

Why the Supreme Court should take up Title X gag rule case

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The AMA and other parties have filed a petition requesting that the U.S. Supreme Court review *AMA v. Azar*, a case that seeks to overturn a Department of Health and Human Services (HHS) gag rule that unlawfully dictates what physicians practicing at facilities funded under the Title X family planning grant program can't say and must say.

"The AMA strongly believes that our nation's highest court must step in to remove government overreach and interference in the patient-physician relationship," said AMA President Susan R. Bailey, MD.

"Restricting the information that physicians can provide to their Title X patients blocks honest, informed conversations about all health care options—an unconscionable violation that is essentially a gag rule," Dr. Bailey added. "As physicians and leaders in medicine, we are fighting against the government's intrusion in the exam room while protecting open communication between patients and physicians, which is the foundation of high-quality medical care."

The case merits Supreme Court review because the questions it raises, according to the petition, "concern the integrity of the patient-provider relationship—founded on open and honest communications, the lynchpin of proper medical care."

These questions "arise in the context of a vitally important federal health care program—with significant real-world consequences," the petition says.

The HHS rule prohibits physicians who provide care at Title X-supported facilities from referring their pregnant patients to an abortion provider—even when their patients seek such referrals—and requires physicians to steer patients toward carrying a pregnancy to term.

The Trump administration's gag rule, which took effect May 3, 2019, also requires physicians with pregnant patients seeking an abortion to provide those patients with irrelevant information on prenatal care.

“The gag requirement bans providers from referring their pregnant patients to abortion providers—even when that is the patient’s expressed wish; but it mandates referrals for prenatal care—even when the patient has no such interest,” the petition says.

The petition asks the high court to decide whether HHS can lawfully institute a gag rule on patient-physician discussions.

Joining the AMA in the petition are: Oregon Medical Association; Planned Parenthood Federation of America, Inc.; Planned Parenthood of Southwestern Oregon; Planned Parenthood Columbia Willamette; Thomas N. Ewing, MD; National Family Planning and Reproductive Health Association; Feminist Women’s Health Center; Deborah Oyer, MD; Essential Access Health, Inc.; and Melissa Marshall, MD.

How gag rule violates ACA

The petition also points out that the gag rule violates federal law, including an Affordable Care Act (ACA) provision that explicitly prohibits HHS from:

- Interfering with communications regarding a full range of treatment options between the patient and the provider.
- Restricting the ability of providers to provide full disclosure of all relevant information to patients.
- Violating the ethical standards of health care professionals.

Specifically, the HHS rule violates opinions in the *AMA Code of Medical Ethics* that physicians should not mislead or confuse patients, or subject them to irrelevant information.

The gag rule, however, clearly directs physicians in Title X facilities to do so by mandating that, if a patient asks for contact information for local abortion providers, information given to them must include names of providers who do not perform abortions.

“The AMA’s *Code of Medical Ethics* states, for example, that medical professionals must ‘present relevant information accurately and sensitively, in keeping with the patient’s preferences,’ and that ‘withholding information without the patient’s knowledge or consent is ethically unacceptable,’” the petition says.

Clash in lower courts

Conflicting decisions on the rule have been issued in federal appellate courts, making this case ripe for Supreme Court review.

In a decision that overturned a district-court ruling and went against the AMA and Oregon Medical Association, the San Francisco-based 9th U.S. Circuit Court of Appeals upheld the gag rule. But, in a suit brought by Baltimore, the 4th Circuit, based in Richmond, Virginia, “found that decision flawed and reached opposite conclusions, holding the rule both arbitrary and capricious and contrary to law,” the petition notes.

“In Maryland, the rule has been suspended; everywhere else, it continues to undermine this vital federal public health program,” the petition states.

Millions helped by program

The Title X program’s 2019 annual report states that grant facilities provided family planning services to nearly 4 million patients in 2018, including mammograms, fertility examinations, treatment for sexually transmitted diseases, birth-control counseling and assistance, prostate examinations, and prenatal care.

“The Title X program has been an extraordinary success,” the petition states. “By ensuring access to reproductive health care for millions of individuals who could not otherwise afford it, the program has helped reduce rates of unintended pregnancy and abortion to historic lows.”

The petition argues that, if the 9th Circuit ruling is allowed to stand, it “creates a dangerous pathway” for executive branch interference with patient-physician communications in any government-funded health program—including Medicare and Medicaid.

When the gag rule was first proposed, every major medical association weighed in and all were opposed.

They explained that the rule “would violate fundamental medical ethics, force numerous providers out of the program, and leave patients with deficient health care,” the petition notes.

The AMA believes open communication is a vital part of the patient-physician relationship and has taken the fight for freedom of speech to the courts. Read AMA resources about what physicians need to know about the Title X rule.

At the time the AMA and Oregon Medical Association filed their lawsuit against the gag rule in 2019, 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.