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Management and Administration of a Health Center During Changing Times

*Virginia Community Healthcare Association
September 24, 2025*

TODAY'S PRESENTER

FELDESMAN

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Ted, a national authority in the area of federal grants, is a member of the firm's Health Care and Federal Grants practice groups. He focuses his practice on helping organizations to solve problems, often in crisis situations.

For over 30 years, Ted has advised clients on all aspects of federal program requirements, including issues such as cost-based reimbursement, governance and the never-ending list of grant administration matters. He also serves as an adjunct professor at The George Washington University Law School.

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AGENDA

- 1) What is an Executive Order
- 2) Immigration Issues: PRWORA Injunctions
- 3) More Changes to HHS Grants Policy Statement
 - a) Grant Terminations – Supreme Court Strikes again
- 4) Gender Issues
- 5) DEI and Bondi Memo

EXECUTIVE ORDERS

SOME ADMINISTRATION PRIORITIES . . .



What is an Executive Order...

Policy Directives not Law...

Per a brief filed by the U.S. Department of Justice:

“The E.O.s did not terminate any particular fund or program; rather, they merely provided policy directives to federal agencies. Any alleged future harm necessarily depends on future action by federal agencies that plaintiffs have not adequately alleged has occurred and impacted them.”

Question is, how is an E.O. manifested in your funding documents?

PRWORA – What's Next?

RELEVANT LITIGATION:

- *State of New York, et al. v. DOJ, et al.*, No. 1:25-cv-00345 (D. R.I.): 21 State Attorneys General (plus the District of Columbia) sued the Trump Administration on 7/21/25 challenging the changes to the Government's interpretation of PRWORA.
- On September 10, 2025, the court issued a **preliminary injunction** temporarily ordering that **Defendants may NOT enforce or implement the HHS Notice** (among others) in plaintiff states until further notice of the court.
- Plaintiffs are New York, Washington, Rhode Island, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Nevada, Minnesota, New Jersey, New Mexico, Oregon, Vermont and Wisconsin (21 States and DC) – **NO VIRGINIA**

RELEVANT LITIGATION:

- **Notable Points in Court's Decision:**

- Judge stated that Notice was issued in “a rushed way, without seeking comment from the public or interested parties” – this raising significant Administrative Procedure Act (APA) issues.
- Court expressed skepticism with the Government's argument that statute had been interpreted incorrectly for 30 years.
 - Concluded that the States are “likely to succeed” on their claims.
- “Best reading of the statute is likely that PRWORA does not extend to programs that do not have eligibility requirements.”
- **Court agrees that the Health Center Program is exempted from PRWORA.**
- “The statute governing the Health Center Program **specifically requires that health centers receiving funding must “provide services for all residents within a catchment area” to receive funding.** 42 U.S.C. § 254(b)(2). That is in direct tension with PRWORA's general requirement (cutting across federal law) that any alien who is not a “qualified alien” cannot receive “federal public benefits.” 8 U.S.C. § 1611(a).”

RELEVANT LITIGATION:

- **What's next in this case?**

- The Government may appeal the PI decision and/or ask higher level courts to lift the current stay.
- The merits case will proceed.
 - Parties recently agreed on deadlines for briefing that extend into 2026.
 - Briefing should be complete by **January 9, 2026**.
 - Case will likely be argued and a decision rendered in the winter/spring of 2026.
 - An appeal may ensue beyond that time.
- In short, the litigation may not be completely resolved until next summer (or much later).

What about the Rest incl. Virginia?

- Other 29 States in limbo
- No word yet from Administration
- Nothing stopping enforcement
- Except Health Centers with a Head Start grant ... there are a few nationally ... Head Start litigation resulted in nationwide injunction (for time being!)

Recent E.O. on Federal Grants

“IMPROVING OVERSIGHT OF FEDERAL GRANTMAKING”

(AUG. 7, 2025)

- Applies to **discretionary grants**; not block or formula grants or disaster recovery grants
- Reiterates current administration grant policies:
 - No **racial preferences** or proxies as selection criteria for employment or program participation
 - No promotion of “**gender ideology**”
 - No subsidizing or promoting **illegal immigration**
 - “All else being equal,” preference for awarding grants to organizations with lower **indirect cost rates**
- Feldesman Client Alert <https://www.feldesman.com/new-executive-order-mandates-more-federal-funding-scrutiny/>

DRAWDOWNS

- Requires agencies to insert Administration T&Cs:
 - Requiring “affirmative **agency authorization**” for **drawdowns** in future grant agreements
 - Requiring grantees to provide “**written explanations or support**, with specificity” for **drawdowns** in future grant agreements

Current PMS Certification – What are you Certifying?

- Authority to make certification on behalf of recipient organization that the following are true...
 - You are in compliance with pretty much everything
 - Drawdown request is accurate and complete and you have supporting documentation
 - If in advance, you will disburse for allowable costs within 3 business days
 - All information provided is accurate
 - No changes to recipient eligibility for the award
- Accuracy is a “condition of payment”



The Rule 2 CFR 200.308(b)(10)

Key Language:

“Advance payments to a recipient or subrecipient **must be limited to the minimum amounts needed** and be timed with actual, immediate cash requirements of the recipient or subrecipient in carrying out the purpose of the approved program or project.”



One Proposal with Shutdown Looming ...

- Review costs charged to program income since the start of your current budget period
- Determine which ones are “fully” allowable to your Section 330 grant (works with other grants too)
- Drawdown federal funds and reimburse yourself for those allowable costs
- Frees up program income for cashflow during shutdown if it happens
- All documented properly please!



TERMINATION FOR CONVENIENCE -

“Each agency head shall, to the maximum extent permitted by law and consistent with relevant Executive Orders or other Presidential directives, **take steps to revise the terms and conditions of existing discretionary grants to permit immediate termination for convenience, or clarify that such termination is permitted, including if the award no longer advances agency priorities or the national interest.** Each agency head shall ensure that such terms are included in all future discretionary grants and likewise shall take steps to revise all applicable regulations binding on or incorporated in discretionary grant terms and conditions to require such terms. Agency heads shall take action to incorporate these new terms and conditions into all future amendments to grant awards.”

§ 200.340 TERMINATION (FROM NOV. 2020 CHANGES AS MODIFIED IN OCTOBER OF 2024)

(a) The Federal award may be terminated in part or its entirety as follows:

- (1) By the Federal agency or pass-through entity if the recipient or subrecipient fails to comply with the terms and conditions of the Federal award;
- (2) By the Federal agency or pass-through entity with the consent of the recipient or subrecipient, in which case the two parties must agree upon the termination conditions. These conditions include the effective date and, in the case of partial termination, the portion to be terminated;
- (3) By the recipient or subrecipient upon sending the Federal agency or pass-through entity a written notification of the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal agency or pass-through entity determines that the remaining portion of the Federal award will not accomplish the purposes for which the Federal award was made, the Federal agency or pass-through entity may terminate the Federal award in its entirety; or
- (4) By the Federal agency or pass-through entity pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities.

NIH Terminates Hundreds of Grants for DEI reasons

- Supreme Court in a split decision found that terminations should be in the Court of Federal Claims
- Justice Barrett was deciding vote and wrote that challenges to federal guidance should be brought in Dist. Ct, terminations in Court of Federal Claims
- Here is blog: <https://www.feldesman.com/u-s-supreme-court-allows-hundreds-of-nih-grant-terminations-to-stand/>
- Federal courts now grappling with what any of this means as recently as Monday, Federal judge in California found she had jurisdiction over lawsuit brought by U. of California P.I.s on terminated research grants



HHS Grants Policy Statement

HHS GRANTS POLICY STATEMENT & DEI ENFORCEMENT

- On **April 16, 2025**, HHS amended its **Grants Policy Statement** to provide a new grant term stating that, by accepting the award, the recipient is certifying it will not operate any program that advances or promotes DEI in violation of anti-discrimination laws.
- With no explanation, on **July 24, 2025**, HHS dropped the new DEI language in yet another issuance of the GPS; the new version states that “**by applying for or accepting federal funds from HHS, recipients certify compliance with all federal antidiscrimination laws and these requirements and that complying with those laws is a material condition of receiving federal funding streams.**”
- Then for the **October 1, 2025** version, HHS added the certification we have been seeing with Section 330 (next slide)

CERTIFICATION WITH YOUR NOA FOR HRSA

By accepting this award, including the obligation, expenditure, or drawdown of award funds, **recipients, whose programs are covered by Title IX**, certify as follows:

- Recipient is compliant with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., **including the requirements set forth in Presidential Executive Order 14168 titled Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government**, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq., and Recipient will remain compliant for the duration of the Agreement.
- The above requirements are conditions of payment that go the essence of the Agreement and are therefore material terms of the Agreement.
- Payments under the Agreement are predicated on compliance with the above requirements, and therefore Recipient is not eligible for funding under the Agreement or to retain any funding under the Agreement absent compliance with the above requirements.
- Recipient acknowledges that this certification reflects a change in the government's position regarding the materiality of the foregoing requirements and therefore any prior payment of similar claims does not reflect the materiality of the foregoing requirements to this Agreement.
- Recipient acknowledges that a knowing false statement relating to Recipient's compliance with the above requirements and/or eligibility for the Agreement may subject Recipient to liability under the False Claims Act, 31 U.S.C. § 3729, and/or criminal liability, including under 18 U.S.C. §§ 287 and 1001.

WHEN DOES TITLE IX APPLY?

- Title IX applies to “education programs or activities” receiving federal assistance.
- When is a program/activity considered educational? Case-by-case determination using the following factors:
 - Incrementally structured through a particular course of study or training;
 - Allows participants to earn a degree or diploma, certification, or pursue a specific occupation or trade;
 - Provides instructors, examinations, an evaluation process or grades, or accepts tuition; or
 - Program is held out as educational in nature.
- Not limited to school settings; may apply to Head Start programs, hospital clinical programs, job training programs. See HHS Title IX guidance [here](#).

DEI AND BONDI MEMO

FEDERAL ANTIDISCRIMINATION LAWS

Statute	Basic Scope	HHS Implementing Regs
<p>Title VI of the Civil Rights Act of 1964, 42 USC § 2000d et seq.</p> <p>Title VII, 42 USC 2000e et seq. governs employment practices</p>	No person will be excluded, on the ground of race, color, national origin (including language), or religion, from the participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program** or activity. Does not generally extend to employment discrimination claims, but such claims are covered by Title VII and would likely be referred to the EEOC.	45 CFR Part 80
Rehabilitation Act of 1973, 29 USC § 794	No otherwise qualified individual with a disability will be excluded, solely by reason of his or her disability, from the participation in, be denied the benefits of, or be subjected to discrimination under any program** or activity. This statute can also be the basis of employment discrimination claims.	45 CFR Part 84
Title IX of the Education Amendments Act of 1972	No individual will be subjected to discrimination on the basis of sex in any education program** or activity. This statute can also be the basis of employment discrimination claims.	45 CFR Part 86
Age Discrimination Act of 1975, 42 USC § 6101 et seq.	No individual will be excluded, on the basis of age, from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program** or activity.	45 CFR Part 91
Affordable Care Act, 42 USC § 18116	No individual will be discriminated against in a federally funded health care program or activity “on the ground prohibited under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), or section 794 of title 29”	

BONDI MEMO (JULY 29) – EXECUTIVE SUMMARY

- **Statutory nondiscrimination requirements:** Federal law prohibits discrimination based on protected characteristics like race, sex, color, national origin, or religion.
- **Legal pitfalls of DEI Programs:** The use of terms such as "DEI," "Equity," or other euphemistic terms does not excuse unlawful discrimination or absolve parties from scrutiny regarding potential violations.
- **Prohibition on Protected Characteristics as Criteria:** Using race, sex, or other protected characteristics for employment, program participation, resource allocation, or other similar activities, opportunities, or benefits, is unlawful, except in rare cases where such discrimination satisfies the relevant level of judicial scrutiny.

EXECUTIVE SUMMARY, CONT.

- **Importance of Sex-separated Intimate Spaces and Athletic Competitions:** Compelling employees to share intimate spaces with the opposite sex or allowing men to compete in women's athletic competitions would typically be unlawful.
- **Unlawful Proxy Discrimination:** Facially neutral criteria (*e.g.*, "cultural competence," "lived experience," geographic targeting) that function as proxies for protected characteristics violate federal law if designed or applied with the intention of advantaging or disadvantaging individuals based on protected characteristics.
- **Scrutiny of Third-Party Funding:** Recipients of federal grants should ensure federal funds do not support third-party programs that discriminate.

DOJ GUIDANCE “BEST PRACTICES” (NON-BINDING)

ONE EXAMPLE

“Focus on Skills and Qualifications: Base selection decisions on specific, measurable skills and qualifications directly related to job performance or program participation. For example, rather than asking about "cultural competence," assess specific skills such as language proficiency or relevant educational credentials. Criteria like socioeconomic status, first-generation status, or geographic diversity must not be used if selected to prioritize individuals based on racial, sex-based, or other protected characteristics.”



ANOTHER BEST PRACTICE...

“Document Legitimate Rationales: If using criteria in hiring, promotions, or selecting contracts that might correlate with protected characteristics, document clear, legitimate rationales unrelated to race, sex, or other protected characteristics. Ensure these rationales are consistently applied and are demonstrably related to legitimate, nondiscriminatory institutional objectives.”

Upshot...

- Employment –
 - Have employment counsel review assess Employment policies, practices for compliance
 - Implement any recommended changes
 - Certify backed up by expert advice
- Procurement –
 - Review 2 CFR 200.321 – solid advice to encourage small, minority owned businesses including
 - (1) These business types are included on solicitation lists;
 - (2) These business types are solicited whenever they are deemed eligible as potential sources;
 - (3) Dividing procurement transactions into separate procurements to permit maximum participation by these business types;
 - (4) Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;

GENDER AND GENDER AFFIRMING CARE

DEFENDING WOMEN FROM GENDER IDEOLOGY EXTREMISM AND RESTORING BIOLOGICAL TRUTH TO THE FEDERAL GOVERNMENT **(JAN. 20, 2025)**

Policy: “It is the policy of the United States to recognize two sexes, male and female.”

Approach:

(i) Explains that “[g]ender ideology” replaces the biological category of sex with an ever-shifting concept of self-assessed gender identity, permitting the false claim that males can identify as and thus become women and vice versa, and requiring all institutions of society to regard this false claim as true. Gender ideology includes the idea that there is a vast spectrum of genders that are disconnected from one’s sex. Gender ideology is internally inconsistent, in that it diminishes sex as an identifiable or useful category but nevertheless maintains that it is possible for a person to be born in the wrong sexed body.”

(ii) Directs that “[f]ederal funds shall not be used to promote gender ideology. Each agency shall assess grant conditions and grantee preferences and ensure grant funds do not promote gender ideology.”

(iii) “The Attorney General shall ensure that the Bureau of Prisons revises its policies concerning medical care to be consistent with this order and shall ensure that no Federal funds are expended for any medical procedure, treatment, or drug for the purpose of conforming an inmate’s appearance to that of the opposite sex.”

PROTECTING CHILDREN FROM CHEMICAL AND SURGICAL MUTILATION (JAN. 28, 2025)

Policy: “It is the policy of the United States that it will not fund, sponsor, promote, assist, or support the so-called “transition” of a child from one sex to another, and it will rigorously enforce all laws that prohibit or limit these destructive and life-altering procedures.”

Approach:

(i) Defines “chemical and surgical mutilation” as “the use of puberty blockers, including GnRH agonists and other interventions, to delay the onset or progression of normally timed puberty in an individual who does not identify as his or her sex; the use of sex hormones, such as androgen blockers, estrogen, progesterone, or testosterone, to align an individual’s physical appearance with an identity that differs from his or her sex; and surgical procedures that attempt to transform an individual’s physical appearance to align with an identity that differs from his or her sex or that attempt to alter or remove an individual’s sexual organs to minimize or destroy their natural biological functions. This phrase sometimes is referred to as “gender affirming care.”

(ii) Directs agencies to “rescind or amend all policies” that rely on guidance from the World Professional Association for Transgender Health (WPATH), including WPATH’s “Standards of Care Version 8.”

PROTECTING CHILDREN FROM CHEMICAL AND SURGICAL MUTILATION (CONT.)

Approach (cont.):

- (iii) Directs the Secretary of HHS to publish a review of literature of best practices “for promoting the health of children who assert gender dysphoria, rapid-onset gender dysphoria, or other identity-based confusion.”
- (iv) Directs agencies that provide research or education grants to medical institutions, including medical schools and hospitals, to ensure that institutions receiving Federal research or education grants end the chemical and surgical mutilation of children “consistent with applicable law.”
- (v) Directs the Secretary of HHS to implement all appropriate regulatory and subregulatory actions to end gender affirming care in: (A) Medicare or Medicaid, (B) clinical-abuse or inappropriate-use assessments relevant to State Medicaid programs, (C) mandatory drug-use reviews, (D) essential health benefits requirements, (E) section 1557 of the ACA (prohibiting discrimination in covered health programs or activities), (F) quality, safety and oversight memoranda, (G) the Eleventh Revision of the International Classification of Diseases and other federally funded manuals, including the DSM-V-TR and (H) withdraw HHS’s March 2, 2022 guidance document titled “HHS Notice and Guidance on Gender Affirming Care, Civil Rights and Patient Privacy” and, in consultation with the Attorney General, issue new guidance protecting whistleblowers who take action related to ensuring compliance with this order.
- (vi) Directs the Secretary of Defense to exclude gender-affirming care from TRICARE
- (vii) Directs the Director of OPM to exclude gender-affirming care from federal health plans.
- (viii) Directs DOJ to implement related enforcement actions under statutes that prohibit female genital mutilation or that protect consumers from violations of FDA laws.

DEFENDING WOMEN FROM GENDER IDEOLOGY EXTREMISM AND RESTORING BIOLOGICAL TRUTH TO THE FEDERAL GOVERNMENT **E.O. 14168 (JAN. 20, 2025)**

Policy: “It is the policy of the United States to recognize two sexes, male and female.”

Approach:

(i) Explains that “[g]ender ideology” replaces the biological category of sex with an **ever-shifting concept of self-assessed gender identity**, permitting the false claim that males can identify as and thus become women and vice versa, and requiring all institutions of society to regard this false claim as true. Gender ideology includes the idea that there is a vast spectrum of genders that are disconnected from one’s sex. Gender ideology is internally inconsistent, in that it diminishes sex as an identifiable or useful category but nevertheless maintains that it is possible for a person to be born in the wrong sexed body.”

(ii) Directs that “[f]ederal funds shall not be used to promote gender ideology. Each agency shall assess grant conditions and grantee preferences and **ensure grant funds do not promote gender ideology.**”

QUESTIONS



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