

January 19, 2026

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

Submitted electronically via regulations.gov

**RE: Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance**

Dear Secretary Kennedy,

Our groups, which represent more than 400,000 clinicians across the country, appreciate the opportunity to comment on the proposed rule on Nondiscrimination on the basis of Disability [published](#) in the Federal Register on December 19, 2025.

This Notice of Proposed Rulemaking (NPRM) clarifies that HHS Office of Civil Rights (OCR) is interpreting Section 504 of the Rehabilitation Act of 1973's statutory exclusion for "gender identity disorders not resulting from physical impairments" to include "gender dysphoria not resulting from a physical impairment." This interpretation means such conditions are excluded from the definition of "disability" under the Rehabilitation Act and the ADA. HHS states that this clarification is needed to address ambiguity created by the preamble of the 2024 [final rule](#) on Section 504, titled "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance", to ensure alignment with statutory language in the Rehabilitation Act.

**We respectfully urge HHS to maintain the 2024 final rule text without modification.** The current regulatory text in the 2024 final rule already incorporates the Rehabilitation Act's statutory exclusion by reference in [29 USC § 705\(20\)\(F\)](#) and is administrable for clinicians and covered entities. Further, in April 2025, HHS issued a [clarification](#) stating the language in the preamble of the 2024 final rule concerning gender dysphoria does not have the force or effect of law and therefore cannot be enforced. Thus, adding new codified language is unnecessary, as preamble language does not alter the enforcement of regulatory text, and risks creating confusion for both patients as well as clinicians and institutions. Clear communication is essential to delivering quality care, and additional regulatory burdens will lead to delays in care and ultimately weaken practical protections and increase disparities in care for HHS funded programs.

Further, we wish to express our opposition to the underlying exclusion itself. Our organizations have detailed policies<sup>i</sup>, <sup>ii</sup>, <sup>iii</sup> opposing patient discrimination in any form, including but not limited to, on the basis of actual or perceived race, color, religion, gender, sexual orientation, gender identity. Federal courts have also weighed in on the issue, including in the context of Section 1557, and have recognized repeatedly over many years that sex discrimination includes discrimination based on gender identity.

Authors of the article, *Perceived discrimination and health: A meta-analytic review*, found that even perceived discrimination can significantly relate to more negative mental health outcomes. Moreover, increased discrimination led to poorer mental health outcomes across races and genders. The effect was shown to be similar with regard to physical health as well. Our organizations stand firmly behind section 1557's gender identity protections and oppose any modifications to the rule that would weaken those protections and thereby jeopardize the health and well-being of vulnerable populations.

Our members provide continuous, comprehensive care across the lifespan and often serve as the first point of contact for individuals seeking health care across the U.S., including help navigating disability related barriers. As physicians who frequently manage complex, interrelated physical and behavioral health needs, changes that narrow protections under Section 504 can have substantial implications for access, care continuity, and ultimately health outcomes. Even subtle shifts in nondiscrimination protections may discourage patients from seeking care, reduce trust in the health system, or create delays in receiving medically necessary services.

For additional questions, please contact David Tully, Vice President, Government Relations, AAFP at [dtully@aafp.org](mailto:dtully@aafp.org).

Sincerely,

American Academy of Family Physicians  
American Academy of Pediatrics  
American College of Obstetricians and Gynecologists  
American College of Physicians  
American Psychiatric Association

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<sup>i</sup> <https://www.psychiatry.org/getattachment/ad686aa4-8ca9-4a92-b007-cf05a50f8e78/Position-2018-Discrimination-Against-Transgender-and-Gender-Diverse-Individuals.pdf>

<sup>ii</sup> <https://www.aafp.org/about/policies/all/discrimination-patient.html#Discrimination,%20Patient>

<sup>iii</sup> <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2021/03/health-care-for-transgender-and-gender-diverse-individuals>