

Biden administration bars LGBTQ+ discrimination in health care

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What's the news: The Department of Health and Human Services has effectively overturned a Trump-era rule by announcing that it will interpret and enforce essential Affordable Care Act (ACA) protections on the basis of sex to include discrimination on the basis of gender identity and sexual orientation.

“The Biden administration did the right thing by terminating a short-lived effort to allow discrimination based on gender or sexual orientation when seeking health care,” said AMA President Susan R. Bailey, MD. “As we said in our letter to the previous administration, the interpretation was contrary to the intent and the plain language of the law. It's unfortunate that such an obvious step had to be taken; the AMA welcomes this commonsense understanding of the law.”

“This move is a victory for health equity and ends a dismal chapter in which a federal agency sought to remove civil rights protections,” Dr. Bailey said.

The AMA had called on the Trump administration to withdraw the rule. Learn about other strong, early signs from the Biden administration on LGBTQ+ inclusion and health.

Why it's important: The Trump-era rule misinterpreted the nondiscrimination provisions included in the ACA by drastically limiting such protections despite decades of case law recognizing them.

The rule concerned the ACA's section 1557, which was designed to help people experiencing barriers to care, including LGBTQ+ people. The rule gutted protections against discrimination based on gender identity and sex stereotypes.

In a statement announcing the change, HHS Secretary Xavier Becerra noted research showing that one-quarter of LGBTQ+ people facing discrimination postponed or avoided getting medical care they needed because they feared further discrimination.

“It is the position of the Department of Health and Human Services that everyone—including LGBTQ people—should be able to access health care, free from discrimination or interference, period,” Becerra said.

HHS said the Office for Civil Rights will enforce Section 1557 and Title IX bans on discrimination on the basis of sexual orientation or gender identity in light of the U.S. Supreme Court’s decision in the case of *Bostock v. Clayton County* and court decisions that have followed.

In *Bostock*, the high court ruled 6–3 that the protections against sex discrimination in the workplace contained in Title VII of the 1964 Civil Rights Act apply to employees in the LGBTQ+ community.

That was the result sought by the AMA Litigation Center, American College of Physicians, Medical Association of Georgia, Michigan State Medical Society and other medical, mental health and health care organizations in a joint amicus brief in the Supreme Court filed in 2019.

Learn more: Find out why the raft of state anti-transgender bills are a dangerous intrusion into medicine. In addition, learn about physicians’ support for a congressional bill to end discrimination against LGBTQ+ Americans.

The AMA Advisory Committee on LGBTQ Issues highlights LGBTQ news and topics related to patients and physicians.