

Health Care in Motion

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Reproductive Rights in the Spotlight this Week

Mississippi Abortion Ban Makes it to the Supreme Court Docket; Comment Period Closes on Administration's Illuminating Title X Proposal

On Monday morning, the U.S. Supreme Court [agreed to hear](#) *Dobbs v. Jackson Women's Health Organization*, a case involving a Mississippi law that explicitly and directly challenges the abortion protections enshrined in *Roe v. Wade*. The state law bans abortions after 15 weeks, without exception, even in cases of rape or incest. As [explained by Nancy Northup](#), president and CEO of the Center for Reproductive Rights, “[t]he consequences of a *Roe* reversal would be devastating. Over 20 states would prohibit abortion outright. Eleven states—including Mississippi—currently have trigger bans on the books which would instantaneously ban abortion if *Roe* is overturned.”

This latest, momentous fight for reproductive justice is still gearing up. The Supreme Court will not hear the case until the new term next fall, and a decision will not likely be handed down until the first half of 2022. In the meantime, *Roe* stands. As of now, the Mississippi ban and those like it are illegal, and advocates continue to organize. You can expect much more to come on the *Dobbs* case, as these storm clouds continue to gather on the horizon.

In other (more positive) news, this week also saw the public comment period end on the Biden administration's [proposed revisions to Title X](#)—the federal family planning funding program. The proposal largely seeks to turn back time to the status quo in place before the [Trump administration's 2019](#) imposition of a gag rule and other restrictions. Under the 2019 changes, Planned Parenthood and others exited the Title X program and, ultimately and unsurprisingly, the program [served fewer patients](#).¹

¹ Three lawsuits about these changes (including [one](#) led by then California Attorney General, now HHS Secretary Xavier Becerra) were to be argued before the Supreme Court. However, given the Biden administration's current rulemaking process and confirmation that it will continue to enforce the 2019 rule (where permitted) in the meantime, the Supreme Court [dismissed these cases](#) Monday.

CHLPI, together with partner organizations in the HIV Health Care Access Working Group, submitted comments to the Title X proposed rule. Read our comments [here](#).

A welcome step in and of itself, the Biden administration's proposed rule also will likely strengthen this important program in the future. The administration's analyses of challenges, potential solutions, and approaches to reform in the Title X proposed rule are illuminating. Themes emerge that signal what health care advocates may expect from Biden's Department of Health and Human Services (HHS)—and key opportunities for advocates to influence the path forward.

- **Explicit focus on health equity.** Among other changes, the Title X proposed rule would consider the ability of an applicant to advance health equity as a criterion for awarding grant funds. The proposal insufficiently details what this might look like, but such centering of health equity is in line with [Biden's Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#), issued his first day in office and a core part of the administration's agenda.
- **Addressing health care disparities across states.** [Some states have local policies in place that restrict Title X funds from going to certain health care providers](#), such as those that offer abortion care. HHS asks for public comment on strategies to ensure that otherwise qualified providers are not excluded from program participation. The proposed rule recognizes that “state restrictions...unrelated to the ability to deliver Title X services undermine the mission of the program to ensure widely available access to services by the most qualified providers” and can have wide-reaching consequences, such as the creation of geographic deserts void of access to Title X providers. State variation in health care law and policy is a significant driver of disparity—Medicaid expansion still has not been adopted in a staggering 12 states—and we are excited to see HHS's new request for innovative responses on the issue.
- **Eye on social determinants of health.** The proposed rule also envisions an enhanced role for telemedicine in family planning services. We expect most programs under HHS' purview to permanently adopt this new normal in the coming year. The proposal is again sparse on details, but the focus on telehealth is, we hope, also indicative of another trend: a commitment to recognizing the role that social determinants of health play in health outcomes. In the [comments](#) to a recent care coordination rule interpreting federal patient privacy laws, CHLPI urged HHS to do more to support community-based organizations and community-clinical partnerships working to address health-related social needs. These needs include food insecurity and nutrition, the digital divide, and transportation issues, among others. The previous administration took positive steps in this direction with, for example, [a letter to state health officials highlighting opportunities to address SDOH in Medicaid and CHIP](#). Taken together, these developments show the positive direction of federal policy in this area. We cannot let this momentum subside.

The Biden administration’s HHS is still getting started, [with important roles slowly being filled](#), amid [recent announcements regarding the highly anticipated rulemaking to restore nondiscrimination protections on the bases of sexual orientation and gender identity](#), and in the face of [ongoing court battles over Trump-era policies](#). Changes are coming but they will not happen overnight. And, importantly, [public comments still matter](#). They make for stronger policy—by pointing out issues, offering alternatives, and helping decision-makers identify solutions they may not have initially considered. Public comments also build the record of support for future litigation, a turbulence we expect to continue. With that in mind we keep on commenting on.

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