given the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*, are Title X recipients still allowed to provide clients with counseling and a referral for an abortion?**

Not only are Title X recipients **allowed**, but per the 2021 Title X rule, Title X recipients are **required** to offer pregnant clients the opportunity to be provided **information and counseling** regarding each of the following options: prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination. If requested to provide such information and counseling, provide neutral, factual information and nondirective counseling on each of the options, **and referral upon request**, except with respect to any option(s) about which the pregnant client indicates they do not wish to receive such information and counseling. (42 CFR § 59.5(a)(5))

However, there are limitations on what abortion counseling and referral is permissible under the statute. A Title X project may not provide pregnancy options 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. And, while a Title X project may provide a referral for abortion, which 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. (65 Fed. Reg. 41281 (July 3, 2000))

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**7. Can Title X grantees accept referrals from clients living in a different state from where the service site is located?**

Yes, Title X recipients can provide services for clients living outside of the community and state that the service site is located in. Title X recipients are required to provide services without the imposition of any durational residency requirement. (42 CFR § 59.5(b)(5))

**8. Can Title X recipients make referrals for a client to a provider in a different state?**

There are no geographic limits for Title X recipients making referrals for their clients.

Title X recipients are required to provide for coordination and use of referrals and linkages with primary healthcare providers, other providers of healthcare services, local health and welfare departments, hospitals, voluntary agencies, and health services projects supported by other federal programs, **who are in close physical proximity to the Title X site, when feasible**, in order to promote access to services and provide a seamless continuum of care. (42 CFR § 59.5(b)(8))

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Title X recipients have flexibility to refer clients for services across state lines if necessary.

**9. Can Title X recipients provide pregnancy counseling via telehealth?**

Yes, Title X recipients are required to provide for medical services related to family planning (including consultation by a clinical services provider, examination, prescription and continuing supervision, laboratory examination, contraceptive supplies), **in person or via telehealth**, and necessary referral to other medical facilities when medically indicated, and provide for the effective usage of contraceptive devices and practices. (42 CFR § 59.5(b)(1))

**10. What is Title X's requirement on maintaining client confidentiality?**

As detailed in 42 CFR § 59.10(a), the Title X program requires that 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 that does not identify particular individuals. Reasonable efforts to collect charges without jeopardizing client confidentiality must be made. Recipients must inform the client of any potential for disclosure of their confidential health information to policyholders where the policyholder is someone other than the client. (42 CFR § 59.10(a))



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# ***Dobbs v. Jackson Women's Health Organization U.S. Supreme Court Decision: Impact on Title X Program***

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QUESTIONS & ANSWERS FOR TITLE X RECIPIENTS

June 2022

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The questions and answers included below aim to provide guidance and clarification from OPA for Title X recipients regarding the impact of the U.S. Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* on the Title X Program.

## **General Questions**

- 1. If a Title X recipient begins to see an influx of clients following the Supreme Court decision in *Dobbs, et al. v. Jackson Women's Health Organization*, is the Title X recipient allowed to reallocate funds to account for the change in client volume?**

Title X recipients can submit a request for a budget revision via Grant Solutions at any time if a need arises to reallocate more than 10% of the total budget across approved budget categories. The request should contain documentation explaining the need for the budget revision along with a revised budget (SF-424A) and revised budget narrative. This should be submitted through the GrantSolutions amendment module to begin the review and approval process. The process may take up to 30 days. If approved the grants management officer will issue a notice of award with the budget revision. Guidance on how to submit a budget revision amendment in GrantSolutions can be found on [MAX.gov](https://www.max.gov). Recipients should discuss any potential reallocation of funds with their respective project officer and grants management specialist.

- 2. Will OPA be providing Title X recipients with additional funding to address the potential influx in clients that may result from Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*?**

OPA is working to secure additional funding, but unfortunately does not have additional funding available at this time to provide to Title X recipients who may experience an influx in clients following the *Dobbs* Supreme Court decision. If additional funds were to become available at any point, OPA will share the information with all Title X recipients.

- 3. Can Title X recipients expand services to a new community or a new state if the need for services changes?**

The Title X program is not a state-based formula grant program, therefore individual Title X project service areas are not limited to individual states. Title X recipients interested in expanding their service area to include new communities, either within or across states, would need to request approval from OPA and GAM for a change in scope of their projects. Requests must be submitted via a change in scope amendment which may take up to 30 days for review. Approval is communicated via a notice of award issued by the grants management officer. Costs may be disallowed if a recipient begins implementing a change in scope prior to its approval.

A change in scope occurs when the recipient proposes changes to project's objectives, aims, or purposes identified in the approved application, such as changing the service area; applying a new technology; adding or eliminating a service delivery site; or making budget changes that cause a project to change substantially from what was originally approved. The [Title X Family Planning Change in Scope Worksheet](#) helps identify elements for clinic closures, new clinics, or other programmatic changes which may require a request for a change in scope to the current

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Title X family planning project. Recipients are not required to use the worksheet, but can include the completed worksheet with their amendment submission in Grant Solutions.

**4. Can Title X recipients begin to limit receipt of services to only residents from their state if the influx of clients from other states becomes too burdensome?**

No, Title X recipients cannot limit receipt of services to only residents from their states. Title X recipients are required to provide services without the imposition of any durational residency requirement or a requirement that the client be referred by a physician. (42 CFR § 59.5(b)(5))

**5. Can Title X recipients remove pregnancy testing and counseling from their Title X projects?**

Title X recipients are required to provide a broad range of acceptable and effective medically approved family planning methods (including natural family planning methods) and services (**including pregnancy testing and counseling**, assistance to achieve pregnancy, basic infertility services, sexually transmitted infection (STI) services, preconception health services, and adolescent-friendly health services). 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 acceptable and effective medically approved family planning methods and services. (42 CFR § 59.5(a)(1))

**As a result of the requirement in § 59.5(a)(1), Title X recipients cannot completely remove pregnancy testing and counseling services from their Title X projects.** Title X service sites are expected to provide most, if not all, of acceptable and effective medically approved family planning methods and services on site and to detail the referral process for family planning methods and services that are unavailable on-site. However, as long as the entire Title X project offers a broad range of acceptable and effective medically approved family planning methods and services, including pregnancy testing and counseling, not all individual service sites participating in the project must offer the broad range of methods and services.

Furthermore, Title X recipients are required to ensure that Title X service sites that are unable to provide clients with access to a broad range of acceptable and effective medically approved family planning methods and services, must be able to provide a prescription to the client for their method of choice or referrals to another provider, as requested. (42 CFR § 59.5(a)(1))

**6. Given the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*, can Title X recipients still provide emergency contraception to clients?**

Yes, Title X recipients are required to provide a broad range of acceptable and effective medically approved family planning methods (including natural family planning methods) and services (including pregnancy testing and counseling, assistance to achieve pregnancy, basic infertility services, sexually transmitted infection (STI) services, preconception health services, and adolescent-friendly health services). (42 CFR § 59.5(a)(1))

The questions and answers included below aim to provide guidance and clarification from OPA for Title X recipients regarding the impact of the U.S. Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* on the Title X Program.

Title X recipients may still consider emergency contraception as part of the required broad range of methods and services because it is a medically approved method of contraception. "Emergency contraception is a [FDA-approved] method of birth control you can use if you had sex without using [birth control](#) or if your birth control method did not work correctly. Emergency contraception pills are different from the abortion pill. If you are already pregnant, emergency contraception pills do not stop or harm your pregnancy." ([womenshealth.gov](https://www.womenshealth.gov)) Click [here](#) for more information on emergency contraception.

**7. Who should Title X recipients contact with questions about the impact of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*?**

For questions related to the impact of *Dobbs* on their Title X projects, Title X recipients should contact their respective OPA project officers; in addition, they should refer to the Title X Program Handbook for further guidance on all Title X recipient expectations. For questions about *Dobbs* outside the scope of their Title X projects, recipients should contact their private counsel.

**Counseling and Referral Questions**

**8. Given the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*, are Title X recipients still allowed to provide counseling to clients about abortion?**

Not only are Title X recipients **allowed**, but per the 2021 Title X rule, Title X recipients are **required** to offer pregnant clients the opportunity to be provided **information and counseling** regarding each of the following options: prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination. If requested to provide such information and counseling, provide neutral, factual information and nondirective counseling on each of the options, **and referral upon request**, except with respect to any option(s) about which the pregnant client indicates they do not wish to receive such information and counseling. (42 CFR § 59.5(a)(5))

**9. Given the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*, are Title X recipients still allowed to provide clients with counseling and a referral for an abortion?**

Not only are Title X recipients **allowed**, but per the 2021 Title X rule, Title X recipients are **required** to offer pregnant clients the opportunity to be provided **information and counseling** regarding each of the following options: prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination. If requested to provide such information and counseling, provide neutral, factual information and nondirective counseling on each of the options, **and referral upon request**, except with respect to any option(s) about which the pregnant client indicates they do not wish to receive such information and counseling. (42 CFR § 59.5(a)(5))

However, there are limitations on what abortion counseling and referral is permissible under the statute. A Title X project may not provide pregnancy options 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

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benefits. And, while a Title X project may provide a referral for abortion, which 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. (65 Fed. Reg. 41281 (July 3, 2000))

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. (65 Fed. Reg. 41281 (July 3, 2000)).

**10. Can Title X grantees accept referrals from clients living in a different state from where the service site is located?**

Yes, Title X recipients can provide services for clients living outside of the community and state that the service site is located in. Title X recipients are required to provide services without the imposition of any durational residency requirement. (42 CFR § 59.5(b)(5))

**11. Can Title X recipients make referrals for a client to a provider in a different state?**

There are no geographic limits for Title X recipients making referrals for their clients.

Title X recipients are required to provide for coordination and use of referrals and linkages with primary healthcare providers, other providers of healthcare services, local health and welfare departments, hospitals, voluntary agencies, and health services projects supported by other federal programs, **who are in close physical proximity to the Title X site, when feasible**, in order to promote access to services and provide a seamless continuum of care. (42 CFR § 59.5(b)(8))

Title X recipients have flexibility to refer clients for services across state lines if necessary.

**12. Can Title X recipients provide pregnancy counseling via telehealth?**

Yes, Title X recipients are required to provide for medical services related to family planning (including consultation by a clinical services provider, examination, prescription and continuing supervision, laboratory examination, contraceptive supplies), **in person or via telehealth**, and necessary referral to other medical facilities when medically indicated, and provide for the effective usage of contraceptive devices and practices. (42 CFR § 59.5(b)(1))

**13. When providing clients with a referral for an abortion, are Title X recipients allowed to take any further steps to help clients secure an appointment?**

While a Title X project may provide a referral for abortion, which 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

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### **Prohibition of Abortion Questions**

#### **14. Can Title X projects provide abortion services for clients now in need of such services?**

No, Title X recipients are not allowed to provide abortion as a method of family planning as part of the Title X project. (Section 1008, PHS Act; Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, 136 Stat. 49, 444 (2022); 42 CFR § 59.5(a)(5))

#### **15. Are Title X projects allowed to provide medication abortion pills for clients now in need of such services?**

No, Title X recipients are not allowed to provide abortion as a method of family planning as part of the Title X project. (Section 1008, PHS Act; Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, 136 Stat. 49, 444 (2022); 42 CFR § 59.5(a)(5))

#### **16. What is the Title X program's requirement on abortion as a method of family planning and abortion counseling and referral?**

Title X recipients are not allowed to provide abortion as a method of family planning as part of the Title X project. (Section 1008, PHS Act; Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, 136 Stat. 49, 444 (2022); 42 CFR § 59.5(a)(5))

Title X recipients are required to offer pregnant clients the opportunity to be provided information and counseling regarding each of the following options: prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination. If requested to provide such information and counseling, provide neutral, factual information and nondirective counseling on each of the options, and referral upon request, except with respect to any option(s) about which the pregnant client indicates they do not wish to receive such information and counseling. (42 CFR § 59.5(a)(5))

Furthermore, Title X recipients are prohibited from providing 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

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preserve sufficient separation between Title X program activities and abortion-related activities. (65 Fed. Reg. 41281 (July 3, 2000))

**17. What is considered “sufficient separation” between Title X program activities and abortion-related activities?**

Title X recipients are required to ensure that non-Title X abortion activities are separate and distinct from Title X project activities. Where recipients conduct abortion activities that are not part of the Title X project and would not be permissible if they were, the recipient 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 is so large and 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 recipient agreed to perform in the relevant grant documents as a condition of receiving Title X funds. 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 problem is created.

Separation of Title X from abortion activities does not require separate recipients 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 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;
- c. 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. (65 Fed. Reg. 41281, 41282 (July 3, 2000))

**18. Can Title X recipients use Title X funds to fund speakers to present in opposition to the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*?**

No, Title X recipients are prohibited from promoting or encouraging 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

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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 an available alternative when a family planning method fails in a discussion of relative risks of various methods of contraception. (65 Fed. Reg. 41281, 41282 (July 3, 2000))

**19. How can Title X projects support clients with positive pregnancy tests and are experiencing early pregnancy symptoms such as bleeding, nausea and vomiting, or pain?**

For clients experiencing early pregnancy symptoms before the client realizes they are pregnant, and/or immediately following a positive pregnancy test, Title X providers should assess the client and provide clinical care to address their immediate needs.

Subsequently, as detailed in 42 CFR § 59.5(a)(5), providers must offer pregnant clients the opportunity to be provided information and counseling regarding the following options: prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination. If requested to provide such information and counseling, providers must provide neutral, factual information and nondirective counseling on each of the options, and referral upon request, except with respect to any option(s) about which the pregnant client indicates they do not wish to receive such information and counseling.

Title X recipients are required to provide a broad range of acceptable and effective medically approved family planning methods (including natural family planning methods) and services (including pregnancy testing and counseling, assistance to achieve pregnancy, basic infertility services, sexually transmitted infection (STI) services, preconception health services, and adolescent-friendly health services). (42 CFR § 59.5(a)(1))

Title X recipients are required to provide services in a manner that ensures equitable and quality service delivery consistent with nationally recognized standards of care. (42 CFR § 59.5(a)(3))

In addition, Title X recipients are required to provide for medical services related to family planning (including consultation by a clinical services provider, examination, prescription and continuing supervision, laboratory examination, contraceptive supplies), in person or via telehealth, and necessary referral to other medical facilities when medically indicated, and provide for the effective usage of contraceptive devices and practices. (42 CFR § 59.5(b)(1))

**Confidentiality Questions**

**20. What is Title X's requirement on maintaining client confidentiality?**

As detailed in 42 CFR § 59.10(a), the Title X program requires that 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

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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 that does not identify particular individuals. Reasonable efforts to collect charges without jeopardizing client confidentiality must be made. Recipients must inform the client of any potential for disclosure of their confidential health information to policyholders where the policyholder is someone other than the client. (42 CFR § 59.10(a))



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## Questions & Answers Issued October 2022

### 1. Where should I look for answers about Dobbs and its potential impact on my project?

We recommend you start by contacting your Project Officer and visiting [MAX.gov](https://www.max.gov).

For technical assistance in developing clinical protocols or with other clinical service delivery questions, contact the [National Clinical Training Center on Family Planning \(NCTCFP\)](#).

For other technical assistance, contact the [Reproductive Health National Training Center \(RHNTC\)](#).

For general information not limited to Title X, please review the following:

- **ReproductiveRights.org:** U.S. Department of Health and Human Services website provides accurate and up-to-date information about access to and coverage of reproductive health care and resources.
  - **Executive Order Protecting Access to Reproductive Health Care Services:** On July 8, 2022, President Biden signed an Executive Order. Read the Executive Order [here](#) and factsheet [here](#).
  - **Executive Order On Securing Access to Reproductive and Other Healthcare Services:** On August 3, 2022, President Biden signed a subsequent Executive Order. Read the Executive Order [here](#) and factsheet [here](#).
  - **HIPAA Notice:** Notice regarding [HIPAA Privacy Rule and Disclosures of Information Relating to Reproductive Health Care](#).
  - **Federal Trade Commission Notice:** This [Federal Trade Commission \(FTC\) notice](#) covers enforcing the law against the illegal sharing of highly sensitive data.
2. **If a Title X recipient is located in a state with laws that could be interpreted to prohibit abortion counseling and referral, is the recipient required to comply with the state laws or with the Title X regulations, which require recipients to provide abortion referral and counseling?**

While OPA is unaware of any current state laws that expressly conflict, Title X recipients must still follow Federal regulatory requirements, such as providing nondirective counseling and referrals for abortion on request. However, some practices may be impacted. For example, where a state has banned certain abortions, referrals in those circumstances will need to be made out of state.

### 3. Can Federal recipients use grant funds for legal services directly related to their grant award?

It is possible that recipients can use their grant funds for legal services related to their project. Decisions about allowability of costs are made by the Office of the Assistant Secretary for Health (OASH) Grants Management Officer (GMO) based upon factors set out in grants administration regulations at 45 CFR § 75.459 ("Professional service costs") and 45 CFR §

The questions and answers included below aim to provide guidance and clarification from OPA for Title X recipients regarding the impact of the U.S. Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* on the Title X Program.

75.435 (“Defense and prosecution of criminal and civil proceedings, claims, appeals, and patent infringements”). Recipients should review 45 CFR § 75.459 and 45 CFR § 75.435 and discuss with the GMO for final determination.

45 CFR § 75.459 Professional service costs - <https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75/subpart-E/subject-group-ECFR5d90ba314caea08/section-75.459>

45 CFR § 75.435 Defense and prosecution of criminal and civil proceedings, claims, appeals, and patent infringements - <https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75/subpart-E/subject-group-ECFR5d90ba314caea08/section-75.435>

**4. Does the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* affect the provision of follow-up care for early pregnancy loss; miscarriage; or self-managed abortion at Title X service sites?**

It does not. Title X recipients are required to provide for medical services related to family planning (including consultation by a clinical services provider, examination, prescription and continuing supervision, laboratory examination, contraceptive supplies), in person or via telehealth, and necessary referral to other medical facilities when medically indicated, and provide for the effective usage of contraceptive devices and practices. (42 CFR § 59.5(b)(1))

For technical assistance in developing clinical protocols or with other clinical service delivery questions, contact the [National Clinical Training Center on Family Planning \(NCTCFP\)](#).

**5. Some of our subrecipients are concerned about reporting pregnancy test results in their electronic medical record (EMR), especially since we have to submit Family Planning Annual Report (FPAR) data. How do we ensure the confidentiality of our clients' medical records?**

Title X recipients should ensure that their internal controls for all Title X client data ensure confidentiality. Please refer to the question answered in the June Q&A below: “*What is Title X's requirement on maintaining client confidentiality?*” for more information on client confidentiality.

The [FPAR 2.0 Q&A](#) in the “Data Privacy” section clarifies OPA's deidentifying process to ensure security of client data.

For technical assistance regarding client data privacy and confidentiality, contact the [Reproductive Health National Training Center \(RHNTC\)](#).

**6. Does Title X or OPA provide legal protections if state laws change to be more restrictive than what Title X requires? (i.e., providers or clients being penalized for naming/referring/or accessing abortions services)?**

It is possible that recipients can use their grant funds for legal services related to their project. Please refer to the question answered in the Q&A above: “*Can Federal recipients use grant funds for legal services directly related to their grant award?*” for more information.

The questions and answers included below aim to provide guidance and clarification from OPA for Title X recipients regarding the impact of the U.S. Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* on the Title X Program.

To request technical assistance regarding client data privacy and confidentiality, or identify relevant resources, contact the [RHNTC](#).

**7. Can Title X funds be used to purchase home pregnancy tests for clients?**

Yes, Title X funds can be used to purchase home pregnancy tests for clients. Service sites should have protocols established for how they provide the home pregnancy tests to clients under the Title X project and how they ensure confidential, client-centered follow up as needed to promote continuity of care.

For technical assistance in developing clinical protocols or with other clinical service delivery questions, contact the [NCTCFP](#).

The questions and answers included below aim to provide guidance and clarification from OPA for Title X recipients regarding the impact of the U.S. Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* on the Title X Program.

## Questions & Answers Issued June 2022

- 1. If a Title X recipient begins to see an influx of clients following the Supreme Court decision in *Dobbs, et al. v. Jackson Women's Health Organization*, is the Title X recipient allowed to reallocate funds to account for the change in client volume?**

Title X recipients can submit a request for a budget revision via Grant Solutions at any time if a need arises to reallocate more than 10% of the total budget across approved budget categories. The request should contain documentation explaining the need for the budget revision along with a revised budget (SF-424A) and revised budget narrative. This should be submitted through the GrantSolutions amendment module to begin the review and approval process. The process may take up to 30 days. If approved the grants management officer will issue a notice of award with the budget revision. Guidance on how to submit a budget revision amendment in GrantSolutions can be found on [MAX.gov](https://www.max.gov). Recipients should discuss any potential reallocation of funds with their respective project officer and grants management specialist.

- 2. Will OPA be providing Title X recipients with additional funding to address the potential influx in clients that may result from Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*?**

OPA is working to secure additional funding, but unfortunately does not have additional funding available at this time to provide to Title X recipients who may experience an influx in clients following the *Dobbs* Supreme Court decision. If additional funds were to become available at any point, OPA will share the information with all Title X recipients.

- 3. Can Title X recipients expand services to a new community or a new state if the need for services changes?**

The Title X program is not a state-based formula grant program, therefore individual Title X project service areas are not limited to individual states. Title X recipients interested in expanding their service area to include new communities, either within or across states, would need to request approval from OPA and GAM for a change in scope of their projects. Requests must be submitted via a change in scope amendment which may take up to 30 days for review. Approval is communicated via a notice of award issued by the grants management officer. Costs may be disallowed if a recipient begins implementing a change in scope prior to its approval.

A change in scope occurs when the recipient proposes changes to project's objectives, aims, or purposes identified in the approved application, such as changing the service area; applying a new technology; adding or eliminating a service delivery site; or making budget changes that cause a project to change substantially from what was originally approved. The [Title X Family Planning Change in Scope Worksheet](#) helps identify elements for clinic closures, new clinics, or other programmatic changes which may require a request for a change in scope to the current Title X family planning project. Recipients are not required to use the worksheet, but can include the completed worksheet with their amendment submission in Grant Solutions.

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**4. Can Title X recipients begin to limit receipt of services to only residents from their state if the influx of clients from other states becomes too burdensome?**

No, Title X recipients cannot limit receipt of services to only residents from their states. Title X recipients are required to provide services without the imposition of any durational residency requirement or a requirement that the client be referred by a physician. (42 CFR § 59.5(b)(5))

**5. Can Title X recipients remove pregnancy testing and counseling from their Title X projects?**

Title X recipients are required to provide a broad range of acceptable and effective medically approved family planning methods (including natural family planning methods) and services (**including pregnancy testing and counseling**, assistance to achieve pregnancy, basic infertility services, sexually transmitted infection (STI) services, preconception health services, and adolescent-friendly health services). 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 acceptable and effective medically approved family planning methods and services. (42 CFR § 59.5(a)(1))

**As a result of the requirement in § 59.5(a)(1), Title X recipients cannot completely remove pregnancy testing and counseling services from their Title X projects.** Title X service sites are expected to provide most, if not all, of acceptable and effective medically approved family planning methods and services on site and to detail the referral process for family planning methods and services that are unavailable on-site. However, as long as the entire Title X project offers a broad range of acceptable and effective medically approved family planning methods and services, including pregnancy testing and counseling, not all individual service sites participating in the project must offer the broad range of methods and services.

Furthermore, Title X recipients are required to ensure that Title X service sites that are unable to provide clients with access to a broad range of acceptable and effective medically approved family planning methods and services, must be able to provide a prescription to the client for their method of choice or referrals to another provider, as requested. (42 CFR § 59.5(a)(1))

**6. Given the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*, can Title X recipients still provide emergency contraception to clients?**

Yes, Title X recipients are required to provide a broad range of acceptable and effective medically approved family planning methods (including natural family planning methods) and services (including pregnancy testing and counseling, assistance to achieve pregnancy, basic infertility services, sexually transmitted infection (STI) services, preconception health services, and adolescent-friendly health services). (42 CFR § 59.5(a)(1))

Title X recipients may still consider emergency contraception as part of the required broad range of methods and services because it is a medically approved method of contraception. "Emergency contraception is a [FDA-approved] method of birth control you can use if you had sex without using [birth control](#) or if your birth control method did not work correctly. Emergency

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contraception pills are different from the abortion pill. If you are already pregnant, emergency contraception pills do not stop or harm your pregnancy." (womenshealth.gov) Click [here](#) for more information on emergency contraception.

**7. Who should Title X recipients contact with questions about the impact of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*?**

For questions related to the impact of *Dobbs* on their Title X projects, Title X recipients should contact their respective OPA project officers; in addition, they should refer to the Title X Program Handbook for further guidance on all Title X recipient expectations. For questions about *Dobbs* outside the scope of their Title X projects, recipients should contact their private counsel.

**8. Given the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*, are Title X recipients still allowed to provide counseling to clients about abortion?**

Not only are Title X recipients **allowed**, but per the 2021 Title X rule, Title X recipients are **required** to offer pregnant clients the opportunity to be provided **information and counseling** regarding each of the following options: prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination. If requested to provide such information and counseling, provide neutral, factual information and nondirective counseling on each of the options, **and referral upon request**, except with respect to any option(s) about which the pregnant client indicates they do not wish to receive such information and counseling. (42 CFR § 59.5(a)(5))

**9. Given the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*, are Title X recipients still allowed to provide clients with counseling and a referral for an abortion?**

Not only are Title X recipients **allowed**, but per the 2021 Title X rule, Title X recipients are **required** to offer pregnant clients the opportunity to be provided **information and counseling** regarding each of the following options: prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination. If requested to provide such information and counseling, provide neutral, factual information and nondirective counseling on each of the options, **and referral upon request**, except with respect to any option(s) about which the pregnant client indicates they do not wish to receive such information and counseling. (42 CFR § 59.5(a)(5))

However, there are limitations on what abortion counseling and referral is permissible under the statute. A Title X project may not provide pregnancy options 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. And, while a Title X project may provide a referral for abortion, which 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. (65 Fed. Reg. 41281 (July 3, 2000))

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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. (65 Fed. Reg. 41281 (July 3, 2000)).

**10. Can Title X grantees accept referrals from clients living in a different state from where the service site is located?**

Yes, Title X recipients can provide services for clients living outside of the community and state that the service site is located in. Title X recipients are required to provide services without the imposition of any durational residency requirement. (42 CFR § 59.5(b)(5))

**11. Can Title X recipients make referrals for a client to a provider in a different state?**

There are no geographic limits for Title X recipients making referrals for their clients.

Title X recipients are required to provide for coordination and use of referrals and linkages with primary healthcare providers, other providers of healthcare services, local health and welfare departments, hospitals, voluntary agencies, and health services projects supported by other federal programs, **who are in close physical proximity to the Title X site, when feasible**, in order to promote access to services and provide a seamless continuum of care. (42 CFR § 59.5(b)(8))

Title X recipients have flexibility to refer clients for services across state lines if necessary.

**12. Can Title X recipients provide pregnancy counseling via telehealth?**

Yes, Title X recipients are required to provide for medical services related to family planning (including consultation by a clinical services provider, examination, prescription and continuing supervision, laboratory examination, contraceptive supplies), **in person or via telehealth**, and necessary referral to other medical facilities when medically indicated, and provide for the effective usage of contraceptive devices and practices. (42 CFR § 59.5(b)(1))

**13. When providing clients with a referral for an abortion, are Title X recipients allowed to take any further steps to help clients secure an appointment?**

While a Title X project may provide a referral for abortion, which 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. (65 Fed. Reg. 41281 (July 3, 2000))

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**14. Can Title X projects provide abortion services for clients now in need of such services?**

No, Title X recipients are not allowed to provide abortion as a method of family planning as part of the Title X project. (Section 1008, PHS Act; Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, 136 Stat. 49, 444 (2022); 42 CFR § 59.5(a)(5))

**15. Are Title X projects allowed to provide medication abortion pills for clients now in need of such services?**

No, Title X recipients are not allowed to provide abortion as a method of family planning as part of the Title X project. (Section 1008, PHS Act; Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, 136 Stat. 49, 444 (2022); 42 CFR § 59.5(a)(5))

**16. What is the Title X program's requirement on abortion as a method of family planning and abortion counseling and referral?**

Title X recipients are not allowed to provide abortion as a method of family planning as part of the Title X project. (Section 1008, PHS Act; Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, 136 Stat. 49, 444 (2022); 42 CFR § 59.5(a)(5))

Title X recipients are required to offer pregnant clients the opportunity to be provided information and counseling regarding each of the following options: prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination. If requested to provide such information and counseling, provide neutral, factual information and nondirective counseling on each of the options, and referral upon request, except with respect to any option(s) about which the pregnant client indicates they do not wish to receive such information and counseling. (42 CFR § 59.5(a)(5))

Furthermore, Title X recipients are prohibited from providing 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. (65 Fed. Reg. 41281 (July 3, 2000))

**17. What is considered "sufficient separation" between Title X program activities and abortion-related activities?**

Title X recipients are required to ensure that non-Title X abortion activities are separate and distinct from Title X project activities. Where recipients conduct abortion activities that are not part of the Title X project and would not be permissible if they were, the recipient must ensure that the Title X-supported project is separate and distinguishable from those other activities.

The questions and answers included below aim to provide guidance and clarification from OPA for Title X recipients regarding the impact of the U.S. Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* on the Title X Program.

What must be looked at is whether the abortion element in a program of family planning services is so large and 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 recipient agreed to perform in the relevant grant documents as a condition of receiving Title X funds. 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 problem is created.

Separation of Title X from abortion activities does not require separate recipients 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 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;
- c. 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. (65 Fed. Reg. 41281, 41282 (July 3, 2000))

**18. Can Title X recipients use Title X funds to fund speakers to present in opposition to the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*?**

No, Title X recipients are prohibited from promoting or encouraging 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 an available alternative when a family planning method fails in a discussion of relative risks of various methods of contraception. (65 Fed. Reg. 41281, 41282 (July 3, 2000))

**19. How can Title X projects support clients with positive pregnancy tests and are experiencing early pregnancy symptoms such as bleeding, nausea and vomiting, or pain?**

The questions and answers included below aim to provide guidance and clarification from OPA for Title X recipients regarding the impact of the U.S. Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* on the Title X Program.

For clients experiencing early pregnancy symptoms before the client realizes they are pregnant, and/or immediately following a positive pregnancy test, Title X providers should assess the client and provide clinical care to address their immediate needs.

Subsequently, as detailed in 42 CFR § 59.5(a)(5), providers must offer pregnant clients the opportunity to be provided information and counseling regarding the following options: prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination. If requested to provide such information and counseling, providers must provide neutral, factual information and nondirective counseling on each of the options, and referral upon request, except with respect to any option(s) about which the pregnant client indicates they do not wish to receive such information and counseling.

Title X recipients are required to provide a broad range of acceptable and effective medically approved family planning methods (including natural family planning methods) and services (including pregnancy testing and counseling, assistance to achieve pregnancy, basic infertility services, sexually transmitted infection (STI) services, preconception health services, and adolescent-friendly health services). (42 CFR § 59.5(a)(1))

Title X recipients are required to provide services in a manner that ensures equitable and quality service delivery consistent with nationally recognized standards of care. (42 CFR § 59.5(a)(3))

In addition, Title X recipients are required to provide for medical services related to family planning (including consultation by a clinical services provider, examination, prescription and continuing supervision, laboratory examination, contraceptive supplies), in person or via telehealth, and necessary referral to other medical facilities when medically indicated, and provide for the effective usage of contraceptive devices and practices. (42 CFR § 59.5(b)(1))

## **20. What is Title X's requirement on maintaining client confidentiality?**

As detailed in 42 CFR § 59.10(a), the Title X program requires that 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 that does not identify particular individuals. Reasonable efforts to collect charges without jeopardizing client confidentiality must be made. Recipients must inform the client of any potential for disclosure of their confidential health information to policyholders where the policyholder is someone other than the client. (42 CFR § 59.10(a))



Assistant Secretary for Health  
Office of the Assistant Secretary for Health  
Office of Population Affairs  
Washington, D.C. 20201

June 29, 2022

Dear Title X Colleagues,

For more than 50 years, Title X family planning clinics have delivered a broad range of family planning and preventive health services for millions of low-income or uninsured individuals and others. In light of the Supreme Court's consequential decision in *Dobbs v. Jackson Women's Health Organization*, the U.S. Department of Health and Human Services (HHS) Office of Population Affairs (OPA) reaffirms its commitment to Title X, the nation's family planning program, and the imperative to support communities' access to equitable, affordable, client-centered quality family planning and related preventive health services.

OPA is keenly aware of the impact of the Court's decision and is intent on maintaining Title X as a safe haven for robust, quality, client-centered family planning services. **For example, all Title X recipients continue to operate under the federal requirements of the 2021 Title X rule, including the requirement to provide nondirective pregnancy options counseling in the event of a positive pregnancy test and client-requested referrals.** The full text of the 2021 Title X rule is available at <https://www.ecfr.gov/current/title-42/part-59/subpart-A>. A few of the Title X requirements especially relevant given this recent decision are highlighted below and include:

- Providing a broad range of acceptable and effective medically approved family planning methods (including natural family planning methods) and services (including pregnancy testing and counseling, assistance to achieve pregnancy, basic infertility services, sexually transmitted infection (STI) services, preconception health services, and adolescent-friendly health services). (42 CFR § 59.5(a)(1))
- Providing services in a manner that ensures equitable and quality service delivery consistent with nationally recognized standards of care. (42 CFR § 59.5(a)(3))
- Offering pregnant clients the opportunity to be provided information and counseling regarding each of the following options: prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination. If requested to provide such information and counseling, provide neutral, factual information and nondirective counseling on each of the options, and referral upon request, except with respect to any option(s) about which the pregnant client indicates they do not wish to receive such information and counseling. (42 CFR § 59.5(a)(5))
- Ensuring that 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. Information may otherwise be disclosed only in summary, statistical, or other form that does not identify the individual. Reasonable efforts to collect charges without jeopardizing client confidentiality must be made. Recipients must inform the client of any potential for disclosure of their confidential health information to policyholders where the policyholder is someone other than the client. (42 CFR § 59.10(a))

Prior to the Supreme Court decision, OPA had taken several meaningful actions to restore access to equitable, affordable, client-centered, quality family planning services, such as amending the Title X Family Planning regulations, awarding over \$260 million in grant funding for Title X service delivery, and playing a vital role in the HHS Intra-agency Task Force on Reproductive Healthcare Access. Looking toward the future, we are committed to helping you bolster your efforts to maintain and expand access to equitable, affordable, client-centered, quality family planning services. OPA's charge for the field is threefold:

1. *Bolster access* - Including continuing to provide and/or expand mobile services, drive-thru services, and telehealth services; as well as thinking about how to expand access for additional subrecipients to join Title X networks by reducing burdensome paperwork and/or taking other steps to encourage new partners to join Title X networks.
2. *Advance equity* - Including engaging communities to ensure services are client-centered, using data to evaluate patterns in services provided, assessing clinic locations and hours, equity training for staff, and hiring staff specifically focused on equity work.
3. *Ensure quality* - Including updating clinical protocols, rethinking training, and providing ongoing support for clinical providers.

At OPA, we feel an immense responsibility to provide continued and timely support to assist you in providing access to equitable, affordable, client-centered, quality family planning services. To help you navigate this challenging time, OPA has prepared the attached list of Questions and Answers to provide additional guidance and clarity on the potential impact of the Supreme Court decision on the Title X program. We will continue to monitor how the Court's decision impacts the family planning field and will provide updated guidance and technical assistance as needed. We encourage you to continue openly communicating with your OPA project officer so that we can stay abreast of what is happening in your communities and states.

Your project officer is on stand-by to answer any questions you may have and to support you in any way we can. In addition, both the Reproductive Health National Training Center (RHNTC) and the National Clinical Training Center for Family Planning (NCTCFP) are available to provide Title X recipients with a wide range of intensive and individualized technical assistance (TA) tailored specifically to meet your needs. Please reach out directly to your RHNTC grantee liaison via email or through <https://rhntc.org/contact-us>, and reach out to the NCTCFP at [ctcfp-cahs@umkc.edu](mailto:ctcfp-cahs@umkc.edu) to begin discussing how these two OPA-funded training centers can help you.

Thank you for your commitment to serving your communities. We are grateful to have you as a part of the Title X network.

Sincerely,

(b)(6)



Jessica Swafford Marcella, M.P.A.  
Deputy Assistant Secretary for Health and Director,  
Office of Adolescent Health  
Office of Population Affairs



Assistant Secretary for Health  
Office of the Assistant Secretary for Health  
Office of Population Affairs  
Washington, D.C. 20201

June 29, 2022

Dear Teen Pregnancy Prevention Colleagues,

For more than a decade, OPA Teen Pregnancy Prevention (TPP) grantees have significantly improved U.S. adolescent health outcomes by providing evidence-based, medically accurate, trauma-informed, and age-appropriate sexual and reproductive health programs, and by developing and evaluating innovative and new approaches to disrupting health inequities and improving adolescent sexual and reproductive health. In light of the Supreme Court's consequential decision in *Dobbs v. Jackson Women's Health Organization*, the U.S. Department of Health and Human Services (HHS) Office of Population Affairs (OPA) reaffirms its commitment to supporting young people's access to the highest-quality sexual and reproductive health programs, including the information and services provided through the TPP program.

OPA is keenly aware of the impact that the court's recent decision, and the specific state restrictions that may follow, will have on TPP recipients. It is important that all TPP recipients stay informed of changes to state laws that may impact your programs, including laws related to the content of the sexual health education you can deliver and the types of referrals you will be able to make.

Please know that OPA feels an immense responsibility to provide continued and timely support as we together navigate this challenging time. OPA has prepared the attached list of Questions and Answers to provide additional guidance and clarity on the impact of the Supreme Court decision on the TPP program. We will continue to monitor how the Court's decision impacts the TPP recipient community and will provide updated guidance and technical assistance as needed. We encourage you to continue openly communicating with your OPA project officer so that we can stay abreast of what is happening in your communities and provide the most responsive and timely support possible.

Your project officer is on stand-by to answer any questions you may have and to support you in any way we can. In addition, the Reproductive Health National Training Center (RHNTC) is available to provide TPP recipients with a wide range of intensive and individualized technical assistance (TA) tailored specifically to meet your needs. Please reach out directly to your RHNTC grantee liaison via email or through <https://rhntc.org/contact-us> to begin discussing how they can help you.

Finally, we believe that the Court's recent decision elevates the importance for having strong referrals and linkages between TPP recipients and the Title X family planning service providers in your states and communities. Despite the Supreme Court decision,

Title X recipients continue to operate under the requirements of the [2021 Title X rule](#). Title X recipients are required, by the 2021 Title X rule, “to offer pregnant clients the opportunity to be provided information and counseling regarding each of the following options: prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination. If requested to provide such information and counseling, provide neutral, factual information and nondirective counseling on each of the options, and referral upon request, except with respect to any option(s) about which the pregnant client indicates they do not wish to receive such information and counseling.” (42 CFR § 59.5(a)(5)). As a result, in places with restrictive state laws, Title X providers may be able to provide counseling and referral services that TPP recipients cannot.

Looking forward, we thank you for your ongoing partnership and tireless commitment to the health of our nation.

Sincerely,

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Jessica Swafford Marcella, M.P.A.  
Deputy Assistant Secretary for Health and  
Director, Office of Adolescent Health  
Office of Population Affairs