



ALERT: The Trump Administration is Threatening Access to Health Care During the Pandemic

In the midst of a pandemic and mounting evidence that minority groups are at disproportionate risk of potentially deadly outcomes from COVID-19, the Trump-Pence Administration is planning to issue a [final rule](#) in the coming weeks that would allow discriminatory beliefs to dictate patient care. This is a direct attack on the communities the law protects, including people of color, women, people with disabilities, seniors, people whose primary language is not English, immigrants, and LGBTQ individuals. There could not be a more reprehensible time to tell health care providers that it is permissible to deny anyone medical care, including refusing to provide COVID-19 testing and treatment simply because of who someone is. Even with this rule, the Health Care Rights Law remains the law of the land and [federal courts](#) have [affirmed](#) its sex discrimination prohibition applies to transgender people. However, the Trump Administration's elimination of strong, clear rules prohibiting discrimination will lead to unequal access to health coverage and care, particularly for LGBTQ patients.

What Is the Health Care Rights Law?

The Health Care Rights Law— Section 1557 of the Affordable Care Act— prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health care programs or activities. It is the first federal civil rights law to prohibit discrimination based on sex in health care. After six years and nearly 25,000 public comments, HHS issued a [Final Rule](#) in May 2016 to implement the Health Care Rights Law, clarifying that:

- discrimination based on sex stereotyping, gender identity, and pregnancy are prohibited forms of sex discrimination;
- transgender people are protected under the prohibition on gender identity discrimination and lesbian, gay, and bisexual people are largely protected from discrimination under the prohibition on sex stereotyping;
- for individuals with disabilities, covered entities must make all programs and activities provided through electronic and information technology accessible, ensure physical accessibility to new or altered facilities, provide appropriate auxiliary aids and services; and
- requires covered entities to take reasonable steps to provide meaningful access to health care programs or activities for people with limited English proficiency.

What will the New Rule Do?

[HHS's rule will](#)

- erase explicit nondiscrimination protections for LGBTQ patients
- drastically limit the entities covered under the nondiscrimination protections
- erase sexual orientation and gender identity protections in 10 other regulations unrelated to the Health Care Rights Law, including prohibitions on discriminating against people because of their sexual orientation in [Programs of All-Inclusive Care for the](#)

Elderly

- weaken [language access protections](#), harming the ability of patients with limited English proficiency (LEP) to understand information about their medical care and coverage
- eliminate all requirements to notify patients of their rights and grievance procedures
- add broad religious exemptions for health care providers and insurers, permitting providers to discriminate based on sex
- allow insurers to employ marketing practices or benefit designs to discourage people with HIV from enrolling in certain health plans, which could potentially force these individuals to buy more expensive plans

Why Is This a Problem?

Despite [receiving over 130,000 public comments](#) opposing these proposed changes, the Trump Administration moved forward with its discriminatory attack on health care access. These [protections](#) are critical to [removing barriers](#) to coverage and care for LGBTQ people, who face high rates of discrimination in health care. A [study](#) done by the Center for American Progress found 8 percent of LGBQ and 29 percent of transgender survey respondents were refused health care because of their actual or perceived sexual orientation or gender identity. [18 percent](#) of LGBTQ people said it would be “very difficult” or “not possible” to find the same service at a different hospital and this rate more than doubled for LGBTQ people living outside metropolitan areas. Data obtained by CAP under a [Freedom of Information Act](#) request indicates HHS’s enforcement of the rule was effective in resolving issues of anti-LGBTQ discrimination, with the majority of complaints received resolved through voluntary corrective action taken by the subjects of the complaints.

In its proposal, HHS even [acknowledged](#) that “an unknown number of persons are likely not aware of their right to file complaints with the Department’s Office for Civil Rights and some unknown subset of this population may suffer remediable grievances, but will not complain to OCR absent notices informing them of the process.”