GENDER-AFFIRMING CARE LITIGATION UPDATE

There have been significant developments in the litigation surrounding Executive Order 14187 ("Executive Order"), entitled "Protecting Children from Chemical and Surgical Mutilation," which directs agencies and certain federal health care programs to limit access to gender-affirming care to patients under the age of 19 through different measures, including halting federal grant funding that provide such gender-affirming care for minors. This post provides an update to the current status of the legal challenges related to this Executive Order. We discussed the key directives of the Executive Order and introduced the ongoing cases in a prior alert, which can be found here.

ONGOING LITIGATION AND PRELIMINARY INJUNCTIONS

***PFLAG v. Trump*, No. 1:25-cv-00337 (D. Md.)**

On February 4, 2025, Lambda Legal filed a federal lawsuit on behalf of PFLAG in the U.S. District Court for the District of Maryland. The complaint raises a number of claims, including that the Executive Order usurps the legislative function granted to Congress, violates laws that prohibit discrimination on the basis of sex and disability, violates the Equal Protection and Due Process clauses of the Fifth Amendment and violates the First Amendment freedom of speech protections.

On March 4, 2025, the *PFLAG* court issued a nationwide preliminary injunction effectively extending a temporary restraining order that was set to expire on March 5. The preliminary injunction bars the federal government from conditioning, withholding or terminating federal funding on the basis that a hospital or other entity provides gender-affirming care to minors. Furthermore, the preliminary injunction held that Defendants could not take steps to "implement, give effect to, or reinstate under a different name the directives" that condition or withhold federal funding on the basis of providing gender-affirming care to a patient under the age of 19.

On March 5 and March 6, 2025, subagencies of the Department of Health and Human Services (including the Centers for Medicare & Medicaid Services, the Health Resources & Services Administration and the Substance Abuse & Mental Health Services Administration) issued additional notices alerting federal funding recipients that the agencies may begin taking steps to appropriately update policies to protect children from chemical and surgical mutilation; review policies, grants and programs in light of the concerns discussed in their prior notices; and consider re-scoping, delaying or potentially cancelling new grants in the future depending on the nature of the work and any future policy changes. Although the plaintiffs filed an emergency motion to enforce the preliminary injunction, claiming that the March 5 and March 6 notices violated the preliminary injunction, on March 28, 2025, the *PFLAG* court denied the plaintiffs' motion. The *PFLAG* court found that the notices do not "condition, withhold, or terminate any specific federal funding" and, without further action by the defendants, do not violate the preliminary injunction. Additionally, the *PFLAG* court held that the notices, in their current form, do not violate the preliminary injunction's prohibition on taking steps to implement the enjoined directives in a different form.

The defendants, on March 21, 2025, filed an appeal with the Fourth Circuit challenging the issuance of the preliminary injunction by the District Court of Maryland. The proceedings are currently ongoing.

On April 9, 2025, the *PFLAG* court issued an Order staying the Defendants' deadline to respond to the Amended Complaint, as well as a variety of other case-related deadlines; this stay will remain in place pending the resolution of the defendants' appeal of the preliminary injunction to the Fourth Circuit. Importantly, the Order preserves the plaintiffs' ability to, among other things, move to enforce the existing preliminary injunction during the appeal to the Fourth Circuit.

***Washington v. Trump*, 2:25-cv-00127 (W.D. Wash.)**

A similar challenge to the Executive Order was brought by the States of Washington, Oregon and Minnesota, with Colorado subsequently joining the action. A preliminary injunction is currently in place in those four states, temporarily halting enforcement of the Order within their jurisdictions.

On March 3, 2025, the Department of Justice filed a notice of appeal to the U.S. Court of Appeals for the Ninth Circuit, seeking to overturn the district court's preliminary injunction. An emergency motion requesting a stay of the injunction pending appeal was denied by the Ninth Circuit on March 17, 2025, with the court concluding that the government had not demonstrated a likelihood of success on the merits or that

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it would suffer irreparable harm without a stay.

While the appeal is ongoing, the district court continues to address related matters. On March 20, 2025, the court denied the plaintiffs' motion for contempt regarding alleged non-compliance with the injunction but granted the plaintiffs' request for expedited discovery to investigate potential violations. The defendants have since moved for a limited stay of district court proceedings pending the resolution of the appeal; the court has not yet ruled on this request. According to the Ninth Circuit's briefing schedule, the defendants' opening brief is due on April 21, 2025, with the plaintiffs' answering brief due on May 19, 2025.

CURRENT STATUS

Both *PFLAG v. Trump* and *Washington v. Trump* remain ongoing, with preliminary injunctions currently blocking the enforcement of the Executive Order's provisions concerning gender-affirming care for minors. In *PFLAG,* the injunction applies nationwide, while in *Washington,* the injunction is limited to the four plaintiff states – Washington, Oregon, Minnesota and Colorado. The legal proceedings continue to evolve, and additional developments are expected as the cases advance through the judicial process.

PRACTICAL TAKEAWAYS

- **Stay Informed**: Continue to check Hall Render's website for updates to litigation and agency action related to the provision of gender-affirming care to minors.
- **Communicate**: Maintain open communication with providers and clinical leadership to ensure all parties are aware of the ongoing legal challenges and how such challenges may impact their practices.
- **Consider State-Specific Laws**: States may have different requirements or policies surrounding gender-affirming care; ensure you are up to date on your state's requirements.
- **Work Closely with Counsel**: Working with legal counsel will help hospital and health care providers to appropriately assess risk associated with the provision of care that may fall within the scope of the Executive Order and/or state laws that conflict therewith.

If you have questions regarding the Executive Order, the associated litigation or state law governing the provision of gender-affirming care to minors, please contact:

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