

Essential Elements: Drafting a Title X Subrecipient Agreement



This job aid describes the essential elements of a Title X subrecipient agreement in accordance with the Title X statutes, regulations, legislative mandates, OPA expectations, and other applicable federal guidance. Title X grantees can refer to this document to develop their subrecipient agreements.

When developing a subrecipient agreement, Title X projects must adhere to all requirements and expectations, as well as to other applicable federal guidance on grants and agreements. A subrecipient agreement should detail all requirements and expectations with which the subrecipient, in addition to the grantee, must adhere to.

Essential elements to be incorporated from the Title X requirements and expectations and the Office of Management and Budget (OMB) Guidance for Grants and Agreements (Uniform Guidance), as well as general contracting provisions, are briefly described below. Grantees also should review the source documents linked in this job aid.

This job aid is not intended to provide legal advice. Title X grantees should consult with their own legal counsel to develop subrecipient agreements in accordance with all applicable federal and state law and regulations.

Grantees can use the following information, presented as essential elements, to double-check what's in their current subrecipient agreements and to make sure all elements are included. Grantees can also refer to these essential elements as a basis for developing agreements with subrecipients who will be joining their networks.

OMB Guidance for Grants and Agreements (Uniform Guidance)

[Uniform Guidance](#) (Part 75) outlines contract provisions for federal awards to non-federal entities. Title X grantees that pass through funds to subrecipients should review §75.352, "[Requirements for Pass-through Entities](#)." Additionally, all contracts made by non-federal entities must comply with [Appendix III](#) to Part 75.

Element	Description
Federal award identification	Must include subrecipient name; subrecipient unique entity identifier; Federal Award Identification Number (FAIN); federal award date; subaward period of performance start and end date; subaward budget period start and end date; amount of federal funds obligated to the subrecipient; federal award project description; name of federal awarding agency and grantee contact information; assistance listing number and title; and indirect cost rate for the federal award.
Pass-through requirements	Must include all requirements imposed by the grantee on the subrecipient.
Indirect cost rate	Must include indirect cost rate information, i.e., an approved federal recognized indirect cost rate negotiated between the federal government and the subrecipient, a negotiated indirect cost rate between the grantee and the subrecipient, or the de minimis indirect cost rate.
Records access	Must require the subrecipient to allow the grantee and federal auditors access to subrecipient records and financial statements.
Monitoring	Subrecipients must submit to monitoring activities designed to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward, and that subaward performance goals are achieved.
Closeout	Must include all terms and conditions concerning closeout of the subaward.

Element	Description
Remedies	All contracts that exceed the simplified acquisition threshold (currently \$250,000) must address administrative, contractual, or legal remedies in instances where subrecipients violate or breach contract terms and provide for appropriate sanctions and penalties.
Termination	All contracts that exceed \$10,000 must address termination for cause and for convenience.
Rights to inventions	Must comply with the requirements of 37 CFR Part 401 : “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.”
Debarment and suspension	Subrecipients must not be debarred, suspended, or otherwise excluded in the System for Award Management (SAM).
Anti-lobbying	Subrecipients must certify that they will not use federal appropriated funds to pay any person or organization for lobbying activities.

Title X Program Requirements and Expectations

The 2021 Title X final rule, “[Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services](#),” describes the requirements that must be met by a family planning project. These not only apply to grantees but are passed through to subrecipients. The [Title X Program Handbook](#) provides additional information and resources on Title X requirements and expectations. Additionally, subrecipients must meet many of the Title X reporting requirements and expectations included in the grantee’s notice of award.

Element	Description
Description of services	Must include a detailed description of services to be provided in accordance with 42 CFR § 59.5. This includes requirements related to providing a broad range of acceptable and effective medically approved family planning methods and services; providing services without coercion and on a voluntary basis; providing services in a manner that is client-centered, culturally and linguistically appropriate, inclusive, and trauma-informed, and that ensures equitable and quality service delivery consistent with nationally recognized standards of care; providing services in a manner that does not discriminate on the basis of religion, race, color, national origin, disability, age, sex, sexual orientation, gender identify, sex characteristics, number of pregnancies, or marital status; providing services without the imposition of any durational residency requirement; and ensuring priority will be given to clients from low-income families.
Prohibition on abortion as a method of family planning	Must include a prohibition on abortion as a method of family planning in accordance with the Title X statute (Title X of the Public Health Service Act, 42 U.S.C. 300 et seq.) and 42 CFR § 59.5.
Separation between abortion-related activities and Title X project activities	Where subrecipients conduct abortion activities that are not part of the Title X project and would not be permissible if they were, must require subrecipients to demonstrate separation between these activities and Title X project activities in accordance with Title X statute, regulations, and OPA expectations.
Description of nondirective counseling	Must include the requirement to offer pregnant clients the opportunity to receive neutral, factual information, and nondirective counseling regarding pregnancy options (i.e., prenatal care and delivery; infant care, foster care, or adoption; and pregnancy termination) and referral upon request, except with respect to any options about which the pregnant client indicates they do not wish to receive information and counseling.

Element	Description
Charges, income, and third-party billing	Must prohibit charges for clients from a low-income family, except to the extent that payment will be made by a third party that is authorized or under legal obligation. Must also describe how charges will be made for services to clients other than those from low-income families in accordance with a schedule of discounts based on ability to pay; how family income should be assessed; and the process for income verification and self-reported income. Must require reasonable efforts to obtain third-party payment where authorized and legally obligated.
Referrals	Must require coordination and use of referrals and linkages with primary health care providers, other providers of health care services, local health and welfare departments, hospital, voluntary agencies, and health services projects supported by other federal programs to promote access to services and provide a seamless continuum of care.
Community participation	Must require opportunities for community education, participation, and engagement.
Training	Must require orientation and in-service training for all project personnel.
Project oversight	Must require that family planning medical services will be performed under the direction of a clinical services provider, with services offered within their scope of practice and allowable under state law, with special training or experience in family planning.
Subcontracting for Title X services	If Title X services will be provided by subcontract or other agreement, must require services to be provided in accordance with a plan that establishes rates and method of payment for medical care that are reasonable and necessary.
Reporting requirements	Must require the submission of information needed to meet various reporting requirements, including the Family Planning Annual Report, the quarterly Federal Financial Report, the Annual Progress Report, and review of single audits.
Salary limitation	Must include restrictions related to the use of federal funds for salaries in excess of the Executive Level II of the Federal Executive Pay Scale (adjusted annually and published by the Office of Personnel Management). For the purposes of the salary limitation, the direct salary is exclusive of fringe benefits and indirect costs, and the rate limits the amount that may be awarded and charged to the grant—not the total salary amount that also may be paid with non-federal funds.

General Contracting Provisions

Contracts for health care services generally include the following standard provisions, even where not expressly required by federal guidance.

Element	Description
Insurance	May wish to require proof of coverage and additional insured for various business insurance policies, including workers' compensation, unemployment insurance, professional liability, and property, casualty, and general liability.
Indemnification	May wish to include mutual indemnification or hold harmless terms.
HIPAA data use	May wish to include provisions that establish the conditions under which protected health information may be used or disclosed consistent with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule and for the limited purpose of administering the Title X project. Alternatively, may wish to draft and execute a separate agreement focused on data use.

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