

Trump poised to roll back transgender health protections

By Nathaniel Weixel - 04/23/19 06:00 AM EDT

The Trump administration appears ready to roll back health care protections for transgender people, and advocates are gearing up for a fight.

A proposed rule from the Department of Health and Human Services (HHS) that's expected in the coming days would make it easier for doctors, hospitals and insurance companies to deny care or coverage to transgender patients, as well as women who have had abortions.

Coming on the heels of the [military transgender ban](#), there are fears the administration could go even further and use the proposal as an opportunity to narrow the definition of gender.

The administration hinted in a recent court filing that new health regulations could be published as soon as next week. The rule is expected to weaken or eliminate an anti-discrimination provision enshrined in ObamaCare.

The provision says patients cannot be turned away because they are transgender, nor can they be denied coverage if they need a service that's related to their transgender status.

Religious providers say they expect the administration's rule to reinforce their right not to provide treatment that is against their beliefs.

Advocates, meanwhile, say they are concerned that the proposal could jeopardize the gains made in making sure transgender individuals receive equal access to care.

The proposal is "likely to send an even stronger signal that the administration endorses discrimination in health care against transgender people," said Harper Jean Tobin, director of policy at the National Center for Transgender Equality.

The rule "won't mean that overnight transgender people can't get health care, but it will be a steady drip of allowing more discrimination," Tobin said.

Chase Strangio, an attorney at the American Civil Liberties Union (ACLU), said access to health care can be a life or death circumstance, and the rule could have "catastrophic effects" if it is finalized.

"To have the government take a stand in favor of discrimination is deeply upsetting," Strangio said.

Once the proposal is released, a public comment period will follow. After that, a final rule will be issued.

As for what comes next, Strangio said the ACLU has had two years to prepare for that.

"If the final rule looks like the proposal we are anticipating, we and our partners will file suit as soon as possible," Strangio said. "We can expect many legal challenges to any final rule."

[President Trump](#) repeatedly pledged support for the LGBTQ community on the campaign trail in 2016. But advocates say the president's words increasingly ring hollow, and his administration has been steadily eroding protections for transgender individuals.

For example, the military's transgender ban took effect earlier this month, despite objections from

advocacy groups and medical experts. And the Supreme Court on Monday said it would [hear arguments](#) this year on three cases concerning whether federal law applies to transgender identity.

Additionally, the Justice Department has argued that the main federal civil rights law doesn't protect employees from discrimination based on gender identity. Former Attorney General [Jeff Sessions](#) in 2017 wrote a memo saying the law "does not encompass discrimination based on gender identity per se."

The existing health care rule was first issued in 2016, six years after the 2010 Affordable Care Act was signed into law. The rule prohibited providers and insurers who receive federal money from denying treatment or coverage to anyone based on sex, gender identity or termination of pregnancy.

It also required doctors and hospitals to provide "medically necessary" services to transgender individuals, as long as those services were the same ones provided to other patients.

That rule was challenged in court by a group of Christian providers called the Franciscan Alliance. They argued the rule forces insurers to pay for abortions and compels doctors to perform gender transition services, even if they disagree with those services on moral or medical grounds.

A federal judge in Texas agreed with that argument, issuing a nationwide injunction in late 2016 that is still in effect. The ruling said Congress had outlawed discrimination based on "the biological differences between males and females" but not transgender status.

The new proposed rule has been under review at the White House Office of Management and Budget for more than a year, something that experts say is highly unusual.

That delay is causing confusion in the health care industry: ObamaCare's nondiscrimination statute is the law, even if a rule implementing it has been put on hold.

In a court filing earlier this month, the administration said it would be publishing the proposal soon, a move that would likely affect the lawsuit in Texas.

Luke Goodrich, senior counsel with the Becket Fund for Religious Liberty and a lead attorney for the plaintiffs, said providers would be better served by a ruling from the judge. He said they just want to make sure their religious protections are upheld.

Katie Keith, a health care consultant and professor at Georgetown Law, said, "It's going to be really hard for people to understand their rights in health care" while the confusion continues.

Tobin, of the National Center for Transgender Equality, said the uncertainty is having a harmful effect.

"At a time when the administration is trying to overturn the entire Affordable Care Act, at a time when the transgender ban in military is taking effect, transgender people are scared for their ability to get the health care they need, and that their providers know they need," Tobin said.

Goodrich argues that providers won't turn away patients just because they are transgender, so long as the doctors aren't giving transition-related care or "being pressured to perform abortions."

He said the plaintiffs have been treating transgender people for years and "won't stop doing that, because they provide care for everyone. That's not what the lawsuit is about in our view."

Transgender advocates are concerned the administration will use the lawsuit as an excuse to redefine gender.

The New York Times last year reported that HHS proposed in a memo that government agencies adopt a [narrower definition of gender](#) in a way that would essentially end federal recognition of transgender individuals.

No rules have been issued, but advocates say administration officials have been telegraphing their views.

The HHS memo is a “blueprint” for discrimination, and the nondiscrimination proposal is a major part of it, Tobin said.