

February 17, 2026

Dr. Mehmet Oz, Administrator
Centers for Medicare & Medicaid Services,
Department of Health and Human Services
7500 Security Boulevard, Baltimore, MD 21244-1850

RE: HHS Docket CMS-2481-P (RIN 0938-AV73)

Disability Rights Education and Defense Fund (DREDF) strongly opposes the above rule entitled Hospital Condition of Participation: Prohibiting Sex-Rejecting Procedures for Children. The proposed rule, introduced by the Centers for Medicare and Medicaid Services (CMS), seeks an unprecedented treatment-specific revision of the requirements that Medicare and Medicaid certified hospitals must meet to participate in the Medicare and Medicaid programs. DREDF is a national cross-disability law and policy center that protects and advances the civil and human rights of people with disabilities through legal advocacy, training, education, and development of legislation and public policy. In the more than 40 years that have passed since our founding, we have persistently fought for the right of people with disabilities to be fully integrated within all aspects of community life. DREDF's work is based on the knowledge that people with disabilities of varying ages, racial and ethnic backgrounds, genders, and sexual orientations are fully capable of achieving self-sufficiency and contributing to their communities with access to needed services and supports, protection from discrimination, and the reasonable accommodations and modifications enshrined in U.S. law.

Purpose of Medicaid Program

The Medicaid program is a national state-based health coverage program first established in 1965 and administered and financed jointly by the federal government and participating state governments. [Medicare.gov](https://www.medicare.gov) states that 'Medicaid provides health coverage to low-income people and is one of the largest payers for health care in the United States.'¹ The federal government itself recognizes that Medicaid, the Children's Health Insurance Program (CHIP), and the Basic Health Program (BHP) together "provide an important foundation for maintaining the health of our nation."²

¹ "About Us" at <https://www.medicare.gov/about-us#:~:text=The%20Center%20for%20Medicaid%20and,Medicaid%20and%20CHIP%20eligibility%20levels>.

² *Id.*

Medicaid’s statutory purpose of serving as a safety net program that provides healthcare for diverse population groups that have been left out of the county’s private insurance health market, including people with disabilities and low-income persons, has been broadly recognized congressionally and academically.³ Courts have also found that the core objective of the Medicaid program is to furnish medical assistance for those who are eligible.⁴

The Proposed Rule Fails to Further the Core Purposes of Medicaid

Against this backdrop, the proposed rule strays from both the purpose of the Medicaid program, and statutory restrictions on how federal agencies can shape that program. The proposed rule is based on Executive Order 14187 (EO), titled “Protecting Children from Chemical and Surgical Mutilation.” The EO called on the federal Department of Health and Human Services (HHS) to conduct a review of medical evidence on gender-affirming care and directed the agency to “take all appropriate actions to end the chemical and surgical mutilation of children, including regulatory and sub-regulatory actions, which may involve [. . .]: Medicare or Medicaid conditions of participation or conditions for coverage”⁵ Any medical review conducted under such an EO has a predetermined underlying purpose that both skews away from medical evidence supporting gender affirming care, and has little or nothing to do with ensuring that all persons eligible for Medicaid will receive medical assistance.

A rule that threatens providers by conditioning their participation in the Medicaid program on no longer providing care that has been medically recognized and approved under the program for years will directly affect provider networks that are key to the successful operation of Medicaid. This is particularly true in rural and other areas where hospital providers are already sparse and already subject to ongoing financial pressures. The individual physicians and healthcare providers who work in these hospitals will undoubtedly include providers who have worked with transgender youth and their families in successfully providing treatment that is now banned, further impacting on the relationships that hospitals have with local physicians. Physicians and other healthcare providers will face the prospect of having to end their care relationships

³ See for example _____

⁴ Gresham v. Azar, No. 19-5094 (D.C. Cir. 2020).

⁵ 90 FR 8771, <https://www.federalregister.gov/documents/2025/02/03/2025-02194/protecting-children-from-chemical-and-surgical-mutilation>

with transgender patients who they can no longer treat in a hospital setting, and not being able to provide treatment options that they and their patients want and expect. The health of the nation cannot benefit from federal interference in provider networks that targets medically recognized treatment options and stigmatizes particular underserved populations who use those treatment options.⁶

By targeting a wide range of treatments encompassing mental health therapy, drug treatments, hormone therapies, and surgical interventions and broadly labeling them as “sex rejection” procedures, the proposed rule seems to suggest that the inherent and unknown risks of these procedures justify an extortion-like approach to Medicaid Conditions of Participation (CoP) to prevent hospitals from providing these procedures. However, the proposed rule also makes exceptions to forbidding the provision of these so-called sex rejection treatments for *some* patients, as set out in in proposed subsection § 482.46(b), below.

(b) Exceptions. The definition at paragraph (a)(5) of this section does not include procedures:

- (1) To treat an individual with a medically verifiable disorder of sexual development;
- (2) For purposes other than attempting to align an individual's physical appearance or body with an asserted identity that differs from the individual's sex; or
- (3) To treat complications, including any infection, injury, disease, or disorder that has been caused by or exacerbated by the performance of a sex-rejecting procedure.

Presumably, the providers and hospitals who will be involved in providing healthcare services care to the individuals identified in the above exemption are the same providers and hospitals who have been engaged in the wider provision of gender affirming care to transgender youth. CMS is clearly interposing itself within standards of care that have been established by the medical provision and sought by transgender youth and their families for years, dictating how these providers can and cannot exercise their medical judgement. CMS cannot simultaneously impose a government-imposed standard for when specific kinds of treatment can be given and when it cannot, when a family or patients' motives can be trusted and when they cannot, and when treatment is medically justified and when it is not, and then claim that it is not engaged in the practice of medicine.

⁶ Patients themselves will also be in a health ecosystem where they will be stigmatized simply for being who they are, thereby discouraging them from seeking obtaining *any* kind of regular preventive healthcare except for unavoidable emergency care, in the same way that people with disabilities are reluctant to seek regular preventive care from providers who judge them for seeking care or engaging in typical life activities that require such care..

The Proposed Rule Discriminates Against People with Disabilities

The proposed rule further discriminates based on disability. While patients with other diagnoses such as precocious puberty, 5-alpha reductase deficiency, Klinefelter syndrome, Turner Syndrome, or growth hormone deficiency may access hormone therapy and related care at funded providers, patients who need such care based on gender dysphoria may not. Restricting medically necessary and physician-prescribed healthcare because the patient has a disfavored diagnosis is disability discrimination. This also flies against the core purpose of Medicaid, which is intended to ensure that people with lower income, those with fewer resources, and those who face barriers to education, travel, and employment will have access to needed healthcare. By tying the proposed rule to the Medicaid program, the rule places barriers to gender-affirming care directly in the way of minor children and their families who will have the fewest options for gaining access to the mental health and wellness options that youth will need to remain mentally and physically stable as they undergo adolescence, until they reach adulthood and move beyond the reach of the proposed rule.

The proposed rule's overarching conception of "the practice of medicine" creates a terrible precedent for federal regulation of healthcare providers, established state regulatory jurisdictions, and the autonomy and well-being of everyone in this country. The rule asserts that *all* persons "are either healthy or unhealthy based on whether they are operating according to their biological functions." Disability communities have fought this false binary for decades⁷ because it is the basis for asserting that health care narrowly involves affirming/restoring healthy and normal biological functions. This narrow frame of reference can lead to people with disabilities and chronic conditions, and anyone of any age whose bodily parts cannot be made to function typically, being subject to all kinds of federal restrictions and regulations because their healthcare needs lie outside of the "practice of medicine." The federal government could presumably decide that as a condition of participation, hospitals must adopt treatment

7

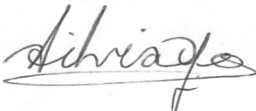
See Monika Mitra, Linda Long-Bellil, Ian Moura, Angel Miles, and H. Stephen Kaye, *Advancing Health Equity And Reducing Health Disparities For People With Disabilities In The United States*,

standards that prioritize patients who are most likely to be cured without losing healthy parts, or direct health insurers away from coverage of preventive care as it is unnecessary for organ systems that are still healthy, all because changes to well-established practices are not regulating the practice of medicine. Hospitals could be required to stop administering medications for opioid use disorder (MOUD) as a condition of participation because federal experts decide that synthetic opioids cannot effectively treat a body that has been made unhealthy by deliberate opioid use in the first place.

This conception of the practice of medicine also undermines decades of evidence-based progress in recognizing and treating mental health disabilities, because a person's experience of living in their body is irrelevant to what the federal government decides is healthy. By taking the position that psychological distress is not appropriately understood as a meaningful component of mental health, this rule paves the way for further interference into the practice of medicine as it relates to mental health, and outright contradicts this administration's and HHS's own positions on psychosocial distress as one of the most pressing health care needs faced by American youth.⁸

DREDF strongly urges CMS to not finalize this proposed rule which substitutes federal medical judgement for the healthcare decisions made by medical professions working jointly with youth and their families. The overreach that animates this entire rule has profound implications for all Medicaid beneficiaries, providers, and the entire program which is a core part of the nation's healthcare safety net. Thank you for the opportunity to comment on the proposed rule. Please feel free to contact me at syee@dredf.org or at 510-644-2555 x5234 should you have any questions or wish to discuss the above.

Sincerely,

A handwritten signature in black ink, appearing to read "Silvia Yee", with a horizontal line underneath the signature.

Silvia Yee
Policy Director

⁸ "Parallel to the decline in physical activity, American youth face a deepening psychosocial crisis. This is marked by rising mental health disorders, significant sleep deficits, chronic stress, and pervasive loneliness, all exacerbated by the widespread influence of technology." See: The White House. Establishing the President's Make America Healthy Again Commission. The White House (2025). Available at: <https://www.whitehouse.gov/presidential-actions/2025/02/establishing-the-presidents-make-america-healthy-again-commission/> (Accessed February 12, 2026).