

Title X gag rule: What's on the line in upcoming oral arguments

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What's the news: The AMA will have its say in upcoming oral arguments in the 9th U.S. Circuit Court of Appeals in an effort to block a Trump administration rule that would gag physicians and decimate the Title X program. The new rule limits the medical advice physicians can give their Title X patients and compels physicians to act as government mouthpieces, violating the *AMA Code of Medical Ethics*.

The Title X family planning program ensures that every person has access to basic, preventive reproductive health care such as birth control, cancer screenings, and sexually transmitted-infection testing and treatment regardless of economic or insurance status. Roughly 4,000 clinics have served 4 million family-planning patients annually in the Title X program.

The oral arguments will be heard Sept. 23 in the lawsuit that was filed by the AMA, the Oregon Medical Association and others in March. The case was later consolidated on appeal with other lawsuits that include 20 states, the District of Columbia and individual health professionals.

The AMA and its co-plaintiffs are seeking to enjoin implementation of the new federal rule while the courts determine whether it passes legal muster. U.S. District Judge Michael McShane in April issued a nationwide injunction blocking the rule's implementation.

"The gag rule prevents doctors from behaving like informed professionals," McShane wrote. "At the heart of this rule is the arrogant assumption that government is better suited to direct the health care of women than their medical providers."

A three-judge panel of the 9th U.S. Circuit Court of Appeals stayed that district court ruling in June, allowing the rule to take effect. Now attorneys for the AMA and the other co-plaintiffs will argue before an 11-judge panel of the appeals court to reverse course.

Why it matters for patients and physicians: The injunction is "necessary to prevent immediate irreparable harm," says the brief filed by the AMA and its co-plaintiffs.

As AMA President Patrice A. Harris, MD, MA, wrote recently in the *San Francisco Chronicle*, “Whether you’re a patient or physician, we should all agree that our government has no place dictating the type of care physicians can provide to patients or controlling what we can say to them. Anything short of complete openness and honesty inside the exam room undermines the critical patient-physician relationship and represents a fundamental threat to quality care.”

The government’s new rule imposes restrictions on physicians’ ability to counsel their patients in the Title X program about the full range of family planning options, including referrals for abortion.

About 40% of Title X patients have been served by Planned Parenthood, which in August announced that it is withdrawing from the program because the new gag rule forces physicians and other health professionals to withhold information from patients and imposes additional cost-prohibitive requirements.

In overriding the district court’s thoughtful issuance of a preliminary injunction, the 9th U.S. Circuit Court of Appeals overlooked a 2010 congressional mandate under the Affordable Care Act that forbids the Department of Health and Human Services from promulgating any regulation that would create unreasonable barriers to care, impede timely access to care, interfere with patient-physician communications, or violate medical ethics.

What’s next: After oral arguments, the 11-judge panel will consider the case and likely issue a decision this fall.

The AMA continues to fight against government interference in the exam room in other ways. For example, in a separate legal action, a federal district court in North Dakota recently sided with the AMA and others and issued a preliminary injunction to block enforcement of a state law that would force physicians to give patients a politically motivated message that is misleading and could harm patients.

The provision would have forced North Dakota physicians to tell women “that it may be possible to reverse the effect of an abortion-inducing drug if she changes her mind, but time is of the essence, and information and assistance with reversing the effects of an abortion-inducing drug are available” in government-printed materials to be given to the patients.