FAMILIESUSA
THE VOICE FOR HEALTH CARE CONSUMERS

February 17, 2026

The Honorable Mehmet Oz, M.D.
Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244-1850

Submitted electronically via Medicaid.gov

Re: RIN 0938-AV87; CMS-3481-P
Medicare and Medicaid Programs; Hospital Condition of Participation: Prohibiting Sex Rejecting Procedures on Children

Dear Administrator Oz,

Families USA, the longtime national, non-partisan health care consumer advocacy organization, appreciates the opportunity to comment on the proposed *Medicare and Medicaid Programs; Hospital Conditions of Participation: Limiting Participation Based on the Performance of Sex Trait Modification Procedures on Children* (herein "the proposed rule").

For over 40 years, our work has focused on advancing quality, affordable health care for all and ensuring that every family is able to regularly see a health care provider and get medical treatment when needed. **Families USA strongly opposes the proposed rule and urges the Department of Health and Human Services (HHS) and the Centers for Medicare & Medicaid Services (CMS) to withdraw their proposed rule on the grounds that it unjustly utilizes the hospital Medicare and Medicaid Conditions of Participation program to prevent hospitals from providing important and life-saving treatment to youth with gender dysphoria and those identifying as transgender, and if enacted, it would have dramatic repercussions on the U.S. health system as a whole.**

Hospital Conditions of Participation (CoP) directly shape whether consumers can access safe, high quality hospital care in their communities. Hospitals must meet safety standards set in the Conditions of Participation to receive Medicare and Medicaid funding, which is essential to most hospitals' financial viability.[i] The changes this proposed rule aims to make to the CoP regulation will have immediate consequences for patients and families by misusing the regulation to determine what medical services are available, where care can be delivered, and whether medically necessary treatment remains accessible.

At a time when families across the country struggle to afford high and rising health care costs, experience limited and disparate access to care and face persistent gaps in the quality of care delivered, CoP rulemaking should only serve to strengthen hospital accountability and ensure the health care system adequately meets the needs of patients and families.[ii] Since 1966, CoPs have effectively protected patient safety and ensured the quality of care that hospitals provide,[iii] and explicitly do *not* intervene in the practice of medicine or any medical services. The proposed rule departs from this original intention and design by repurposing the CoPs to regulate the practice of medicine and eliminate access to life-saving, evidence-based medical care for children with gender dysphoria and young people who identify as transgender, and will likely hinder access to services for youth who aren't diagnosed with gender dysphoria or identify as transgender, but who need access to gender and hormonal health care.

Gender affirming care is necessary and scientifically supported health care that helps people, including children, live long, happy, and healthy lives.[iv] The proposed rule relies on assertions inconsistent with established scientific evidence and recognized standards of care and if finalized, would cause significant harm to children, families, hospitals, and our nation's health care system. **The proposed rule is not statutorily supported, is wholly unjustified, and should be withdrawn in its entirety.**

The Proposed Rule Misuses the Hospital Conditions of Participation

Since the inception of Medicare, Conditions of Participation have been used to establish formal health and safety standards for all hospitals participating in the Medicare program. CoPs set structural and process measures that hospitals must meet to demonstrate they are maintaining appropriate levels of structural and procedural quality as a condition of receiving federal funding.[v] Measures include things like staff qualifications, patients' rights, hospital governance standards, medical record maintenance, and emergency preparedness.[vi] CoPs set hospital-level safety standards that allow patients to maintain autonomy over their health care decisions and support providers' professional duty to center their patients expressed health needs and best interests when providing care. **CoPs do not regulate the provision of medical services**. This distinction is also made clear in the Social Security Act, which regulates Medicare and Medicaid law, and expressly prohibits federal officials from exercising "any supervision or control over the practice of medicine or the manner in which medical services are provided."[vii]

CMS's prior CoP rulemaking reflects this important distinction. Previously, CMS used CoPs to modernize operational standards, including telemedicine credentialing, reporting requirements, minimum standards for certain services and emergency readiness for obstetrical and maternity care.[viii] Yet, instead of regulating hospital safety or operational standards, the proposed rule disregards the statute's limits and conditions Medicare and Medicaid participation, and the federal funds tied to it, on whether a hospital provides gender affirming care–referred to in the proposed rule as "sex-rejecting procedures"–to minors.

HHS and CMS's use of the CoP in this proposed rule to prevent the delivery of medically necessary care for youth is a deviation from both CoP regulation and its intent, and an overreach by the federal government in the regulation of medical practice. The Administration's proposed use of the CoP regulation miscategorizes gender affirming care for youth as unsafe and nonmedical in order to remove these services from hospitals, neglects the established safety and current use of these treatments and services across a wide range of populations, and threatens the wellbeing of transgender youth. **Families USA opposes the proposed rule and urges HHS and CMS to withdraw the rule due to its misuse of the CoP law, which would set a dangerous precedent by politicizing legal redefinitions of what is and is not considered safe medical care.**

Gender Affirming Care is Safe and Effective Medical Care

In its attempt to disqualify gender affirming care for youth as a medical service, the proposed rule relies heavily on assertions put forth in a November 2025 HHS publication on gender affirming care entitled *Treatment for Pediatric Gender Dysphoria: Review of Evidence and Best Practices* (hereafter, "the Review") to claim that gender affirming care for youth is unsafe and not medically necessary.[ix] The Review, which was written and published within 90 days as directed by Executive Order "Protecting Children from Chemical and Surgical Mutilation,"[x] received extensive criticism for disregarding peer-reviewed, evidence-based research and established clinical guidance supporting the efficacy and safety of gender affirming care.[xi]

Leaders and experts in the fields of pediatric medicine and transgender health, including the American Academy for Pediatrics (AAP) and the American Medical Association (AMA), continue to confirm that gender affirming care, when provided through individualized assessment and shared decision making, is medically necessary and appropriate. AAP has long supported gender affirming care for children, citing that adolescents who identify as transgender have high rates of depression, anxiety, and suicide and that gender affirming care, especially in partnership with a specialized gender-affirmative provider and support from family, can reduce stigma, address mental health issues, and reinforce a child's resiliency.[xii] The AMA officially recognizes that "medical and surgical treatments for gender dysphoria and gender incongruence, as determined by shared decision making between the patient and physician, are medically necessary as outlined by generally accepted standards of medical and surgical practice."[xiii] HHS and CMS's assertion that such care is "unnecessary" and poses "disproportionate risks" is unfounded.

The set of services identified by HHS and CMS within the proposed rule, including puberty blockers and hormone therapies, has been used for decades to safely treat children for a range of hormone dysfunction conditions unrelated to gender dysphoria, such as precocious puberty, hypogonadism and Turner syndrome.[xiv] These hormonal pharmacological treatments are well-established as safe within pediatric medicine. Furthermore, gender affirming surgical

interventions addressed in this proposed rule, such as mastectomies or facial augmentation (e.g., rhinoplasty) surgeries, are widely considered safe, are sometimes determined to be a medical necessity, and are regularly performed to improve quality of life for non-transgender and transgender people alike.[xv,xvi] Additionally, treatments related to genital surgery, which is often more commonly associated by the general public to be gender affirming surgery, carry low complication rates and high patient satisfaction rates.[xvii]

By selectively relying on contested scientific findings while rejecting well-established evidence and medical consensus, CMS relies on an incomplete evidentiary record that does not justify taking away life-saving, necessary medical care from youth. **Families USA strongly opposes the proposed rule and its selective use of data and disregard for evidence-based science and recognized standards of care. We urge HHS and CMS to rescind the proposed rule to protect young people's access to medical care and to avoid setting a dangerous precedent of relying on flawed or incomplete evidence to drive policy changes.**

The Proposed Rule Imposes Cost Burdens on Hospitals and Health Care Systems

The proposed rule, if finalized, would also incur high costs and impose an undue burden on hospitals. Under this proposed rule, hospitals that continue to provide gender affirming care that meets the needs of the patients and communities they serve would face financial ruin as a result of the loss of Medicare and Medicaid funding. Conversely, if hospitals implement restrictions on gender affirming care in accordance with the new rule, they would likely face significant costs due to the establishment of new protocols, training staff, and other administrative labor,[xviii] including needing to transfer or terminate care for current patients and establish new procedures to align care with exemptions in federal rulemaking.

The proposed rule estimates some costs and savings associated with terminating hospital-based gender affirming care for youth, but fails to accurately define the extent of these costs to the health care system or account for administrative and extenuating costs associated with terminating such services. In fact, the reported costs from the proposed rule conflict with peer reviewed data, which indicate nominal costs associated with providing gender affirming care, especially for children. In their proposed rule, HHS and CMS estimate that patients who receive gender affirming hormone therapy incur an average cost to payors of $755 per patient, according to 2019 data. The same data found that for gender affirming surgical procedures, the average cost for payors was approximately $28,367 in 2019. Yet a report on gender care utilization and cost published by the National Institutes of Health found that in 2019, the average transgender patient incurred an annual cost of $1,776 for hormone and surgical care *combined*, which equated to an impact of only $0.06 per month across all commercially insured members.[xix] These costs would be even less significant when just accounting for trans youth. A study of 2019 insurance data conducted by Harvard's T.H. Chan School of Public Health found that *no* gender-affirming surgeries were performed on children under the age of 12 years old.

Among transgender teens aged 15 to 17, only about 2.1 gender-affirming surgeries were performed per 100,000 individuals.[xx]

Additionally, the proposed rule estimates that the cost savings from terminating gender affirming care services would be exactly equal to the costs of transferring these patients to eligible providers. HHS and CMS fail to provide a methodology for how they arrived at these numbers and how the sum of terminating services and transferring patients to providers that can serve them equates to a net zero cost to hospitals. Furthermore, HHS and CMS fail to disclose or estimate the administrative and long-term costs of terminating such care. Reports from similar hospital service closures, such as the closure of rural maternity wards, have found increases in associated health impacts and mortality rates. For example, rural maternity ward closures have forced patients to drive farther for treatment and to forgo regular care, leading to increased emergency department utilization and worse health outcomes.[xxi] The termination of gender affirming services for youth could have similar impacts, as children with gender dysphoria already face disproportionately high rates of depression, self-harm, and suicide – all of which are likely to rise without regular access to care.[xxii] Ultimately, poorer patient outcomes also hurt hospital finances as they treat more serious consequences that result from the lack of regular gender care options.

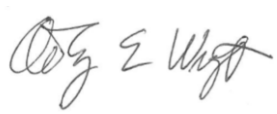
Taken together, the proposed rule fails to fully estimate the costs incurred by both patients and hospital systems and the impact these costs will have on health outcomes for young people who have gender dysphoria. **Families USA strongly opposes the proposed rule and the inevitable harm to hospitals and patients if finalized and urges HHS and CMS to withdraw this proposal.**

Conclusion

The proposed rule would lead to an unprecedented and inappropriate use of CoP regulation. It deviates from decades of peer-reviewed scientific literature, expert opinion and state law, and it fails to accurately reflect the significant costs to both health systems and patients. If finalized, the rule will diminish the wellbeing of children with gender dysphoria and others who need access to gender and hormonal health care and will have lasting impacts on hospital operations. Further, finalizing this proposed rule would set a dangerous precedent that would leave medical decision-making and practice at the whims of a federal Administration and an ever-changing political agenda, rather than being rooted in state medical oversight authority, established standards of care, and evidence-based medicine.

As such, **Families USA opposes the proposed rule and urges HHS and CMS to withdraw the rule to ensure that transgender children's lives are protected, hospitals maintain authority over their medical care and operations, and scientific and medical consensus guides health care decision-making.** If you have further questions about these comments, please contact Christine Nguyen, Senior Policy Analyst at cnguyen@familiesusa.org.

Sincerely,



Anthony Wright
Executive Director

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