



January 27, 2022

The Honorable Xavier Becerra  
Secretary, United States Department of Health and Human Services  
Centers for Medicare & Medicaid Services  
Attention: CMS-9911-P  
P.O. Box 8016, Baltimore, MD 21244-8016.  
Official Comment Opposing Proposed RIN 0938-AU65

[SUBMITTED ELECTRONICALLY]

Dear Mr. Secretary,

Family Policy Alliance is writing to express our strong opposition to the U.S. Department of Health and Human Service's (Department) RIN 0938-AU65, a proposed rule to force health insurance plans to cover elective gender transition services that harm, not help, patients.

Family Policy Alliance is a national pro-family organization representing hundreds of thousands of Americans across the country—Americans who believe healthcare should help—not harm—individuals.

We are deeply concerned by the Department's aggressive attempt to issue a “must-do-harm” order through its changes to the Essential Health Benefit nondiscrimination requirements, at the price of American tax dollars, conscience rights, and even children's futures.

We strongly oppose RIN 0938-AU65 for the following reasons:

1. The Department, and the Administration, is misapplying the U.S. Supreme Court case *Bostock v. Clayton County*. This case dealt with the interpretation of Title VII, not Title IX. Justice Gorsuch deliberately stated in the majority opinion:

The employers worry that our decision will sweep beyond Title VII to other federal or state laws that prohibit sex discrimination. And, under Title VII itself, they say sex-segregated bathrooms, locker rooms, and dress codes will prove unsustainable after our decision today. But none of these other laws are before us; we have not had the benefit of adversarial



testing about the meaning of their terms, and we do not prejudge any such question today. *Under Title VII, too, we do not purport to address bathrooms, locker rooms, or anything else of the kind.* [31] (Emphasis added).<sup>1</sup>

Clearly, the Court did not give the Department the authority to radically change nation-wide healthcare policy through Title VII. We urge the Department to adhere to statute-rather than misapply this case.

2. The Department has not proven it will respect conscience rights in healthcare policy. Many employers, healthcare beneficiaries, and healthcare providers hold sincere religious, moral, and ethical objections to gender reassignment “treatments” that would alter an individual’s body chemistry, change or amputate healthy body parts, or modify appearances with surgery. This rule forces those who object to these “treatments” to be complicit with their implementation—especially through the coercive power of funding.

Furthermore, we are deeply concerned this Department would not defend any conscience rights of healthcare employers, beneficiaries, or providers. This precedent was set when the Department refused to defend the conscience rights of a nurse to not perform an abortion.<sup>2</sup> If this Department purposefully refuses to defend the conscience rights of a woman who was forced to perform a procedure to end the life of an innocent, unborn child, why should Americans believe the Department will defend other conscience rights?

3. With this rule, the Department has severely ignored the first duty of medicine: to do no harm. It is even more alarming to consider the effect the Department’s proposal could have on children.

This Department’s proposal is encouraging children and adults who are struggling to accept their biological sex to undergo experimental and off-label treatments to alter their body chemistry with puberty blockers and/or cross-sex hormones, change or amputate healthy body parts, and modify their appearance with surgery. Many of these treatments are irreparable and will cause sterility.

Children are not capable of making such life-altering decisions. That is why we do not allow children to purchase firearms, consume alcohol or use tobacco.

Furthermore, robust evidence is significantly lacking on the long-term effects of transition on minors. And, only recently have stories of “detransitioners” come to light—that is, stories of those who transitioned, then changed their minds. Many of these individuals face long-term physical and psychosocial consequences from “transitioning,” including those who transitioned in their youth. This Department must consider the alarming effects this policy will have on both children and adults.

One thing, however, is crystal clear: Anyone who believes they must alter their body—often irreparably—in order to be comfortable, is an individual who is deeply hurting and in need of help, not harm.

The last thing this Department should do is hurt them even more.

4. Finally, this rule was promulgated with a mere 21-day comment period. With such a strikingly short comment period, the Department is signaling deliberate disregard for the American people’s input in order to force a nation-wide political experiment upon our healthcare.

Moreover, the brief comment period indicates the Department disregards the taxpayer dollars that will be wasted to defend against litigation that will certainly be initiated to oppose this dramatic government overreach.

The Department should have provided a reasonable comment period to allow for essential public input on such a drastic change to national healthcare policy.

In conclusion, the Department must immediately reverse course, rescind this rule, and do no harm—especially for the sake of our nation’s children. The rule lacks thorough review from the public, is based on an obvious misapplication of *Bostock*, constitutes an attack on conscience rights, and, most importantly, will inflict harm on American children and adults.

Sincerely,

Craig DeRoche  
President and CEO  
Family Policy Alliance