

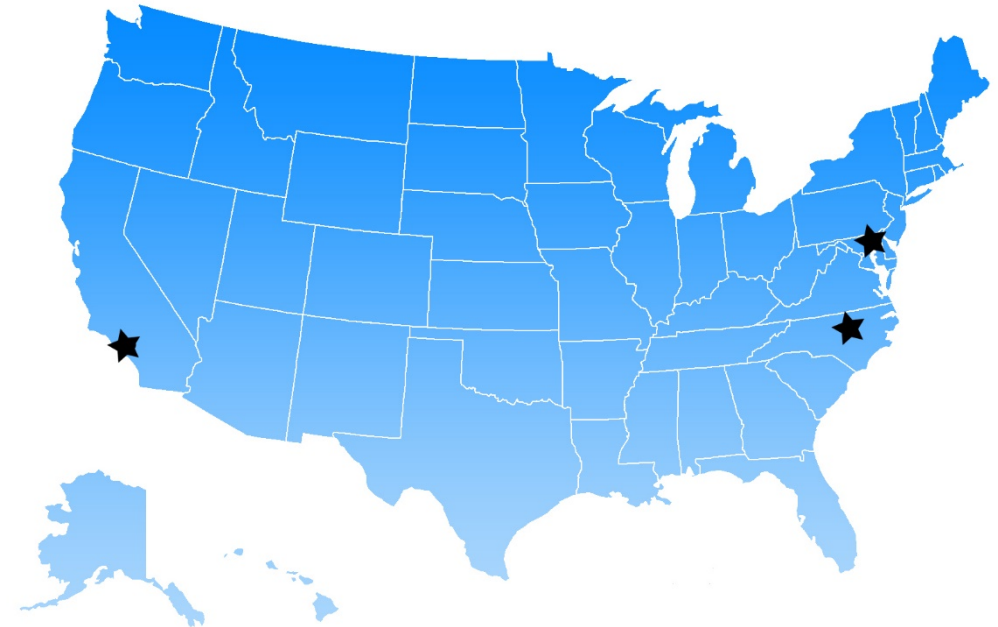
Safeguarding Access: What's Happening in the Courts

Susan Berke Fogel, National Health Law Program



About NHeLP

- National non-profit committed to improving health care access and quality for underserved individuals and families
- State & Local Partners:
 - Disability rights advocates
 - Poverty & legal aid advocates
 - Reproductive rights, health, and justice
- Offices: CA, DC, NC
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Roadmap

- 1. Title X litigation
- 1. Health care refusals
- 1. Public Charge

Title X Litigation

Litigation status

Legal Challenges to HHS Title X Family Planning Rule

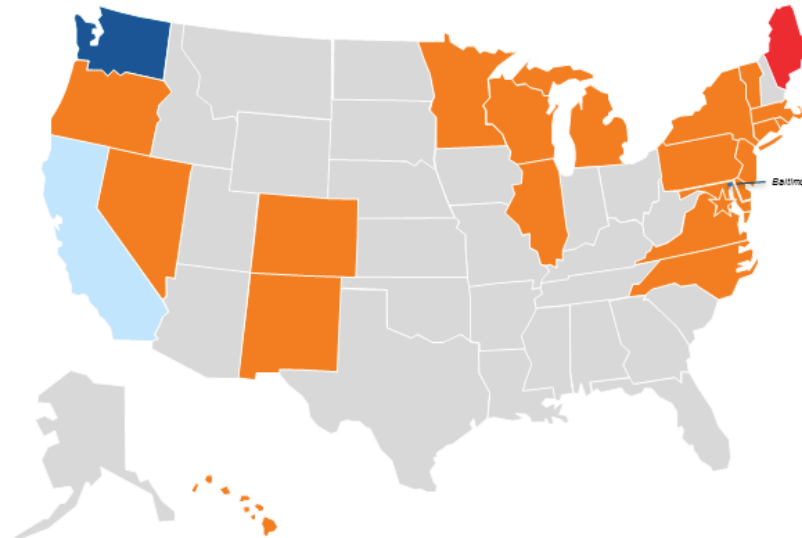
New Title X Regulations Became Effective July 15, 2019

State of Washington v. Azar
NFPRHA v. Azar

Federal Court: Eastern District of Washington

State of Oregon with 20 other states and DC v. Azar
American Medical Association & Planned Parenthood v. Azar

Federal Court: District of Oregon



Family Planning Association of Maine v. US Department of Health and Human Services

Federal Court: District of Maine

Mayor and City Council of Baltimore v. Azar

Federal Court: District of Maryland

State of California v. Azar
Essential Access Health, Inc. v. Azar

Federal Court: Northern District of California

Health Care Refusals

Health Care Refusals and Standards of Care



Religious exemptions are permission to refuse to provide care that there is a duty to provide

Quality care is evaluated against accepted standards of evidence, is patient-centered and prevention-focused

Refusals allow individuals, entities to not meet those standards

Promoting the Right to Discriminate

- New Office for Civil Rights: Conscience and Religious Freedom Division
- Executive Order: Promoting Free Speech and Religious Liberty
- Regulations:
 - HHS: Protecting Statutory Conscience Rights in Health Care
 - HHS: Birth control rules
 - ACA § 1557
 - Dept. Labor: Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption

Health Care Refusals

Who Can Refuse to Do What?



New Rule - Who can refuse? *

Statutes:

- Individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan

Rule adds:

- **Person** (1 USC 1) = include corporations, companies, associations, firms, partnerships, societies, and joint stock companies
- State, public agency, public institution, public organization, or other public entity.
- **Plan sponsor** not engaged in health care (ie an employer)
- **Workforce** = everyone in the health care system including volunteers, trainees, other members or agents of a covered entity

What can they refuse to do? *

Statutes:

Provide, cover, pay for, provide coverage of, refer, perform or assist in performance, teach/train

Rule:

- Assist in the performance = “articulable connection to . . .”
- Does not require a moral or religious objection
 - “Choose not to provide” or “Would rather not”
- Referral = provide any information by any means . . . If the health service is the possible outcome

Impact

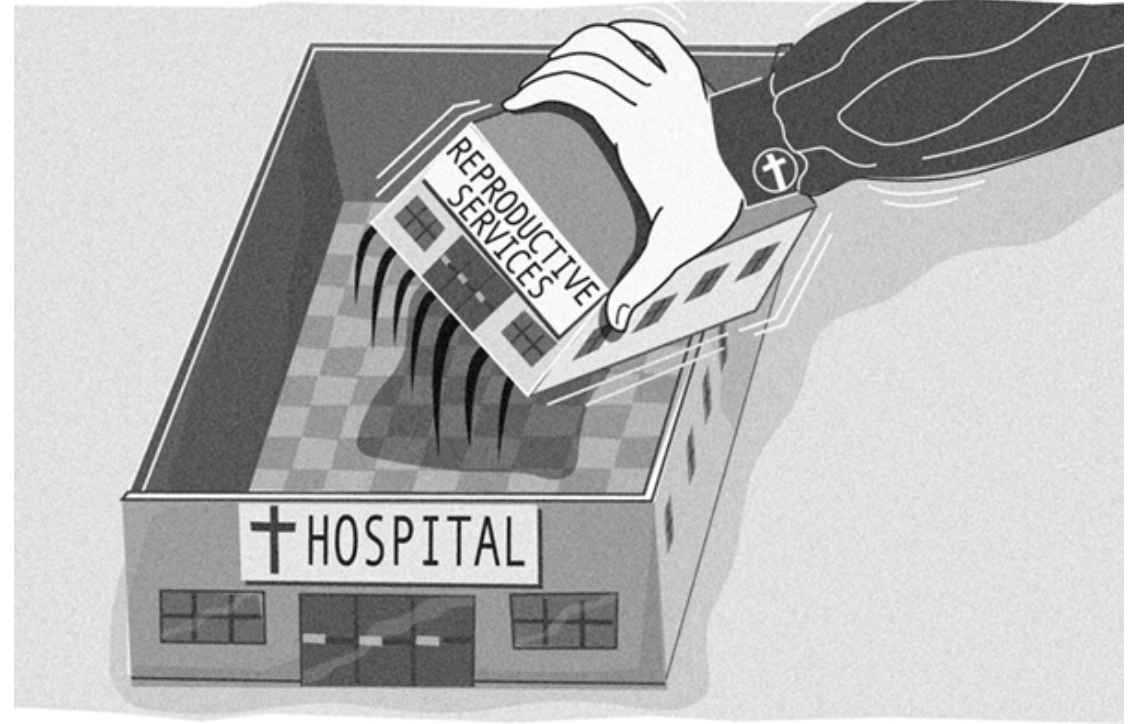
- Contraceptive coverage: any employer can decide not to cover – no longer need a religious objection
- OCR complaints
 - CA FACT Act violates Weldon (Supreme Court already enjoined)
- Redefining discrimination on the basis of sex to exclude LGBTQ

Catholic Health Care

- 1 of 6 people seen in a Catholic hospital each year
- 5 of 10 largest hospital systems in US are Catholic
 - CommonSpirit (Dignity + CHI) is #2
- Most people do not know whether an entity is Catholic or whether it restricts care
- No exceptions for emergency care

Religious restrictions at Catholic Hospitals

- No abortion, contraception, sterilization, infertility services, or “safer sex” counseling
- End of life care options can be curtailed
- Gender reassignment surgery has been denied
- Some Dignity Hospitals - Common Values
 - Less Catholic
 - Allows family planning and sterilization, but prohibits abortion, ART



When a hospital becomes Catholic, reproductive health services are eliminated.

Recent California mergers

- **Dignity Health and Catholic Health Initiatives**. Includes:
 - 205 hospitals with 23,358 beds
 - Ownership of 46 physician groups
 - 79 ambulatory surgery centers
 - 115 urgent care clinics
 - 129 rural health clinics
- **UCSF and Dignity** – called off but stay tuned
- **Adventist and St. Joseph's** – AG denied

Public charge

“Give me your tired and your poor who can stand on their own two feet and who will not become a public charge”

Ken Cuccinelli, USCIS DHS

The Invisible Wall



Trump's Invisible Wall

PUBLIC CHARGE: Visas and green card processing <i>outside</i> the U.S. (DOS - Foreign Affairs Manual (FAM))	PUBLIC CHARGE: Visa extensions & Status changes (DHS Proposed Rule)	PUBLIC CHARGE: Green card processing <i>inside</i> the U.S. (DHS Proposed Rule)	SPONSOR DEEMING & LIABILITY: Potential application to more programs (White House memo)	PUBLIC CHARGE: Grounds for deportation (Anticipated DOJ NPRM)	FEE WAIVER: Removing receipt of means-tested benefits from eligibility list (DHS Proposed Rule)
CITIZENSHIP QUESTION IN CENSUS 2020: Chills civic participation and will limit funding for basic needs programs that depend on accurate count (SCOTUS decision)	PUBLIC HOUSING ACCESS: Closes door to mixed status families (HUD Proposed Rule)			ACCESS TO SSA BENEFITS: Closes door to limited English proficient speakers (SSA Proposed Rule)	ACCESS TO FOOD STAMPS: Closes door to those who are unemployed and underemployed (USDA Proposed Rule)

When does public charge come up?

A public charge assessment is made when a person:

- Applies to enter the U.S.
- Applies to adjust status to become a Lawful Permanent Resident (LPR)
- A green card holder leaves the U.S. for more than 180 consecutive days (6 months) and reenters

A public charge assessment is not made when a person:

- Applies to become a U.S. citizen
- Applies to renew a green card

Changes in final rule



A dramatically different definition of public charge

New standards and weighted factors designed to make it harder for low and moderate income people to pass

Additional public benefits programs can be considered by immigration officials.

New definition of “public charge”

Current:

A person who is likely to become primarily dependent on the government for subsistence

New rule:

A person who is “more likely than not to receive” one or more specified public benefits for at least 12 months in a 36 month period*

* Receiving two benefits in one month counts as 2 months of benefits.

Spotlight: Reproductive and Sexual Health Services

Subject to public charge:

- “Federally funded Medicaid programs” (unless exempt)
 - Medicaid-funded family planning expansion programs
 - Medicaid-funded BCCPT programs

Not subject to public charge:

- Medicaid during pregnancy + 60 days post partum
- Medicaid services under 21 years old (minor consent, school-based health services)
- Ryan White
- Title X
- CDC, state, or county funded health screenings, immunizations, and treatment programs
- Other programs not listed

Chilling effects

FOOD

POLITICO

Immigrants, fearing Trump crackdown, drop out of nutrition programs

Both documented and undocumented immigrants fear that accepting federal aid could make them ineligible for a green card if rules are changed.

By HELENA BOTTEMILLER EVICH | 09/03/2018 08:17 AM EDT | Updated 09/04/2018 01:29 PM EDT

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The Health 202: Under Trump, immigrants back away from Medicaid, Obamacare subsidies

By Paige Winfield Cunningham

April 11

THE PROGNOSIS

Enrolling in Medicaid or an Obamacare plan doesn't hurt immigrants' chances of gaining permanent residency in the United States. That might change soon, under a major policy shift the Trump administration is considering that could curtail legal immigration.



Spillover effects



Covered California 2019 Open Enrollment Early Observations and Analysis

However, Covered California's analysis found a substantial differential impact among some populations where English is not the preferred spoken language. In particular, the number of Mandarin speakers dropped 28 percent, Spanish speakers dropped 29 percent and Korean speakers dropped 46 percent. By comparison, the number of English speakers dropped 22 percent.

Covered California believes this is an area of concern that warrants further study and may be the result of factors outside of the federal removal of penalty, such as concerns over whether receiving financial help for health coverage would designate someone a "public charge" and affect their immigration status — an issue that received substantial press coverage in "in-language" media.

Status of Regulations

- 10/10/2018 Department of Homeland Security (DHS) published proposed rule (leaked drafts appeared in 2017)
- 08/14/2019 DHS published final rule
- Nine lawsuits filed challenging the regulation
- **As of October 14, 2019, five federal courts have issued preliminary injunctions (including three nation-wide) blocking the rule from going into effect**

Key Community Messages

1. The final rule is not in effect yet. Don't disenroll from services without first consulting an immigration lawyer trained on public charge.
2. The public charge test does not apply to every immigrant.
3. Use of public benefits does not automatically make you a public charge.
4. Public charge does not consider benefits used by family members.



THANK YOU

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