

# Federal judge will enjoin family-planning physician gag rule

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U.S. District Judge Michael J. McShane said Tuesday he will issue a temporary injunction against the Trump administration's gag rule dictating what physicians can and cannot say about family planning to their patients in the Title X program. The AMA is the lead plaintiff in the lawsuit to stop the rule, which was set to take effect May 3.

The judge's forthcoming written ruling will define the scope of that injunction. The ruling will also enjoin the rule's requirement of financial and physical separation between Title X and non-Title X abortion-related activities.

"Judge McShane got it exactly right when he called the new Title X rule a 'ham-fisted' approach to health care," said AMA President Barbara L. McAneny, MD. "The judge repeatedly asked how the new gag rule would improve health outcomes. The government was unable to answer.

"The new rule would have placed obstacles to health care for low-income patients," Dr. McAneny added. "We are pleased the judge shared the AMA's concern about the physician-patient relationship that the rule would have jeopardized."

McShane said he needed more time to determine whether to issue a nationwide injunction or to have his ruling apply only to the plaintiffs in the case, which include the AMA and Planned Parenthood, explained Brian Vandenberg. He is AMA senior vice president and general counsel and was on the scene at the Mark O. Hatfield Courthouse in Portland, Oregon.

"Patients need to be able to trust their physicians, and we need to always make sure that doctors are working for their patients and not for the federal government," Vandenberg said Tuesday during a broadcast on Facebook Live prior to the hearing.

Judge McShane underscored that the original purpose of the Title X program was to provide family planning services for low-income individuals and that the new rule did not appear to further that goal. The goal would, in fact, be compromised by the new rule, the federal judge said, according to

Vandenberg.

The judge also highlighted arguments made by the AMA and others regarding the health benefits of the Title X program. These include fewer unintended pregnancies and reduced instances of cervical cancer due to the screening services that are provided, among others, Vandenberg added.

The Title X program ensures that every person has access to basic, preventive reproductive health care, such as birth control, cancer screenings, sexually transmitted infection testing and treatment regardless of where they live or whether they have health insurance. Roughly 4,000 clinics received Title X funds in 2017.

The Title X program has been a major public health success, helping women avoid an estimated 800,000 unintended pregnancies annually, and yielding vast benefits in terms of prevention and early detection of cervical cancer and sexually transmitted infections.

## **“Immediate and irreparable harm”**

The Department of Health and Human Services “rule would cause immediate and irreparable harm to patients and providers and would politicize the practice of medicine and delivery of health care,” the AMA and its co-plaintiffs said in their most recent court filing.

The filing further states that, under the rule, physicians would be required to conclude a visit “by telling the patient where and how she can obtain a particular treatment option of the government’s preference.”

The AMA frequently files friend-of-the-court briefs in support or opposition of a plaintiff or defendant in cases where there is a link to established AMA policy. In this case, however, the AMA is acting as a plaintiff, along with family physician Tom Ewing, MD, Planned Parenthood, the Oregon Medical Association and others to challenge the new rule.

Vandenberg explained that this action was taken because the new rule not only limits what physicians can say to a patient—it also scripts what they must say. In doing so, the government has crossed a line “so significantly, so profoundly,” that the AMA had to step in.