

# AMA opposes HHS rule removing protection against discrimination

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**What's the news:** While this week's U.S. Supreme Court ruling protects the LGBTQ+ community against discrimination in the workplace, the U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) issued a rule last week that removed protections that had banned health care providers and health plans from discriminating against LGBTQ patients, women and others.

This removal of equal access and health coverage protections will harm populations that are especially vulnerable to discrimination, such as LGBTQ individuals.

The AMA opposed the OCR rule when it was proposed last year and, again, noted its continued opposition when the final version was released last week.

"The federal government should never make it more difficult for individuals to access health care—during a pandemic or any other time," said AMA President Susan Bailey, MD.

Read Proposal would roll back LGBTQ protections. That's an awful idea.

The rule in question concerns Section 1557 of the Affordable Care Act (ACA) that was enacted in 2010. Section 1557 prohibits discrimination against individuals participating in an HHS-funded or administered program or receiving coverage from a health insurance marketplace plan.

The Obama administration issued a rule to implement Section 1557 in May 2016 that defined discrimination "on the basis of sex" to include discrimination based on sexual orientation, gender identity, and termination of a pregnancy—a position long-held by many federal agencies and courts, including the Supreme Court. The 2016 rule also included provisions for OCR to investigate complaints of such discrimination.

The rule took effect that July and has since been the subject of continuous litigation.

An HHS fact sheet on the final rule states that “protections prohibiting discrimination on the basis of race, color, national origin, disability, age, and sex remain in effect.” However, the final rule removes the 2016 rule’s interpretation of discrimination “on the basis of sex” and no longer protects against discrimination based on sexual orientation or gender identity.

The fact sheet notes that, last October, OCR “vacated” the 2016 rule’s provisions protecting against discrimination on the basis of gender identity and pregnancy termination. It also notes that the U.S. Department of Justice (DOJ) argued in court that protection against discrimination on the basis of sexual orientation is not included in Title VII of the Civil Rights Act of 1964. The Supreme Court, in its June 15 ruling, disagreed with the DOJ’s position; however, Section 1557 of the ACA does not incorporate Title VII’s anti-discrimination protections.

The final rule also removes reference to protections for women who have terminated a pregnancy and states that OCR will interpret Section 1557’s prohibition on sex-based discrimination “consistent with Title IX and its implementing regulations.”

Additionally, the final rule removes protections for sexual orientation, gender identity, and sex stereotypes from multiple programs administered by the Centers for Medicare and Medicaid, including Medicaid, ACA plan marketing and benefit design, Qualified Health Plans under the ACA, and Medicare’s Programs for All-inclusive Care of the Elderly (PACE).

Read Court: Workers can’t be fired over gender identity, sexual orientation.

**Why it’s important:** The new HHS rule allows discrimination forbidden by AMA policy.

“Respect for the diversity of patients is a fundamental value of the medical profession and is reflected in long-standing AMA policy opposing discrimination based on race, gender, sexual orientation, gender identity or a woman’s decisions about pregnancy, including termination,” Dr. Bailey said.

The AMA explained its opposition to the rule when it was proposed last year and commented how the “proposal marks the rare occasion in which a federal agency seeks to remove civil rights protections.”

“It legitimizes unequal treatment of patients by not only providers, health care organizations, and insurers, but also by the government itself—and it will harm patients,” AMA CEO and Executive Vice President James L. Madara, MD, wrote in a letter to HHS Sec. Alex Azar. “It deems certain classes of people less worthy of care, compassion, access, and good health than others. Such policy should not be permitted by the U.S. government, let alone proposed by it.”

**To learn more:** Read about how the AMA advocates for the LGBTQ community and consider getting involved in the AMA Advisory Committee on LGBTQ Issues.