

February 17, 2026

Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
Attention: CMS-2451
Baltimore, MD 21244-8016

Submitted Electronically

**Re: RIN 0938-AV87; CMS-3481
Medicare and Medicaid Programs; Hospital Condition of Participation: Prohibiting
Sex-Rejecting Procedures for Children**

Secretary Kennedy and Administrator Oz:

As 40 undersigned organizations committed to protecting and expanding access to sexual and reproductive health, rights, and justice, we strongly oppose the proposed rule (“proposed rule”) targeting hospitals that provide care for transgender young people.¹ This rule seeks to bar hospitals from participating in Medicare and Medicaid if they provide this essential, evidence-based care for transgender youth, referred to here as transition-related health care (TRH). This proposed rule would effectively bar transgender young people from receiving TRH at virtually any hospital, endangering their health and wellbeing and exacerbating the significant challenges they already face in accessing TRH.² By issuing the proposed rule, the Centers for Medicare and Medicaid Services (CMS), under the Department of Health & Human Services (HHS), attempts to use regulations—intended to protect the health, safety, and rights of patients—as a means of targeting health care that this administration openly disfavors.³

This proposed rule represents a troubling and unauthorized departure from the purpose of conditions of participation regulations (CoPs) and the established way they have been used, and it creates a dangerous precedent for CMS to use these regulations to target other forms of care based on ideological opposition.⁴ And without a legitimate government interest beyond ideological opposition to TRH access for transgender youth, the proposed rule amounts to

¹ Medicare and Medicaid Programs; Hospital Condition of Participation: Prohibiting Sex-Rejecting Procedures for Children, 90 Fed. Reg. 242 (proposed Dec. 19, 2026) <https://public-inspection.federalregister.gov/2025-23465.pdf>.

² Roberto Abreu, Jules P. Sostre, Kirsten A. Gonzalez, Gabriel M. Lockett, Em Matsuno, & Della v. Mosley, , Impact Of Gender-Affirming Care Bans on Transgender and Gender Diverse Youth: Parental Figures’ Perspective, 36 J. Fam. Psych. 643 (2022) (showing the impact of state bans on health care for transgender youth, including on access, physical and mental health, safety, and families); Human Rights Watch, ‘*They’re Ruining People’s Lives’: Bans on Gender-Affirming Care for Transgender Youth in the US*’ (June 3, 2025), <https://www.hrw.org/report/2025/06/03/theyre-ruining-peoples-lives/bans-on-gender-affirming-care-for-transgender-youth>.

³ Exec. Order No. 14187, 90 Fed. Reg. 21 (Jan. 28, 2025) <https://www.whitehouse.gov/Presidential-Actions/2025/01/Protecting-Children-From-Chemical-And-Surgical-Mutilation/>.

⁴ Ctrs. for Medicare & Medicaid Servs., Conditions for Coverage (CfCs) & Conditions of Participation (CoPs) <https://www.cms.gov/medicare/health-safety-standards/conditions-coverage-participation> (last updated Sept. 9, 2024).

discriminatory animus.⁵ As organizations specializing in sexual and reproductive health care (SRH) policy, we have witnessed the harmful impact of policies intended to limit access to essential care and their disproportionate impact on people of color, LGBTQI+ people, disabled people, and people with low incomes. We urge the Department of Health and Human Services (HHS) to withdraw this proposed rule in its entirety.

I. The Proposed Rule ignores the necessity, safety, and effectiveness of TRH for transgender youth.

TRH is evidence-based care supported by extensive scientific research demonstrating its safety, efficacy, and benefits for transgender youth.⁶ For many transgender youth, access to this care is critical for their well-being and essential for their ability to live safe and healthy lives. All major medical organizations in the United States, including the American Academy of Pediatrics and the American Medical Association, recognize the importance of access to this care and oppose policies that create unwarranted barriers to it.⁷

Research indicates that when transgender youth receive the medical support they need, it significantly improves their health and overall quality of life, including by substantially decreasing rates of depression, anxiety, and suicidality.⁸ For instance, a 2023 study revealed that transgender adolescents who underwent hormone therapy for two years experienced significant reductions in symptoms of depression and anxiety, along with increased life satisfaction.⁹ In a similar vein, a 2022 study found that individuals who began puberty-delaying medications or hormone therapy had 60% lower odds of experiencing depression and 73% lower odds of suicidality.¹⁰ In contrast, denying access to care can result in serious negative health effects, including heightened rates of depression, anxiety, and suicidality.¹¹

The proposed rule fails to acknowledge this substantial body of evidence and the positions of leading medical providers demonstrating the safety, efficacy, and necessity of TRH for

⁵ *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973) (“[I]f the constitutional conception of ‘equal protection of the laws’ means anything, it must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest.”); See also Scott Skinner-Thompson, *Trans Animus*, 65 B.C. L. REV. 965 (2024) <https://bclawreview.bc.edu/articles/3125>.

⁶ Eli Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People*, 23 *Int'l J. Transgender Health* 1 (2022) (corrected in Sept. 2022) <https://pmc.ncbi.nlm.nih.gov/articles/PMC9481143/>.

⁷ Alyson Sulaski Wyckoff, *AAP Reaffirms Gender-Affirming Care Policy, Authorizes Systematic Review of Evidence to Guide Update*, American Acad. of Pediatrics News, (Aug. 4, 2023) <https://publications.aap.org/aapnews/news/25340/AAP-reaffirms-gender-affirming-care-policy> (describing the AAP's re-affirmation of its gender-affirming care policy); see James L. Madara, *AMA to States: Stop Interfering in Health Care of Transgender Children*, American Medical Association (Apr. 26, 2021) <https://www.ama-assn.org/press-center/ama-press-releases/ama-states-stop-interfering-health-care-transgender-children>; see also Asa Radix, *WPATH Statement Regarding Executive Order 'Protecting Children From Chemical and Surgical Mutilation'*, World Pro. Ass'n for Transgender Health (Jan. 28, 2025) <https://wpath.org/wp-content/uploads/2025/01/01.28.25-WPATH-Board-Statement-Regarding-Executive-Order.pdf>.

⁸ Whitman-Walker Inst., *Understanding Medically Necessary Care for Transgender People*, (Mar. 2024) https://assets.aclu.org/live/uploads/2024/06/Understanding-Medically-Necessary-Care-for-Transgender-People_Branded2.pdf (describing the medical diagnosis of gender dysphoria and its individualized and age-appropriate treatments).

⁹ Diane Chen et al., *Psychosocial Functioning in Transgender Youth after 2 Years of Hormones*, 388 *New England J. Med.* 240 (2023) <https://www.nejm.org/doi/pdf/10.1056/NEJMoa2206297>.

¹⁰ Diana M. Tordoff et al., *Mental Health Outcomes in Transgender and Nonbinary Youths Receiving Gender-Affirming Care*, 5 *JAMA Network Open* 1 (Feb. 25, 2022) <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2789423> (corrected on July 26, 2022).

¹¹ Diana M. Tordoff et al., *Mental Health Outcomes in Transgender and Nonbinary Youths Receiving Gender-Affirming Care*, 5 *JAMA Network Open* 1 (Feb. 25, 2022) <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2789423> (corrected on July 26, 2022).

transgender youth and the manner in which it is provided. Instead, CMS ignores the cumulative weight of the evidence and relies on a single flawed report, issued by HHS, that has faced significant criticism from researchers, advocates, and medical associations due to its questionable methods, misalignment with expert guidelines, promotion of misinformation, and failure to disclose the authors.¹² By disregarding widely accepted data on TRH and relying instead on the administration's own unsubstantiated and unscientific claims, the justifications offered in this proposed rule are not supported by the data and point to a rule that is not only unwarranted and arbitrary, but amounts to illegal animus.

II. The proposed rule would harm transgender young people and their families.

The proposed rule would harm transgender young people and their families by making it difficult or even impossible for transgender youth to access the care they need. The proposed rule would force hospitals to choose between providing best practice care and participating in Medicaid and Medicare. Considering that virtually all hospitals rely on Medicare and Medicaid funding, this rule would coerce many hospitals into denying care for transgender youth. This rule would seriously jeopardize access to care, as many transgender youth rely on hospital settings for TRH, often as their only option. The impact would lead to significant harm for these young people, increasing barriers to care or resulting in complete loss of access, ultimately affecting their short- and long-term health and overall wellbeing.

As organizations specializing in SRH policy, we have closely observed the harmful effects of policies that restrict access to essential care due to ideological opposition. Abortion has been under constant attack for decades, and harmful policies—including the Hyde Amendment, targeted regulation of abortion provider (TRAP) laws, and abortion bans and restrictions—have persistently cut away at access to this essential care.¹³ As a result of so many restrictions on abortion, many people are forced to travel far distances, and to contend with additional barriers to access, including costs related to travel, childcare, lodging, and time off work.¹⁴ unable to access the care they need and are forced to contend with. One groundbreaking study, The Turnaway Study, followed 1,000 women¹⁵ across the country over five years. Some of them

¹² Lindsey Dawson, *U.S. Department of Health and Human Services Report on Pediatric Gender Dysphoria and Gender Conversion Efforts*, KFF (May 6, 2025) <https://www.kff.org/lgbtq/u-s-department-of-health-and-human-services-report-on-pediatric-gender-dysphoria-and-gender-conversion-efforts/>.

¹³ Alina Salganicoff, Laurie Sobel, Ivette Gomez, & Amrutha Ramaswamy, *The Hyde Amendment and Coverage for Abortion Services Under Medicaid in the Post-Roe Era*, KFF (Mar. 14, 2024) <https://www.kff.org/womens-health-policy/the-hyde-amendment-and-coverage-for-abortion-services-under-medicaid-in-the-post-roe-era/>; Kimya Forouzan, *Targeted Regulation of Abortion Providers*, Guttmacher Inst. (Jan. 30, 2026) [https://www.guttmacher.org/state-policy/explore/targeted-regulation-abortion-providers#:~:text=Facility%20structural%20requirements,.have%20TRAP%20laws%20in%20effect](https://www.guttmacher.org/state-policy/explore/targeted-regulation-abortion-providers#:~:text=Facility%20structural%20requirements,.have%20TRAP%20laws%20in%20effect;); Nigel Madden, Emma Trawick, Katie Watson, & Lynn M. Yee, *Post-Dobbs Abortion Restrictions and the Families They Leave Behind*, 114 *Am. J. Pub. Health* 1043 (2024) <https://pmc.ncbi.nlm.nih.gov/articles/PMC11375356/>.

¹⁴ ANSIRH & UCSF, *The Harms of Denying a Woman a Wanted Abortion: Findings from the Turnaway Study* (2020); https://www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf

¹⁵ While the data is specific to cisgender women, we acknowledge that other people may need abortion care as well, including transgender men and many nonbinary individuals. See e.g. Heidi Moseson, et al., *Abortion Experiences and Preferences of Transgender, Nonbinary, and Gender-Expansive People in the United States*, 224 (4) *Am. J. Obstetrics Gynecology*. 376.e1 (2021), <https://pmc.ncbi.nlm.nih.gov/articles/PMC7518170/pdf/main.pdf>.

received the abortions they sought, and some were denied care. The study demonstrates that, similar to TRH, abortion access is closely tied to socioeconomic status, health, and overall well-being.¹⁶ The study revealed that over 95% of individuals who chose to have abortions felt it was the right decision five years later, with no evidence of mental health issues post-abortion. These individuals also experienced greater financial stability and were more likely to raise children in stable environments and have a wanted child later.

In contrast, those unable to obtain abortions due to state or federal restrictions faced serious physical and mental health challenges, economic hardship, and insecurity.¹⁷ And with abortion bans enforced in various states across the country, access to care has only become further limited. This impacts two-thirds of U.S. adolescents, who already face significant barriers to obtaining abortion care, including transportation issues, financial constraints, and potential parental involvement requirements.¹⁸ This data underscores the tangible effects that restrictions on health care access can have on individuals and reveals the potential harm that may arise from imposing limitations on TRH for transgender adolescents.

The proposed rule would worsen the significant challenges transgender youth already face in accessing health care, including state laws restricting TRH, geographical limitations, provider availability, and financial barriers that make care unaffordable for many families. If finalized, the proposed rule would disproportionately impact those already encountering heightened barriers to care, such as transgender youth of color, LGBTQI+ individuals, disabled people, and those with low incomes. By financially coercing hospitals to discontinue providing TRH to any transgender youth, this rule would exacerbate existing issues related to provider availability and deepen the inequities faced by these populations.

III. The proposed rule is based in discriminatory animus and not a legitimate government interest.

Although the proposed rule claims to be based on statutory interpretation, the reasoning provided by CMS indicates that its motivation is based on a desire to discriminate against transgender youth more generally. The proposed rule fails to establish a legitimate governmental interest to support its recommendations, nor does it rely on widely accepted evidence to validate its discriminatory attempts to coerce hospitals into denying TRH to transgender youth. As a result,

¹⁶ Dan Frost, UCSF Turnaway Study Shows Impact of Abortion Access on Well-Being, Univ. of Cal. San Francisco (June 30, 2022) <https://www.ucsf.edu/news/2022/06/423161/ucsf-turnaway-study-shows-impact-abortion-access>.

¹⁷ Dan Frost, UCSF Turnaway Study Shows Impact of Abortion Access on Well-Being, Univ. of Cal. San Francisco (June 30, 2022) <https://www.ucsf.edu/news/2022/06/423161/ucsf-turnaway-study-shows-impact-abortion-access>.

¹⁸ Laura D. Lindberg, Julie Maslowsky, & Paz Baum, *Implications of Abortion Restrictions for Adolescents*, 179 JAMA Pediatrics 675 (2025) <https://jamanetwork.com/journals/jamapediatrics/article-abstract/2832264>. The Supreme Court's erroneous decision in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), to overturn the constitutional right to abortion has worsened existing health and social inequalities affecting two-thirds of U.S. adolescents who already encounter significant barriers to accessing abortion care, such as transportation issues, financial constraints, and potential parental involvement requirements. See Bianca A. Allison, Kinsey Vear, Andrea J. Hoopes, & Julie Maslowsky, *The Perceived Impact of a Post-Dobbs Landscape on U.S. Adolescents and Young Adults*, 138 Contraception 1 (2024) <https://pmc.ncbi.nlm.nih.gov/articles/PMC11365779/>; See also Laura D. Lindberg, Julie Maslowsky, & Paz Baum, *Implications of Abortion Restrictions for Adolescents*, 179 JAMA Pediatrics 675 (2025) <https://jamanetwork.com/journals/jamapediatrics/article-abstract/2832264>.

this rule exemplifies discriminatory animus; actions motivated by discrimination and lacking a legitimate governmental justification—beyond a desire to harm a politically unpopular group—cannot be defended.¹⁹

The Trump Administration has consistently displayed prejudice and ideological hostility toward transgender individuals and their health care. From the outset of his presidency, President Trump made his administration’s animus towards transgender people blatantly clear through an executive order that initiated a broad governmental assault on their rights.²⁰ Shortly thereafter, he issued another executive order that spread misinformation about care for transgender youth, inciting fear and hate with baseless claims and paving the way for policies that deny such care.²¹ Discrimination or ideological opposition to certain health care services, devoid of legitimate governmental interest and rooted in bias, constitutes evidence of discriminatory animus and cannot justify these efforts to obstruct access to essential services.²²

IV. The proposed rule exceeds CMS’s statutory authority and marks a troubling departure from the intended use of CoP regulations.

The proposed rule represents a dangerous departure from the standard use of CoP regulations and their original intent: to establish health and safety standards that protect patients’ rights and welfare. By limiting access to medically necessary, best-practice care provided by licensed providers, the proposed rule seeks to weaponize CoP regulations as a tool of ideological control. CMS’s attempts to use CoP regulations to target disfavored care sets a troubling precedent for restricting access to other essential health services. CoP regulations are designed to help patients, not restrict them from accessing care; this proposed rule blatantly deviates from that well-established intent, potentially paving the way for other ideologically driven restrictions on essential care rather than adhering to established medical standards.

The proposed rule would also be contrary to limits on CMS’s authority to regulate the practice of medicine, violating Section 1801 of the Social Security Act.²³ Section 1801 states that federal officials may not “exercise any supervision or control over the practice of medicine...the manner in which medical services are provided...or the administration or operation of any such institution, agency, or person” providing health services.²⁴ The proposed rule violates this

¹⁹ *U.S. Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534 (1973) (“[I]f the constitutional conception of ‘equal protection of the laws’ means anything, it must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest.”); See also Scott Skinner-Thompson, *Trans Animus*, 65 B.C. L. REV. 965 (2024) <https://bclawreview.bc.edu/articles/3125>.

²⁰ Exec. Order No. 14168, 90 Fed. Reg. 861519 (Jan. 20, 2025) <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>.

²¹ Exec. Order No. 14187, 90 Fed. Reg. 877121 (Jan. 28, 2025) <https://www.whitehouse.gov/Presidential-Actions/2025/01/Protecting-Children-From-Chemical-And-Surgical-Mutilation/>.

²² *U.S. Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534 (1973) (“[I]f the constitutional conception of ‘equal protection of the laws’ means anything, it must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest.”); See also Scott Skinner-Thompson, *Trans Animus*, 65 B.C. L. REV. 965 (2024) <https://bclawreview.bc.edu/articles/3125>.

²³ The Social Security Act, 42 U.S.C. § 1395 (stating that “[n]othing in this subchapter shall be construed to authorize any Federal officer or employee to exercise any supervision or control over the practice of medicine or the manner in which medical services are provided, or over the selection, tenure, or compensation of any officer or employee of any institution, agency, or person providing health services; or to exercise any supervision or control over the administration or operation of any such institution, agency, or person”).

²⁴ 42 U.S.C. § 1395.

express prohibition by limiting the medical care that hospitals participating in Medicaid and Medicare can provide. CMS tries to justify this intrusion on the practice of medicine by claiming that TRH for young people “...is not healthcare and hence not subsumed under ‘the practice of medicine.’”²⁵ This rationale is illogical, insufficient, and unsupported by the evidence. There is no controversy among major medical organizations that TRH is medical care, and CMS’s own characterizations of TRH demonstrate that it is a form of medical care. CMS’s conclusory claim that TRH for youth does not qualify as a legitimate medical practice, presented without applicable or relevant evidence, is not sufficient to justify a violation of the prohibition on federal interference in the practice of medicine.

We strongly urge the agency to withdraw the proposed rule that seeks to withhold federal funds from Medicare and Medicaid hospitals that provide health care for transgender youth. As organizations that advocate for expanded access to SRH, including abortion care, we are all too familiar with the consequences of ideologically driven policies that impact and hinder access to essential care. Without legitimate governmental justification beyond ideological opposition towards TRH for young people, the proposed rule amounts to discriminatory animus. And it exceeds CMS’s authority to regulate the practice of medicine, in violation of Section 1801 of the Social Security Act. This rule would pose a significant threat to the health and wellbeing of transgender young people and exacerbate the barriers they already face to health care access. We also request that you incorporate the cited materials into the record for Administrative Procedure Act purposes.

For further information, please contact Bridget Winkler, Senior Counsel at the National Women’s Law Center, at bwinkler@nwlc.org.

Signed,

ACCESS REPRODUCTIVE JUSTICE
Advocates for Youth
All* Above All
American Atheists
American Civil Liberties Union
American Humanist Association
Arkansas Black Gay Men's Forum
Autistic Self Advocacy Network
Autistic Women & Nonbinary Network
California LGBTQ Health and Human Services Network
Center for Law and Social Policy (CLASP)

²⁵ The administration also argues that Section 1861(e)(9) of the Act “explicitly gives CMS the authority to enact regulations that the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services in a hospital...” but this authority does not amount to the regulatory authority to control the practice of medicine. Medicare and Medicaid Programs; Hospital Condition of Participation: Prohibiting Sex-Rejecting Procedures for Children, 90 Fed. Reg. 59463 (proposed Dec. 19, 2025) (to be codified at 42 C.F.R. pt. 482), <https://public-inspection.federalregister.gov/2025-23465.pdf>

Community Catalyst
Defend Public Health
Disability Rights California
Guttmacher Institute
Healthcare Across Borders
Healthy Teen Network
Ibis Reproductive Health
If/When/How: Lawyering for Reproductive Justice
Maryland National Organization for Women
National Abortion Federation
National Asian Pacific American Women's Forum
National Council of Jewish Women
National Latina Institute for Reproductive Justice
National Network of Abortion Funds
National Organization for Women
National Women's Law Center
New Disabled South
Physicians for Reproductive Health
Planned Parenthood Action Fund
Population Institute
Positive Women's Network-USA
Power to Decide
Religious Community for Reproductive Choice
Reproductive Freedom for All
Reproductive Health Access Project
SEIU
The Institute for Health Research & Policy at Whitman-Walker
The TransLatin@ Coalition
UltraViolet Action