

February 17, 2026

Secretary Robert F. Kennedy, Jr.
U.S. Department of Health and Human Services

Mehmet Oz, M.D.
Administrator, Centers for Medicare & Medicaid Services

RE: “Hospital Condition of Participation: Prohibiting Sex-Rejecting Procedures for Children” (CMS-3481-P)(RIN 0938-AV73)¹

Submitted to: <http://www.regulations.gov>

Dear Secretary Kennedy, Jr. and Administrator Oz,

On behalf of Fenway Health in Boston and the 33,000 patients we serve, we write in strong opposition to the proposed Condition of Participation (CoP) rule. The proposed rule would bar any hospital that provides puberty blockers, hormone therapy, or surgery for transgender youth under age 18 from participating in the Medicare and Medicaid programs. Nearly all U.S. hospitals participate in these programs. CMS should withdraw this rule as it violates the right of families, patients and providers to make private decisions about their health care. It is also unprecedented, inconsistent, unlawful, and runs counter to the science and the positions of leading pediatric and adolescent medical professional associations on medically necessary transition related health care for transgender and gender diverse youth.

Interferes with families’ decision-making autonomy on difficult and complex health decisions

Fenway Health opposes the proposed CoP rule for many reasons, but first and foremost because it **inserts the federal government into already difficult and complex decisions that**

¹ Department of Health and Human Services, Centers for Medicare & Medicaid Services. 42 CFR Part 482 [CMS-3481-P]. RIN 0938-AV87. “Medicare and Medicaid Programs; Hospital Condition of Participation: Prohibiting Sex-Rejecting Procedures for Children.” A Proposed Rule by the [Centers for Medicare & Medicaid Services](https://www.federalregister.gov/documents/2025/12/19/2025-23465/medicare-and-medicaid-programs-hospital-condition-of-participation-prohibiting-sex-rejecting) on [12/19/2025](https://www.federalregister.gov/documents/2025/12/19/2025-23465/medicare-and-medicaid-programs-hospital-condition-of-participation-prohibiting-sex-rejecting). *Federal Register*. <https://www.federalregister.gov/documents/2025/12/19/2025-23465/medicare-and-medicaid-programs-hospital-condition-of-participation-prohibiting-sex-rejecting>

parents of transgender youth make in partnership with medical professionals and their children. Such a policy should be anathema to small-government conservatives. Each individual experiencing gender dysphoria requires individualized treatment and care. Blunt federal efforts to prohibit such care from hospitals across the U.S. will only serve to make it harder for parents to care for and support their children, and for providers to treat individuals working closely with their families.

Unprecedented

This move by CMS is also unprecedented. In general CoPs are issued that relate to *how care is provided*, but they are generally not used to restrict *what kinds of care is allowed*. Compliance with CoPs is generally done by state agencies or accreditation agencies such as the Joint Commission on Accreditation of Hospitals, and hospitals that have violations are usually given time to rectify them. If they fail to do this CMS can terminate its relationship with the entity and no longer reimburse health care services through Medicare and Medicaid.²

Inconsistent in that it allows unnecessary, nonconsensual operations on intersex youth to continue

The proposed rule is inconsistent, in that it allows procedures on intersex minors, which are often performed without consent on infants and which can cause damage.³ The majority of these surgeries are not medically necessary and can be delayed until the individual can participate in the decision. There is no evidence demonstrating the benefits of cosmetic genital surgery to an intersex child's long-term mental or physical health, nor is there evidence of any

² Dawson L, Hulver S. "New Trump Administration Proposals," KFF, December 22, 2025.

³ Roen K. Intersex or diverse sex development: critical review of psychosocial health care research and indications for practice. *J Sex Res.* 2019;56):511-528.

risk to delaying the procedures until the individual can decide if they wish to have the surgery.^{4,5,6,7}

Many intersex people experience multiple adverse side effects from these deferrable early genital surgeries, including scarring, chronic pain, loss of sensation, urinary and sexual dysfunction, and other complications that require repeated follow-up surgeries. Intersex people also report symptoms of post-traumatic stress disorder, depression, feelings of loneliness, and fear of intimacy due to surgeries performed on them before they were old enough to participate in the decision themselves.⁸

Unlawful

The proposed CoP rule is unlawful. Section 1801 of the Social Security Act states that CMS is *not* authorized to “exercise any supervision or control over the practice of medicine” (42 U.S.C. 1395). CMS asserts that gender affirming care for transgender youth is not health care and that therefore this restriction does not apply:

However, we believe that providing the SRPs [Sex-Rejecting Procedures] for children is not healthcare and hence are not subsumed under the term of “the practice of medicine.” Therefore, the proposed rule would not regulate the practice of medicine.⁹

⁴ Almasri J, Zaiem F, Rodriguez-Gutierrez R, et al. Genital reconstructive surgery in females with congenital adrenal hyperplasia: A systematic review and meta-analysis. *J Clin Endocrinol Metab.* 2018;103:4089–4096.

⁵ Jones T, Hart B, Carpenter M, Ansara G, Leonard W, Lucke J. *Intersex: Stories and Statistics from Australia.* Cambridge, UK: Open Book Publishers; 2016.

⁶ Kreukels BPC, Cohen-Kettenis PT, Roehle R, et al. Sexuality in adults with differences/disorders of sex development (DSD): findings from the DSD-LIFE Study. *J Sex Marital Ther.* 2019;45:688–705.

⁷ Rynja SP, de Jong TP, Bosch JL, de Kort LM. Functional, cosmetic and psychosexual results in adult men who underwent hypospadias correction in childhood. *J Pediatr Urol.* 2011;7:504–515.

⁸ Carpenter M. Intersex Variations, human rights, and the International Classification of Diseases. *Health Hum Rights.* 2018;20:205-214.

⁹ Department of Health and Human Services, Centers for Medicare & Medicaid Services. 42 CFR Part 482 [CMS-3481-P]. RIN 0938-AV87. “Medicare and Medicaid Programs; Hospital Condition of Participation: Prohibiting Sex-Rejecting Procedures for Children.” A Proposed Rule by the [Centers for Medicare & Medicaid Services](https://www.federalregister.gov/documents/2025/12/19/2025-23465/medicare-and-medicaid-programs-hospital-condition-of-participation-prohibiting-sex-rejecting) on [12/19/2025](https://www.federalregister.gov/documents/2025/12/19/2025-23465/medicare-and-medicaid-programs-hospital-condition-of-participation-prohibiting-sex-rejecting). *Federal Register.* <https://www.federalregister.gov/documents/2025/12/19/2025-23465/medicare-and-medicaid-programs-hospital-condition-of-participation-prohibiting-sex-rejecting>

However, this claim by CMS runs counter to the science and the positions of leading pediatric and adolescent medical professional associations on medically necessary transition related health care for transgender and gender diverse youth. Transition-related health care for transgender youth is medicine. According to the American Medical Association, “[e]very major medical association in the United States recognizes the medical necessity of transition-related care for improving the physical and mental health of transgender people.”¹⁰

These policies deny medically necessary care that has been shown effective in treating gender dysphoria

Transgender health care for youth and adults with gender dysphoria has been shown to be medically necessary.^{11,12,13,14,15,16} It can improve health outcomes for transgender patients experiencing gender dysphoria. According to the American Psychiatric Association’s *Diagnostic & Statistical Manual of Mental Disorders*, “gender dysphoria” is the diagnostic term for “clinically significant distress” experienced by some transgender people resulting from the

¹⁰ UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA EVANSVILLE DIVISION AUTUMN CORDELLIONÉ, also known as JONATHAN RICHARDSON, Plaintiff, v. COMMISSIONER, INDIANA DEPARTMENT OF CORRECTION, in her official capacity. Defendant. Case No. 3:23-cv-135-RLY-CSW STATEMENT OF INTEREST OF THE UNITED STATES. Filed August 28, 2023. <https://www.justice.gov/crt/media/1339316/dl>

¹¹Wyckoff AS. AAP reaffirms gender-affirming care policy, authorizes systematic review of evidence to guide update. Published online August 4, 2023. Accessed October 15, 2023.

<https://publications.aap.org/aapnews/news/25340/AAP-reaffirms-gender-affirming-care-policy>

¹² “AMA reinforces opposition to restrictions on transgender medical care [press release].” American Medical Association, 2021. <https://www.ama-assn.org/press-center/ama-press-releases/ama-reinforces-opposition-restrictions-transgender-medical-care>

¹³ Position Statement on Gender-Affirming Care for Transgender Youth. American Psychiatric Association, December 2025. <https://www.psychiatry.org/getattachment/8665a2f2-0b73-4477-8f60-79015ba9f815/Position-Treatment-of-Transgender-Gender-Diverse-Youth.pdf>.

¹⁴ American Academy of Child and Adolescent Psychiatry Statement Responding to Efforts to Ban Evidence-Based Care for Transgender and Gender Diverse Youth [press release]. 2019.

https://www.aacap.org/AACAP/Latest_News/AACAP_Statement_Responding_to_Efforts-to_ban_Evidence-Based_Care_for_Transgender_and_Gender_Diverse.aspx

¹⁵ The Endocrine Society Calls on Congress to Reject Efforts to Ban Access to Gender-Affirming Care. News release. Society Letters. July 18, 2023. Accessed March 24, 2024. <https://www.endocrine.org/advocacy/society-letters/2023/opposing-efforts-to-ban-gac>

¹⁶ WPATH. Statement in Response to Proposed Legislation Denying Evidence-Based Care for Transgender People Under 18 Years of Age and to Penalize Professionals who Provide that Medical Care [press release]. 2020. <https://wpath.org/wp-content/uploads/2024/11/FINAL-Joint-Statement-Opposing-Anti-Trans-Legislation-Jan-28-2020.pdf>

incongruence between their gender identity and the sex assigned at birth. To be diagnosed with gender dysphoria, the incongruence between one's sex assigned at birth and one's gender identity must persist for at least six months and be accompanied by clinically significant distress or impairment in occupational, social, or other important areas of functioning.¹⁷ The inability of people diagnosed with gender dysphoria to live consistent with their gender identity can significantly undermine their overall health and wellbeing. Delay or denial of medically necessary treatment for gender dysphoria is likely to create or exacerbate other medical issues, such as anxiety, depression, and suicidality. Transgender people who do not receive medically necessary gender affirming care face increased rates of victimization, substance abuse, depression, anxiety, and suicidality.¹⁸ A 2022 study found that transgender people who accessed hormone therapy in adolescence or adulthood had lower risk of past-year suicidal ideation when compared with those desiring but never accessing gender affirming hormones. The earlier hormone therapy was started the greater the reduction in suicidal ideation.¹⁹

The American Academy of Pediatrics,²⁰ the Society for Adolescent Health and Medicine,²¹ and every other major medical society²² has stated the importance of transgender health care for youth experiencing gender dysphoria. Various studies have shown that transgender health care is associated with decreased suicidal ideation and lower rates of anxiety

¹⁷ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, Washington, DC: APA, 5th edition, 2013, pp. 452-453.

¹⁸ Restar AJ, Layland EK, Davis B, Thompson H, Streed C. The Public Health Crisis State of Transgender Health Care and Policy. *Am J Public Health*. 2024 Feb;114(2):161-163.

¹⁹ Turban JL, King D, Kobe J, Reisner SL, Keuroghlian AS. Access to gender-affirming hormones during adolescence and mental health outcomes among transgender adults. *PLoS One*. 2022 Jan 12;17(1):e0261039. doi: 10.1371/journal.pone.0261039. Erratum in: *PLoS One*. 2023 Jun 12;18(6):e0287283. doi: 10.1371/journal.pone.0287283. PMID: 35020719; PMCID: PMC8754307.

²⁰Wyckoff AS. AAP reaffirms gender-affirming care policy, authorizes systematic review of evidence to guide update. Published online August 4, 2023. Accessed October 15, 2023.

<https://publications.aap.org/aapnews/news/25340/AAP-reaffirms-gender-affirming-care-policy>

²¹ Society for Adolescent Health and Medicine. "SAHM Supports Protecting Access to Comprehensive Clinical Care for Transgender and Nonbinary Adolescents and Young Adults, and the Clinicians Who Provide Such Care." Press release. October 25, 2024. https://adolescenthealth.org/press_release/sahm-supports-protecting-access-to-comprehensive-clinical-care-for-transgender-and-nonbinary-adolescents-and-young-adults-and-the-clinicians-who-provide-such-care/

²² UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA EVANSVILLE DIVISION AUTUMN CORDELLIONÉ, also known as JONATHAN RICHARDSON, Plaintiff, v. COMMISSIONER, INDIANA DEPARTMENT OF CORRECTION, in her official capacity. Defendant. Case No. 3:23-cv-135-RLY-CSW STATEMENT OF INTEREST OF THE UNITED STATES. Filed August 28, 2023. <https://www.justice.gov/crt/media/1339316/d>

and depression among transgender and gender diverse (TGD) adults.^{23,24,25} The literature on transgender youth also shows overwhelmingly positive mental health outcomes as a result of gender-affirming care for transgender youth.^{26,27,28,29} In general surgery is rarely provided to minor patients for the purposes of gender affirmation.³⁰

Introducing uncertainty, reducing access to care, and increasing mistrust

From our physicians' perspective (as not just practicing clinicians but also as professors of medicine training our next generation of primary care doctors) this proposed rule extends far beyond transgender care. By allowing political ideology to override clinical standards, it introduces uncertainty into routine pediatric and adolescent practice, forcing clinicians and institutions to second-guess evidence-based decisions. This destabilizes care pathways, disrupts long-term patient relationships, and places providers at risk for inconsistent enforcement. The result is not improved oversight, but reduced access, delayed care, and a measurable loss of trust in the healthcare system.

²³ Hughto JMW, Gunn HA, Rood BA, Pantalone DW. Social and Medical Gender Affirmation Experiences Are Inversely Associated with Mental Health Problems in a U.S. Non-Probability Sample of Transgender Adults. *Arch Sex Behav*. 2020;49(7):2635-2647. doi:10.1007/s10508-020-01655-5

²⁴ Scheim AI, Baker KE, Restar AJ, Sell RL. Health and Health Care Among Transgender Adults in the United States. *Annu Rev Public Health*. 2022;43:503-523. doi:[10.1146/annurev-publhealth-052620-100313](https://doi.org/10.1146/annurev-publhealth-052620-100313)

²⁵ Bränström R, Pachankis JE. Reduction in Mental Health Treatment Utilization Among Transgender Individuals After Gender-Affirming Surgeries: A Total Population Study. *Am J Psychiatry*. 2020;177(8):727-734. doi:[10.1176/appi.ajp.2019.19010080](https://doi.org/10.1176/appi.ajp.2019.19010080)

²⁶ Allen LR, Watson LB, Egan AM, Moser CN. Well-being and suicidality among transgender youth after gender-affirming hormones. *Clinical Practice in Pediatric Psychology*. 2019;7(3):302-311. doi:[10.1037/cpp0000288](https://doi.org/10.1037/cpp0000288)

²⁷ Chen D, Berona J, Chan YM, et al. Psychosocial Functioning in Transgender Youth after 2 Years of Hormones. *N Engl J Med*. 2023;388(3):240-250. doi:[10.1056/NEJMoa2206297](https://doi.org/10.1056/NEJMoa2206297)

²⁸ Psychological Functioning in Transgender Adolescents Before and After Gender-Affirmative Care Compared With Cisgender General Population Peers - *ClinicalKey*. Accessed February 7, 2024. <https://www-clinicalkey-com.ezproxy.library.tufts.edu/#!/content/playContent/1-s2.0-S1054139X20300276?returnurl=null&referrer=null>

²⁹ Kuper LE, Stewart S, Preston S, Lau M, Lopez X. Body Dissatisfaction and Mental Health Outcomes of Youth on Gender-Affirming Hormone Therapy. *Pediatrics*. 2020;145(4):e20193006. doi:[10.1542/peds.2019-3006](https://doi.org/10.1542/peds.2019-3006)

³⁰ Freitag T, *Gender-affirming care for adolescents: Understanding the fundamental components and scientific support for lifesaving gender affirmation*. Boston: The Fenway Institute, 2024. <https://fenwayhealth.org/policy-briefs/gender-affirming-care-for-adolescents-understanding-the-fundamental-components-and-scientific-support-for-lifesaving-gender-affirmation/>

Conclusion: Proposed CoP rule would restrict access to care.

According to KFF, “[i]f the proposed CoPs rule were finalized, most hospitals would be prohibited from providing gender affirming care services for youth.” This would mean a ban on such services for all youth under 18, not just those on Medicaid or Medicare.³¹ Transgender youth are a sizable population in the U.S. A 2023 Massachusetts Department of Public Health report on the 2021 Massachusetts Youth Risk Behavior Survey and Massachusetts Youth Health Survey found that 2.6 percent of high school students reported that they were transgender.³² At the national level, data from the 2023 Youth Risk Behavior Survey showed that 3.3 percent of U.S. high school students identified as transgender, and an additional 2.2 percent identified as questioning.³³

This sizable population of young people needs support and access to health care. They and their families deserve health care informed by science and clinical experience. They do not deserve arbitrary restrictions on their ability to access care motivated by ideology and politics. Fenway Health appreciates the opportunity to provide feedback on the proposed CMS CoP rule. We strongly urge CMS to withdraw this proposed rule. If you have any questions, please contact information@fenwayhealth.org.

Sincerely,

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Fenway Health

³¹ Dawson L, Hulver S. “New Trump Administration Proposals,” KFF, December 22, 2025.

³² Massachusetts Department of Public Health (MDPH). *Health and Risk Behaviors of Massachusetts Youth, 2021*, pg. 74. Published December 2023. <https://www.mass.gov/doc/health-and-risk-behaviors-of-massachusetts-youth-2021/download>

³³ Suarez NA, Trujillo L, McKinnon II, et al. Disparities in School Connectedness, Unstable Housing, Experiences of Violence, Mental Health, and Suicidal Thoughts and Behaviors Among Transgender and Cisgender High School Students — Youth Risk Behavior Survey, United States, 2023. *MMWR Suppl 2024;73(Suppl-4):50–58*. DOI: <http://dx.doi.org/10.15585/mmwr.su7304a6>.

F E N W A Y  H E A L T H

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