

## Resources on Federal Health Issues from Eva Marie Stahl

Blog on balanced billing offering a good explainer: <https://www.communitycatalyst.org/blog/hold-patients-harmless-from-surprise-medical-bills-an-open-letter-to-the-president#.XFCghVxKg2x>

### WHDT Roundup for January 28

- **ICYMI:** The Trump administration announced the [first enforcement action by the Conscience and Religious Freedom Division](#) – a finding that the state of California violated federal conscience protections. This action was mostly symbolic, given that this California law combating fake women’s clinics was blocked by the U.S. Supreme Court in June in *NIFLA v. Becerra*. However, if California violates the Court’s injunction, it would be subject to enforcement action from the HHS Office for Civil Rights.

### Regulatory Watchlist:

- **Revised Birth Control Rules:** On January 14th, a federal court in Pennsylvania granted a nationwide injunction blocking the Trump administration’s attack on birth control. The injunction was decided the day after a California court injunction covering 13 states and Washington, D.C. These injunctions block implementation of the rule while the Pennsylvania and California cases continue to be litigated. As a reminder, these two final rules on birth control coverage were released on Nov. 7th. The rules are the administration’s attempt to create broad religious and moral exemptions that would allow virtually any employer and university to refuse to cover birth control (opt out based on religious beliefs [here](#) and opt out based on moral beliefs [here](#)).
  - **Background:** As you might recall, last October the Trump administration issued two interim final rules that would allow virtually any employer or university to not cover birth control coverage if the employer or university claimed to have a religious or moral objection. In December, a federal court in Pennsylvania issued a nationwide temporary injunction that prevented the rules from being effective (a second court in California ruled similarly shortly thereafter).
  - NWLC created talking points (see attached) and published a [blog](#) about the new rules as well as a [blog](#) about the shady tactics the administration is using during this process.

### Active Comment Periods:

- **Title IX Changes - Comments due January 30:** On Nov. 16th, the Department of Education released a Notice of Proposed Rulemaking addressing how schools must respond to sexual harassment under Title IX. If the draft rules go into effect, it would encourage and even require schools to be complicit in harassment and violence. Schools would be required to ignore students who ask for help, and, in the rare cases where schools do investigate, the proposed rule would allow schools to deny survivors due process. For example, schools would stop investigating incidents that occur outside of school programs, and place the burden of interim measures and accommodations on survivors instead of perpetrators. Moreover, schools can retroactively claim religious exemptions to compliance with Title IX. This proposed regulation

will inevitably make it harder for survivors to come forward. The comment period opened Nov. 29th and will have a 60 day comment period.

- NWLC circulated [talking points](#) outlining the proposed rule and its effect.
- Know Your IX created the website [Hands Off IX](#), which will have template comments, a research guide, sample social, and a training video on how to submit comments.
- The primary messaging: this regulation is NOT bolstering the rights of the accused (or of victims, obviously), but is instead letting schools off the hook for investigating Title IX violations.
- **HIPAA RFI - Comments due February 12:** The Office for Civil Rights (OCR) at HHS issued a [Request for Information \(RFI\)](#) to identify provisions of the Health Insurance Portability and Accountability Act (HIPAA) privacy and security regulations that “may impede the transformation to value-based health care or that limit or discourage coordinated care among individuals and covered entities (including hospitals, physicians, and other providers, payors, and insurers), without meaningfully contributing to the protection of the privacy or security of individuals’ protected health information. The scope of the RFI is broad and touches on issues such as social determinants of health, parental access to treatment information of minor children, and accelerated patient access to health information. There are concerns that this may affect minor confidentiality protections.
  - If you’d like to learn more, the National Partnership will be hosting a webinar about commenting on the HIPAA RFI on Tuesday, February 05 from 11 – 12 pm ET. Please email Erin Mackay at [emackay@nationalpartnership.org](mailto:emackay@nationalpartnership.org). The National Partnership will also be sharing a sign-on letter in response to the RFI; reach out to Erin to find out more!
  - NHeLP will also be submitting comments. If you have any questions, please contact Candace at [gibson@healthlaw.org](mailto:gibson@healthlaw.org) and she can refer you to the appropriate NHeLP staff who will submit comments on this RFI.
- **Notice of Benefit and Payment Parameters for 2020 NPRM - Comments due February 19:** HHS issued the [Benefit and Payment Parameters NPRM](#) last Thursday. The NPRM has not been published yet in the Federal Register. There are proposed changes regarding essential health benefits and training requirements for navigators. The NPRM also includes language that would hinder access to abortion coverage in the marketplaces. According to the NPRM, issuers of qualified health plans that cover abortion care outside of the Hyde exceptions would have to offer plans that do not provide abortion coverage.

### **Medicaid Waivers - Active Comment Periods and Guidance:**

- **Family Planning Waivers**
  - Still no news on when the TX family planning waiver will be approved.
- **Medicaid Waivers:**
  - **Arizona:** On Jan. 18th, CMS approved Arizona’s 1115 waiver request to add community engagement requirements for able-bodied adults on AHCCSC, which look similar to work requirements. The waiver also limits retroactive coverage for some applicants to the beginning of the month in which the Medicaid application is filed.
- **Medicaid and Reproductive Justice Fact Sheets:** National Health Law Program in partnership with In Our Own Voice: National Black Women’s Reproductive Justice Agenda, National Asian Pacific American Women’s Forum, All\* Above All, and National Latina Institute for Reproductive Health has created fact sheets on how Medicaid is a reproductive justice issue and how the

Trump's misuse of Medicaid demonstration projects (Section 1115 waivers) hurts reproductive justice communities. Please check out the fact sheets below.

- [Medicaid Demonstration Waivers and Reproductive Justice](#)
- [Medicaid and Reproductive Justice](#)

### **Regulations and Executive Orders Expected Soon:**

- **Pending 1557 Rule:** According to HHS' fall regulatory agenda, the proposed 1557 rule is slated to be released at any moment.
  - The Leadership Conference on Civil and Human Rights Health Taskforce, which includes the ACLU, CAP, National Partnership for Women & Families, NWLC, the Taskforce, and NHeLP, has created a campaign and has rebranded Â§ 1557 as the Health Care Rights Law. When the NPRM is released, there will be an immediate, public facing response highlighting the dangers of rolling back this law. We encourage you to participate via social media. NWLC will share a dropbox with different digital strategies to use when the NPRM is released.
  - The NWLC and NCTE has created a listserv for both policy and comms folks who are working on Health Care Rights Law response. To sign up for the listserv, please go [here](#).
  - The Center for Reproductive Rights is once again running a "comment lab" designed to generate as many unique, substantive comments as possible on the new Health Care Rights Law regulation from communities that sit at intersections with our movement (e.g. labor, immigration, faith communities). To that end, CRR is partnering with a pro bono law firm that will collaborate with organizations from each community to draft template comments with their unique perspective, which they can then distribute to their own networks. If your organization may be interested in participating in the comment lab, please contact Freya Riedlin ([friedlin@reprorights.org](mailto:friedlin@reprorights.org)).
- **Limitations on Language re: Sexual and Reproductive Health in Foreign Policy:** The State Department is [considering a prohibition](#) on U.S. foreign officials' use of phrases such as "sexual and reproductive health" and "comprehensive sexuality education." While the exact policy implications of this prohibition are unclear, it could undermine negotiations at the UN over language used in international resolutions or agreements and could also interfere with the work of NGOs engaged in reproductive health and sex ed work.
- **Religious Exemption in Federal Contracting:** The Department of Labor has sent to OMB for review a [proposed rule](#) that is expected to broaden the Bush-era exemption that allows federal contractors to prefer people of a certain religion in the hiring process.

### **Additional Resources:**

- **Last week, the National Partnership for Women & Families and the American College of Obstetricians and Gynecologists released [consensus guidelines](#) from The Project on Facility Guidelines for the Safe Performance of Primary Care and Gynecology Procedures in Offices and Clinics.** This project was undertaken by an expert stakeholder working group of clinicians, consumers, and representatives from accrediting bodies to support evidence-informed policy regarding procedures performed in these settings. The goal of the Project was to further healthcare quality, safety, affordability, and patient experience without imposing unjustified burdens on patients' access to care or on clinicians' ability to provide care within their scope of practice. The consensus was that requiring facilities performing office-based procedures,

including abortion, to meet standards beyond those currently in effect for all general medical offices and clinics is unjustified based on an analysis of available evidence.

- The Guidelines are also included in a [Commentary](#) published in the February issue of **ACOG's Green Journal**.