

Congress of the United States
Washington, DC 20515

July 12, 2021

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Becerra,

We write to request information on the U.S. Department of Health and Human Services' (HHS) announcement on May 10, 2021, that HHS will enforce the "sex" discrimination prohibition in Section 1557 of the Affordable Care Act as including sexual orientation and gender identity.¹

This change in policy concerning Section 1557 will require health care providers to provide, and insurance to cover, experimental gender transition procedures such as puberty blockers, cross-sex hormones, and sex-reassignment surgeries regardless of physicians clinical judgment based on evidence-based practices, or conscience objections. Health care providers determine care delivery based on evidence to support medical necessity. This mandate will harm not only physicians and other health care providers, but also patients as there is growing evidence that these gender transition procedures can be harmful.² Under the Obama Administration, the Centers for Medicare and Medicaid Services (CMS) stated that, "there is not enough evidence to determine whether gender reassignment surgery improves health outcomes for [patients] with gender dysphoria."³ As a result, CMS declined to issue a national coverage determination for such procedures under the Medicare program.⁴

In other countries, governments have taken similar action based on available clinical evidence. A 2020 study commission by England's National Institute for Health and Care Excellence found very low evidence for the effectiveness of puberty blockers and cross-sex hormones.⁵ England's

¹ The May 20th announcement was later posted in the Federal Register but with a date of May 13, 2021. <https://www.govinfo.gov/content/pkg/FR-2021-05-25/pdf/2021-10477.pdf>.

² [Summary of Studies Regarding Risks Associated With Transgender Medical Interventions — HHS Transgender Mandate](#)

³ [Proposed Decision Memo for Gender Dysphoria and Gender Reassignment Surgery \(CAG-00446N\) \(cms.gov\)](#)

⁴ Centers for Medicare and Medicaid Services, Decision Memo for GENDER Dysphoria and GENDER REASSIGNMENT SURGERY (CAG-00446N), August 30, 2016, <https://www.cms.gov/medicare-coverage-database/details/nca-decision-memo.aspx?NCAId=282&CoverageSelection=National&KeyWord=gender+reassignment+surgery&KeyWordLookup=Title&KeywordSearchType=And&bc=gAAAACAACAAAAA%3D%3D&>.

⁵ National Institute for Health and Care Excellence (England), *Evidence Review: Gonadotrophin releasing hormone analogues for children and adolescents with gender dysphoria* (11 March 2021), <https://www.evidence.nhs.uk/document?id=2334888&returnUrl=search%3ffrom%3d2020-01-01%26q%3dgender%2bdysphoria%26sp%3don%26to%3d2021-03-31>.

High Court of Justice also prohibited such treatments in young children due to the risks of permanent physical and psychological harm.⁶ In Sweden, their leading medical research institute recently announced it is ending the practice of prescribing puberty blockers and cross-sex hormones to minors citing the highly uncertain risk/benefit ratio of hormonal interventions for minors.⁷

This growing body of research should put a pause on HHS's decision to mandate that physicians perform these experimental procedures rather than threatening them with legal consequences for following their best medical judgement.

Additionally, for decades, Congress has made consistent and clear attempts in federal law to protect rights of conscience for those in the medical field but HHS has been slow or missing in action with respect to enforcement of these laws. Compliance and enforcement with the law improved when HHS established a Conscience and Religious Freedom Division within its Office for Civil Rights (OCR) in 2018. However, the HHS Assistant Secretary for Health, Dr. Levine, recently stated that the Conscience Division should be "disbanded."⁸

To that end, we ask that you respond to the following questions:

1. In statements to the media about the Section 1557 policy change, Dr. Levine justified it as preventing "discrimination" by physicians and hospitals that would refuse to "fix a broken bone, protect heart health, and screen for cancer risk" based on the sexual orientation or gender identity of patients.⁹ Please identify, including by name of the parties and dates of occurrence, every instance of a physician and other health care provider refusing to fix a broken bone, perform a heart screening or test, or perform a cancer screening solely based on sexual orientation or gender identity of a patient at any time over the last fifteen years. Please provide all supporting evidence in your possession of the allegations and limit your response to only the procedures and screenings cited by Dr. Levine above. If you have no supporting evidence in your possession of each particular allegation of such discrimination, please state so.
2. Does HHS believe mastectomies can ever be medically appropriate treatments for gender dysphoria in minors?
3. Does HHS believe penectomies can ever be medically appropriate treatments for gender dysphoria in minors?

⁶ Royal Courts of Justice, High Court of Justice Administrative Court, *Bell v. Tavistock*, January 1, 2020, (Case No: CO/60/2020), <https://www.judiciary.uk/wp-content/uploads/2020/12/Bell-v-Tavistock-Judgment.pdf>.

⁷ Sweden's Karolinska Ends All Use of Puberty Blockers and Cross-Sex Hormones for Minors Outside of Clinical Studies | SEGM. The Karolinska Institute is responsible for selecting the annual Nobel Prize winner for medicine. <https://ki.se/en/about>.

⁸ <https://www.washingtonblade.com/2021/01/19/historic-rachel-levine-tapped-to-become-first-openly-transgender-senate-confirmed-official/>.

⁹ <https://www.hhs.gov/about/news/2021/05/10/hhs-announces-prohibition-sex-discrimination-includes-discrimination-basis-sexual-orientation-gender-identity.html>.

4. Does HHS believe hysterectomies can ever be medically appropriate treatments for gender dysphoria in minors?
5. Does HHS believe puberty blockers can ever be medically appropriate treatments for gender dysphoria in pre-pubescent minors?
6. Does HHS believe cross-sex hormones can ever be medically appropriate treatments for gender dysphoria in pre-pubescent minors?
7. Do you acknowledge that a physician who is licensed to perform and regularly offers mastectomy services is now prohibited under the Section 1557 announcement from having a flat policy of never performing such mastectomies to treat gender dysphoria or for sex-reassignment purposes?
8. Do you acknowledge that a physician who is licensed to perform and regularly offers hysterectomy services is now prohibited under the Section 1557 announcement from having a flat policy of never performing such hysterectomies to treat gender dysphoria or for sex-reassignment purposes?
9. Do you acknowledge that an insurance company covered by Section 1557 that regularly covers or pays for hysterectomy or mastectomy services is now prohibited under the Section 1557 announcement from having a flat policy of never covering or paying for such services to treat gender dysphoria or for sex-reassignment purposes?
10. What medical evidence did HHS consider *before* making its announcement?
11. Since CMS sees a lack of evidence that “gender reassignment surgery improves health outcomes for [patients] with gender dysphoria,” why did you determine that these procedures should be mandated?
12. What protections will be provided to physicians, nurses, and all other health care providers who decline to provide experimental gender transition treatments, such as puberty blockers, cross-sex hormones, and sex-change surgeries, because in their professional medical judgment they believe such treatments would always be harmful to their patients?
13. Your announcement stated that “OCR will comply with the Religious Freedom Restoration Act . . . and all other legal requirements.” As you know, President Biden has announced his support of the Equality Act, which would prohibit RFRA from applying to Section 1557. Do you also support RFRA not applying to Section 1557?
14. Do you believe the federal government has a compelling governmental interest in prohibiting sexual orientation and gender identity discrimination in federally funded health programs and activities?
15. Please identify all gender identities currently recognized by HHS as being protected under the announcement.
16. With respect to sex discrimination under the announcement, please clarify and explain HHS’s description on:
 - a. How it defines a person to be a man or a woman.
 - b. How HHS will determine if a complainant or respondent is a man or a woman.

17. Will you be issuing regulations providing clear and robust protections—as multiple courts have ruled are required—to physicians and other health care providers, and health care entities whose deeply held religious beliefs prevent them from providing experimental gender transition treatments such as puberty blockers, cross-sex hormones, and sex-change surgeries?
18. Does this mandate supersede Section 1557 regulations finalized in 2020?
19. State all sources of legal authority for your announcement not being required to go through public notice and comment rulemaking.
20. Do you intend to issue proposed rulemaking on Section 1557 to replace the 2020 regulations?
21. The announcement cites two federal circuit court opinions, both of which are being appealed. Explain in detail how HHS is complying with each opinion.
22. Do you reject or support Dr. Levine’s statement that the Conscience and Religious Freedom Division within OCR should be disbanded?
 - a. Will you commit to not shut down or impair the work of the Conscience and Religious Freedom Division?
 - b. Will you commit to not transfer or reassign any career professionals out of the Conscience and Religious Freedom Division?

Thank you for your attention to this important matter. We appreciate your prompt response no later than August 13, 2021.

Sincerely,



Doug LaMalfa
Member of Congress

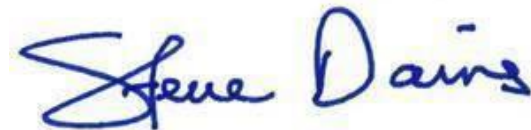


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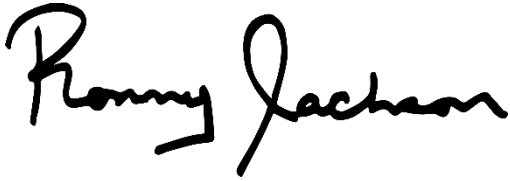
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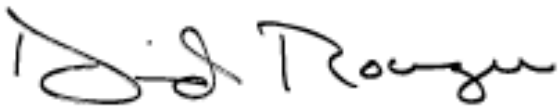
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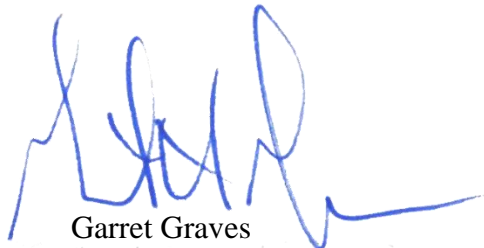
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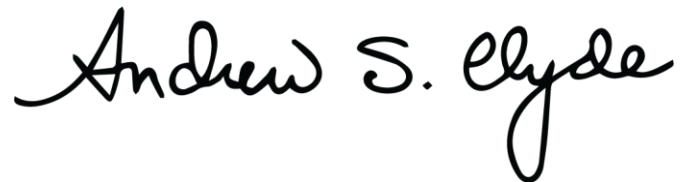
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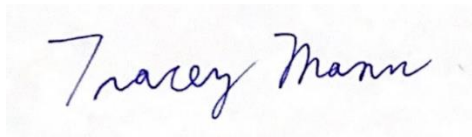
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