



January 19, 2026

Secretary Robert F. Kennedy, Jr.
U.S. Department of Health & Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Submitted via: www.regulations.gov

Re: [RIN Number 0945-AA27](#), “Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance”

Dear Secretary Robert F. Kennedy, Jr.,

The Center for American Progress (CAP) is grateful to have the opportunity to comment on the Department of Health & Human Services (HHS) Notice of Proposed Rulemaking (NPRM) for Nondiscrimination on the Basis of Disability Programs or Activities Receiving Federal Financial Assistance (Docket ID number HHS-OCR-2026-0034), which was released on December 19, 2025. This proposed rule is discriminatory, is inconsistent with historical precedent, and will deny basic civil rights for a number of disabled people.

As an independent, nonpartisan policy institute, CAP is dedicated to improving the lives of all Americans through bold ideas, as well as strong leadership, and concerted action. Due to our continued policy analysis around disability and LGBTQI+ issues, CAP is uniquely qualified to comment on the HHS administrative amendment to declassify gender dysphoria as a possible disability.

Proposed Rule

The proposed rule intends to reverse language within a 2024 HHS final rule ([89 FR 40066](#)) published on May 9, 2024. The 2024 rule explained in the preamble of the Department’s NPRM that HHS would interpret gender dysphoria as a possible disability and thus protected under Section 504 of the Rehabilitation Act. It also emphasized that disability, as defined by the Rehabilitation Act, should be interpreted as broadly as possible within the law to be more inclusive. The 2025 proposed rule equates gender dysphoria to gender identity disorders and thus not protected by Section 504.

Opposing Proposed Rule

CAP firmly opposes this rule as it refuses equal protections for individuals diagnosed with gender dysphoria, a well researched medical condition that can cause “[clinically significant distress or impairment](#)” in social, occupational, or other important areas of

functioning.” There are a number of reasons why this proposed rule runs counter to historical precedent.

The proposed rule conflates gender identity disorder—an outdated term—and gender dysphoria. While the Rehabilitation Act included the term “gender identity disorder,” it [failed to provide](#) a definition for gender identity disorder even though it provides a definition for many other terms. The Diagnostic and Statistical Manual (DSM)—the book medical professionals use to diagnose people—provided a specific definition for [gender identity disorder](#). In 2013, the DSM was updated with new research and the authors decided to replace gender identity disorder with [gender dysphoria](#) due to a change in definition and understanding of what individuals were experiencing.

While it is common to replace legislative language to update it with current terminology, legislators have yet to change gender identity disorder to gender dysphoria in the Rehabilitation Act. They have had ample opportunity to do so and have replaced other terms such as [handicapped](#) through amendments to the Rehabilitation Act. With the definitions of the terms significantly different and no amendments to change the language, HHS should not be arguing that the legislators meant to include gender dysphoria in its definition of gender identity disorder.

Another issue with the proposed rule’s rollback is that the Rehabilitation Act specifically states that gender identity disorder was not considered a disability if it was “[not resulting from physical impairments](#).” However, research on gender dysphoria shows that the condition may be linked to [biological differences](#). Individuals were more likely to be diagnosed with gender dysphoria when they had [abnormal biological processes](#) that affect gonadal development and brain structures similar to the gender which they identify. The correlation between physical impairments and gender dysphoria circumvents the proposed rule’s arguments.

Lastly, over the past decade, courts have increasingly held that the ADA’s, and therefore the Rehabilitation Act’s, exclusion of gender identity disorders does not apply to gender dysphoria. For example, the [Fourth Circuit](#) concluded in [Williams v. Kincaid](#) that “gender identity disorders” do not include gender dysphoria. Furthermore, Congress has made its intent clear: that disability should be construed as broadly as possible and the exclusions listed in the law should be interpreted as [narrowly as possible](#). The proposed rule, much like the exclusionary arguments that failed in *Williams v. Kincaid*, seeks to narrow the definition of disability and thus go against Congress.

Gender Dysphoria is a Disability

The proposed rule will [decrease](#) disabled people’s access to HHS-funded activities and programs by allowing businesses, organizations, and local agencies to discriminate against a subsection of disabled people who already [disproportionately struggle](#) to access health services and resources. It also ignores [medical expertise](#) that define gender dysphoria as a disabling condition.

Individuals with gender dysphoria often have [additional disabilities](#), including mental health and neurological conditions. Research indicates a [relationship](#) between autism and gender dysphoria. A [literature review](#) of the relationship between gender dysphoria

and psychiatric disorders pre and post receiving transgender health care services showed a higher rate of mental health issues like depression and anxiety in individuals with gender dysphoria before treatment.

[CAP research](#) shows that transgender people face significant discrimination in the health care setting. While not all transgender people [experience gender dysphoria](#), CAP's research on the impacts of discrimination on the LGBTQI+ community provides some context on gender dysphoria and discrimination in the health care setting. In a 2024 nationally representative survey, [70 percent](#) of transgender adults identified as disabled and [37 percent](#) of transgender people avoided necessary health care due to fear of discrimination. [Twenty-one percent](#) of transgender adults experienced providers refusing to document their gender dysphoria experiences and [31 percent](#) of disabled transgender adults were misgendered by their health care provider. By allowing discrimination to happen to a small subset of disabled people, HHS is allowing ableist discrimination to fester and weakening civil rights protections for all disabled people.

Conclusion

CAP vehemently opposes proposed rule [RIN Number 0945-AA27](#) because it goes against [historical precedent](#), strips basic civil rights, and ensures unequal protection under the law. This could lead to increased discrimination for disabled people, including those who have—or are perceived to have—gender dysphoria. The intent of the Rehabilitation Act and its amendments is to be as inclusive as possible in order to protect the civil rights of the most vulnerable. This proposed rule does the exact opposite. CAP strongly urges HHS to withdraw this proposed rule and enforce the original final rule to protect all disabled people from discrimination within HHS-funded programs.

For any questions regarding this comment letter, please contact Senior Director of CAP's Disability Justice Initiative Mia Ives-Rublee, at mivesrublee@americanprogress.org. CAP appreciates the opportunity to provide a comment on this proposed rule and thanks HHS for considering our recommendations.

Sincerely,

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