

National LGBTQ Task Force

Trump Administration Final Healthcare “Conscience” Rule

Frequently Asked Questions

Background

On May 2, 2019, the Department of Health and Human Services (HHS) issued a [final rule](#) that will allow healthcare entities and workers to refuse to do anything for patients that goes against their religious or moral beliefs.¹

LGBTQ people—especially those of us who are transgender, nonbinary, and gender nonconforming, people of color, people living with low-income, and people seeking access to reproductive health services—already live in fear of being discriminated against by health providers and are regularly refused care outright.

The new rule dangerously compounds these barriers to accessing care by granting new rights to any one working in the healthcare system who believes their personal beliefs should determine whether someone receives care and what kind of care they receive.

Ultimately, the rule will most significantly impact LGBTQ people seeking access to reproductive health services, such as abortion, contraception, and gender-affirming care.

Who can refuse to provide medical care?

The rule allows doctors, nurses, pharmacists, EMTs, receptionists, schedulers, insurance companies, pharmacies, and hospitals to refuse to provide, participate in, pay for, provide coverage of, give information about, or refer patients to certain services that go against their personal beliefs.

What can be refused?

The rule points out specific services that can be refused, such as abortion, assisted suicide, and services that result in sterilization. Because some gender-affirming care can cause sterilization, transgender people could also be refused coverage and care on this ground.

Further, healthcare workers and entities will be protected for refusing anything that goes against their personal belief. This could mean refusing to help someone based on who they are or on the type of care they are seeking, including contraception, HIV medications, gender-affirming care, infertility treatments, and more.

Service can be refused even in emergency situations, and providers have no obligation to inform patients about services the provider will refuse.

Doesn't the law already protect people's religious beliefs?

Yes. Federal law already allows providers to refuse to treat people based on their religious beliefs. This rule expands the scope of existing laws by allowing health workers and entities to refuse

¹ Dep't of Health & Human Servs., Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 45 C.F.R. 88 (2019), available at <https://www.hhs.gov/sites/default/files/final-conscience-rule.pdf>.

health care services because of any belief, even when that belief is based on something other than religion.

Is this the same rule that tries to take away civil rights protections for transgender, nonbinary, and gender nonconforming people?

No. HHS has long been considering proposing a separate rule that would rollback Obama-era healthcare nondiscrimination protections for transgender, nonbinary, and gender nonconforming people, and people who have had abortions. That rule is expected to attempt to redefine the term “sex” under the Affordable Care Act (ACA, Obamacare), rather than expanding religious or “conscience” objections. However, together, the rules will make it harder for many people to access health care services.

When does the rule take effect?

Because it is a final rule, it takes effect 60 days after publication in the Federal Register, which is pending. Legal action has already begun and could delay or prevent implementation of the rule.

What do I do if I am discriminated against in health care?

The ACA still protects people from discrimination in healthcare based on race, color, national origin, sex, age, and disability. Although HHS is currently not enforcing the Obama-era nondiscrimination rule implementing this law, you may still be able to file a complaint with the HHS Office of Civil Rights, so they have it on record that you experienced this form of discrimination.

Additionally, several federal courts have clarified that sex discrimination in the ACA includes discrimination based on gender identity and sex stereotypes.² As a result, you may be able to bring a lawsuit. Many states also protect LGBTQ people from discrimination in healthcare. You may be able to file a complaint with your state health or civil rights agencies.

² Boyden v. Conlin, 2018 WL 4473347 (W.D. Wis. 2018); Tovar v. Essentia Health, Inc., 2018 WL 4516949 (D. Minn. 2018); Prescott v. Rady Children’s Hospital-San Diego, 2017 WL 4310756 (S.D. Cal., 2017); Cruz v. Zucker, 195 F.Supp.3d 554 (S.D.N.Y. Jul. 5, 2016); Rumble v. Fairview Health Servs., 2015 WL 1197415 (D. Minn. 2015).