

Coppersmith Brockelman Client Alert

HHS Announces Proposed Rules Restricting “Sex-Rejecting Procedures” for Minors and Removing Gender Dysphoria from Disability Nondiscrimination Protections

Chelsea Sage Gaberdiel, Coppersmith Brockelman PLC | January 5, 2026

On December 18, 2025, the U.S. Department of Health and Human Services (HHS) Centers for Medicare and Medicaid (CMS) and HHS’ Office for Civil Rights (OCR) [announced](#) three proposed rules limiting funding for and access to gender-affirming medical care. The proposed rules stem from two Executive Orders issued in the first days of the Trump administration, [EO 14168](#) and [EO 14187](#), which directed HHS to take action to end certain types of gender-affirming medical care referred to by the Trump administration as “sex-rejecting procedures” (SRPs) and identified Medicare or Medicaid conditions of participation as a basis for action. The proposed rules also rely on HHS’ “Treatment for Pediatric Gender Dysphoria: Review of Evidence and Best Practices,” [November 19 report](#), which national medical associations have criticized as being unscientifically outcome-driven.

CMS’s proposed revisions to the [conditions of participation](#) prohibit SRPs on anyone under 18 years of age. An SRP is “any pharmaceutical or surgical intervention that attempts to align an individual’s physical appearance or body with an asserted identity that differs from the individual’s sex” by “intentionally disrupting or suppressing” a body’s biological functions or “intentionally altering an individual’s physical appearance or body.” [NPRM 42 CFR § 482.46\(a\)\(5\)](#). The proposed rule includes exceptions for treatment of a medically verifiable disorder of sexual development, treatment for purposes other than aligning physical appearance with gender identity that differs from sex, and to treat complications arising from a prior SRP. Banning certain types of medical treatment to a class of individuals is a novel interpretation of the Medicare/Medicaid conditions of participation, which have historically been limited to establishing quality and safety standards. Among other challenges, Medicare’s prohibition on the regulation of the practice of medicine may invalidate the proposed rule.

Separately, CMS has proposed a [limitation on funding rule](#) that would prohibit states from receiving federal matching funds for SRPs provided to Medicaid beneficiaries under the age of 18 or Children’s Health Insurance Program beneficiaries under 19 years of age. [42 CFR 441.800-.802 and 42 CFR 457.476](#). The proposed rule [notes](#) that it does not affect the use of state-only funds.

Comments on the two CMS rules are due by February 17, 2026. CMS has specifically solicited comments on published studies measuring the impact of restrictions on SRPs. CMS has also sought comment on whether states that currently cover SRPs would continue to do so absent federal funds.

Finally, HHS' OCR is [proposing](#) to exclude the condition of gender dysphoria from the definition of "disability" under its regulations implementing Section 504 of the Rehabilitation Act. Section 504 broadly prohibits discrimination on the basis of disability in any program or activity receiving federal funds. This stems from OCR's [Feb. 20, 2025 rescission](#) of the March 2, 2022 HHS Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy. Among other pronouncements regarding access to gender-affirming care, that March 2022 Guidance took the position that gender dysphoria may qualify as a disability for purposes of the ADA and Section 504. OCR had reiterated that position in the preamble language to its 2024 regulations implementing Section 504 ("[2024 Final Rule](#)").

OCR's [existing regulations](#) affirm the long-standing exclusions from the definition of "disability" for "transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders," under the Americans with Disabilities Act and Section 504. Whether gender dysphoria is a "gender identity disorder" is a question of considerable division among courts across the country. In the only federal appellate court decision on the matter, *Williams v. Kincaid*, 45 F.4th 759 (4th Cir. 2022), the Fourth Circuit concluded that a diagnosis of gender dysphoria under the American Psychiatric Association's Diagnostic and Statistical Manual-5 is not part of the long-standing gender identity disorder exclusion and thus individuals with this condition could be entitled to nondiscrimination protection. The effect of OCR's proposed exclusion of gender dysphoria would be to remove gender dysphoria as a basis for protection against disability discrimination.

Comments to OCR's proposed clarification rule are due January 20, 2026. OCR states that it is especially interested in commentary addressing whether an entity has changed its policies, practices, or procedures to account for the 2024 Final Rule gender dysphoria preamble language and how OCR's proposed rule would affect the entity. In this regard, OCR noted that it considered not issuing a proposed rule and simply reiterating OCR's current position that the 2024 Final Rule preamble language is not binding or legally enforceable. OCR has already made its position clear in the [April 11, 2025 sub-regulatory guidance](#).

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