



# AMA v. Azar (U.S. S. Ct., 9<sup>th</sup> Cir., OR Dist. Ct.)

Topics Covered: Physician-Patient Communications

## Issue

An issue in this case is whether Department of Health and Human Services regulations that would restrict the ability of physicians to communicate freely with their patients about family planning health concerns – particularly referrals for abortion services – violate statutory and constitutional protections for open communications between physicians and patients.

## AMA Interest

The AMA champions free and open communication between physicians and their patients, and the preservation of the physician-patient relationship.

## Case Summary

Title X of the Public Health Service Act, 42 U.S.C. §§ 300 *et seq.*, establishes federal funding for family planning services for low-income individuals, mostly women. One provision of Title X, 42 U.S.C. § 300a-6, states as follows:

“None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.”

What this provision does not say is whether it prohibits Title X appropriations to facilities that refer patients to other providers – outside the Title X program – who provide abortions. Since Title X was enacted in 1970 (before *Roe v. Wade*), various regulations have been promulgated to interpret this provision. The gist of these regulations has varied with the political philosophy of the president sitting at the time of their adoption. Since 2000 (when President Clinton was in office) and until 2019, the regulations interpreted 300a-6 narrowly, so they did not inhibit referrals for abortions.

On March 5, 2019, HHS published a Final Rule, which prohibited physicians and other health professionals from referring Title X patients for abortions. The rule also required physicians to provide a referral for prenatal care upon a patient’s being diagnosed as pregnant, regardless of whether the patient desires the referral. These portions of the final rule are called the “Gag Requirement.”

Beyond the restrictions on communications with patients, the rule also includes a requirement that Title X clinics which provide abortion services in addition to other forms of family planning must physically separate the non-abortion services from the abortion services and must also keep separate financial records for the two types of services. These portions of the final rule are called the “Separation Requirement.”

The practical effect of the Gag Requirement is to degrade the quality of services available through Title X clinics. The practical effect of the Separation Requirement is to put many Title X clinics out of business.

On April 29, 2019, the district court preliminarily enjoined enforcement of the Regulations. HHS appealed to the Ninth Circuit, a panel of which stayed the preliminary injunction pending full review. On February 24, 2020, the Ninth Circuit, sitting *en banc* vacated the district court's preliminary injunction, which allowed the Regulations to go into effect. On May 8, 2020, the Ninth Circuit denied *super en banc* review.

### **AMA Involvement**

The AMA, joined by the Oregon Medical Association, the Planned Parenthood Federation of America, and two health professionals, including one physician, sued HHS in the United States District Court for the District of Oregon to have the Final Rule declared invalid.

United States Supreme Court petition for *certiorari*