

(5) A pregnant woman requests information on abortion and asks the title X project to refer her to an abortion provider. The project counselor tells her that the project does not consider abortion an appropriate method of family planning and therefore does not counsel or refer for abortion. The counselor further tells the client that the project can help her to obtain prenatal care and necessary social services, and provides her with a list of such providers from which the client may choose. Such actions are consistent with paragraph (a) of this section.

(6) Title X project staff provide contraceptive counseling to a client in order to assist her in selecting a contraceptive method. In discussing oral contraceptives, the project counselor provides the client with information contained in the patient package insert accompanying a brand of oral contraceptives, referring to abortion only in the context of a discussion of the relative safety of various contraceptive methods and in no way promoting abortion as a method of family planning. The provision of this information does not constitute abortion counseling or referral.

[53 FR 2945, Feb. 2, 1988]

EDITORIAL NOTE: For provisions of § 59.8 which have been suspended, see the EDITORIAL NOTE following the SOURCE of Subpart A.

§ 59.9 Maintenance of program integrity.

A title X project must be organized so that it is physically and financially separate, as determined in accordance with the review established in this section, from activities which are prohibited under section 1008 of the Act and § 59.8 and § 59.10 of these regulations from inclusion in the title X program. In order to be physically and financially separate, a title X project must have an objective integrity and independence from prohibited activities. Mere bookkeeping separation of title X funds from other monies is not sufficient. The Secretary will determine whether such objective integrity and independence exist based on a review of facts and circumstances. Factors relevant to this determination shall include (but are not limited to):

(a) The existence of separate accounting records;

(b) The degree of separation from facilities (*e.g.*, treatment, consultation, examination, and waiting rooms) in which prohibited activities occur and the extent of such prohibited activities;

(c) The existence of separate personnel;

(d) The extent to which signs and other forms of identification of the title X project are present and signs and material promoting abortion are absent.

[53 FR 2945, Feb. 2, 1988]

EDITORIAL NOTE: For provisions of § 59.9 which have been suspended, see the EDITORIAL NOTE following the SOURCE of Subpart A.

§ 59.10 Prohibition on activities that encourage, promote or advocate abortion.

(a) A title X project may not encourage, promote or advocate abortion as a method of family planning. This requirement prohibits actions to assist women to obtain abortions or increase the availability or accessibility of abortion for family planning purposes. Prohibited actions include the use of title X project funds for the following:

(1) Lobbying for the passage of legislation to increase in any way the availability of abortion as a method of family planning;

(2) Providing speakers to promote the use of abortion as a method of family planning;

(3) Paying dues to any group that as a significant part of its activities advocates abortion as a method of family planning;

(4) Using legal action to make abortion available in any way as a method of family planning; and

(5) Developing or disseminating in any way materials (including printed matter and audiovisual materials) advocating abortion as a method of family planning.

(b) *Examples.* (1) Clients at a title X project are given brochures advertising an abortion clinic. Provision of the brochure violates paragraph (a) of this section.

(2) A title X project makes an appointment for a pregnant client with

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an abortion clinic. The title X project has violated paragraph (a) of this section.

(3) A title X project pays dues to a state association which, among other activities, lobbies at state and local levels for the passage of legislation to protect and expand the legal availability of abortion as a method of family planning. The association spends a significant amount of its annual budget on such activity. Payment of dues to the association violates paragraph (a)(3) of this section.

(4) An organization conducts a number of activities, including operating a title X project. The organization uses non-project funds to pay dues to an association which, among other activities, engages in lobbying to protect and expand the legal availability of abortion as a method of family planning. The association spends a significant amount of its annual budget on such activity. Payment of dues to the association by the organization does not violate paragraph (a)(3) of this section.

(5) An organization that operates a title X project engages in lobbying to increase the legal availability of abortion as a method of family planning. The project itself engages in no such activities and the facilities and funds of the project are kept separate from prohibited activities. The project is not in violation of paragraph (a)(1) of this section.

(6) Employees of a title X project write their legislative representatives in support of legislation seeking to expand the legal availability of abortion, using no project funds to do so. The title X project has not violated paragraph (a)(1) of this section.

(7) On her own time and at her own expense, a title X project employee speaks before a legislative body in support of abortion as a method of family planning. The title X project has not violated paragraph (a) of this section.

[53 FR 2945, Feb. 2, 1988]

EDITORIAL NOTE: For provisions of § 59.10 which have been suspended, see the EDITORIAL NOTE following the SOURCE of Subpart A.

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

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

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

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

(3) The relative need of the applicant;

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

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

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

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

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

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

[45 FR 37436, June 3, 1980. Redesignated and amended at 53 FR 2944, 2946, Feb. 2, 1988]

EDITORIAL NOTE: For provisions of § 59.11 which have been suspended, see the EDITORIAL NOTE following the SOURCE of Subpart A.