



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Parts 438, 440, 457, and 460

#### Office of the Secretary

#### 45 CFR Parts 80, 84, 92, 147, 155 and 156

### Notice of Vacatur Regarding Certain Provisions of the 2024 Nondiscrimination in Health Programs and Activities Final Rule

**AGENCY:** Office for Civil Rights, Office of the Secretary, Department of Health and Human Services; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

**ACTION:** Notification of court decision.

**SUMMARY:** This is to inform the public that, on October 22, 2025, the United States District Court for the Southern District of Mississippi issued an order in *Tennessee v. Kennedy*, No. 1:24-cv-161-LG-BWR (S.D. Miss. Oct. 22, 2025), vacating portions of the final rule titled “Nondiscrimination in Health Programs and Activities,” published May 6, 2024 (89 FR 37522). Specifically, the court vacated certain provisions of the regulation to the extent they expand Title IX’s definition of sex discrimination to include gender-identity discrimination. Pursuant to the court’s order, the vacated provisions are legally void. The other provisions of the Section 1557 Rule remain in force.

**DATES:** The *Tennessee* court issued its vacatur order on October 22, 2025. As long as the specified provisions of the 2024 Section 1557 Rule remain vacated, OCR and CMS cannot and will not enforce the vacated provisions.

**FOR FURTHER INFORMATION CONTACT:** Steven Mitchell at (202) 240-3110 or (800) 537-7697 (TDD), or by email at [1557@hhs.gov](mailto:1557@hhs.gov).

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS or the Department) is responsible for enforcing Section 1557 of the Affordable Care Act (ACA) (Section 1557).<sup>1</sup> Section 1557 prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in a health program or activity, any part of which is receiving Federal financial assistance. On August 4, 2022, the Department published a Notice of Proposed Rulemaking (NPRM).<sup>2</sup> On May 6, 2024, the Department published a final rule, the Nondiscrimination in Health Programs and Activities Rule (2024 Rule or Rule),<sup>3</sup> which finalized proposals in the NPRM. The 2024 Rule provides, among other things, that discrimination on the basis of sex includes discrimination on the basis of gender identity.<sup>4</sup>

On July 3, 2024, the United States District Court for the Southern District of Mississippi granted a preliminary injunction that prohibited HHS from enforcing, relying on, implementing, or otherwise acting pursuant to the 2024 Rule's provisions concerning gender-identity discrimination.<sup>5</sup> The Court also stayed the Rule's effective date as to specific provisions, insofar as the Rule was intended to extend discrimination on the basis of sex to include discrimination on the basis of gender identity.

On October 22, 2025, the court issued a final judgment vacating the following parts of the 2024 Rule to the extent that they expand Title IX's definition of sex discrimination to include gender-identity discrimination: 42 CFR 438.3(d)(4), 42 CFR 438.206(c)(2), 42 CFR 440.262 (which apply to CHIP managed care through cross-references in §§ 457.1201(d) and 457.1230(a), and CHIP fee-for-service through cross-reference at § 457.495(e)), 42 CFR 460.98(b)(3), 42 CFR 460.112(a), 45 CFR 92.101(a)(2)(iv), 45 CFR 92.206(b)(1)–(4), 45

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<sup>1</sup> 42 U.S.C. § 18116.

<sup>2</sup> See 87 FR 47824.

<sup>3</sup> See 89 FR 37522 (May 6, 2024).

<sup>4</sup> 45 CFR § 92.101(a)(2)(iv).

<sup>5</sup> *Tennessee v. Becerra*, No. 1:24-cv-161-LG-BWR (S.D. Miss. July 3, 2024) Dkt. 30.

CFR 92.207(b)(3)–(5), 45 CFR 92.8(b)(1), 45 CFR 92.10(a)(1)(i), and 45 CFR 92.208.<sup>6</sup> The court also issued plaintiffs the following declaratory judgment: “HHS exceeded its statutory authority when (1) it interpreted Title IX, as incorporated into Section 1557, to prohibit discrimination on the basis of gender identity, and (2) when it implemented Section 1557 regulations concerning gender identity and ‘gender affirming care.’”<sup>7</sup>

As long as the specified provisions of the 2024 Section 1557 Rule remain vacated, those provisions are legally void to the extent that they expand Title IX’s definition of sex discrimination to include gender-identity discrimination. OCR cannot and will not investigate or enforce compliance with, the provisions of the 2024 Rule that were vacated, to the extent that such provisions expanded Title IX’s definition of sex discrimination to include gender-identity discrimination.

## **II. Who/What is covered by this Notification?**

This Notification applies to all covered entities with respect to their compliance with the provisions of the 2024 Section 1557 Rule that were deemed unlawful and vacated by the court.

## **III. Who/What is not covered by this Notification?**

This Notification does not apply to the provisions of the Section 1557 Rule that were not vacated in the Court’s October 22, 2025, final judgment or to the specified provisions to the extent they relate to things other than expanding Title IX’s definition of discrimination to include gender-identity discrimination. The other provisions of the 2024 Rule remain in force.

## **IV. Collection of Information Requirements**

This Notification creates no legal obligations and no legal rights. Because this Notification imposes no information collection requirements, it need not be reviewed by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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<sup>6</sup> *Tennessee v. Kennedy*, No. 1:24-cv-161-LG-BWR (S.D. Miss. Oct. 22, 2025). The court held “universal vacatur is the appropriate remedy” and that HHS exceeded its statutory authority. Dkt. 79 at 21.

<sup>7</sup> Final Judgment, *Tennessee v. Kennedy*, No. 1:24-cv-161-LG-BWR (S.D. Miss. Oct. 22, 2025), Dkt. 80 at 1-2.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Mehmet Oz, having reviewed and approved this document, authorizes Evell Barco Holland, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

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**Paula M. Stannard,**

*Director,*

*Office for Civil Rights.*

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**Evell Barco Holland,**

*Federal Register Liaison,*

*Centers for Medicare & Medicaid Services.*