



March 1, 2023

Yoshie Darnall, Program Director
Ralph Alvarado, Authorized Official
Grant #FPHPA006553
710 James Robertson Pkwy
Nashville, TN 37243

Dear Ms. Darnall & Dr. Alvarado,

On January 25, 2023, the Office of Population Affairs (OPA) began a review of all Title X service grants to ensure compliance with the requirements for nondirective options counseling and referral, in accordance with the 2021 Title X implementing regulations at 42 CFR § 59.5 (a)(5). As stated in the initial request, OPA does not intend to bring enforcement actions against Title X recipients that are making, and continue to make, good-faith efforts to comply with the 2021 Final Rule. OPA is committed to working with grantees to assist them in coming into compliance with the requirements of the 2021 Final Rule.

As part of the request, grantees were required to submit a copy of the current policy(ies) and any other supporting documentation (e.g., procedures, subrecipient contract language) for providing nondirective options counseling and referrals within its Title X project. Additionally, grantees were asked to provide a written statement of compliance with the 2021 Title X Final Rule, including the requirements for providing nondirective options counseling and referrals within its Title X project, signed by the Project Director and Authorized Official. The request was to be fulfilled as a Grant Note within GrantSolutions.

The initial deadline for submission was February 6, 2023. On February 3, 2023, the Tennessee Department of Health requested an extension to February 13, 2023, to give the new commissioner (Dr. Ralph Alvarado, sworn in January 17, 2023) time to review the program and provide a response. We granted the extension that same day. On February 7, 2023, Tennessee requested an additional extension to February 28, 2023, indicating that they had underestimated “the amount of time needed to get the new Commissioner, Dr. Alvarado, knowledgeable about Title X and the requirements.” On February 9, 2023, OPA denied the request for a second extension. We received your submission on February 13, 2023, which included an attached policy entitled “Pregnancy Test Conducted in a Family Planning Visit.”

OPA has reviewed your submission and determined that Tennessee’s policy for providing nondirective options counseling within your Title X project is not in compliance with the Title X regulatory requirements and, therefore, cannot be approved. Specifically, the policy submitted as proof of compliance states that, “Patients with positive pregnancy test must be offered the opportunity to be provided information and counseling regarding all options that are legal in the State of Tennessee”. The inclusion of “legal in the state of Tennessee” is not an acceptable addition to your policy as Title X recipients must still follow all Federal regulatory requirements regarding nondirective options counseling and referrals. In addition, the nursing protocol only included the steps for treating clients who opt to continue a pregnancy. And, while the policy does appear to provide instructions related to providing counseling and referral for prenatal care, no instructions are given for infant care, foster care, adoption, or pregnancy termination, which are all required to be provided upon request.

In order to be in compliance with the 2021 Title X implementing regulations at 42 CFR § 59.5(a)(5), Tennessee's policy must clearly state that the project will offer pregnant clients information and nondirective counseling on each of the following options: prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination (unless clients indicate they do not want such information or counseling). Additionally, projects are required to provide referrals upon client request, including referrals for abortion.

Because OPA is committed to working with grantees to ensure compliance with the 2021 Final Rule, Tennessee has 10 calendar days to provide written assurance to OPA as a Grant Note in GrantSolutions, stating compliance with the Title X nondirective options counseling requirement at 42 CFR § 59.5(a)(5)(ii), signed by your Program Director and Authorizing Official. Failure to provide the requested assurance and supporting documentation, and to show that you are in compliance with the 2021 Title X regulatory requirements at 42 CFR § 59.5(a)(5)(ii), will constitute material noncompliance with the terms and conditions of your award. You must also provide OPA with a revised counseling policy, and a procedure related to referrals as requested in OPA's January 25, 2023, letter.

As another option, you may submit an alternate compliance proposal **by March 13, 2023**. Examples of compliance with 42 CFR § 59.5(a)(5)(ii) include:

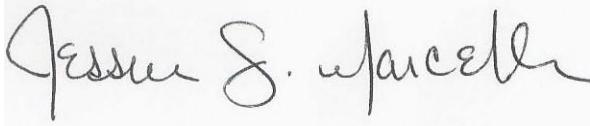
- Providing nondirective options counseling on-site by Title X providers on (A) prenatal care and delivery; (B) infant care, foster care, or adoption; and (C) pregnancy termination, and referral upon request, except with respect to any option(s) about which the pregnant client indicates they do not wish to receive such information and counseling;
- Providing nondirective options counseling, using a telehealth partnership with another entity, on (A) prenatal care and delivery; (B) infant care, foster care, or adoption; and (C) pregnancy termination, 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 ; or
- Providing clients with a referral to another entity (e.g., All-Options Talkline) that provides nondirective options counseling on (A) prenatal care and delivery; (B) infant care, foster care, or adoption; and (C) pregnancy termination, 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.

Please be aware that if you do not provide a response demonstrating compliance by March 13, 2023, you will be considered out of compliance with the regulatory requirements of the Title X program and, therefore, the terms and conditions of your grant. In that case, your current award can be suspended or terminated pursuant to 45 CFR § 75.372(a)(1) for material noncompliance with the terms and conditions of the award. A termination under this section must be reported to the Office of Management and Budget-designated integrity and performance system, currently the Federal Awardee Performance and Integrity Information System. See 45 CFR § 75.372(b). Inclusion in FAPIIS may affect your ability to obtain future Federal funding.

Alternatively, you may voluntarily relinquish the grant if you so choose. Please contact your GAM Grants Management Specialist, Robin Fuller, for more information on relinquishment. A decision to relinquish your award is not reported to FAPIIS.

OPA will assist you with these concerns with the intent of ensuring compliance with the 2021 Title X implementing regulations. If you have questions, please contact your OPA Project Officer, Tisha Reed.

Very respectfully,



Jessica Swafford Marcella
Deputy Assistant Secretary for Population Affairs
U.S. Department of Health and Human Services
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Scott Moore
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