February 17, 2026

Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services

Re: Medicaid Program; Prohibition on Federal Medicaid and Children's Health Insurance Program Funding for Sex-Rejecting Procedures Furnished to Children CMS-2451-P

Medicare and Medicaid Programs; Hospital Condition of Participation: Limiting Participation Based on the Performance of Sex Trait Modification Procedures on Children, CMS-3481-P RIN 0938-AV97

Dear Secretary Kennedy and Administrator Oz:

These Montana organizations submit the following comment in response to the following 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 and Medicare and Medicaid Programs; Hospital Condition of Participation: Limiting Participation Based on the Performance of Sex Trait Modification Procedures on Children. We strongly oppose both rules and respectfully urge their withdrawal.

We are a group of 2SLGBTQIA+ Montanans and our allies. We work to secure safety, dignity, and justice for queer and transgender Montanans. The coalition includes:

Legal Voice is a legal advocacy organization that believes that all women and 2SLGBTQIA+ people should be able to live their lives with dignity and autonomy. To this end, we work in Montana's courtrooms, legislature, and communities to create strong, equitable laws and empower people to know their rights.

EmpowerMT is a leadership development organization that educates and inspires youth, institutions, and communities to end mistreatment, correct systemic inequities, and strengthen community cohesion. EmpowerMT empowers the building of community through education, skill building, leadership development, and collective action.

Catalyst Montana is a statewide organization that uplifts low-income and marginalized Montanans to realize a Montana where there is dignity, safety, and justice for all.

Queer Prom MT provides safe and joyful social spaces for queer youth in Missoula and throughout Western Montana.

Montana Chapter, American Academy of Pediatrics believes in the inherent worth of all children. Our mission is to advocate for activities, programs, and policies that will

promote children's optimal health and well-being. We also work to support the professional and personal growth of our members who care for the children of Montana.

Montana Gender Alliance focuses direct services, community building, and civic engagement for the Montana transgender community.

Montana Coalition Against Domestic & Sexual Violence envisions a Montana that honors individual dignity and celebrates diversity, equality, and peace. We are a statewide coalition of individuals and organizations working together to uproot violence and oppression to end domestic and sexual violence in Montana.

These organizations advocate against gender-affirming care bans, including a 2023 ban passed by the Montana Legislature. The ban is currently enjoined because, in part, it likely violates transgender youth's constitutional right of privacy.[1] Thus far, the Montana courts have reasoned that this ban unlawfully infringes constitutional rights to equal protection of the laws, the right of parents to direct their children's upbringing, the right to privacy, and the right to seek healthcare.

As advocacy organizations fighting for the rights of 2SLGBTQIA+ individuals, we have long advocated for access to healthcare and the closure of coverage gaps. This rule will dangerously undermine the health and lives of transgender youth through discriminatory, and likely unconstitutional, action.

These proposed rules aim to enact President Trump's Executive Order 14187,[2] 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.[3] The Hospital Ban rule would prohibit Medicare and Medicaid-participating hospitals from performing "sex-rejecting procedures" on any one under 18 years of age. The rule defines such procedures as "pharmaceutical or surgical intervention", which would effectively ban the use of puberty blockers and surgery.[4]

Through these unnecessarily difficult times, we continue working with community members who are denied health insurance coverage for gender-affirming care. Unfortunately, we anticipate that this need will increase, against the explicit consent by

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[1] *Cross v. State*, 2024 MT 303, ¶¶ 51, 56, 419 Mont. 290, 560 P.3d 637.
[2] Executive Order 14187, https://www.federalregister.gov/documents/2025/02/03/2025-02194/protecting-children-from-chemical-and-surgical-mutilation (Jan. 28, 2025).
[3] Medicaid Program; Prohibition on Federal Medicaid and Children's Health Insurance Program Funding for Sex-Rejecting Procedures Furnished to Children, https://www.federalregister.gov/d/2025-23464/p-212 (Dec. 19, 2025).
[4] Medicare and Medicaid Programs; Hospital Condition of Participation: Prohibiting Sex-Rejecting Procedures for Children, https://www.federalregister.gov/d/2025-23465/p-140 (Dec. 19, 2025).

both parents/legal guardians and medical providers, for individuals to access essential medical care.

A. This Rule Heightens Existing Healthcare Disparities for Transgender People.

Our organizations support individuals who have been denied gender-affirming care – denied even when it is medically recommended by doctors, therapists, and approved by parents/legal guardians.

Transgender people make up roughly 1.0% of the United States population, or about 2.8 million people aged 13 and older.[5] Among youth aged 13-17, 3.3% identify as transgender.[6] In Montana, 3.50% of youth aged 13-17 and 0.77% of all adults 18+ identify as transgender.[7]

Transgender youth already face barriers in accessing gender-affirming care. In 2025, 40% of Montana youth were enrolled in Medicaid or in Healthy Montana Kids (Montana's CHIP program).[8] Two-thirds of Montana's Medicaid expansion enrolled individuals who live in rural communities.[9] 21% of Indigenous Montanans are enrolled in Medicaid.[10] This expansion has kept critical access and rural health clinics in operation for all youth in Montana. Despite this access, those from rural communities and low-income families contend with delays, increased costs, and long commutes to clinics, which sometimes result in a complete loss of access.[11]

This rule will undoubtedly impact their access to services. Given the Medicaid enrollment numbers, without Medicaid, many transgender youth will be unable to access this lifesaving care. This rule will have a detrimental effect on these youth, as well as the broader queer community.

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[5] 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/

[6] *Id.*

[7] *Id.*

[8] Children Enrolled in Medicaid or Healthy Montana Kids (CHIP) in Montana, https://datacenter.aecf.org/data/tables/7759-children-enrolled-in-medicaid-or-healthy-montana-kids-childrens-health-insurance-program-or-chip#detailed/2/any/false/1096,2545,1095,2048,574,1729,37,871,870/1055,6836,6835/14957,23750 (last accessed Feb. 11, 2026).

[9] Montana Healthcare Foundation, *Medicaid in Montana, How Medicaid Impacts Montana's State Budget, Economy, and Health* 23 (Jan. 2023), https://mthf.org/wp-content/uploads/2023-Medicaid-in-Montana-Report_FINAL.pdf.

[10] *Id.* at 20.

[11] Rural Health Information Hub, Healthcare Access in Rural Communities, https://www.ruralhealthinfo.org/topics/healthcare-access (last accessed Feb. 17, 2026).

These experiences show that even under current law, rural transgender youth and their families face extraordinary barriers to accessing medically necessary care through Medicaid.[12] 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 Montana courts have already found discriminatory.

B. Gender-Affirming Care is a Safe, Proven, and Vital Treatment for Youth.

This rule is in direct contradiction to scientific, evidence-based care, shown to be safe and effective for transgender youth. Gender-affirming care is the accepted standard of care by medical providers, and it saves lives. Medical providers should be guided by scientific and clinical evidence, rather than fear of government retribution.

While the Trump Administration puts hormone therapy and surgeries at the forefront of its cruel, distorted arguments, this is a misconception regarding gender-affirming care. For many transgender youth, gender-affirming care is mental health services and community support.

As Montanans, we pride ourselves on the preservation of our healthcare privacy. The right to privacy is enshrined in our Constitution,[13] and Montana case law has interpreted that right broadly to encompass privacy in medical decision-making.[14] We are concerned that these essential liberties will be impacted, and these critical medical needs will not be met.

Medical decisions related to transgender youth are complex, deeply personal, and highly individualized. These life-saving medical decisions should not be made by the government through prohibition. Rather, they should be made in private, between the youth, their parents, and qualified medical providers. Medical professionals should be guided by scientific and clinical evidence, rather than the fear of government retribution.

C. **This Rule Will Make it More Difficult for Transgender Youth to Access Care and Will Have Long-Lasting, Detrimental Ramifications.**

This rule will be felt by transgender youth, their families, and their healthcare providers when youth do not receive the life-saving gender-affirming care they need and deserve.

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. This rule will go even further, using Medicaid and Medicare as leverage to coerce hospitals into no longer providing lifesaving, medically necessary care for transgender youth.

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[12] The Trevor Project. The Mental Health and Experiences of LGBTQ+ Young People in the Rural U.S. (2025) https://doi.org/10.70226/XAGT4119

[13] Mont. Const. Art. II, Sect. 10.

[14] *See generally Armstrong v. State*, 1999 MT 261, 296 Mont. 361, 989 P.2d 364; *Cross v. State*, 2024 MT 303, 419 Mont. 290, 560 P3d 637.

This rule is not about protecting youth. It is about using transgender children as political pawns, which is evidenced by the exceptions made for gender-affirming care for infants without their consent. This rule will have devastating consequences for families that work hard to protect the physical and mental health of their children.

Montana leads the nation in adolescent suicide rates. According to a 2024 report from The Trevor Project, 49% of transgender and nonbinary youth in Montana have seriously considered suicide.[15] 56% of Montana 2SLGBTQIA+ youth noted that recent politics negatively impacted their well-being "a lot."[16] Across the United States, a 2SLGBTQIA+ youth attempts suicide every 45 seconds.[17] As a nation, we are facing a youth suicide crisis. Studies have shown that when transgender youth receive gender-affirming care, suicide rates decrease and the youth experience improvements in overall well-being. This rule will cause irreparable harm to transgender youth, who already face many barriers in accessing life-saving care. Transgender kids should be allowed to live and to thrive.

Again, we urge CMS to withdraw this proposed rule in its entirety. We will continue to fight for transgender youth, their families, and the medical professionals who provide care them, so that they can live their authentic lives.

For further information, please contact Robin Turner, Legal Voice Staff Attorney, at rturner@legalvoice.org.

Sincerely,

Legal Voice
EmpowerMT
Catalyst Montana
Queer Prom MT
Montana Chapter, American Academy of Pediatrics
Montana Coalition Against Domestic & Sexual Violence
Montana Gender Alliance

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[15] Nath, R., Matthews, D., Hobaica, S., Eden, T.M., Taylor, A.B., DeChants, J.P., Suffredini, K. (2025). 2024 U.S. National Survey on the Mental Health of LGBTQ+ Young People by State. The Trevor Project. www.thetrevorproject.org/survey-2024-by-state; See also Rosston, K, LCSW. *Suicide in Montana: Facts, Figures, and Formulas for Prevention*, Montana Department of Health and Human Services (Nov. 2024) (noting "LGBTQ youth are **4 times** more likely, and questioning youth are 3 times more likely, to attempt suicide as their straight peers.") (emphasis original).

[16] Nath, *supra* note 15, at 6.

[17] The Trevor Project, *Facts about Suicide Among LGBTQ+ Young People*, https://www.thetrevorproject.org/resources/article/facts-about-lgbtq-youth-suicide/ (Last updated Jan. 2024).