

In major effort to end gender-affirming care, Trump administration takes aim at hospitals

Proposed rules threaten financial consequences for clinics providing such care to trans minors

By [Theresa Gaffney](#), [Daniel Payne](#), and [Chelsea Cirruzzo](#)

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The Trump administration is making its most forceful attempt yet at restricting gender-affirming care for transgender youth in the U.S.

The Centers for Medicare and Medicaid Services proposed on Thursday two rules to withhold federal funds in connection with gender-affirming care for trans minors, including puberty blockers, hormones, and surgery. The most stringent rule would bar facilities that offer this care from receiving any funding from the federal Medicare or Medicaid programs, a move that would effectively force most medical centers to cease providing it.

The agency also wants to prohibit Medicaid and Children's Health Insurance Program funds from being spent on gender-affirming care for minors.

The public will have 60 days to submit comments on the proposed funding rules, after which the administration could change them or move to finalize them.

It's unclear how long it will take CMS to finalize the rules, according to Hannah Oliason, an attorney at Nilan Johnson Lewis who works with hospitals. But with a substantial number of comments expected, it could take months or even a year. It's possible the rules could become effective

immediately after that, though. If they change substantially from the proposals, there would likely be more of a transition period, Oliason said.

The proposals from CMS mark the latest of a slew of attempts by the Trump administration and Republicans to roll back access to this care for trans youth. It's a campaign that started a week into President Trump's term with an executive order that sought to ban transgender health care for people under 19. The order was later blocked by a federal judge.

Underscoring the breadth of the administration's efforts, in a press conference Thursday morning, health secretary Robert F. Kennedy Jr. noted that the Food and Drug Administration sent warning letters to manufacturers of chest binders, which many nonbinary and trans masculine people use to flatten their chests. The letters tell the firms to stop marketing the devices to children with gender dysphoria.

Trump administration leaders and the authors of a recent federal report on gender dysphoria emphasize that therapy and social transition without medical assistance should be prioritized for children. Providers who work with trans children say that these components are already part of the standard of practice.

"These policies and proposals misconstrue the current medical consensus and fail to reflect the realities of pediatric care and the needs of children and families," Susan J. Kressly, president of the American Academy of Pediatrics, said in a statement. She said the proposals should be withdrawn. "These rules help no one, do nothing to address health care costs, and unfairly stigmatize a population of young people."

The Department of Health and Human Services also sewed up existing loopholes surrounding gender dysphoria, proposing a reversal to a 2024 Biden administration update to a landmark disability law that expanded the definition of disability to include gender dysphoria.

On Thursday afternoon, the House passed a bill with the same goal as one of the CMS proposals: to ban Medicaid from covering gender-affirming care for trans youth. The measure is unlikely to pass the Senate, where it needs 60 votes. On Wednesday, it passed a bill banning

clinicians from providing gender-affirming care to trans minors, which is also unlikely to pass the Senate.

Federal rhetoric on trans people

At the press conference, Kennedy said that gender-affirming care “inflicted lasting physical and psychological damage on young people. “This is not medicine,” he continued. “This is malpractice.”

Clinicians, patients, and advocates who have spent years providing, receiving, and learning about the care maintain that it’s evidence-based and often lifesaving. But federal health leaders and speakers at Thursday’s event made repeated comments likening transgender identity to a political “war” on biology and denying the existence of transgender people.

Deputy health secretary Jim O’Neill said that to deny what he sees as the “fundamental truths” of biology constitutes “a hatred for nature as God designed it, and for life as it was meant to be lived.” He said that there are only two genders, and that to claim otherwise is “evil.”

Historians have documented evidence of gender diversity throughout human history. “Transgender young people are very, very real,” said Kellan Baker, a senior adviser for health policy at the nonprofit think tank Movement Advancement Project. “And their health care needs are very, very real.”

Kennedy accused the Biden administration — which used regulation to allow federal nondiscrimination disability laws to apply to gender dysphoria — of serving “the commercial interest of a predatory, multibillion dollar industry.”

In response to a reporter’s question, CMS Administrator Mehmet Oz estimated that “at least” \$250 million may have been spent over 10 years by Medicare and Medicaid on gender-affirming care for minors. The federal government spends about \$840 billion a year on Medicaid and another \$580 billion on Medicaid and CHIP, according to an analysis from KFF.

The idea that providers and any groups that offer gender-affirming services are motivated by profit in a predatory scheme continued throughout the press conference.

“We are not going to let these taxpayer dollars go on to hurt children,” Oz said.

Sen. Roger Marshall (R-Kan.), a physician, told STAT that he and his colleagues are ready to use their powers to support the administration. Earlier this year, Marshall introduced a bill, alongside Sen. Bill Cassidy (R-La.), who chairs the Senate health committee, to ban federal health insurance programs from funding gender-affirming services. Both were present at the HHS press conference on Thursday.

Withholding federal funds

Both proposed rules hone in on what the text refers to as “sex-rejecting procedures,” which includes any medication or surgical procedure that “attempts to align an individual’s physical appearance or body with a stated identity that differs from the individual’s sex.” Like the state laws banning gender-affirming care that preceded the Trump administration’s action, each proposed rule includes exceptions for presumably cisgender children with intersex traits, as well as for those broadly with a physical disorder, injury, or illness.

The Children’s Hospital Association and Physicians for Reproductive Health also condemned the proposed rules Thursday.

It’s not the first time the administration has attempted to stop Medicaid from funding this kind of pediatric care. Over the summer, early versions of Trump’s tax-cut bill included provisions that would have prevented Medicaid and the Children’s Health Insurance Program from funding gender-affirming care, though they were ultimately struck from the final version.

Even if federal funds can no longer cover gender-affirming care for trans youth, states could still use their own, separate funds to pay for it, the Medicaid rule states. But proponents of gender-affirming care worry this will create an even weaker patchwork of coverage across the country.

Twenty-six states currently cover gender-affirming care for trans people, but 11 state policies explicitly exclude trans health care from coverage for people of all ages, while three exclude the care for minors, according to Movement Advancement Project [data](#) .

But if Medicare and Medicaid move forward with the plan to cut off funding to hospitals and clinics that provide gender affirming care, it's likely that the vast majority would stop. Both programs are major sources of funds to the health care system.

Attorneys working to uphold gender-affirming care access are ready to challenge the new policies, said John Card, an attorney at the Harvard Law School's Center for Health Law and Policy Innovation.

The administration's planned rules have been widely reported for months, offering health systems and transgender rights advocates time to plan their responses, he said. In mid-November, the Department of Health and Human Services re-released its controversial report on gender dysphoria, which categorized all gender-affirming care as experimental. As experts in trans health care predicted, the document is cited within both of the rules.

Oversight of medical practice is typically left up to the states, but the proposed rule on conditions of participation claims that, when provided to trans youth, puberty blockers, hormones, and surgeries are "not healthcare and hence are not subsumed under the term of 'the practice of medicine.'" Kennedy signed a declaration Thursday echoing this idea, stating that gender-affirming care does not meet medical standards of care.

The rule also touts the agency's "broad statutory authority" to create regulations in the interest of people's health and safety. The rule also acknowledges that it was developed specifically to comply with Trump's executive order banning gender-affirming care for young people.

Challenges to the proposals

State attorneys general, hospitals, and patients that could be affected by these rules do not necessarily have to wait until they're finalized to

challenge them in court, Oliason said. While the government would likely claim that a court shouldn't weigh in before the rules are implemented, plaintiffs could argue that there's an immediate harm.

Some state attorneys general may already be preparing to respond. "I will continue to stand up for the rule of law and the right of all Massachusetts residents to receive medically necessary health care and am prepared to take action if any unlawful rule is finalized," Massachusetts AG Andrea Joy Campbell said in a statement.

Overall, Oliason believes that CMS faces an "uphill battle" legally when it comes to changing the conditions of participation.

"They're essentially banning an entire class of procedures and that goes further than what I have seen in terms of health and safety standards," she said. The claim from CMS that its authority lies in part with the fact that these medications and procedures do not constitute medical care will likely be a major point in any legal challenges.

Shannon Minter, legal director of the National Center for LGBTQ Rights, agreed with Oliason: "The federal government has never before attempted to cut off all Medicaid coverage to facilities that provide a certain care. That's coercive and overreaching," he said.

There's potential legal precedent for states to argue that the federal government is coercing them to do what it wants: He points to the 2012 Supreme Court decision that struck down penalties for states that refused to expand Medicaid under the Affordable Care Act.

And Oliason offered some paths forward she expected health systems may consider: arguing that federal agencies under current law are prohibited from issuing rules that are "arbitrary and capricious," or following previous challenges around gender-affirming care that use nondiscrimination laws and constitutional protections as defenses.

The administration's rhetoric could also play a role in any challenges to the rules — while the text of the proposed rules relies on the HHS report and the evidence around gender-affirming care, the way that officials talk about transgender people could be referenced to demonstrate an "ulterior motive," Oliason said.

As litigation is pursued, the attorneys said there could be a period of legal uncertainty — which could mean difficulties in accessing care for transgender minors.

“Some systems may preemptively suspend gender-affirming care programs to avoid jeopardizing Medicare and Medicaid funding,” Oliason said. “Others may maintain services during the public comment period while developing contingency plans.”

Already, continued political pressure from agencies across the government — including CMS, the Department of Justice, and the Federal Trade Commission — has led some health systems to abandon offerings for gender-affirming care for minors.

Some patient communities are pushing back. Ten families in Connecticut are challenging the termination of care at Yale New Haven Health and Connecticut Children’s Medical Center. In Boston, a grassroots campaign has quickly grown to protest Fenway Health, which stopped providing care to patients under 19, and to pressure the LGBTQ+ clinic to reinstate the care.