February 17, 2026

Centers for Medicare and Medicaid Services (CMS)
U.S. Department of Health and Human Services (HHS)
Attention: CMS-3841-P & CMS-2451-P

Submitted electronically via http://www.regulations.gov

> Re: Medicaid Program; Prohibition on Federal Medicaid and Children's Health Insurance Program Funding for Sex-Rejecting Procedures Furnished to Children CMS-2451-P RIN 0938-AV73 & Medicare and Medicaid Programs; Hospital Condition of Participation: Limiting Participation Based on the Performance of Sex Trait Modification Procedures on Children CMS-3841-P RIN 0938-AV87

Dear Secretary Kennedy and Administrator Oz:

QLaw Foundation of Washington (QLaw), Legal Voice and Northwest Health Law Advocates (NoHLA) submit the following comment in response to the following two proposed rules by the Centers for Medicare & Medicaid Services (CMS) within the Department of Health and Human Services: Medicaid Program; Prohibition on Federal Medicaid and Children's Health Insurance Program Funding for Sex-Rejecting Procedures Furnished to Children [hereinafter Medicaid and CHIP Ban] and Medicare and Medicaid Programs; Hospital Condition of Participation: Limiting Participation Based on the Performance of Sex Trait Modification Procedures on Children [hereinafter Hospital Ban]. We strongly oppose both the proposed rules and urge their withdrawal.

QLaw is a civil legal aid organization. Our mission is to promote the dignity and respect of Two-Spirit, Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual, and more (2SLGBTQIA+) Washingtonians within the legal system through advocacy, education, and legal assistance. QLaw also runs a Legal Clinic that provides free civil legal consultations to 2SLGBTQIA+ individuals—particularly transgender and gender-diverse people with low incomes—who are facing barriers to accessing healthcare, maintaining public benefits, securing accurate identity documents, and protecting their safety and family stability. Our vision is a world in which no 2SLGBTQIA+ person will face additional barriers to authentic living, access to justice, or equality before the law because of their queer identity.

Legal Voice is a legal advocacy organization. We believe that all women and 2SLGBTQ+ people should be able to live their lives with dignity, safety, and autonomy. To this end, we work in the Northwest's courtrooms, legislatures, and communities – creating and enforcing strong, equitable laws and empowering people to know their rights.

NoHLA is a nonprofit legal advocacy organization that aims to ensure access to quality, affordable health care for all Washingtonians. For over 25 years, we have worked to eliminate systemic barriers to health using legal, policy, and community education tools.

Given this mission, we have extensive familiarity with Washington's Medicaid program and laws related to patient rights.

These rules aim to enact President Trump's Executive Order 14187,[1] which seeks to prevent medical professionals from providing gender-affirming care to young people. The Medicaid and CHIP Ban rule would prohibit a state Medicaid agency from covering gender-affirming care for minors under 18 and CHIP agencies from covering gender-affirming care for minors under 19 with limited exceptions.[2] The Hospital Ban rule would prohibit Medicare and Medicaid-participating hospitals from performing "sex-rejecting procedures" on any minor under 18 years of age. The rule defines such procedures as any "pharmaceutical or surgical intervention", which would effectively ban the use of puberty blockers as well as surgery.[3]

As advocacy organizations fighting for the rights of 2SLGBTQIA+ individuals, we have made substantial progress in expanding access to health care and closing coverage gaps. These rules will reverse that progress and significantly damage the health and lives of transgender youth through discriminatory, cruel, and likely illegal action. Gender-affirming care is grounded in evidence-based best practices. These rules undermine standard medical practice, impose ideological judgments and barriers on private doctor-patient relationships, and endanger transgender youth. They will disrupt people's essential healthcare with significant negative impacts, which are completely ignored by CMS.

A. The Proposed Rules Will Exacerbate Barriers Transgender People Already Face to Accessing Care.

Transgender people comprise roughly 1.0% of the United States population, or about 2.8 million people aged 13 and older.[4] Among youth aged 13 – 17, 3.3% identify as transgender.[5] Washington closely mirrors the national trends, with 3.39% of youth aged 13-17 and 1.07% of all adults 18+ identifying as transgender.[6]

Transgender people already face multiple barriers in accessing healthcare, including transphobia from healthcare providers and unaffordability of gender-affirming care.[7]

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[1] Exec. Order No. 14187, 90 FR 8771 (January 28, 2025) https://www.federalregister.gov/documents/2025/02/03/2025-02194/protecting-children-from-chemical-and-surgical-mutilation.

[2] Prohibition on Federal Medicaid and Children's Health Insurance Program Funding for Sex-Rejecting Procedures Furnished to Children, CMS-2451-P, p. 212 (proposed Dec. 19, 2025) (to be codified at 42 C.F.R. Parts 442 and 457); https://www.federalregister.gov/d/2025-23464/p-212.

[3] Medicare and Medicaid Programs; Hospital Condition of Participation: Prohibiting Sex-Rejecting Procedures for Children, CMS-3481-P, p. 140 (proposed Dec. 19, 2025) (to be codified at 42 C.F.R. 482); https://www.federalregister.gov/d/2025-23465/p-140.

[4] Jody L. Herman & Andrew R. Flores, *How Many Adults and Youth Identify as Transgender in the United States?*, UCLA School of Law Williams Institute (Aug. 2025), https://williamsinstitute.law.ucla.edu/publications/trans-adults-united-states/

[5] *Id*.

[6] *Id*.

[7] Kedryn Berrian et al., *Barriers to Quality Healthcare Among Transgender and Gender Nonconforming Adults*, 60(1) Health Serv. Res. (July 2024) https://doi.org/10.1111/1475-6773.14362.

Transgender people are less likely to be insured than both the lesbian, gay, and bisexual populations, and the general US population.[8] Those who do have insurance report coverage denials for care related to gender transition, or no in-network providers who could perform transition-related surgery or care.[9] LGBT people in general display higher rates of poverty and are twice as likely as non-LGBT people to have Medicaid as their primary source of health insurance.[10] Surveys show that 43.2% of trans people in Washington experienced barriers to obtaining gender-affirming care, with 81% of people pinpointing insurance policies as the main barrier in obtaining care.[11]

QLaw's legal clinic data demonstrates how common and systemic denials of gender-affirming care already are for transgender people insured through Medicaid. Between 2022 and 2025, 51 of the 53 healthcare-related cases handled by our clinic involved Medicaid insurance denials for gender-affirming care. Many of these denials occurred despite prior authorization and required people to navigate extensive administrative hurdles to prove the medical necessity of care already recommended by providers. In several cases, insurers denied coverage in ways that directly contradicted their own written policies.

QLaw, along with other legal counsel, brought *A.B. v. Premera Blue Cross*, 2:23-cv-00953-TSZ (W.D. Wash. Apr. 18, 2025) on behalf of families facing arbitrary insurance denials for gender-affirming care for their minor children. A federal court found that Premera's categorical denial of coverage for gender-affirming chest surgery for minors was unlawful sex discrimination under the Affordable Care Act. Premera sought and was granted permission to file a supplemental brief on the effect of the United States Supreme Court decision in *United States v. Skrmetti*, 605 U.S. ---, 145 S. Ct. 1816 (2025).[12] The court distinguished the two cases, finding that Premera's insurance policies are not subject to the democratic process, and that they do explicitly discriminate specifically against minors transitioning from "female to male".[13] Furthermore, Premera's secret exceptions policies further undermine any rational basis for their exclusion policies.[14]

Through these difficult times, QLaw continues working with community members who are denied health insurance coverage for gender-affirming care. Unfortunately, we anticipate that this need will increase, even with the explicit consent by both parents/legal guardians and medical providers, for individuals to access the care they need and deserve.

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[8] *Healthcare Insurance Coverage for Gender-Affirming Care of Transgender Patients*, Am. Med. Ass'n. (2025), https://www.ama-assn.org/system/files/transgender-coverage-issue-brief.pdf.
[9] *Id*.
[10] Brad Sears, Andrew R. Flores, & Jet Harbeck, *LGBT Adults with Medicaid as Their Primary Source of Health Insurance*, UCLA School of Law Williams Institute (May 2025), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Medicaid-LGBT-May-2025.pdf.
[11] Traci K. Gillig et al., *Washington LGBTQ+ Survey Report 2025*, Wash. State Univ. (2025), 3, 34, http://lgbtq.wa.gov/sites/default/files/2025-06/WA%20LGBTQ%2B%20Survey%20Report%202025_1.pdf.
[12] *A.B.*, 2:23-cv-00953-TSZ.
[13] *Id*. at 5.
[14] *Id*. at 8.

These experiences show that even under current law, transgender youth and their families face extraordinary barriers to accessing medically necessary care through Medicaid. The proposed CMS rules would mandate blanket discriminatory insurance denials under the Medicaid and CHIP programs, intensifying and legitimizing the very types of denials that courts have already found discriminatory.

Transgender youth already face numerous barriers in accessing care, in addition to unaffordability and insurance denials. Transgender people in rural communities have a difficult time accessing care due to a lack of providers near their homes and the need to travel long distances to reach affirming providers.[15] When seeking care, transgender youth may face transphobia and have difficulty finding supportive providers. The proposed CMS rules would further limit gender-affirming care access care by cutting all Medicaid and Medicare funds to hospitals that provide such care to young people.

Many transgender youth rely on Medicaid for their medically necessary care. Those who have private insurance often rely on providers at hospitals that depend on Medicare and Medicaid funds. Without Medicaid coverage, and without gender-affirming care provision at hospitals, transgender youth will not be able to afford or access this lifesaving care.

B. Gender-Affirming Care is Safe and Effective for Transgender Youth and is Grounded in Scientific Evidence.

The proposed rules are in direct contradiction to scientific, evidence-based care that has been shown to be safe and effective for transgender youth. Every major medical association in the United States supports gender-affirming care for transgender youth.[16] Gender-affirming care is the well-recognized and accepted standard of care by medical providers, and it saves lives. CMS relies upon a 2025 HHS review of gender-affirming care practices, as well as the transphobic Cass Review from the United Kingdom to justify these rules,[17] while simultaneously noting the lack of evidence of harms arising from gender-affirming care.[18] One key flaw in both the Cass Review and the HHS Review is that none of the contributors have research nor clinical experience in transgender healthcare.[19] An evidence-based analysis of the Cass Review found that it "repeatedly misuses data and violates its own evidentiary standards by resting many conclusions on speculations."[20]

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[15] Helen Santoro, *Transgender People in Rural America Struggle to Find Doctors Willing or Able to Provide Care*, KFF Health News, January 23, 2023, https://kffhealthnews.org/news/article/transgender-people-in-rural-america-struggle-to-find-doctors-willing-or-able-to-provide-care/.

[16] Mary Kekatos, *HHS Finalizes Report on Gender-Affirming Care for Youth, Medical Groups Push Back*, ABC News (Nov. 20, 2025), https://abcnews.go.com/Health/hhs-finalizes-report-gender-affirming-care-youth-medical/story?id=127685179.

[17] *See NPRM* at https://www.federalregister.gov/d/2025-23464/p-197 and https://www.federalregister.gov/d/2025-23465/p-69

[18] *Supra* note 2 at 53.

[19] Meredithe McNamara et al., *An Evidence-Based Critique of "The Cass Review" on Gender-affirming Care for Adolescent Gender Dysphoria*, Yale Law School (2024), at 3, https://law.yale.edu/sites/default/files/documents/integrity-project_cass-response.pdf.

[20] *Id.* at 2.

Furthermore, the Cass Report does note that transition is the best outcome for some patients, and recommends individualized, evidence-informed clinical care, not a ban as envisioned by the proposed CMS rules.[21] The sources that the agency cites urging the necessity of this rule do not recommend a ban on gender-affirming care, highlighting that the government's rulemaking is arbitrary and cruel, without a basis in evidence.

While mental health and psychosocial supports are critical components of therapy for many transgender and gender diverse youth, research shows that these supports are insufficient without other therapies.[22] Gender-affirming care – with all options available to the clinician and patient for individualized care – alleviates distress in the patient and improves their overall well-being and quality of life.[23] Pubertal suppression and hormone treatments are essential care for many trans youth – alleviating stress and improving quality of life.[24] Researchers in Washington State found that youth having access to hormones and puberty blockers was associated with 60% lower risk of depression and 73% lower risk of self-harm or suicidal thoughts.[25] These therapies are also prescribed to cisgender youth and considered safe and effective with normal amounts of side effects.[26] In fact, emerging evidence suggests that bans on gender-affirming care and other transphobic laws result in increased mental health challenges in the most impacted populations.[27]

Due to the broad Executive Order and these rules, we are concerned that critical healthcare needs will not be met. Medical decisions related to transgender youth are complex, deeply personal, and individualized to each human being. These life-saving medical decisions should not be made by the government. Rather, it should be made in private, between the youth, their parents/legal guardians, and their qualified medical providers, who are guided by scientific, clinical evidence, to meet each individual's specific care needs, without fear of government overreach, interference, or retribution.

C. The Proposed Rules Will Make It More Difficult for Transgender Youth to Access Care and Will Have Long-Lasting, Detrimental Ramifications.

This rule will harm transgender youth, their families, and their providers for the foreseeable future, preventing youth from receiving the life-saving gender-affirming care they need and deserve. Anti-LGBT laws and policies result in increased mental health challenges for

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[21] *The Cass Review: Independent Review of Gender Identity Services for Children and Young People* (April 2024), at 21, https://webarchive.nationalarchives.gov.uk/ukgwa/20250310144409mp_/https://cass.independent-review.uk/wp-content/uploads/2024/04/CassReview_Final.pdf.

[22] Stephanie Budge, et al., *Gender Affirming Care Is Evidence Based for Transgender and Gender-Diverse Youth*, 75(6) J. of Adolescent Health 851 (Dec. 2024), https://www.jahonline.org/article/S1054-139X(24)00439-7/fulltext.

[23] *Id*.

[24] *Id*.

[25] Kate Stringer, *The Benefits of Gender-Affirming Care* (Mar. 31, 2023), https://sph.washington.edu/news-events/sph-blog/benefits-gender-affirming-care.

[26] *See e.g.* Jean Claude Carel et al., *Consensus Statement on the Use of Gonadotropin-Releasing Hormone Analogs in Children*, Pediatrics 123(4) (Apr. 2009), https://doi.org/10.1542/peds.2008-1783; Claus H. Gravholt et al., *European J. Endocrinology* 190(6) (June 2024) G53-G151, https://doi.org/10.1093/ejendo/lvae050.

[27] Budge et al., *supra* note 22.

transgender youth. A 2024 survey by the Trevor Project found that anti-LGBTQ+ policies have a negative impact on the mental health of 90% of participants.[28] Another study showed that after England limited access to gender-affirming healthcare for young people, suicide rates among trans youth grew significantly.[29] Studies repeatedly show that when transgender youth receive gender-affirming care, suicide rates decrease and youth experience improvements in their overall well-being.[30] The HHS proposed rules disregard the serious mental health effects of restricting access to gender-affirming care.

In addition to the detrimental mental health outcomes of stopping gender-affirming care or never receiving it in the first place, limiting access to gender-affirming care harms a young person and their whole family. There are significant logistical and financial burdens associated with accessing gender-affirming care. Families living in states that ban gender-affirming care for minors have to travel out of state to obtain care, with some even moving out of restrictive states entirely.[31] Families report financial harms including costs for airfare, gas, hotels, lost wages and relocation when they face barriers to healthcare for their children.[32] The Medicaid and CHIP Ban rule suggests that families may pursue private health insurance or pay out of pocket for gender-affirming care.[33] This option is simply not available for most families, with some people quoted up to $26,000 in costs **every three months** in order to maintain necessary medications.[34]

Additionally, healthcare providers experience significant costs from increasing security due to the inflammatory rhetoric around gender-affirming care. Providers report increased threats, including receiving death threats.[35] A clinic in Seattle hired a security guard, installed panic buttons and a security camera, and practiced bomb threat and active shooter drills in the wake of threats.[36] Gender clinics in Washington are scrubbing public-facing materials detailing the services they provide and removing all information on their staff from the public domain.[37] Some providers stopped seeing patients entirely due to concern about criminal charges or financial burdens.[38]

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[28] R. Nath et al., *2024 U.S. National Survey on the Mental Health of LGBTQ+ Young People*, The Trevor Project, 2024, at 11, www.thetrevorproject.org/survey-2024.
[29] *New Data Shows Surge in Trans Kids' Suicides Following Healthcare Rollbacks*, Good Law Project (Feb. 7, 2026), https://goodlawproject.org/new-data-shows-surge-in-trans-kids-suicides-following-healthcare-rollbacks/.
[30] Janet Y. Lee & Stephen M. Rosenthal, 74 Ann. Rev. Med. 107 (Jan. 2023), https://doi.org/10.1146/annurev-med-043021-032007.
[31] Yasemin Smallens, *They're Ruining People's Lives: Bans on Gender-Affirming Care for Transgender Youth in the US*, Human Rights Watch (June 3, 2025), https://www.hrw.org/report/2025/06/03/theyre-ruining-peoples-lives/bans-on-gender-affirming-care-for-transgender-youth.
[32] *Id*.
[33] Medicaid and CHIP Ban NPRM, *supra* note 2 at 143.
[34] *Supra* note 28.
[35] *Supra note 28*; *see also* Landon D. Hughes et al., *Adolescent Providers' Experiences of Harassment Related to Delivering Gender-Affirming Care*, 73 J. Adolescent Health (Oct. 2023), https://doi.org/10.1016/j.jadohealth.2023.06.024.
[36] Casey Parks, *Doctors Who Treat Trans Patients Say Threats Worsened After Trump's Orders*, Washington Post (March 9, 2025), https://www.washingtonpost.com/nation/2025/03/09/doctors-transgender-safety-threats-trump/.
[37] *Id*.
[38] *Id*.

In addition to the psychological and financial burdens, the Hospital Ban NPRM does not take into account the impact of this rule on children living in states with gender-affirming care bans, under the erroneous assumption that families would not travel out of state for care.[39] Many individuals travel vast distances in order to obtain gender-affirming care, with one study finding people traveled an average of 191 miles.[40] 45% of transgender and nonbinary young people reported that their family considered moving to a different state due to anti-LGBTQ+ politics and laws.[41] Preventing hospitals from providing gender-affirming care to young people will limit options further and drastically increase costs and strains for families to find care for their children.

D. The Proposed Rules are Not Based in Science—They are an Arbitrary and Malicious Attack on Transgender Youth.

For almost a year now, federal officials have been threatening the transgender community before any formal rulemaking and, as noted above, the effects are already being felt by community members. The CMS Proposed Rules will go even further, using Medicaid and Medicare as leverage to coerce hospitals into abandoning lifesaving, medically necessary, and evidence-based care for transgender youth. This harms young people and interferes with providers' and hospitals' ability to provide necessary healthcare aligned with the standard of care.

These rules are not about protecting youth: they are about using transgender children as political pawns and explicitly discriminate against transgender people. The Medicaid Ban prohibits states from covering healthcare procedures that are gender-affirming for transgender people, but allows the exact same procedures in other circumstances, such as non-consenting gender-affirming care for infants. Banning care based on the assigned sex and gender identity of the patient seeking the care is discriminatory on its face. The Proposed Rules also arbitrarily declare that gender-affirming healthcare is not within the practice of medicine, despite the fact that it is well-established and has been supported by major medical associations.[42]

E. The Proposed Rules Misinterpret Long-Standing Medicaid Law Principles

For decades, federal Medicaid law has recognized that low-income youth require robust access to care and the opportunity to seek individualized medical necessity

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[39] Hospital Ban NPRM, *supra* note 3 at 162.
[40] Thomas Johnstone et al., *Travel Distance and National Access to Gender-Affirming Surgery*, 174 Surgery 1376 (Dec. 2023) https://doi.org/10.1016/j.surg.2023.09.008.
[41] Trevor Project Survey, *supra* note 28 at 2.
[42] Melissa Jenco, *AAP: Proposed Restrictions to Gender-Affirming Care are a 'Baseless Intrusion into the Patient-Physician Relationship'*, Am. Academy Ped. (Dec. 2025), https://publications.aap.org/aapnews/news/33988/AAP-Proposed-restrictions-to-gender-affirming-care; *APA Policy Statement on Affirming Evidence-Based Inclusive Care for Transgender, Gender Diverse, and Nonbinary Individuals, Addressing Misinformation, and the Role of Psychological Practice and Science*, Am. Psychological Ass'n. (Feb. 2024), https://www.apa.org/about/policy/transgender-nonbinary-inclusive-care.pdf.

determinations. In addition to basic medical necessity principles, the "Early and Periodic Screening, Diagnostic, and Treatment" (EPSDT) framework requires state to ensure that Medicaid enrollees under age 21 receive any necessary health care, diagnostic services, treatment, or other measures to correct or ameliorate physical and mental illnesses and conditions, even if such services might otherwise be uncovered.[43] Like medical necessity, the EPSDT framework is intended to be applied individually, considering the totality of evidence as well as the unique needs of each enrollee.[44] States may choose to adopt the EPSDT framework for CHIP enrollees as well, and many states like Washington do.

In other words, Medicaid & CHIP law support a *higher* level of care for youth, with the goal of ensuring that youth have the opportunity to access all needed services. CMS recognizes the existence of EPSDT in its proposed Medicaid and CHIP Ban rule, but gravely misinterprets the EPSDT doctrine and inappropriately limits states' long-standing flexibility to develop state-specific processes for determining when a service is medically necessary for an EPSDT-eligible enrollee. The proposed rule also misinterprets other core Medicaid laws, including a prohibition against arbitrarily denying or reducing services solely because of the diagnosis, type of illness, or condition.[45] Rather than permitting youth to access services supported by evidence, the proposed rule institutes a categorical denial that is inconsistent with EPSDT and other Medicaid laws.

Conclusion

QLaw, Legal Voice, and NoHLA urge CMS to withdraw these two proposed rules in their entirety. We will continue to fight for transgender youth, their families, and the providers who care for them. The Proposed Rules will have devastating consequences for families who are working hard to keep their children healthy and thriving while facing the cruel tactics of this administration. All young people deserve to live their authentic lives and access the healthcare that they need.

Please reach out to Alizeh Bhojani at abhojani@legalvoice.org with any questions.

Sincerely,

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[43] 42 U.S.C. §1396a(a)43(C), 1396d(r)(5); 42 C.F.R. §§ 441.50, 441.55-441.62.
[44] *See, e.g.*, Washington Administrative Code 182-500-0070, 182-534-0100.
[45] *See generally*, 42 C.F.R., § 440.230.