THE LEGAL AID SOCIETY CIVIL

Civil Practice Law Reform Unit
49 Thomas Street
New York, NY 10013
(212) 577-3300
https://www.legalaidnyc.org/

Alan Levine
President

Twyla Carter
Attorney-in-Chief
Chief Executive Officer

Adriene L. Holder
Chief Attorney
Civil Practice

Judith Goldiner
Attorney-in-Charge
Law Reform Unit

December 12, 2025

Re: Medicaid Program; Prohibition on Federal Medicaid Funding for Sex Trait Modification Procedures Furnished to Children and Youth (CMS-2451) RIN 0938-AV73

To Whom It May Concern:

Thank you for the opportunity to meet with you on December 12, 2025.

The Legal Aid Society is the oldest and largest direct legal services provider to low-income people in the United States. In our three distinct practice areas – Criminal Defense, Civil, and Juvenile Rights – we provide comprehensive representation to many of the most marginalized communities in New York City. The Society's LGBTQ+ Law and Policy Unit addresses systemic issues affecting LGBTQ+ individuals across all three of Legal Aid's practice areas by advocating for affirming and equitable treatment. Within our Civil Practice, the Health Law Unit assists our clients in navigating the complex systems that often deny them access to health insurance and to essential health care. We defend and expand patients' rights through direct representation and by advocating for informed policy change. We requested this meeting because we are very concerned with this proposal to restrict access to health care for transgender and gender diverse young people.

Since the rule itself has not been published, we base many of our comments on CMS's April 11, 2025 letter to State Medicaid Directors.[1] In that letter, CMS claims that medical interventions for the treatment of gender dysphoria were "initiated with an under developed body of evidence," that "lack[s] reliable evidence of long-term benefits for minors," and that "these interventions are now known to cause long-term and irreparable harm."[2] However, a review of the literature proves the opposite: a body of reliable evidence demonstrating the safety and benefits of gender affirming care for young people.[3] The safety and benefits of gender affirming care for young people is recognized

[1] S*ee* Letter from Drew Snyder, Deputy Administrator and Director, Ctrs. for Medicare & Medicaid Servs. (April 11, 2025),(hereinafter "CMS letter") https://www.cms.gov/files/document/letter-stm.pdf.
[2] *Id*. at 1.
[3] *See* Tordoff DM, Wanta JW, Collin A, Stepney C, Inwards-Breland DJ, Ahrens K. Mental Health Outcomes in Transgender and Nonbinary Youths Receiving Gender-Affirming Care. JAMA Netw Open. 2022;5(2):e220978. doi:10.1001/jamanetworkopen.2022.0978 (finding "that gender-affirming medical interventions were associated with lower odds of depression and suicidality over 12 months.); Turban, J. L., King, D., Carswell, J. M., & Keuroghlian, A. S. (2020). Pubertal Suppression for Transgender Youth and Risk of Suicidal Ideation. *Pediatrics*, *145*(2), e20191725. https://doi.org/10.1542/peds.2019-1725 ("pubertal suppression for transgender adolescents who want this treatment is associated with favorable mental health outcomes."); Olson, K. R., Raber, G. F., & Gallagher, N. M. (2024). Levels of

by every major medical association in this country.[4] Any prohibition on federal funding is derived from bias and animus against transgender people and not medical evidence.

The CMS letter demonstrates that the agency has failed to accurately assess not only the efficacy of gender affirming care for youth, but also its frequency. The stoptheharm database that CMS has cited as evidence of the prevalence of this care for minors is clearly not an objective resource.[5] More objective research of private insurance claims demonstrates that hormone therapy and puberty blocking medications for people ages 8 to 17 is rare.[6] CMS claims that over 400 children from the ages of 12 to 18 had genital surgery in 2016 through 2020. Even assuming that number is correct, it is very likely that all of those patients were 18 years old, which is the legal age of majority in most states. A study of medical claims data from nearly 23,000,000 insured minors found that gender affirming surgeries among trans youth were rare.[7] This is consistent with the

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Satisfaction and Regret With Gender-Affirming Medical Care in Adolescence. *JAMA pediatrics*, *178*(12), 1354–1361, https://doi.org/10.1001/jamapediatrics.2024.4527; Green, A. E., DeChants, J. P., Price, M. N., & Davis, C. K. (2022). Association of Gender-Affirming Hormone Therapy With Depression, Thoughts of Suicide, and Attempted Suicide Among Transgender and Nonbinary Youth. *The Journal of adolescent health : official publication of the Society for Adolescent Medicine*, *70*(4), 643–649, https://doi.org/10.1016/j.jadohealth.2021.10.036; Sequeira, G. M., Kahn, N. F., Kyweluk, M. A., Kidd, K. M., Asante, P. G., Karrington, B., Bocek, K., Lucas, R., Christakis, D., Pratt, W., & Richardson, L. P. (2025). Desire for Gender-Affirming Medical Care Before Age 18 in Transgender and Nonbinary Young Adults. *LGBT health*, *12*(1), 29–36, https://doi.org/10.1089/lgbt.2023.0436; Olson-Kennedy, J., Wang, L., Wong, C. F., Chen, D., Ehrensaft, D., Hidalgo, M. A., Tishelman, A. C., Chan, Y. M., Garofalo, R., Radix, A. E., & Rosenthal, S. M. (2025). Emotional Health of Transgender Youth 24 Months After Initiating Gender-Affirming Hormone Therapy. *The Journal of adolescent health: official publication of the Society for Adolescent Medicine*, *77*(1), 41–50, https://doi.org/10.1016/j.jadohealth.2024.11.014; Chelliah, P., Lau, M., & Kuper, L. E. (2024). Changes in Gender Dysphoria, Interpersonal Minority Stress, and Mental Health Among Transgender Youth After One Year of Hormone Therapy. The Journal of adolescent health: official publication of the Society for Adolescent Medicine, 74(6), 1106–1111, https://doi.org/10.1016/j.jadohealth.2023.12.024; Matheny Antommaria AH. Decision-Making for Adolescents with Gender Dysphoria. *Perspect Biol Med*. 2024;67(2):244-260. doi:10.1353/pbm.2024.a929021.

[4] American Academy of Child and Adolescent Psychiatry, American Academy of Family Physicians, American Academy of Nursing, American Academy of Pediatrics, American Academy of Physician Assistants, American College Health Association, American College of Nurse-Midwives, American College of Obstetricians and Gynecologists, American College of Physicians, American Counseling Association, American Heart Association, American Medical Association, American Medical Student Association, American Nurses Association, American Osteopathic Association, American Psychiatric Association, American Psychological Association, American Public Health Association, Endocrine Society, Federation of Pediatric Organizations, GLMA: Health Professionals Advancing LGBTQ Equality, National Association of Nurse Practitioners in Women's Health, National Association of Social Workers, Pediatric Endocrine Society, Society for Adolescent Health and Medicine, World Medical Association.

[5] CMS letter at 1.

[6] Landon D. Hughes, Brittany M. Charlton, and Isa Berzansky, Gender-affirming Medications Among Transgender Adolescents in the U.S. (Research Letter), 2018-2022, JAMA Pediatrics E1 (Jan. 6, 2025).

[7] Dannie Dai, Brittany M. Charlton & Elizabeth R. Boskey, Prevalence of Gender-Affirming Surgical Procedures Among Minors and Adults in the US, 7 JAMA Netw. Open e2418814 (2024) ("these findings suggest that concerns around high rate of gender affirming surgery, specifically among TGD minors, may be unwarranted. Low use by TGD people likely reflects adherence to stringent standards of affirming care.").

clinical practice guidelines which recommend delaying gender-affirming genital surgery until 18 years or older.[8]

The CMS letter cites changes in European criteria that "reserve hormonal interventions only for exceptional cases."[9] First, CMS ignores the overwhelming support of this care by every relevant professional association, and the clinical recommendations of several other countries. Germany recently published their guidelines, which endorse puberty blockers and hormones when necessary.[10] Australia[11] and New Zealand[12] do not restrict this coverage. Second, prohibiting Medicaid coverage for medical treatments would preclude hormonal interventions in *all* cases, including "exceptional cases," regardless of the severity of a patient's needs. Banning Medicaid coverage bans care entirely for people who do not have the financial ability to seek care on a private market.

CMS claims a lack of reliable evidence of long-term benefits for minors, but HHS has canceled funding to research on this topic, indicating that the state of the current evidence about gender affirming care is not the motivating factor for the proposed rule. For example, HHS recently terminated a grant for a longitudinal study of a cohort of transgender youth who receive medical interventions.[13] HHS did not renew funding for a study of the thrombosis risk in transgender adolescents and young adults starting gender affirming hormone therapy.[14] HHS also did not renew funding for a study of transgender and gender diverse youth that would have assessed risks of using puberty blockers for an extended period of time.[15]

CMS cites European policies that "recommend exploratory psychotherapy as a first line of treatment."[16] However, CMS has also cut funding for research on mental health treatment for transgender teens including a study that examined ways of addressing mental illness in transgender people, including teens who report sharply higher rates of persistent sadness and suicide attempts. CMS also terminated funding for a clinical trial looking at how online mentoring might reduce depression and self-harm among transgender teens.[17]

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[8] *See* World Professional Association for Transgender Health (WPATH) Standards of Care for the Health of Transgender and Gender Diverse People, Version 8, International Journal of Transgender Health, 23:sup1, S1-S259, DOI: 10.1080/26895269.2022.2100644 at S66.
[9] CMS letter at 1.
[10] German Society for Child and Adolescent Psychiatry, Psychosomatics and Psychotherapy (DGKJP, 2025): S2k guideline *Gender incongruence and gender dysphoria in childhood and adolescence: diagnosis and treatment*. AWMF register no. 028-014. version 1.0, 2025. https://register.awmf.org/de/leitlinien/detail/028-014 (accessed on DD.MM.YY).
[11] Telfer, M.M., Tollit, M.A., Pace, C.C., & Pang, D.C. *Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents Version 1.3.* Melbourne: The Royal Children's Hospital; 2020.
[12] NZMJ 14 December 2018, Vol 131 No 1487 https://www.nzma.org.nz/journal/read-the-journal/all-issues/2010-2019/2018/vol-131-no-148714-december-2018/7771.
[13] Project number: 5R01HD082554-09.
[14] Project number: 5901HL161153-03.
[15] Project number: 5K23HD107265-02.
[16] CMS letter at 1.
[17] Benjamin Mueller, *Trump Administration Slashes Research Into L.G.B.T.Q. Health,* N.Y. Times (May 4, 2025), https://www.nytimes.com/2025/05/04/health/trump-administration-slashes-research-into-lgbtq-health.html.

CMS is required to examine whether the existing regulations or other law have created or contributed to the problem that a new regulation is intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively. As described above, CMS has failed to identify the issue that the proposed change is designed to correct. To the extent that CMS's concern is that gender affirming care is not being provided in a manner consistent with the best interests of recipients, that is already required by the law. For example, section 1902(a)(19) of the Social Security Act requires states to provide safeguards as may be necessary to ensure covered care and services are provided in a manner consistent with the best interests of recipients. Additionally, states are already required to develop a drug utilization review program. Drug utilization review boards ensure that covered drugs are appropriate and medically necessary. The CMS letter references the prohibition of federal funding for coverage to services "whose purpose is to permanently render an individual incapable of reproducing" and notes that federal regulations specifically prohibit "procedures [to be] performed on a person under age 21."[18] These prohibitions apply only where the primary purpose of the surgery is sterilization, not where sterilization was incidental to surgery.

CMS is required to consider, to the extent reasonable, the degree and nature of the risks posed by various activities within its jurisdiction. Here, CMS has failed to consider the dire risks to prohibiting federal Medicaid funding for gender affirming care for minors. Prohibiting federal funding will result in a total ban on this care in many places across the country. Studies have shown that left untreated, gender dysphoria can substantially affect quality of life, including causing "symptoms of depression and anxiety, substance use disorders, a negative sense of wellbeing and poor self-esteem, and an increased risk of self-harm and suicidality."[19] Following the initial Executive Orders providers reported a spike in mental health crises related to anticipated interruptions in care.[20] CMS has also failed to assess the specific risk to prohibiting coverage and care for people who are age 18. If providers cease to provide care for people who are age 18, they will be running afoul to the age-of-majority and consent laws of many states.

CMS is required to assess both the costs and the benefits of the intended regulation. The costs vastly outweigh the benefits of the intended regulation. The financial cost of providing gender affirming care for young people is very low.[21] Medical intervention for transgender and gender

[18] *Id.*
[19] Garima Garg et al, *Gender Dysphoria*, StatPearls (July 11,2023), https://www.ncbi.nlm.nih.gov/books/NBK532313/; See also Ashlie Owen-Smith, et al., Association between Gender Confirmation Treatments and Perceived Gender Congruence, Body Image Satisfaction, and Mental Health in a Cohort of Transgender Individuals, 15 J. Sexual Med. 4, 591-600 (Apr. 2018); Michelle Marie Johns et al., Protective Factors Among Transgender and Gender Variant Youth: A Systematic Review by Socioecological Level, 39 J Primary Prevention 3, 263-301 (Jun. 2018).
[20] Charlotte Rene Woods, *VCU Health resumes gender-affirming care – but only for some*, Virginia Mercury (Feb. 25, 2025), https://virginiamercury.com/briefs/vcu-health-resumes-gender-affirming-care-but-only-for-some/ ("'I know many of us are anticipating a large spike in children who are in acute mental health crises,' wrote Dr. Frank Petruzella, division chief of emergency pediatric medicine, in an email sent shortly after Trump's order.").
[21] Baker, K., & Restar, A. (2022). Utilization and Costs of Gender-Affirming Care in a Commercially Insured Transgender Population. *The Journal of law, medicine & ethics: a journal of the American Society of Law, Medicine & Ethics*, *50*(3), 456–470, https://doi.org/10.1017/jme.2022.87.

diverse young people is rare.[22] Most surgeries for the treatment of gender dysphoria, which are more expensive, are already not recommended for people under 18. In addition, a lack of access to gender affirming care creates collateral financial consequences. For example, the costs of treating the depression, substance use, and suicide that can result from lack of access to gender affirming care outweighs the costs of providing that care.[23] When gender dysphoria is not adequately addressed, it can cause transgender people to avoid seeking any necessary healthcare, for instance routine gynecological care or even cancer treatment.[24] The targeting of gender affirming care for youth is already having a huge impact on the well-being of transgender youth, who report increased depression and suicidal ideation. It is also leading to relocation, which carries its own risks and costs.

Lastly, it is imperative that OIRA ensure that CMS complete and publish a regulatory impact analysis to accompany the 2025 proposed rule. CMS must fully study:

- The impact of denying gender affirming care on young people seeking such care and the impact on their families
- An analysis of the economic impact this rule will have on states
- An assessment of the impact the proposed rule will have on providers who cease to provide care

Please do not hesitate to contact me if you have any questions. I can be reached via email at BRGarcia@legal-aid.org or by phone at (212) 577-3582.

Sincerely,

Belkys Garcia
Staff Attorney

[22] *See supra* notes 6 and 7.
[23] *See* Padula WV, Heru S., Campbell JD. Societal implications of health insurance coverage for medically necessary services in the U.S. transgender population: a cost-effectiveness analysis. Gen Intern. Med. 2016; 31:394-401.
[24] See Rishub K Das & Brian C Drolet, The True Cost of Antitransgender Legislation, Transgender Health, 2023 Oct. 4; 8(5): 405-407.