

# Domestic Gag Rule

## Challenges for Title X Patients and Providers

*Family planning opponents have long sought to re-impose a prohibition on counseling and referral for abortion, referred to as the “domestic gag rule,” that was first promulgated under the Reagan administration but rescinded by President Clinton in 1993. The Reagan-era restriction prohibited health care professionals in Title X family planning service sites from providing abortion information or referral to a client, even if such information was requested by the client. The rule also required both physical and financial separation of Title X project activities from a health center’s separately funded abortion-related activities. NFPRHA vehemently opposes any effort to interfere in the patient-provider relationship and/or weaken or dismantle Title X’s non-directive counseling requirement.*

### What is the Domestic Gag Rule?

- In 1988 President Reagan’s administration promulgated a final rule barring health care professionals at Title X-funded health centers from counseling patients on pregnancy options that included abortion or referring patients to abortion providers, even if such information was requested by the client. The rule also prohibited Title X-funded health centers from sharing finances, staff, or a physical location with an abortion provider. Title X-funded sites were further mandated to provide all pregnant patients with information on prenatal care and social services, regardless of what options the patient wanted to pursue.<sup>i</sup> Opponents of the rule dubbed this regulation the “domestic gag rule.”
- In 1993, President Clinton issued a presidential memorandum compelling HHS to rescind the gag rule and promulgate new rules. The new rules, which were promulgated in 1993 and were finalized in 2000, require Title X-funded sites to provide nondirective options counseling in the event of a client’s positive pregnancy test. It is up to patients, not the government, to decide whether they would like information on prenatal care, parenting, adoption, and/or pregnancy termination.<sup>ii</sup> These rules simply reinforced the implementing regulations and interpretation of Title X.
- The statute itself further bars providers from offering abortion “as a method of family planning.”<sup>iii</sup> A further regulation finalized in 2000 clarified that Title X funds cannot be used for abortion care, to support advocacy for abortion access, or to facilitate a patient obtaining such care (i.e. making an appointment for her).<sup>iv</sup>

### History of the Domestic Gag Rule

- Although the gag rule was on the books for more than a decade, the rule was only in effect for one month in 1992.
- Timeline:
  - 1988: President Reagan’s administration finalized the new rule. Several organizations, including NFPRHA, sued the federal government that same day. They received a preliminary injunction barring the rule from going into effect. The court cases took several years, culminating in a hearing before the Supreme Court in 1990.
  - 1991: The Supreme Court ruled in *Rust v. Sullivan* that the gag rule was an appropriate use of executive power.<sup>v</sup> Congress passed an appropriations bill to explicitly allow for abortion counseling within Title X (as part of overall nondirective counseling), but it was unable to override President George Herbert Walker Bush’s veto.<sup>vi</sup>
  - 1992: The Department of Health and Human Services issued a memo stating that the regulations would thereafter be interpreted to permit doctors to counsel on abortion within the context of the doctor-patient relationship. NFPRHA and the National Association of Nurse Practitioners in Reproductive Health sued under the Administrative Procedures Act, given that

- there was not proper rule-making for the new memo.<sup>vii</sup> In October, the gag rule went into effect pending disposition of that case, but the injunction was reinstated in November.
- 1993: President Bill Clinton suspended the gag rule by presidential memorandum. The new secretary of Health and Human Services promulgated a rule rescinding the domestic gag rule.<sup>viii</sup>
  - 2000: The new rule is finalized and goes into effect. It required financial, but not physical, separation of Title X and non-Title X activities and reinstated the practice of nondirective option counseling.<sup>ix</sup>

## How the Domestic Gag Rule Hurts Patients and Providers

- Patients trust their Title X provider to offer unbiased information regarding their reproductive and sexual health. This high level of care is critical when a patient is facing an unexpected pregnancy, as patients need to make time-sensitive decisions about what is best for themselves and their loved ones. If providers are barred from providing information that patients request about abortion - a safe and legal medical option - that trust may be lost. The American College of Obstetricians and Gynecologists, the American College of Physicians, and the American Academy of Family Physicians all endorse nondirective options counseling as the appropriate role for providers when a patient is facing an unexpected pregnancy.<sup>x</sup>
- Title X providers refer all pregnant patients to non-Title X programs to handle their pregnancy-related needs, as Title X is specifically focused on pre-pregnancy care. Providers must be able to refer patients to all high-quality providers in their area that meet their particular needs. However, the gag rule bars Title X providers from referring patients to health centers that specialize in abortion care.
- The gag rule would require providers to give all patients information about prenatal care. This may shame and stigmatize patients who express a desire for an abortion, and patients may be unwilling to return to that provider for contraceptives and other health care needs.
- Low-income people will be forced into an untenable situation - their Title X provider may continue to receive federal funds but not be able to offer comprehensive information about their pregnancy options, in which case they are denied information that higher-income people can access from privately paid providers, or their Title X provider may decide to forgo federal funds and continue to provide accurate and timely information upon request, in which case the health center might close due to the reduced funding streams.

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<sup>i</sup> "Statutory Prohibition on Use of Appropriated Funds in Programs Where Abortion is a Method of Family Planning; Standard of Compliance for Family Planning Services Projects, Final Rule." *Federal Register* 53:21 (February 2, 1988) p. 2922.

<sup>ii</sup> Grants for Family Planning Services, 42 U.S.C. §§ 59.5.

<sup>iii</sup> Grants for Family Planning Services, 42 U.S.C. §§ 59.5.

<sup>iv</sup> "Office of Public Health and Science; Standards of Compliance for and Provision of Abortion-Related Services in Family Planning Services Projects, Final Rule." *Federal Register* 65:128 (July 3, 2000) p. 41270.

<sup>v</sup> Chicago-Kent College of Law at Illinois Tech. "Rust v. Sullivan." Oyez. <https://www.oyez.org/cases/1990/89-1391>.

<sup>vi</sup> Family Planning Amendments Act of 1992, S. 323, 102<sup>nd</sup> Cong. (1992).

<sup>vii</sup> *National Family Planning and Reproductive Health Association v. Louis Sullivan*, 979 F.2d 227

<sup>viii</sup> Memorandum on the Title X "Gag Rule," 58 *Federal Register* 23 (Feb. 5, 1993).

<sup>ix</sup> "Office of Public Health and Science; Standards of Compliance for and Provision of Abortion-Related Services in Family Planning Services Projects, Final Rule." *Federal Register* 65:128 (July 3, 2000) p. 41270.

<sup>x</sup> David Moss, Matthew Snyder, and Lu Lin, "Options for Women with Unintended Pregnancy," *American Family Physician* 91, no. 8 (April 15, 2015): 544-49. <http://www.aafp.org/afp/2015/0415/p544.html>; Rose Fife and Sarina Schrager, *The ACP Handbook of Women's Health* (Philadelphia: American College of Physicians, 2009), 508-515.