
Family Planning Consistency and Transparency Act

Model Legislation & Policy Guide



*Advancing the Human Right to Life
in Culture, Law, and Policy*

INTRODUCTION

States have a number of tools that they can employ to limit and to exercise more direct control over who receives federal and state family planning funds, restricting indirect subsidies to abortion providers and unintentional financial support of abortion and abortion-related services.

First, as to federal family planning funds administered and distributed by the states under Title X of the *Public Health Service Act*, Title XX of the *Social Security Act*, and other programs, states may enact specific requirements and restrictions that ensure that federal family planning funds are not used by Planned Parenthood or other abortion providers to indirectly subsidize or support abortion or abortion-related services. For example, states may affirmatively prohibit the “commingling” of federal family planning funds with independent sources of funding used to provide, refer for, or counsel on behalf of abortions. In the same vein, a state can also require the segregation of staff, facilities, and administrative support services between segments of a business providing family planning and those providing abortions, abortion referrals, and/or abortion counseling.

With regard to state family planning funds, a state may enact similar “anti-commingling” requirements. It may further stipulate that no state family planning funds may be granted, appropriated, or otherwise distributed to individuals, organizations, or affiliates of individuals or organizations that perform, induce, refer for, and/or counsel in favor of abortions.

Such state limitations on the appropriation and distribution of federal and state family planning funds have been upheld by at least two federal appellate courts.¹ For example, in 2003, the Texas Legislature diverted nearly \$13 million in federal and state family planning funds away from organizations and healthcare providers that performed abortions or provided abortion-related services. Subsequently, Texas Health Commissioner Eduardo Sanchez sent a letter to Planned Parenthood and other state abortion providers ordering them to cease providing abortions or face a loss of funding. Planned Parenthood then unsuccessfully sued to overturn the new restrictions.

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

To ensure that dedicated federal and state family planning funds are not used to directly or indirectly subsidize or support abortion or abortion-related services, AUL has drafted the *Family Planning Consistency and Transparency Act*. For more information or drafting assistance, please contact AUL at Legislation@AUL.org.

FAMILY PLANNING CONSISTENCY AND TRANSPARENCY ACT

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

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

Section 1. Title.

This Act may be known and cited as the “Family Planning Consistency and Transparency Act.”

Section 2. Legislative Findings and Purposes.

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

- (5) The [Insert name of State] [Department of Health or other appropriate state department or agency] appropriates and distributes both federal and state funds for family planning services to [“family planning contractors” or other appropriate term].
- (6) [Insert reference(s) to applicable state law(s)] prohibits the use of public funds for abortions performed in cases not involving threats to the life of the mother [or insert specific exemption language from applicable state law].
- (7) Left unrestricted or unregulated, federal and state funds for family planning services can, in some cases, effectively and indirectly subsidize contractors, individuals, organizations, or entities performing or inducing abortions, referring for abortions, or counseling in favor of abortions through shared administrative costs, overhead, employee salaries, rent, utilities, and various other expenses.
- (8) When the federal or a state government appropriates public funds to establish a program, it is entitled to define the limits of that program. *Rust v. Sullivan*, 500 U.S. 173, 194 (1991).
- (9) The power to regulate abortion rests with the people of [insert State] and their elected representatives. *Dobbs v. Jackson’s Women’s Health Organization*, __U.S. __, __ (1991).

- (b) Based on the findings in subsection (a), it is the intent of the [*Legislature*] that
- (1) No federal family planning funds appropriated or dispersed by this State shall be used to pay the direct or indirect costs (including, but not limited to, administrative costs or expenses, overhead, employee salaries, rent, and telephone and other utilities) of abortion procedures, abortion referrals, or abortion counseling provided by [*“family planning contractors” or other appropriate term*];
 - (2) While recipients of federal family planning funds may affiliate with an independent, unsubsidized entity that performs abortions, abortion procedures, abortion referrals, or abortion counseling, these independent entities are not to be subsidized either directly or indirectly by these funds;
 - (3) No state family planning funds appropriated or dispersed pursuant to [*Insert reference(s) to specific state statute(s) regarding family planning funds and/or state family planning policies or programs*] shall be appropriated to or distributed to individuals, organizations, entities, or affiliates of individuals, organizations, or entities that perform, induce, refer for, or counsel on behalf of abortion.
 - (4) Family planning funds are used for family planning services and not to subsidize directly or indirectly abortions or abortion-related services.
- (c) Through this Act, the [*Legislature*] is not seeking to
- (1) Enact any impermissible prohibition upon the ability of [*“family planning contractors” or other appropriate term*] or other individuals, organizations, or entities to continue providing abortion services using their own funds and with no direct or indirect federal or state family planning funds or any direct or indirect subsidization from federal or state family planning funds; or
 - (2) With respect to federal family planning funds, prohibit all contracting with [*“family planning contractors” or other appropriate term*], individuals, organizations, or entities that may provide abortion services using other independent sources of funds. For example, under existing federal law, in order to receive family planning funds under Title X, [*“family planning contractors” or other appropriate term*] may form and maintain completely

separate and distinct affiliates (*e.g.*, by dividing its operations into “family planning affiliates” and “abortion services affiliates”). *Planned Parenthood of Mid-Missouri & Eastern Kansas, Inc. v. Dempsey*, 167 F.3d 458 (8th Circuit 1999) and *Planned Parenthood v. Sanchez*, 403 F.3d 324 (5th Circuit 2005).

Section 3. Definitions.

As used in this Act only:

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

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

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

(c) **“Department”** means the [Insert name of State] [Department of Health or insert name of responsible department or agency].

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

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

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

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

Section 4. Prohibitions on Use of Funds.

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

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

Section 5. Limited Waiver.

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

[OPTIONAL: Section 6. Family Planning Funding Prioritization.

[Drafter’s Note: *Section 6 may be enacted as a stand-alone law or as a part of a state Appropriations Act or budgetary rider. This provision promotes women’s health by prioritizing the distribution of public funds for family planning services to healthcare providers who can meet women’s comprehensive medical needs.*]

(a) *Notwithstanding any other law, federal family planning funds and state family planning funds shall be awarded to eligible individuals, organizations, or entities applying to be family planning contractors in the following order of descending priority:*

- (1) *Public entities that provide family planning services including state, county, and local community health clinics and federally qualified health centers;*
- (2) *Nonpublic entities that provide comprehensive primary and preventive health services, as described in 42 U.S.C. 254b(b)(1)(A), in addition to family planning services; and*
- (3) *Nonpublic entities that provide family planning services, but do not provide comprehensive primary and preventive health services.*

(b) *The [Department of Health or other appropriate department or agency] shall, in compliance with federal law, ensure distribution of federal family planning funds in a manner that does not severely limit or eliminate access to family planning services in any region of the State.*

(c) *The [Department of Health or other appropriate department or agency] shall submit an annual report to the [Legislature] listing any family planning contractors that fall under category (a)(3) and the amount of federal or state family planning funds they received. The report shall provide a detailed explanation of how the State determined that there were an insufficient number of eligible individuals, organizations, or entities in categories (a)(1) and (a)(2) to prevent a significant reduction in family planning services in each region of the state where (a)(3) contractors are located.]*

Section [7]. Mandatory Certification of Compliance.

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

(b) A family planning contractor, individual, organization, or entity applying for state family planning funds must certify in writing on forms provided by the Department that it will not perform, induce, refer for, or counsel in favor of abortions and that it does not have affiliates that perform, induce, refer for, or counsel in favor of abortions. Recipients of state family planning funds through the Department will submit an annual written certification

of continued compliance. Funds shall not be granted to any family planning contractor, individual, organization, or entity until required certification has been received.

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

Section [8]. Failure to Comply, Recoupment of Funds, and Civil Penalties.

(a) A family planning contractor that receives any federal and/or state family planning funds and is found not to be in compliance with the requirements of Sections 4 and [7] of this Act will be enjoined from receiving any future federal and/or state family planning funds and will be liable to return to the State the full amount of federal and/or state family planning funds received.

(b) Any violation of this Act may subject the family planning contractor to a civil penalty or fine up to [*Insert appropriate amount*] imposed by the [*Insert name of State*] [*Department of Health or insert name of responsible department or agency*].

(c) Both the Office of the Attorney General and the Office of the District Attorney [*or other appropriate designation*] for the county in which the violation occurred may institute legal action to enforce:

(1) Recoupment, collection, or reimbursement of federal and/or state family planning funds; and

(2) Collection of civil penalties or fines.

Section [9]. Construction.

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

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

Section [10]. Right of Intervention.

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

Section [11]. Severability.

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

Section 11. Effective Date.

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

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

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