

# Trump administration finalizes ‘conscience’ rule affecting transgender people’s health care

**The administration has been preparing to take this step for some time.**

Casey Quinlan May 2, 2019, 1:51 pm

The Trump administration finalized a new rule enabling the discrimination of transgender people in health care on Thursday.

The rule essentially allows health care workers to refer to religious or moral objections when they don’t want to deliver health care services, which would also affect access to abortion and contraception.

The so-called “[conscience rule](#)” would revise existing regulations to “ensure vigorous enforcement of Federal conscience and anti-discrimination laws applicable to the Department, its programs, and recipients of HHS funds.” It would also encourage recipients of funds from the Department of Health and Human Services (HHS) to provide notice to people and entities about their right to be free from coercion and discrimination on account of religious beliefs or moral convictions. The responsibility for enforcement falls to HHS’ Office for Civil Rights.

Roger Severino, the head of the Office for Civil Rights (OCR), created a new office at the department called the Division of Conscience and Religious Freedom last year. LGBTQ rights groups worry the office is set up in part to allow health workers to avoid caring for LGBTQ patients. When Severino previously worked for the Heritage Foundation, he [argued](#) that health workers should be allowed to decide not to provide transition-related procedures for transgender people.

In a press call on Thursday, Severino said of religious freedom issues, “... people should not have to shed their religious beliefs simply to help others in health care.”

Severino was asked what patients living in areas with mostly Catholic hospitals should do if they are denied care, but he dodged the question, saying, “If the hospital is not there, nobody gets care so there’s benefit to allowing diversity of belief.”

Gillian Branstetter, media relations manager for the National Center for Transgender Equality, said the new rule is dire for transgender people trying to access health care without discrimination.

“This could lead to reversal of a lot of the progress transgender people have seen particularly from insurers and providers, so it would take concentrated efforts to try and address some of the inequalities in our system including exclusions in insurance plans. A lot of states have similarly made efforts not just in their employees’ plans but in their Medicaid plans.

The department [argues](#) that enforcement of the rule will remove barriers to entry for people who want to join health care professions but have moral and religious objections. The department wrote, “Federal conscience and anti-discrimination laws, which represent Congress’s considered judgment that these rights are worth protecting even if they impact overall or individual access to a particular service, such as abortion.”

In the rule, the department defines “assisting in the performance” broadly, referring to the participation in “counseling, referral, training, and other arrangements for the procedure, health service, health

program, or research activity.”

Louise Melling, deputy legal director at the American Civil Liberties Union, responded to the news of the rule with a statement:

Once again, this Administration shows itself to be determined to use religious liberty to harm communities it deems less worthy of equal treatment under the law. This rule threatens to prevent people from accessing critical medical care and may endanger people’s lives. Religious liberty is a fundamental right, but it doesn’t include the right to discriminate or harm others. Denying patients health care is not religious liberty. Discriminating against patients based on their gender or gender expression is not religious liberty. Medical standards, not religious belief, should guide medical care.

Transgender rights and health care advocacy groups have worried about these changes for some time.

In May 2017, the Trump administration paused ongoing litigation in a federal district court in Texas that temporarily blocked HHS from enforcing Section 1557’s non-discrimination protections for trans people and pregnant people.

Last month, the Justice Department filed a memorandum in which it told the judge it agreed with the ruling. The department wrote, “Since the Rule was issued, the United States has returned to its longstanding position that the term ‘sex’ in Title VII does not refer to gender identity, and there is no reason why Section 1557, which incorporates Title IX’s analogous prohibition on “sex” discrimination, should be treated differently.”

In March 2018, OCR issued a Notice of Proposed Rulemaking on “Protecting Statutory Conscience Rights in Health Care; Delegations of Authority,” expanding health care providers’ right to refuse services if they have religious or moral objections.

“We are very concerned that the Proposed Rule would legitimize discrimination against vulnerable patients and in fact create a right to refuse to provide certain treatments or services,” James L. Madara, executive vice president and CEO of the American Medical Association, [wrote](#) in a letter responding to the proposed rules. “Given our concerns, we urge HHS to withdraw this Proposal.”

Branstetter said that despite steps forward for health care access for transgender people, patients still struggle to access transgender-related care and have to pay out of pocket. Now, the situation could become even worse.

“Any scroll through GoFundMe can show you the costs of the American health care system and how much of a burden it is on anyone, but you’ll also see a lot of transgender people just trying very hard to access their health care that is considered safe, effective, and necessary by every major medical body in the country,” Branstetter said.

Discrimination against transgender people can happen in any health care setting and can include invasive questions, unnecessary testing, outright harassment, and being turned away by doctors.

“We’ve heard stories of people getting turned away for sprained ankles. In fact, one man I spoke to who had a long-term injury in his ankle was going in for imaging of his ankle and when doctors found out he was trans, they conducted an examination of his chest as well as asked questions about his top surgery,” Branstetter said. “What [good health care] looks like is for trans people to not have to struggle for access to care but then also not wondering how they will be treated once they do find it.”

In 2018, the Center for American Progress requested documents through the Freedom of Information Act of complaints to HHS between 2012 and 2016. It [found](#) that most complaints by transgender patients during that time period were about problems seeking general care and not related to transition-related care. (ThinkProgress is an editorially independent news site housed at the Center for American

Progress Action Fund.)

Many transgender people do not go to the doctor to avoid this kind of discriminatory treatment, Branstetter said, and that ends up hurting transgender people's health. A 2017 [study](#) found that transgender people who delayed health care due to fear of discrimination "had worse general health in the past month than those who did not delay or delayed care for other reasons." These individuals also had greater odds of a suicide attempt or suicidal ideation in the past year as well as depression.

When the director of the Centers for Disease Control and Prevention, Robert Redfield, was asked last year about a Trump administration proposal defining gender by sex at birth, he did not directly criticize the idea, according to [STAT](#). However, when he was asked if these efforts would hurt endeavors to treat HIV, among transgender women in particular, he replied, "We need to understand that stigmatizing illness, stigmatizing individuals is not in the interest of public health."

Results from the CDC's 2017 [Youth Risk Behavior Survey](#) show how vital it is that transgender youth receive access to good health care. Transgender students were more likely to report violence victimization, substance abuse, suicide risk, and sexual risk behaviors than cisgender students. The CDC report said there should be "coordinated intervention efforts" to improve health outcomes among this population.

The administration has taken numerous actions to erase transgender people from policy and to roll back protections. The administration has [argued](#) for a definition of sex in federal civil rights laws that would get rid of any and all protections for transgender people. The departments of [Justice](#), [Health and Human Services](#), and [Labor](#) have all announced initiatives that focus on religious freedom, which many LGBTQ advocates and reproductive rights groups say is a just another path to enable discrimination against LGBTQ people and people who can get pregnant. The administration has also [erased LGBTQ people](#) from its websites and [from federal data](#), instituted a military ban on transgender people, and rolled back Justice Department and Education Department guidance on transgender people's access to bathrooms and other facilities.

The National Center for Transgender Equality sent a letter to HHS last week requesting a delay in rulemaking because the Supreme Court is [set to consider](#) the issue of anti-transgender discrimination.