Biden administration moves to eliminate Title X physician gag rule

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What’s the news: The Biden administration has proposed a new rule that would strengthen the Title X family planning grant program and erase restrictions on patient-physician communication imposed by the Trump administration.

“The AMA strongly applauds the Biden administration’s proposal to reverse the Title X ‘gag rule’—a rule that has inappropriately interfered with the patient-physician relationship and jeopardized safe access to reproductive care,” said AMA President Susan R. Bailey, MD.

The AMA, Oregon Medical Association and others filed a lawsuit in 2019 seeking to block the Department of Health and Human Services (HHS) from implementing the gag rule that unlawfully dictates what physicians practicing at facilities funded by Title X grants cannot say, and must say, to their patients.

The U.S. Supreme Court agreed in February to review the case, American Medical Association v. Cochran, formerly known as AMA v. Azar.

Now, however, the review may not happen as all the parties to the Title X litigation, including the Biden administration, have filed a joint stipulation to dismiss the case.

“This is a case about HHS’s regulatory authority concerning the Title X program—in particular, whether the federal regulation at issue is arbitrary and capricious and contrary to law,” a recent AMA filing in the case says. “The rule requires that Title X providers withhold certain information about abortion from pregnant patients, even if the patient wants that information, and requires providers to inform patients about non-abortion options, even if a patient does not want or need them.”

The Biden proposal notes that the new rule would readopt regulations established in 2000 with modifications aimed at ensuring “access to equitable, affordable, client-centered, quality family planning services for all clients, especially for low-income clients.”

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Why it’s important: The proposal is seen as positive movement toward restoring access to necessary care for millions of low-income and uninsured patients who depend on Title X for family planning services.

“We are pleased that the Biden administration shares our commitment to undoing this dangerous and discriminatory ‘gag rule,’ and look forward to its elimination through any means necessary to achieve the best outcome for patients and physicians—improving the health of our nation,” said Dr. Bailey, a Fort Worth, Texas-based allergist and immunologist.

The Biden proposal noted several public health consequences that resulted after the 2019 gag rule was implemented, including:

- The Title X program lost more than 1,000 service sites representing about one quarter of the locations it had funded prior to the new rule.
- Remaining grantees saw almost 850,000 fewer clients in 2019 than in 2018.
- This included almost 575,000 fewer clients with incomes under the federal poverty level and almost 325,000 fewer uninsured clients.

“This contradicts the purpose and intent of the Title X program, which is to prioritize and increase family planning services to low-income clients,” the proposal says.

The proposal reports these specific drops in service between 2019 and 2018:

- 225,688 fewer clients received oral contraceptives.
- 188,920 fewer clinical breast exams conducted.
- 90,386 fewer Pap tests conducted.

The proposal also cited estimates that the 2019 rule changes may have resulted in some 181,000 unintended pregnancies.

“Ultimately, continued enforcement of the 2019 rule raises the possibility of a two-tiered health care system in which those with insurance and full access to healthcare receive full medical information and referrals, while low-income populations with fewer opportunities for care are relegated to inferior access,” the proposal says.

Learn more: Interested parties have until May 17 to submit comments on the proposal. The Supreme Court hasn’t yet set a date for oral arguments in the case or ruled on the motions to dismiss.

Read more about the AMA’s judicial advocacy and the work of the Litigation Center for the American Medical Association and State Medical Societies.

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