



Background:

Transgender Non-Discrimination Protections in the Affordable Care Act

Transgender Americans face serious discrimination in health care

Over 1.5 million Americans are transgender, and many face [discrimination](#) in health care. The U.S. Transgender Survey, a study of nearly 28,000 transgender adults, revealed that just in the past year:

- **One in three (33%)** of those who saw a health care provider during that year reported being harassed, physically abused, being denied care, or facing other forms of mistreatment because of being transgender. Survey respondents reported being called **hateful slurs, humiliated by staff** in crowded waiting rooms, forced to submit to unnecessary genital examinations, and **physically and sexually assaulted** in health care facilities.
- **Nearly one in four (23%)** said they had avoided going to a doctor when sick or injured out of fear of discrimination.
- **One quarter (25%)** said that they experienced problems with their insurance company related to being transgender, like being denied coverage for transition-related care or being denied coverage for routine health care because of being transgender.

Section 1557 of the Affordable Care Act prohibits sex discrimination by health care providers and insurers who accept federal funds. As the vast majority of courts that have considered federal sex discrimination laws like Section 1557 have said, that includes discrimination against transgender people.

HHS's implementing rule followed the law, medical science, and the lead of states and employers

After years of study and development—including two separate public comment periods with over 25,000 total commenters—the Department of Health and Human Services (HHS) issued a regulation clarifying that the law prohibits discrimination against transgender people. This regulation also clarified other important protections under Section 1557, like protections against discrimination based on race, national origin, and disability. Key facts about Section 1557 and the implementing regulation:

- **Ensures access to medically necessary care.** Section 1557 protects patients from being turned away just because of who they are. It also protects consumers from being denied services typically associated with one gender such as screenings for breast cancer or prostate cancer.
- **Backed by every major medical association.** The American Medical Association, American College of Physicians, American Academy of Family Physicians, American Psychiatric Association, and American Psychological Association agree that that transition-related care is medically necessary and oppose insurance exclusions.
- **No impact on health care premiums.** HHS relied on studies finding that the cost of eliminating transgender exclusions is minimal or nonexistent and can lead to long-term savings.

- **Follows the lead of major employers.** [Half of Fortune 500 companies](#) have transgender-inclusive employee health plans, as do numerous universities, cities, counties, and states.
- **Similar to rules in 18 states and DC.** In the last decade, numerous states have adopted rules prohibiting transgender exclusions and other forms of health care discrimination. In addition, the HHS Departmental Appeals Board [overturned](#) Medicare's transgender exclusion in 2014, and the Defense Department now [provides](#) all needed care for transgender service members.
- **Based on more than 15 years of case law.** [Numerous appeals courts and district courts](#), stretching back over nearly two decades, have found that federal sex discrimination laws, including Section 1557, prohibit discrimination against transgender people.
- **Maintains doctors' ability to make care decisions based on medical expertise and medical necessity.** Like other civil rights laws that apply to health care, Section 1557 does not mandate the provision of specific services or limit doctors' ability to make decisions based on their medical skills and the medical needs of an individual patient. The law simply prohibits discrimination based on race, national origin, age, disability, or sex.

The Trump Administration's move can't change the law but will confuse patients and providers and promote discrimination

In December 2016, a federal district court judge issued a preliminary ruling that disagreed with most of the existing case law and ordered HHS not to enforce the law's protections for transgender people and for patients who face discrimination because of a past abortion. On March 1, 2017, the Justice Department took the highly unusual step of refusing to appeal this nationwide injunction against a federal law. Instead, the Trump Administration is seeking to roll back Section 1557's implementing regulation.

- While Judge O'Connor's preliminary injunction limits any actions by HHS to enforce the law, the law itself remains in effect and people who faced discrimination can still enforce it in court.
- Likewise, rolling back the regulation that interprets Section 1557 would not change the underlying law, which most courts agree protects transgender people.
- Health care providers and insurers that discriminate unlawfully remain subject to private lawsuits.
- But rolling back the regulation does create confusion about what the law requires, puts heavy burden on people who have faced discrimination, and sends transgender people a message that their government does not believe their health and well-being is important and will not stand behind them if they are denied access to basic care.