

Trump rolls back prohibitions on discrimination against transgender patients

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On Friday, the Trump administration declared that an Obamacare regulation prohibiting discrimination against transgender healthcare patients will be lifted this month, endangering the safety and lives of an already vulnerable demographic.

In a statement released Friday, the Department of Health and Human Services announced that the rule change would be based on a return to the government's sex discrimination interpretation according to a plain definition of the word "sex" as either male or female and as determined by human biology."

This is the latest step the administration has taken to restrict the definition of sex after the Obama administration expanded it to strengthen legal protections for transgender individuals in education, housing and the military.

Health and Human Services officials raised the possibility of a reversal of the Obama administration prohibition in May of last year, three years after President Trump promised during its 2016 election campaign that he would not endanger the legal and political rights of LGBT individuals. HHS lawmakers said that they would enact provisions over Section 1557 of the Affordable Care Act, which "prohibits discrimination based on race, color, national origin, sex, age or disability in certain health programs and activities."

In 2016, a rule was enacted under Section 1557 to interpret a ban on sex discrimination that would include discrimination based on sex stereotypes and gender identity. According to the HHS statement, the provision is necessary since "the 2016 Rule declined to recognize sexual orientation as a protected category under the ACA and HHS will leave that judgment undisturbed." This is the latest step that the administration has taken to reverse the definition of sex after legal protections

were implemented during the Obama administration to prevent discrimination for transgender individuals in education, housing and the military.

Trump administration officials have already taken sweeping actions to curtail the democratic rights of transgender people. On Friday, a regulation was put in place by the government to erase requirements for doctors and insurers to cover medically appropriate treatment for transgender patients.

The Trump administration has chosen this provocative maneuver against transgender healthcare rights at a moment with significant political implications. This month marks "pride month," the annual celebration of the LGBTQ movement taking place through the end of June. This month is also the four-year anniversary of the deadly Pulse nightclub shooting in Orlando, where 49 people were killed at a popular LGBTQ venue by a gunman who targeted the club because of the sexual orientation of the guests.

Moreover, the context of the provision takes place under an extraordinary social, political and economic crisis that is shaking the Trump administration and ruling class to its foundations due to the brewing anger among workers at the homicidal policies the government has taken towards the coronavirus pandemic and the large, multiracial protests against police violence sparked by the killing of George Floyd. Trump's rolling back this protection from discrimination in healthcare is a definite political calculation meant to whip up his right-wing base of Christian fundamentalists, racists and anti-gay bigots.

A central part of this agenda is to narrow the definition of sex as biologically determined at birth and to change not only health care provisions but also civil rights laws based on that conclusion. Limitations for transgender people would include access to school

bathrooms, which would be based on a strict biological category, not gender identity. The military would likewise no longer be open to transgender service members. Civil rights protections would also not be extended in hospital visitations and ambulances.

This initiative was hampered, however, on Monday when the US Supreme Court ruled that a 1964 civil rights law effectively protects gay and transgender workers from workplace discrimination. This places the administration's definition in conflict with how the court views "sex" and forms of discrimination related to it.

While Monday's court ruling zeroed in on employment law, a provision of the Civil Rights Act of 1964, known as Title VII, Supreme Court Justice Neil Gorsuch used language in his opinion that could be applied to numerous areas of law prohibiting discrimination "because of sex." Changes to laws in areas beyond employment, such as health care, may be affected by this court ruling, but that is by no means guaranteed.

In fact, there are loopholes administration lawyers might try to use to differentiate between the language of the employment law and the laws governing health care. The Employment Fairness Project director at Lambda Legal told the *New York Times* this week, "I'm sure they won't just fold up their tents ... they'll make it as hard as they can" to eliminate or restrict discriminatory laws against transgendered people.

The Trump administration over the past several months has issued regulations that have threatened protections for transgender Americans. It rescinded an Obama era guidance that protected transgender students' right to use a bathroom or locker room corresponding with their gender identity. Administration officials have proposed a policy to allow homeless shelters to consider biological sex than gender identity for placement decisions, despite the risk of abuse transgender women face when placed with men.

Numerous LBGTQ rights organizations have come out against policy change for transgender people and some have indicated that they plan to mount a legal challenge to Trump and HHS. The Human Rights Campaign, which is considered one of the largest LBGTQ civil rights organizations in the country with over three million members, condemned the attack on

democratic rights and announced plans to sue the Trump administration for unlawful discrimination.

The American Civil Liberties Union stated that the move by Trump would lead to countless lives being lost, while the National Center for Transgender Equality openly stated the administration is "encouraging discrimination" against transgender people. The group's deputy executive director Rodrigo Heng-Lehtinen said the provision "sends a message that medical providers can turn people away from a COVID-19 test or treatment simply because of who they are" and called the rule change "heartless."

Many of the opponents of the new provision have pointed to the dangerous climate in which this is being enforced against an already vulnerable population. Since March 28th, seven transgender and gender non-conforming people have been violently killed across the country.



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