

U.S. appeals court upholds Title X gag rule on physicians

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What's the news: The Trump administration gag rule that violates the *AMA Code of Medical Ethics* by mandating that physicians serve as government mouthpieces in discussions with patients in the Title X program will be allowed to take effect. The 9th U.S. Circuit Court of Appeals, in a 7–4 decision, vacated orders previously entered by federal district courts in California, Oregon and Washington.

“The AMA is disappointed by—and strongly disagrees with—the reasoning behind a federal appeals court’s decision to allow the Trump administration to enforce a gag rule on physicians,” said AMA President Patrice A. Harris, MD, MA.

The ruling upholds the decision made last June by a three-judge panel from the same court that lifted a nationwide injunction issued by the district court. The AMA appealed that decision in the case, *AMA v. Azar*, and asked for it to be heard by a larger “en banc” panel from the 9th Circuit.

A brief filed by the AMA and its co-plaintiffs included arguments against the gag rule and noted that the Health and Human Services Department (HHS) “cannot point to one instance where Title X funds have been misapplied.”

The court dismissed the arguments.

In the majority opinion, Judge Sandra S. Ikuta wrote that “there is no ‘gag’ on abortion counseling” because the rule issued by HHS in March 2019 only prohibits physicians from referring for or encouraging abortion while still allowing them to discuss abortion risks and side effects.

Dissenting Judge Richard A. Paez cited the decision from last April by U.S. District Judge Michael McShane. That judge blocked the rule’s implementation arguing that the gag rule contradicted the *Code of Medical Ethics’* prohibition on withholding information from patients and that it instructed doctors “to intentionally mislead patients.”

“The majority would return us to an older world, one in which a government bureaucrat could restrict a

medical professional from informing a patient of the full range of health care options available to her,” Paez wrote.

The 11 judges heard oral arguments in San Francisco on Sept. 23, 2019, regarding the lawsuit originally filed by the AMA, the Oregon Medical Association and others. The case was later consolidated on appeal with other lawsuits that include 20 states, the District of Columbia and individual health professionals.

Why it matters to patients and physicians: 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 judges failed to properly take into consideration the AMA’s legal arguments or the decision’s impact on either health care or the patient-physician relationship,” Dr. Harris said. “This government overreach and interference demands that physicians violate their ethical obligations—prohibiting open, frank conversations with patients about all their health care options—if they want to continue treating patients under the Title X program. It is unconscionable that the government is telling physicians that they can treat this underserved population only if they promise not to discuss or make referrals for all treatment options.”

In vacating the prior decisions that held up implementation of the rule, Paez wrote that “the majority sanctions the agency’s gross overreach and puts its own policy preferences before the law.”

Learn with the AMA about what you need to know about the Title X rule. At the time the suit was filed, then-AMA President Barbara L. McAneny, MD, wrote an AMA Leadership Viewpoints column explaining why the administration’s changes to Title X put women’s health at risk.

What happens next: Unless it is appealed to the Supreme Court, the ruling ends proceedings regarding injunctions on the gag rule and other new HHS regulations. The decision also hands the case back to the district court “for further proceedings consistent with this opinion.”

In the immediate future, however, Paez predicted it will be patients who will feel the biggest impact.

“In vacating the preliminary injunctions, the majority blesses an executive agency’s disregard of the clear limits placed on it by Congress,” he wrote. “The consequences will be borne by the millions of women who turn to Title X-funded clinics for lifesaving care and the very contraceptive services that have caused rates of unintended pregnancy—and abortion—to plummet.”

Dr. Harris said the AMA will continue to oppose gag rules on physicians.

“As this case moves to the next stage, we’ll continue to fight for open conversations between patients and physicians—the cornerstone of quality health care,” she said.