DEFUNDING THE ABORTION INDUSTRY AND ADVANCING WOMEN’S HEALTH ACT

Model Legislation & Policy Guide
For the 2018 Legislative Year

Accumulating Victories, Building Momentum,
Advancing a Culture of Life in America
INTRODUCTION

States subsidize the abortion industry and give imprimatur to the practice of abortion—often inadvertently—in many ways. Unless states expressly prohibit abortion providers from obtaining public funds and resources, they may acquire taxpayer-funded grants and assets to bankroll their abortion businesses.

States have enacted a variety of measures to prohibit the use of public funds, facilities, and personnel for the performance of abortions or the provision of abortion counselling and/or referrals, including prohibitions or restrictions:

- On the use of all state-authorized or appropriated funds for abortions (at least 20 states);
- On the use by organizations of some or all public funds for abortions, abortion counseling, and/or abortion referrals (at least 24 states);
- On the use of specific state funds or programs for abortion-related services (at least 10 states);
- On the use of some or all public facilities and/or public employees for the performance of abortions or abortion-related services (at least 14 states);
- On the use of state contracts with abortion providers for the provision of abortions (at least 8 states);
- On the use of research grants (at least 5 states);
- On the use of school-based clinics (at least 6 states); and
- On the use of state-subsidized legal services and Interest on Lawyer Trust Accounts\(^1\) (at least 3 states).

\(^1\) Interest on Lawyer Trust Accounts (IOTLA) are often used to subsidize legal services for the poor and disadvantaged. However, such legal services have, in some states, reportedly been used to help minors obtain judicial bypasses of their states' parental involvement laws, allowing the minors to get abortions without their parents' consent or without prior notification of the parents.
Moreover, because abortion providers often provide services categorized as “family planning,” they can easily exploit federal and state family planning funds. 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 providing abortions, referring for abortions, or counseling in favor of abortions through shared administrative costs, overhead, employee salaries, rent, utilities, and various other expenses. At least 21 states have enacted prohibitions on the use of family planning funds for abortions, and some of these states prohibit abortion providers from receiving family planning funds altogether.

Recently, some states have chosen to create a “tiering system” for determining eligibility for family planning funds, with applicants that do not provide comprehensive care for women (e.g., Planned Parenthood) placed in the lowest tier or excluded from consideration. This type of law advances women’s health by ensuring that family planning providers can meet their patients’ comprehensive medical needs. In fact, Planned Parenthood’s internal surveys show that approximately 70 percent of women who visit its clinics do not follow up with referrals to other medical facilities to have important health needs addressed. As a result, it is better for women to seek birth control and related services from more comprehensive healthcare facilities that can address a broad array of health issues that Planned Parenthood and other abortion providers are not equipped to handle.

AUL has drafted the Defunding the Abortion Industry and Advancing Women’s Health Act to assist states in enacting measures that ensure that state taxpayer funds are not used for abortions, abortion referrals, or abortion counseling. For more information or drafting assistance, please contact AUL at (202) 289-1478 or Legislation@AUL.org.

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DEFUNDING THE ABORTION INDUSTRY AND ADVANCING WOMEN’S HEALTH ACT

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

[Drafter’s Note: Provisions in this model may be enacted individually or collectively, depending on the needs of an individual state. The three substantive parts of the Act include drafter’s notes indicating when enactment of each part would be appropriate for a State and provide language that may be tailored to fit its specific needs. Further, AUL will work with states to ensure that the appropriate legislative findings and purposes in Section 2 and definitions in Section 3 are included in the legislation.]

Section 1. Title.

This Act may be known and cited as the “Defunding the Abortion Industry and Advancing Women’s Health Act.”

Section 2. Legislative Findings and Purposes.

[Drafter’s Note: Additional findings and purposes may need to be included, depending on how a particular piece of legislation is structured.]

(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.
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.

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.

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].

[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 statute(s)].

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.

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).


The government may rationally distinguish between abortion and other medical procedures because “no other procedure involves the purposeful termination of a potential life.” Harris v. McRae, 448 U.S. 297, 325 (1980).

It is permissible for the State of [Insert name of State] to engage in unequal subsidization of abortion and other medical services to encourage

(12) Requiring abortion-related activity to be completely separate from other activities that receive federal and/or state funding in no way denies any right to engage abortion-related activities. *Rust v. Sullivan*, 500 U.S. 173, 198 (1991).

(13) Women are best served by [family planning providers] who can address their comprehensive healthcare needs. Some family planning providers are not equipped to address these needs. For example, Planned Parenthood's internal surveys show that approximately seventy (70) percent of women who visit their clinics do not follow up with referrals to other medical facilities to have important health needs addressed.

(b) Based on the findings in subsection (a), the purposes of this Act are to:

(1) Advance the State’s policy that normal childbirth is in the best interests of the well-being and common good of [Insert name of State]’s citizens and should be given preference, encouragement, and support by law and state action;

(2) Ensure that public funds are not used to subsidize abortions directly or indirectly;

(3) Ensure that no federal family planning funds appropriated or dispersed by the State are 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];

(4) Ensure recipients of federal family planning funds that, as permitted by current law, affiliate with an independent, unsubsidized entity that performs or provides abortions, abortion referrals, or abortion counseling, do not use public funds to subsidize, either directly or indirectly, the provision of abortions, abortion counseling, or abortion referrals; and

(5) Guarantee that 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 abortions.

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) “Facility” or “medical facility” means any public or private hospital, clinic, center, medical school, medical training institution, healthcare facility, physician’s office, infirmary, dispensary, ambulatory surgical treatment center, or other institution or location wherein medical care is provided to any person.

(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, but not limited to, 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 and Title XX or other federal money accepted by the State, in whole or in part, for family planning services.

(g) **“Human cloning”** means human asexual reproduction accomplished by (1) introducing the genetic material from one or more human somatic or embryonic cells into a fertilized or unfertilized oocyte whose nuclear material has been removed or inactivated before or after introduction, so as to produce an organism at any stage of development with a human or predominantly human genetic constitution; (2) artificially subdividing a human embryo at any time from the two-cell stage onward, such that more than one human organism results; or (3) introducing pluripotent cells from any source into a human embryo, nonhuman embryo, or artificially manufactured human embryo or trophoblast, under conditions where the introduced cells generate all or most of the body tissues of the developing organism.

(h) **“Physician”** means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the doctor performs such activity or any other individual legally authorized by the State to perform abortions.

(i) **“Prohibited human research”** means:

1. Any medical procedures, scientific or laboratory research, or other kinds of investigation that kill or injure the human subject (at any stage of development) of such research; or

2. Any scientific or laboratory research or other kinds of investigation conducted on fetal tissue obtained from an abortion, unless the research is done to obtain forensic or other evidence in a rape or incest investigation.

**“Prohibited human research”** does not include:

1. *In vitro* fertilization and accompanying embryo transfer to a woman’s body;

2. Research in the use of nuclear transfer or other cloning techniques to produce molecules; deoxyribonucleic acid; or cells other than human embryos, tissues, organs, plants, or animals other than humans; or
(3) Any diagnostic procedure that benefits the human subject of such tests.

(j) “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].

(k) “Unborn child” means the offspring of human beings from conception until birth.

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Part I: Prohibitions on Abortion Funding.

[Drafter’s Note: Sections 4-11 provide options for reducing or eliminating the provision of public funding for abortion providers and abortion-related activities. These provisions are particularly helpful in states that do not have a comprehensive prohibition on public funding for abortions. AUL can assist states with determining which provisions are needed. These sections may be enacted collectively, individually, or as part of a state Appropriations Act or budgetary rider.]

Section 4. Comprehensive Prohibition on the Use of Public Funds.

(a) Notwithstanding any other provision of law to the contrary, no public funds made available to any institution, board, commission, department, agency, official, or employee of the State of [Insert name of State] or of any local political subdivision thereof, whether such funds are made available by the government of the United States, the State of [Insert name of State], or a local governmental subdivision or are from any other public source, or monies paid by students as part of tuition or fees to a state university or a community college shall be used in any way for, to assist in, or to provide facilities for an abortion or for training to perform an abortion.

(b) It shall be unlawful for any person employed by the State or any agency or political subdivision thereof, within the scope of the person's employment, to perform or assist an abortion.

(c) No fund or committee authorized by the [Code] of [Insert name of State] for the special protection of women or children shall be authorized to use or distribute public funds for the payment of abortions, abortion referrals, abortion counseling, or abortion-related services.
(d) No organization that receives funds authorized or appropriated by the State may use those funds to perform or promote abortions, provide counseling in favor of abortion, or to make referrals for abortions.

(e) The limitations in subsections (a) through (d) shall not apply to an abortion performed when the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

Section 5. Use of Public Facilities Prohibited.

(a) It shall be unlawful for any public institution, public facility, public equipment, or other physical asset owned, leased, or controlled by the State or any agency or political subdivision thereof to be used for the purpose of performing or assisting an abortion. This limitation shall not apply to an abortion performed when the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

(b) It shall be unlawful for any public institution or facility to lease or sell its facilities to or property or permit the subleasing of its facilities or property to any physician or health facility for use in the provision or performance of abortion. This limitation shall not apply to an abortion performed when the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

Section 6. Use of Education-Related Fees Prohibited.

No applicant, student, teacher, or employee of any public school or university shall be required to pay any fees that would, in whole or in part, fund an abortion [or insurance coverage for an abortion] for any other applicant, student, teacher, or employee of that school or university.

Section 7. Contracts with Abortion Providers Prohibited/Restricted.

No hospital, clinic, or other health facility owned or operated by the State, a county, a city, or other governmental entity (except the government of the United States, another state, or a foreign nation) shall enter into any contract with any physician or health facility under the terms of which such physician or health facility agrees to provide or perform abortions, except when the life of the mother is endangered by a physical
disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

Section 8. Research Grants Restricted.

(a) Public funds shall not be expended, paid, or granted to or on behalf of an existing or proposed research project that involves the performance of abortion, human cloning, or prohibited human research.

(b) No moneys derived from an award of public funds shall be passed through to any other research project, person, or entity involved with the provision or performance of abortion, human cloning, or prohibited human research.

(c) A research project that receives an award of public funds shall maintain financial records that demonstrate strict compliance with this subsection.

(d) Any audit conducted pursuant to any grant or contract awarding public funds shall also certify whether there is compliance with this subsection and shall note any noncompliance as a material audit finding.

Section 9. School-Based Health Clinics.

(a) No facility operated on public school property or operated by a public school district and no employee of any such facility acting within the scope of such employee's employment shall provide any of the following services to public school students:

   (1) Provision or performance of an abortion;

   (2) Counseling in favor of an abortion;

   (3) Referral for an abortion; or

   (4) Dispensing drugs classified as “emergency contraception” by the federal Food and Drug Administration (FDA).

(b) The [Insert name of State] [Department of Education or other appropriate state department or agency] and local units of administration are prohibited from utilizing state
funds for the procurement of abortions or distribution of drugs classified as “emergency contraception” by the federal Food and Drug Administration (FDA).

Section 10. Legal Funds Restricted.

(a) No federal or state funds which are appropriated by the State for the provision of legal services by private agencies, as authorized by statute previously or subsequently enacted, may be used, directly or indirectly, to:

   (1) Advocate for a legal “right” to abortion;

   (2) Provide legal assistance with respect to any proceeding or litigation which seeks to procure any abortion or to procure public funding for any abortion; or

   (3) Provide legal assistance with respect to any proceeding or litigation which seeks to compel the performance or assistance in the performance of any abortion or the provision of facilities for the performance of any abortion.

(b) Nothing in this subsection shall be construed to require or prevent the expenditure of funds pursuant to a court order awarding fees for attorney's services under the Civil Rights Attorney's Fees Awards Act of 1976 (Public law 94-559, 90 Stat. 2641) nor shall this subsection be construed to prevent the use of public funds to provide court-appointed counsel in any proceeding relating to [Insert reference to state parental involvement (for abortion) law].

Section 11. IOLTA Accounts Restricted.

No Interest on Lawyer Trust Accounts (IOLTA) funds may be used, directly or indirectly, to do any of the following:

(a) Advocate for a legal “right” to abortion;

(b) Provide legal assistance with respect to any proceeding or litigation which seeks to procure or procure public funding for any abortion; or

(c) Provide legal assistance with respect to any proceeding or litigation which seeks to compel the performance or assistance in the performance of any abortion or the provision of facilities for the performance of any abortion.
PART II: Restrictions on Family Planning Funds.

[Drafter’s Note: Sections 12-15 may be enacted as a stand-alone law, in conjunction with Part III and/or provisions in Part I, or as a part of a state Appropriations Act or budgetary rider. These provisions, modeled after laws upheld by federal appellate courts, are appropriate for any state that wishes to prevent federal and state family planning funds from subsidizing the abortion industry. It also helps ensure that limited family planning funds are distributed to individuals, organizations, or entities that provide comprehensive care for women.]

Section 12. Prohibitions on Use of Funds.

(a) No federal or state family planning funds shall be used by contractors of the Department of Health or other appropriate department or agency 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 that have affiliates that perform, induce, refer for, or counsel in favor of abortions.

Section 13. Limited Waiver.

If the Department of Health or other appropriate department or agency concludes that compliance with subsection 12(b) would result in a significant reduction in family planning services in any public health region of the State, the Department of Health or other appropriate department or agency may waive the requirements of subsection 12(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.

Section 14. 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 of Health or other appropriate department or agency must certify in writing on forms provided by the Department of Health or other appropriate department or agency 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 of Health or other appropriate department or agency must certify in writing on forms provided by the Department of Health or other appropriate department or agency that it will not, directly or indirectly, use the funds to perform, induce, refer for abortion, or counsel in favor of abortions.
agency] 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 of Health or other appropriate department or agency] 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 of Health or other appropriate department or agency] 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 of Health or other appropriate department or agency] 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 15. 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 12 and 14 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 [May insert specific time period for recoupment].

(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 [Department of Health or other appropriate 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.
PART III: Prioritization for Award of Family Planning Funds.

[Drafter’s Note: Section 16 may be enacted as a stand-alone law, in conjunction with Part II (so that abortion providers who are awarded family planning funds under Section 16 cannot use the funds to subsidize their abortion practice) or provisions in Part I, 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.]

Section 16. Family Planning Funding Prioritization.

(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.

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Section 17. 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 18. 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 19. 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 20. Effective Date.

This Act takes effect on [Insert date].
AUL’s annual publication *Defending Life* is available online at AUL.org.

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

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