



Director
Office for Civil Rights
Washington, D.C. 20201

February 20, 2025

Re: Recission of “HHS Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy” (issued March 2, 2022)

Pursuant to Section 5(b) of Executive Order (“E.O.”) 14187, “Protecting Children from Chemical and Surgical Mutilation,” the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR) hereby rescinds, “HHS Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy,” originally issued on March 2, 2022 (“2022 OCR Notice and Guidance”). This recission is effective immediately.

Background

On March 2, 2022, HHS OCR issued the 2022 OCR Notice and Guidance, stating that transgender medical interventions may improve both physical and mental health outcomes for minors. The 2022 OCR Notice and Guidance outlined the application of federal civil rights and patient privacy laws to such medical treatments for minors in three ways.

First, the 2022 OCR Notice and Guidance stated that Section 1557 of the Affordable Care Act (“ACA”)¹ prohibits discrimination based on gender identity in federally-funded healthcare settings. Specifically, it provides in relevant part:

Categorically refusing to provide treatment to an individual based on their gender identity is prohibited discrimination. Similarly, federally-funded covered entities restricting an individual’s ability to receive medically necessary care, including gender-affirming care, from their health care provider solely on the basis of their sex assigned at birth or gender identity likely violates Section 1557. For example, if a parent and their child visit a doctor for a consultation regarding or to receive gender affirming care, and the doctor or other staff at the facility reports the parent to state authorities for seeking such care, that reporting may constitute violation of Section 1557 if the doctor or facility receives federal financial assistance.

¹ 42 U.S.C. § 18116.

Restricting a health care provider’s ability to provide or prescribe such care may also violate Section 1557.

Second, the 2022 OCR Notice and Guidance noted that gender dysphoria might qualify as a disability under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, and that “[r]estrictions that prevent otherwise qualified individuals from receiving medically necessary care on the basis of their gender dysphoria, gender dysphoria diagnosis, or perception of gender dysphoria may, therefore, also violate Section 504 and Title II of the ADA.”

Finally, regarding patient privacy, the 2022 OCR Notice and Guidance emphasized that healthcare providers and other covered entities cannot disclose protected health information about gender-affirming care without patient authorization, except in limited circumstances where explicitly required by law, i.e., “limited to ‘a mandate contained in law that compels an entity to make a use or disclosure of PHI and that is enforceable in a court of law.’”

Basis for Rescission

HHS OCR rescinds the 2022 OCR Notice and Guidance under E.O. 14187, “Protecting Children from Chemical and Surgical Mutilation.” Specifically, Section 5(b) of the E.O. provides: “The Secretary of HHS shall promptly withdraw HHS’s March 2, 2022, guidance document titled ‘HHS Notice and Guidance on Gender Affirming Care, Civil Rights and Patient Privacy’ and, in consultation with the Attorney General, issue new guidance protecting whistleblowers who take action related to ensuring compliance with this order.”²

First, the legal basis for the 2022 OCR Notice and Guidance under Section 1557 of the ACA has been called into question by several court decisions. To start, on October 1, 2022, the District Court for the Northern District of Texas vacated this guidance, *Texas v. EEOC et al.*, No. 2:21-cv-00194-Z, ECF No. 74 (N.D. Tex. 2022), noting that Section 1557 of the ACA does not prohibit discrimination on account of sexual orientation and gender identity, and the interpretation of “sex” discrimination that the Supreme Court of the United States adopted in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), is inapplicable to the prohibitions on “sex” discrimination in Section 1557 of the ACA.

The district court’s rationale was followed by several other federal courts addressing the same issue—whether the prohibition on sex discrimination found in Section 1557 of the ACA included discrimination on the basis of gender identity. *See Tennessee, et al. v. Kennedy, et al.*, No. 1:24-cv-00161-LG-BWR (S.D. Miss. July 3, 2024) (“It is further ordered and adjudged that the July 5, 2024, effective date of the final rule entitled Nondiscrimination in Health Programs and Activities, 89 Fed. Reg. 37,522 (May 6, 2024) is stayed nationwide pursuant to 5 U.S.C. § 705, in so far as this final rule is intended to extend discrimination on the basis of sex to include discrimination on the basis of gender identity in the following regulations: 42 C.F.R. §§ 438.3, 438.206, 440.262, 460.98, 460.112; 45 C.F.R. §§ 92.5, 92.6, 92.7, 92.8, 92.9, 92.10, 92.101, 92.206-211, 92.301,

² On February 14, 2025, the District Court for the Western District of Washington issued a Temporary Restraining Order with regard to enforcement or implementation of Sections 4 and 8(a) of E.O. 14187. *See State of Washington et al., v. Trump, et al.*, No. 2:25-cv-00244-LK, ECF No. 158 (W.D. Was. Feb. 14, 2025). The order does not bear on this Rescission, which is issued under Section 5 of the E.O.

92.303, 92.304.”); *Florida v. HHS*, No. 8:24-cv-01080-WFJ-TGW (M.D. Fl. July 3, 2024), No. 24-12826 (11th Cir.) (granting Plaintiffs’ motion for a preliminary injunction within the State of Florida, staying the effective date of the sex discrimination provisions in the Section 1557 final rule); *Texas, et al., v. Kennedy*, No. 6:24-cv-211-JDK (E.D. Tex. August 30, 2024), No. 24-40568 (5th Cir.) (issuing a nationwide injunction on the sex discrimination provisions challenged by Plaintiffs, specifically “42 C.F.R. §§438.3(d)(4), 438.206(c)(2), 440.262, 460.98(b)(3), 460.112(a); 45 C.F.R. §§ 92.101(a)(2) (and all references to this subsection), 92.206(b), 92.207(b)(3)–(5).”).

Second, gender dysphoria likely does not meet the definition of a disability under Section 504 of the Rehabilitation Act.³ The relevant statute specifically excludes from the definition of disability “transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, *gender identity disorders not resulting from physical impairments*, or other sexual behavior disorders.”⁴ In its decision vacating the 2022 OCR Notice and Guidance, the Northern District of Texas pointed to this statutory language and held that the March 2022 Notice and Guidance’s conclusion concerning Section 504 was arbitrary and capricious, reasoning that Defendants “appear to misstate the law and do not detail what went into their decisionmaking.” *Texas*, 2:21-cv-00194, ECF No. 74. It is likely that the Section 504 drafters intended “gender identity disorders not resulting from physical impairments” to apply to gender dysphoria.

Finally, the 2022 OCR Notice and Guidance lacks adequate legal basis under federal privacy laws, including the HIPAA Privacy, Security and Breach Notification Rules.⁵ By its own terms, the HIPAA Privacy Rule permits covered entities and business associates to disclose PHI about an individual, without the individual’s authorization,⁶ when such disclosure is required by another law and the disclosure complies with the requirements of the other law.⁷

Accordingly, effective immediately, the 2022 OCR Notice and Guidance no longer represents the views or policies of HHS OCR. Covered entities should no longer rely on the rescinded 2022 OCR Notice and Guidance. Pursuant to E.O. 14187 HHS shall, in consultation with the Attorney General, expeditiously issue new guidance protecting whistleblowers who take action related to ensuring compliance with this order.

/s/

Anthony F. Archeval
Acting Director
HHS Office for Civil Rights

³ 45 C.F.R. 84.4.

⁴ 29 U.S.C. § 705(20)(F)(i).

⁵ 45 C.F.R. Parts 160 and 164, Subparts A, C, D, and E.

⁶ See 45 C.F.R. 164.508(c) (HIPAA authorization required elements).

⁷ 45 C.F.R. 164.512(a)(1).