

# United States Senate

WASHINGTON, DC 20510

January 20, 2026

The Honorable Robert F. Kennedy, Jr.  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

The Honorable Paula M. Stannard  
Director  
Office for Civil Rights  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Kennedy and Director Stannard:

We write to express our strong opposition to the Notice of Proposed Rulemaking (NPRM) issued by the Department of Health and Human Services (the Department) on December 19, 2025, proposing a revision to the Department's regulations implementing Section 504 of the *Rehabilitation Act of 1973* (the "Act") that would exclude gender dysphoria from the definition of "disability."<sup>1</sup> This harmful proposal, which lacks any basis in the law, is yet another transphobic action from this Administration, which now seeks to rip away discrimination protections from individuals with gender dysphoria. The Department should immediately rescind the proposed rule.

Consistent with the *Americans with Disabilities Act* ("ADA"), Section 504 currently prohibits federally funded programs and activities from engaging in disability-based discrimination. In the 2008 amendments to the ADA, Congress expressly stated that the term "disability" must be "construed in favor of broad coverage of individuals" to the "maximum extent" permitted by the ADA.<sup>2</sup> Section 504 narrowly excludes "gender identity disorders not resulting from physical impairments."<sup>3</sup> The Trump administration, however, aims to reinterpret the law's narrow exclusion and permit discrimination based on gender dysphoria, a recognized psychological diagnosis characterized by significant and often disabling distress.<sup>4</sup> The

<sup>1</sup> *Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance*, U.S. Dep't of Health and Human Services (Dec. 19, 2025), <https://www.federalregister.gov/documents/2025/12/19/2025-23484/nondiscrimination-on-the-basis-of-disability-in-programs-or-activities-receiving-federal-financial>.

<sup>2</sup> Pub. L. 110-325, 122 Stat. 3553.

<sup>3</sup> 42 U.S.C. § 12102(a)-(b).

<sup>4</sup> See *What is Gender Dysphoria?*, American Psychiatric Association (2026), <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria>.

Department's proposed revision would remove this often-disabling condition from Section 504's protections contrary to the text and purpose of the Act, which was designed to protect individuals with disabilities from discrimination. If finalized, this proposed rule would threaten the health and safety of individuals with gender dysphoria and exacerbate the health disparities experienced by this population.<sup>5</sup>

The proposed rule, which appears based on a troubling political agenda with prejudicial intent, is at odds with congressional intent and federal judicial decisions interpreting gender dysphoria as a protected disabling condition. Congress enacted the ADA with an expansive remedial purpose, defining disability broadly and directing courts to construe the statute in favor of coverage;<sup>6</sup> nothing in the Act's narrow exclusion for "gender identity disorders not resulting from physical impairments" undermines the conclusion that a medically recognized condition such as gender dysphoria—marked by clinically significant distress and functional limitations—falls squarely within the ADA's protections. For example, in *Williams v. Kincaid*, the Fourth Circuit held that gender dysphoria is not categorically excluded from the ADA and may constitute a disability protected by federal disability rights laws.<sup>7</sup> Further, in *Blatt v. Cabela's Retail*, the court found that the ADA covered the plaintiff's gender dysphoria, which went "beyond merely identifying with a different gender and is characterized by clinically significant stress and other impairments that may be disabling."<sup>8</sup> Accordingly, we urge you to rescind the proposed rule and send a message to the American people that you will follow the law and uphold the continued protection of basic human rights instead of dismantling them.

Adding insult to injury, the Department included this proposed rule among a host of other proposals targeting gender-affirming protections, including a declaration denouncing gender-affirming care practices.<sup>9</sup> In fact, gender-affirming care provides lifesaving and medically necessary services to transgender and gender-diverse people, many of whom experience gender dysphoria. Yet, this Administration aims to strip the right to access health care from an already under-protected population; more than 90 percent of transgender youth reside in states with some form of restrictive healthcare legislation,<sup>10</sup> while facing disproportionately high rates of homelessness and violence.<sup>11</sup> These other actions to undermine the health care rights of

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<sup>5</sup> See Ankit Rastogi *et al.*, *Health and Wellbeing: A Report of the 2022 U.S. Transgender Survey*, Advocates for Transgender Equality, (June 3, 2025), <https://ustranssurvey.org/download-reports/>.

<sup>6</sup> See 42 U.S.C. § 12102(4)(A)-(B); *Bragdon v. Abbott*, 524 U.S. 624, 638 (1998).

<sup>7</sup> See *Williams v. Kincaid*, 45 F.4th 759, 769-70 (4th Cir. 2022), <https://www.ca4.uscourts.gov/opinions/212030R1.P.pdf>.

<sup>8</sup> No. 5:14-cv-04822, 2017 WL 2178123, at \*2 (E.D. Pa. May 18, 2017).

<sup>9</sup> *Declaration of the Secretary of the Department of Health and Human Services, RE: Safety, Effectiveness, and Professional Standards of Care for Sex-Rejecting Procedures on Children and Adolescents*, U.S. Dep't of Health and Human Services (Dec. 18, 2025), <https://www.hhs.gov/sites/default/files/declaration-pediatric-sex-rejecting-procedures.pdf>.

<sup>10</sup> *The Impact of 2024 Anti-Transgender Legislation on Youth*, UCLA - Williams Institute (Apr. 2024), <https://williamsinstitute.law.ucla.edu/publications/2024-anti-trans-legislation/>.

<sup>11</sup> Trevor Goodyear *et al.*, *Intersecting transitions among 2S/LGBTQ+ youth experiencing homelessness: A scoping review*, Children and Youth Services Review (Jan. 2024), <https://www.sciencedirect.com/science/article/pii/S0190740923005510>.

transgender Americans further evince the discriminatory purpose underlying the Department's proposed rule.

The Department's efforts appear to have been guided by a report that the Department first issued in May 2025 entitled "Treatment for Pediatric Gender Dysphoria: Review of Evidence and Best Practices,"<sup>12</sup> which medical professionals have denounced.<sup>13</sup> The American Psychological Association (APA) issued a statement decrying the report's "lack of transparency regarding authorship, expertise, and methodology," which the APA concluded "undermines scientific rigor and contradicts standards for evidence-based policymaking."<sup>14</sup>

It is disheartening to witness such targeted health care attacks amid this Administration's devastating cuts to Medicaid and the Affordable Care Act. We face the reality of an estimated 15 million low- and middle-income Americans losing coverage<sup>15</sup> due to cuts in Republicans' so-called "One Big Beautiful Bill Act" and an expected 51,000 preventable deaths per year arising from the spike in the number of uninsured Americans.<sup>16</sup> The trans and gender-diverse communities who face significantly higher unemployment rates<sup>17</sup> and lower wages will be especially vulnerable.<sup>18</sup> The Administration's actions stand in stark contrast to the supposed promise to "Make America Healthy Again."

We are gravely concerned that this proposed rule, if finalized, will not only invite discrimination against people with gender dysphoria, but will also set a precedent for additional exclusionary regulations and practices to take root—targeting other members of the disability community and the broader populace. Despite claims that this proposed revision will provide "regulatory clarity," it is inherently exclusionary and a poorly disguised effort to codify and permit discrimination. Excluding gender dysphoria from discrimination protection not only lacks a basis in the law, but it is also immoral and unjust, and confirms this Administration's belief that certain groups of individuals with a disability are less deserving of protection than others.

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<sup>12</sup> *Gender Dysphoria Report*, OASH, U.S. Dep't of Health and Human Services (Nov. 2025), <https://opa.hhs.gov/gender-dysphoria-report>.

<sup>13</sup> Selena Simmons-Duffin, *Health care for transgender children questioned in 400-page Trump administration report*, NPR (May 2, 2025), <https://www.npr.org/sections/shots-health-news/2025/05/01/nx-s1-5383599/transgender-gender-affirming-care-trump-hhs>.

<sup>14</sup> *APA Statement on Access to Treatment for Transgender, Gender Diverse, and Nonbinary People*, American Psychological Association (May 1, 2025), <https://updates.apaservices.org/statement-on-access-to-treatment-for-transgender-gender-diverse-and-nonbinary-people>.

<sup>15</sup> Elizabeth Zhang and Gideon Lukens, *Medicaid Work Requirements Will Take Away Coverage From Millions: State and Congressional District Estimates*, Center on Budget and Policy Priorities (July 2025), <https://www.cbpp.org/research/health/medicaid-work-requirements-will-take-away-coverage-from-millions-state-and>.

<sup>16</sup> *Proposed changes to Medicaid, other health programs could lead to over 51,000 preventable deaths, researchers warn*, Yale School of Public Health (June 2025), <https://ysph.yale.edu/news-article/proposed-federal-budget-could-lead-to-over-51000-preventable-deaths-researchers-warn-in-letter-to-senate-leaders/>.

<sup>17</sup> *Trans People in the U.S.: Identities, Demographics, and Wellbeing*, KFF (Sept. 2025), <https://www.kff.org/other-health/trans-people-in-the-u-s-identities-demographics-and-wellbeing/>.

<sup>18</sup> *The Wage Gap Among LGBTQ+ Workers in the United States*, Human Rights Campaign, <https://www.hrc.org/resources/the-wage-gap-among-lgbtq-workers-in-the-united-states>.

The cruel irony of the Department's proposal is that, if finalized, these new regulations would leverage anti-discrimination statutes to permit and promote discrimination against those who experience gender dysphoria. All disabilities are entitled to federal protection, regardless of their associations or cause. We urge you to immediately rescind this proposal and commit to supporting discrimination protections for all people with disabilities. We cannot and will not stand for the distortion of our nation's fundamental anti-discrimination laws to be used to harm the very communities that these laws were meant to protect.

Sincerely,

Edward J. Markey

Edward J. Markey  
United States Senator

Bernard Sanders

Bernard Sanders  
United States Senator

Ron Wyden

Ron Wyden  
United States Senator  
Ranking Member, Committee  
on Finance