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Hawai'i Attorney General Challenges Health Care Discrimination

HONOLULU – Hawai'i Attorney General Clare E. Connors joined a coalition of 22 attorneys general in challenging the Trump Administration's attempts to make it easier for health care providers to refuse to provide necessary and desired health coverage to individuals on the basis of their health care providers' "religious beliefs or moral convictions." In an [amicus brief](#) filed in support of lawsuits brought by the states of California and Washington against the U.S. Department of Health and Human Services (HHS), the coalition opposes the Trump Administration's 'Refusal-of-Care' rule.

"The Trump administration's campaign to block access to health care in this manner is illegal," said Attorney General Connors. "This rule, which allows healthcare providers to discriminate unlawfully in refusing to provide care, has particularly dangerous consequences during this pandemic."

In May 2019, the Trump Administration's HHS introduced a final rule that would vastly and unreasonably expand the ability of health care providers to deny patients access to certain lawful and medically needed procedures, services, and information, including that related to abortion, sterilization, and aid-in-dying — all while purporting to implement various federal conscience statutes. In reality, however, the rule violates the careful balance Congress struck in the underlying statutes by simultaneously expanding the job functions that objectors may refuse to perform based on their personal views, and severely restricting the actions that employers may take to plan for and accommodate such objections while ensuring that patients receive uninterrupted care. The rule would disproportionately impact women and members of the LGBTQ+ community.

Every federal court that has considered the rule has agreed that it is not authorized by law, and has accordingly vacated the rule in full, including the U.S. District Court for the Northern District of California and the U.S. District Court for the Eastern District of Washington. After those losses, the Trump Administration appealed to the U.S. Court of Appeals for the Ninth Circuit. The coalition — led by New York Attorney General Letitia James — filed this amicus brief in support of California and Washington in that appeal.

The coalition argues, in the amicus brief, that the rule's definition of "discrimination" is inconsistent with statute and is thus contrary to the Administrative Procedures Act and that HHS acted arbitrarily and capriciously in promulgating the rule. Specifically, HHS failed to acknowledge that the redefinition of "discrimination" represented a change in position, failed to consider the reliance interests created by HHS's own past guidance as to the scope of the federal conscience statutes' anti-discrimination provisions, and relied on empirical justification for the rule that is contradicted by the administrative record.

Further, the coalition explains that the rule not only threatens to harm countless patients in disrupting their access to medically necessary care, but also places at risk billions in critical federal health care funding that Congress has appropriated to the states.

Similarly but separately, Attorney General Connors joined a coalition of 23 states and localities in filing a lawsuit against the Trump Administration's 'Refusal-of-Care' rule in the U.S. District Court for the Southern District of New York in May of 2019. Last November, the coalition won that case in federal court. The Trump Administration has appealed the matter and the case is pending in the U.S. Court of Appeals for the Second Circuit.

Joining Attorneys General Connors and James in filing this amicus brief are the attorneys general of Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Wisconsin, and the District of Columbia.

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