

What to Know about the CMS Anti-Gender Affirming Care Proposed Rules

As part of their vicious and continuing attacks on transgender people, the Trump Administration recently proposed two new rules that purposefully and cruelly limit access to gender affirming care for young people. This attack is just the latest from this administration that targets families with trans youth and these children's ability to live healthy, happy lives. These rules not only threaten access to gender affirming care, they also threaten states' abilities to provide comprehensive, proven, and necessary care to patients – including patients not using Medicaid or Medicare and patients seeking care other than gender affirming care.

Will these rules ban gender affirming care in Illinois?

NO. While these proposed rules impact the way that people are able to access care, they do not ban or make gender affirming care illegal in Illinois.

Who is proposing these rules?

The proposed rules are the product of the Centers for Medicaid and Medicare Services in the US Department of Health and Human Services. The Centers for Medicare and Medicaid Services (CMS) provide health coverage through Medicare, Medicaid, the Children's Health Insurance Program (CHIP), and the Health Insurance Marketplace.

What impact does CMS have at the state level?

Final rules from CMS impact the way that Medicaid and Medicare funding works at the state level. This includes rules about which hospitals, institutions, and providers are able to care for patients (when they seek reimbursement from Medicaid or Medicare) and how that care is reimbursed or funded.

Could these rules impact care other than gender affirming care?

Yes. The proposed conditions of participation rule would prevent hospitals that participate in the Medicaid and Medicare programs from providing gender affirming care to minors. If they provide this care, they could be denied reimbursement for any care by Medicare and Medicaid. In other words, the federal government is telling hospitals that if they provide gender affirming care they will lose all Medicaid and Medicare funding – funding often key to the survival of the hospital. This rule does not apply to individual providers.

The proposed rule would require:

- Hospitals to comply with limiting gender affirming care to minors to receive federal Medicaid and Medicare funding
- Hospitals to stop providing pharmaceutical or surgical interventions for trans minors seeking gender affirming care that would affirm their gender identity
- If institutions do not stop providing this care, they risk losing the ability to participate in Medicaid and Medicare, which, for many institutions, is essential to providing all care that they offer

What does this look like in action?

Mr. Smith visits Hospital of Illinois for emergency care when he is experiencing chest pains. In addition to being the primary emergency room and health care provider within 50 miles, Hospital of Illinois also provides gender affirming care to minor patients. Hospital of Illinois relies on Medicaid and Medicare reimbursements and funding for all of the health care that it provides – including care in the emergency room. If this rule is finalized, Hospital of Illinois will have to stop providing gender affirming care to minor patients or will lose the funding needed to keep providing all other care – including keeping their emergency room running, where Mr. Smith needs care for his chest pains.

What does the reimbursement rule propose?

The proposed reimbursement rule would prohibit the use of federal Medicaid dollars for gender affirming care for minors and prohibit federal CHIP funding for gender affirming care for patients under 19. This rule does not prevent state funding for Medicaid services to cover gender affirming care for patients under 19.

The proposed rule would require:

- No federal funding through Medicaid or CHIP be used for providing pharmaceutical or surgical interventions for trans minors seeking gender affirming care that would affirm their gender identity

What does this look like in action?

Mrs. Jones and her family have Medicaid for their health insurance. They receive their primary care at Hospital of Illinois, and Hospital of Illinois provides gender affirming care for Mrs. Jones' 16-year-old daughter. If this rule is finalized, Mrs. Jones' daughter will no longer be able to use their health insurance to pay for gender affirming care at Hospital of Illinois or any other health care provider, just because Mrs. Jones and her family have Medicaid insurance.

When do the rules go into effect?

Like most proposed rules at the federal level, these rules have a 60-day comment period. After the comment period ends, HHS releases a final rule that goes into effect based on the language of the final rule.