

Trump Administration Proposes Rule To Reverse Protections For Transgender Patients

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The federal Department of Health and Human Services is proposing to roll back an Obama-era policy intended to protect transgender people from discrimination in health care.

Roger Severino, director of the HHS Office for Civil Rights, said [the proposed rule](#), released Friday, would revise protections put into place in 2016 as part of the Affordable Care Act that defined discrimination "on the basis of sex" to include gender identity. Gender identity was interpreted as one's "internal sense of being male, female, neither, or a combination of male and female."

Two lawsuits temporarily blocked that definition from being implemented. Today's proposed action by HHS would go along with those court rulings and permanently remove gender identity from the classes protected from discrimination by the health care law.

Severino said at a press briefing that the proposed rule conforms with existing law.

"When Congress prohibited sex discrimination, it did so according to the plain meaning of the term, and we are making our regulations conform," said Severino in a statement.

"We have concluded in our most recent filing with the court that discrimination on the basis of sex does not cover gender identity," he said during a press briefing.

Jocelyn Samuels, the former head of HHS's Office for Civil Rights, says that the 2016 policy defining sex to include gender identity was based on how the courts had treated sex discrimination laws in education and employment.

"We determined based on extensive analysis of the law and the way that the law had been applied under employment discrimination laws and education discrimination laws that sex discrimination included not just discrimination against women and men, but also discrimination based on sex stereotyping and gender identity," says Samuels, who is now director of the [Williams Institute](#) at the UCLA School of Law.

However, that rule had been on hold after a Texas judge, on the last day of 2016, [ruled](#) that the Obama administration exceeded its authority by interpreting sex discrimination to include discrimination against transgender people. The Trump Administration signaled that it intended to reverse the rule when it told the judge there was no need to issue a final ruling because it was rewriting the rule.

Samuels says the change is "extraordinarily damaging" to transgender people.

Research from the Williams Institute found that more than 780,000 transgender people live in states that [lack legal protections](#) from gender identity discrimination in public accommodations, such as health care facilities. [Twenty-eight states lack such protections](#), according to the Williams Institute.

A 2017 [NPR poll](#) found that 31% of transgender Americans lack regular access to health care. And 22% said they avoided doctors or health care for fear of being discriminated against. The poll is part of a partnership with the Robert Wood Johnson Foundation and the Harvard T.H. Chan School of Health.

The [Human Rights Campaign](#) says fear of discrimination causes many LGBTQ people to avoid seeking

medical care. The group cites studies that show that 70 percent of transgender patients say they have experienced discrimination in a health care setting.

"Everyone deserves access to medically necessary care and should never be turned away because of who they are," says David Stacy, the group's director of government affairs.

This week, the Department of Housing and Urban Development also [proposed a new rule](#) related to transgender people. It would undo protections for transgender people who go to federally funded homeless shelters. Critics say the change would allow shelter operators to turn transgender individuals away because of their gender identity, or to require transgender men to use women-only shelters and vice versa.

Today's proposed rule from HHS's Office for Civil Rights also proposes to reverse language in the Obama-era rule that included termination of pregnancy in the definition of sex discrimination.

It also would retain language in the 2016 rule that ensured protection for persons with disabilities in health care settings. It includes provisions to provide language access to non-English speakers. In addition, it rolls back regulation requiring the mailing of language access notices. HHS estimates it will save \$3.6 billion in the first five years after finalization.

Severino said that his office would continue to vigorously enforce prohibitions of discrimination on the basis of race, color, national origin, disability, age and sex in health care.