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By

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Provisions relating to [transgender](#) procedures were excluded from the Biden administration's rulemaking on nondiscrimination protections in [Obamacare](#) plans, a last-minute change welcomed by [religious liberty](#) advocates.

The Centers for Medicare and Medicaid Services [released a final rule](#) Thursday updating Obamacare's regulations that drops a January proposal to change the civil rights provision known as Section 1557 to include "gender identity" and "sexual orientation" as categories explicitly protected from discrimination. Section 1557 already prohibits discrimination based on race, color, national origin, sex, age, and disability in health programs and activities that receive federal funding.

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Nor did Thursday's final rule include a separate proposal related to transgender services that had worried religious liberty advocates. That second proposal was meant to stop insurers from limiting the coverage of essential health benefits, or the list of health services insurers are required to cover under Obamacare, based on gender identity in treating gender dysphoria when clinical evidence demonstrates that such coverage is medically necessary for transgender people.

For instance, if an insurer were to cover hormone therapy to treat nontransition-related conditions, the plan must also cover the therapy for the treatment of gender dysphoria — that is, emotional distress due to a disconnect between gender identity and biological sex. Not doing so would be presumptively discriminatory, per the initial proposed rule.

The agency's move to put off consideration of the proposals offered [a temporary reprieve for religious freedom](#) advocates, who characterized the second rule as a mandate on insurers to cover the cost of gender transition care such as hormone therapy, reassignment surgery, and puberty blockers despite whatever religious or moral objections they might have.

"CMS's decision to drop its plans to mandate insurance coverage of irreversible and sterilizing medical and surgical gender transition procedures, including for children, is huge," said Rachel Morrison, a policy analyst at the Ethics and Public Policy Center, a conservative think tank. "For an agency to completely abandon a proposal at the final stage, especially one that aligns so closely with the administration's priorities, is practically unheard of."

This is not the end of the road for the rules, though. The nondiscrimination proposals related to sexual orientation and gender identity will be considered "at a later time," the rule indicated, "to ensure that they are consistent with the policies and requirements that will be included in the section 1557 rulemaking."

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The rules, if finalized, were expected to [prompt a legal conflict](#) between the government healthcare agency and religious freedom advocates. The initial proposal did not detail what kinds of exemptions insurers and employers paying for insurance for their workers would be allowed. However, conservatives said that, if finalized, the rule would have likely run afoul of the Religious Freedom Restoration Act, a 1993 law that established legal safeguards for religious people and entities with respect to federal rules.