

Doctors concerned about complex legal landscape for transgender patients:

ANALYSIS

A revision removing references to gender identity goes into effect mid-August.

By
Dr. Danielle Weitzer
and
Sony Salzman
August 10, 2020

[Ed. Note: I don't usually post comments to articles, but the comments to this article were so ignorant that it behooves all of us to recognize just what the general public thinks of trans people.]

Discrimination can be an everyday occurrence for transgender people – even at the doctor's office. Enacted a decade ago, the Affordable Care Act forbid discrimination among health programs that receive federal funding. Then, in 2016, the Department of Health and Human Services determined that the basis of sex discrimination as outlined in the Affordable Care Act also included reference to gender identity -- a win for the transgender community.

But in June 2020, HHS announced a new final rule excluding specific protections for transgender people. That rule is set to go into effect in mid-August.

Now, doctors are sounding the alarm in a editorial published in the [New England Journal of Medicine](#), saying that under the new rule it once again will be legal for doctors to turn away transgender patients seeking care, effectively stripping them of protections that have been in place for four years.

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Despite advancements in medical treatments for transgender people, when it comes to regular checkups many of them still face widespread discrimination in doctor's offices across the United States, with a 2015 survey finding that over one-third have been harassed or refused care.

Under the Trump administration, HHS revised its position on transgender rights because it said the Obama-era rule had gone too far in its interpretation of "sex discrimination," according to a federal court.

According to Roger Severino, director of the Office for Civil Rights at HHS, "The gender identity and termination of pregnancy provisions of the 2016 rule were held unlawful and unenforceable by a federal court in December 2016, and a court vacated that language in October 2019."

But advocates say that the new HHS rule is especially ill-timed during the pandemic.

"The timing of this announcement is particularly deadly in the midst of a pandemic that disproportionately impacts transgender populations and communities of color," said co-author Sula Malina, a social worker in training at the Columbia School of Social Work. People who identify as transgender have not always been specifically protected under federal anti-discrimination laws such as the Civil Rights Act of 1964, but there are signs that is changing. In June 2020 -- the same month the Trump administration issued its new final rule -- the Supreme Court found that it's illegal for employers to discriminate against members of the LGBTQ community, including transgender people. That means today, the Supreme Court has decided the Civil Rights Act's prohibition of "sex discrimination" also applies to transgender people. Now, advocates and doctors are hoping the Supreme Court ruling effectively reinstates the Obama-era final rule, which also urged a broader interpretation of sex discrimination in regards to the Affordable Care Act.

"Earlier this year, the Supreme Court made clear that federal anti-discrimination laws protect LGBTQ people. That empowers federal agencies to step in and prevent discrimination against LGBTQ people in lots of different areas -- including in the provision of health care. It's disappointing that HHS is refusing to do so," said Ashok Chandran, assistant counsel at the NAACP Legal Defense and Educational Fund.

While it's still not yet clear how the revised HHS final rule and the Supreme Court decision will impact transgender people seeking medical care, lawyers consulted by ABC News say it's likely the Supreme Court's interpretation will mean transgender people are protected from discrimination in a doctor's office, meaning gender minorities would be protected in a health care context.

In the meantime, the legal and political back-and-forth has been stressful for the transgender community.

"These policies aren't just words on a document, they affect real people in real time," Arroyo said. "I would like to see a broader and science-based definition of sex and gender identity used when creating policies, but more importantly, a process that is not driven by sex or gender -- one that looks at all humans as equals."

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중량 김 • 19 hours ago

Pardon my ignorance, but how does a virus disproportionately effect transgender people? I could understand it affecting different sexes as those are physiological differences. But gender, being a social construct, is no different than it affecting Catholics more than Baptists.

Moomoofish 중량 김 • 18 hours ago

Maybe due to lack of reliable care since discrimination has been legalized so it makes them more vulnerable? Not sure, but society is awful so most trans people I know suffer from depression and anxiety as well which may well make them more susceptible.

NoMoreYes44 Moomoofish • 15 hours ago

Maybe they were prescribed proper mental health care and refused it.

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cran Moomoofish • 13 hours ago

What makes people believe that surgery can fix their depression? Silly, but the doctors make a mint on these unfortunate people. They get the surgery, and expect humanity to bend itself around their little worlds. People don't change that fast, and it is too much to expect. Ask a black person.

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ReviewTheFacts 중량 김 • 11 hours ago • edited

Here are 3 scenarios.

1) Transgender person goes to the hospital with Covid. There are few ventilators and beds available, and they elect to reject the transgender person as they'd have to have a room for him/herself where they could house 2-4 other people in that same room. That person later dies.

2) Transgender person is refused treatment for any of a number of medical issues that many ordinary citizens get, just because the doctor can't stand "perverts" according to his religious beliefs. The ailment/condition goes untreated, and the person later contracts Covid, and has less chance of survival.

3) The transgender person is young, and when having come out to his/her parents, is kicked out of the home and is living on the street, where he/she contracts Covid from other homeless people, and, having no money, is not treated with the "best" treatments due to lack of insurance and cash. The patient dies.

This is not a black and white issue, as some try to paint it.

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[NoEcho ReviewTheFacts](#) • 10 hours ago

funny you say it's not a black and white issue but sounds just like it...

When it comes to ESSENTIAL care a patient is triaged and given the necessary care with few questions asked...It's illegal to require payment of proof of insurance prior to providing essential care... a ventilator would be considered essential to a patient needing one. The government is giving extra dollars for those said to have COVID and placed on a ventilator...no one is doing a "dundee check" prior to inserting the tubes.

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[Alexa Nielsen NoEcho](#) • 9 hours ago

Patients will have medical records and hopefully the doctors reads them before treating them. I know our doctors, nurses, hospitals, emergency rooms and clinics read the patients records first. You are naive in thinking there is equal treatment for all.

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[Crunchy2k Alexa Nielsen](#) • 8 hours ago

Cross dressing causes medical conditions? That is a new one on me. Any psychological problems would be for the patient to bring up. I wouldn't expect any medical personnel to facilitate a patient's fantasy.

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[ReviewTheFacts Crunchy2k](#) • 22 minutes ago

You are assuming that it is a mental issue. It is no longer treated as such, and it didn't work. Changing the genitalia to match the hard wiring in the brain did work, so it's treated as a medical issue, not a mental one. There are standards of care for it, and one of those standards is to rule out ANY mental issues prior to any treatment.

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[NoEcho Alexa Nielsen](#) • 3 hours ago

You're naive believing they actually read the records beyond the current "why are you here"

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[중량 김 ReviewTheFacts](#) • 5 hours ago

Lots of possibilities and what ifs, but nothing worrisome. Gender is a social construct. It is not an inherent trait that is beyond one's control like race, sex, orientation, et al. A person can choose gender based upon how they feel (gender fluid) or even claim no gender (agender). Your choices, your desire to feel comfortable, does not qualify you for protected status.

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[ReviewTheFacts 중량 김](#) • an hour ago

I'm hetero male, by the way. None of this is worrisome to you, as you are likely not transgender. You asked, and I told you some of the worries transgendered individuals HAVE HAD and HAVE experienced, as I have known several in my lifetime. As a college project, I did an extensive study of the issues.

As far as anyone having "special status" or "more rights than everyone else," that's hyperbole. They want THE SAME RIGHTS EVERYONE ELSE HAS, no more, no less. Protection from discrimination would be a start in that direction. Being denied medical care, being harassed, beaten, killed, raped, kicked out of their families who will not acknowledge that they exist, denying them jobs because they are who they are, all of this is what they currently have to deal with.

It may not be worrisome to you, but it is very real to them. Your desire to discriminate does not trump their EXISTING RIGHTS, and yet, this happens. You asked, and I told you. Your biases are showing.

[WesternIowan](#) • 18 hours ago

Sad that HHS is headed by a trump swamp monster.

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[Fair Assessment WesternIowan](#) • 10 hours ago

Sad you are so easily led.

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[WesternIowan Fair Assessment](#) • 8 hours ago

Sad that you are so easily duped.

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[Fair Assessment WesternIowan](#) • 26 minutes ago

Sad that you are so easily duped.

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[Tom](#) • 16 hours ago • edited

"Under the revised rule a medical provider or insurance company could decide not to treat a transgender person for conditions like strep throat or for cancer, just because they do not want to treat a transgender person. This is especially concerning amidst the COVID-19 pandemic."

Nobody should be OK with this.

•

[NoMoreYes44 Tom](#) • 15 hours ago

I'm OK with this.

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[NoEcho Tom](#) • 10 hours ago

last I checked MOST medical professionals only concern is will the check/insurance clear the bank. If they can find a reason to offer more treatment they get more dollars.

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[ReviewTheFacts Tom](#) • 21 minutes ago

As you can see from the posts here, there are A LOT of insecure people who cannot accept anything different than what they are. That is the basis of discrimination.

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[Bobby Tanner](#) • 13 hours ago

OOoohhhh, I thought it was about getting the thing cut off, not about the Covid-19 virus...

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[Fair Assessment](#) • 10 hours ago • edited

Doctors concerned? Is there a lot of money to be made by redoing someone's plumbing?

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[NoEcho Fair Assessment](#) • 10 hours ago

there's a joke that if repeated here would get removed or cause one to get banned...has to do with removing vs installing.

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[raoul](#) • 8 hours ago

Since health and life insurance policies as well as automobile insurance policies can discriminate on a gender basis for the premiums they charge would that mean that a man who identified as a woman would be charged less even though physically he was male?

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[Davey](#) • 8 hours ago

"once again will be legal for doctors to turn away transgender patients seeking care"<-----
Good!! They spread a sickness to all people.

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