

April 11, 2025

U.S. Department of Health and Human Services (HHS)

Centers for Medicare and Medicaid Services

Re: 45 CFR Parts 147, 155, and 156 [CMS-9884-P] RIN 0938-AV61 Patient Protection and Affordable Care Act; Marketplace Integrity and Affordability Proposed Rule

Submitted to: <https://www.regulations.gov>

Dear colleagues,

Fenway Health appreciates the opportunity to submit the following comment regarding CMS's draft Proposed Rule regarding the coverage of gender affirming care (GAC) as Essential Health Benefits under the Affordable Care Act. Fenway Health strongly opposes the Centers for Medicare and Medicaid Services proposed rule (CMS-9884-P), which would eliminate coverage of gender affirming care from the Essential Health Benefits (EHB) under the Affordable Care Act (ACA). This proposed rule is discriminatory, medically unsound, and threatens the health, safety, and human dignity of transgender and gender diverse people nationwide

Fenway Health is a federally qualified health center and Ryan White Part C HIV clinic in Boston, Massachusetts. We provide care to about 35,000 patients every year, with a mission to advocate for and deliver equitable and accessible health care centering LGBTQIA+ people, BIPOC individuals, and other underserved communities. For many years we have worked to ensure our patients receive care rooted in ethical, rigorous, and peer-reviewed science, and that our services are guided by the needs of the lived experiences of the communities we serve. Fenway also provides HIV and STI prevention, screening, care, and research, with our work impacting patients locally, and also guiding innovation for prevention and care nationally and internationally.

Fenway Health writes in firm opposition to the proposed rule, CMS-9884-P, which seeks to exclude coverage of medically necessary, evidence-based care for transgender and gender diverse individuals. Allowing the Affordable Care Act (ACA) Health Care Marketplace Plans to remove gender affirming care from essential health benefits (EHB) threatens to exacerbate health disparities and anti-transgender discrimination in health care, preventing individuals' right to access medically necessary health care. The proposed rule calls gender affirming care "coverage for sex-trait modification," although it does not define this term. Starting in plan year 2026, the proposed rule would prohibit insurance plans from covering gender affirming care as Essential Health Benefits, which would not only erode access to medical care for many Americans, but would also undermine significant progress made at the state and federal levels to advance health equity and reduce health disparities in this country.

The Affordable Care Act requires insurance plans to cover Essential Health Benefits that are “equal to the scope of benefits provided under a typical employer plan.” Because only a small percentage of the U.S. population is transgender, only a small percentage of Americans accessed gender affirming care through these plans in Plan Years 2022 and 2023 (0.11%), as CMS notes in its proposed rule. However, coverage of gender affirming care by insurance plans is widespread and typical. In fact, most large employers cover gender affirming care, according to the Human Rights Campaign: 72 percent of Fortune 500 companies, and 91% of companies participating in HRC’s Corporate Equality Index, offer transgender-inclusive health insurance coverage.<sup>1</sup> Some 24 states and the District of Columbia prohibit transgender health care exclusions.<sup>2</sup>

**Gender affirming care is medically necessary care.** It can improve health outcomes for transgender patients experiencing gender dysphoria. According to the American Psychiatric Association’s *Diagnostic & Statistical Manual of Mental Disorders*, “gender dysphoria” is the diagnostic term for “clinically significant distress” experienced by some transgender people resulting from the incongruence between their gender identity and the sex assigned at birth. To be diagnosed with gender dysphoria, the incongruence between one’s sex assigned at birth and one’s gender identity must persist for at least six months and be accompanied by clinically significant distress or impairment in occupational, social, or other important areas of functioning.<sup>3</sup> The inability of people diagnosed with gender dysphoria to live consistent with their gender identity can significantly undermine their overall health and wellbeing. Delay or denial of medically necessary treatment for gender dysphoria is likely to create or exacerbate other medical issues, such as anxiety, depression, and suicidality. Transgender people who do not receive medically necessary gender affirming care face increased rates of victimization, substance abuse, depression, anxiety, and suicidality.<sup>4</sup> According to the American Medical Association, “[e]very major medical association in the United States recognizes the medical necessity of transition-related care for improving the physical and mental health of transgender people.”<sup>5</sup>

A 2022 study found that transgender people who accessed hormone therapy in adolescence or adulthood had lower risk of past-year suicidal ideation when compared with those desiring but never accessing gender affirming hormones.<sup>6</sup> The earlier hormone therapy was started the greater the reduction in suicidal ideation.

### **Gender affirming care is cost effective.**

A small percentage of the US population identifies as transgender and not all transgender individuals seek medical transition-related services. When accessed, these services—hormone therapy and surgery—are

---

<sup>1</sup> Human Rights Campaign, *Healthcare Equality Index 2024*. <https://www.hrc.org/resources/healthcare-equality-index>

<sup>2</sup> Movement Advancement Project, “Healthcare Laws and Policies.” [https://www.lgbtmap.org/equality-maps/healthcare\\_laws\\_and\\_policies](https://www.lgbtmap.org/equality-maps/healthcare_laws_and_policies)

<sup>3</sup> American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, Washington, DC: APA, 5th edition, 2013, pp. 452-453.

<sup>4</sup> Restar AJ, Layland EK, Davis B, Thompson H, Streed C. The Public Health Crisis State of Transgender Health Care and Policy. *Am J Public Health*. 2024 Feb;114(2):161-163. doi: 10.2105/AJPH.2023.307523. PMID: 38335490; PMCID: PMC10862226.

<sup>5</sup> UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA EVANSVILLE DIVISION AUTUMN CORDELLIONÉ, also known as JONATHAN RICHARDSON, Plaintiff, v. COMMISSIONER, INDIANA DEPARTMENT OF CORRECTION, in her official capacity. Defendant. Case No. 3:23-cv-135-RLY-CSW STATEMENT OF INTEREST OF THE UNITED STATES. <https://www.justice.gov/crt/media/1339316/dl>

<sup>6</sup> Turban JL, King D, Kobe J, Reisner SL, Keuroghlian AS. Access to gender-affirming hormones during adolescence and mental health outcomes among transgender adults. *PLoS One*. 2022 Jan 12;17(1):e0261039. doi: 10.1371/journal.pone.0261039. Erratum in: *PLoS One*. 2023 Jun 12;18(6):e0287283. doi: 10.1371/journal.pone.0287283. PMID: 35020719; PMCID: PMC8754307.

relatively cheap, extremely effective, and are shown to decrease negative long-term health outcomes (depression, substance use, HIV, cardiovascular disease), which are expensive and of an on-going nature. Since negative health outcomes are associated with denial of services, it is actually in the Federal government's best interest to cover gender affirming health benefits.

In a 2016 study, researchers found that removal of transgender exclusions is affordable and efficient:

Compared to no health benefits for transgender patients (\$23,619; 6.49 QALYs [Quality Adjusted Life Years]), insurance coverage for medically necessary services came at a greater cost and effectiveness (\$31,816; 7.37 QALYs), with an incremental cost-effectiveness ratio (ICER) of \$9314/QALY. **The budget impact of this coverage is approximately \$0.016 per member per month.** Although the cost for transitions is \$10,000–22,000 and the cost of provider coverage is \$2175/year, these additional expenses hold good value for reducing the risk of negative endpoints —HIV, depression, suicidality, and drug abuse. Results were robust to uncertainty. The probabilistic sensitivity analysis showed that provider coverage was cost-effective in 85% of simulations.<sup>7</sup>

A more recent study found that the per patient cost of gender affirming care remains low even as access to insurance coverage for such care has grown. In 2019, each covered transgender person incurred an average of \$1,776 in costs for gender-affirming hormone therapy and surgeries combined. Considered on a per-member basis across the entire commercially insured population, the budget impact of gender-affirming care in 2019 was \$0.73 per year, or \$0.06 per member per month.<sup>8</sup>

The societal and economic costs of denying gender affirming care far outweigh the minimal investment required to provide it.

**The evidence is clear:** science shows that access to gender affirming care improves mental health outcomes and overall functionality and participation in society, reduces long-term negative health complications, and is cheap on a population level. This care is evidence-based, medically necessary, and endorsed by every major medical society in the United States. Removing gender affirming care from Essential Health Benefits coverage will worsen the health and well-being of transgender people, and will also increase health disparities affecting this population. Ultimately this will cost our health system more in disease care and cost our economy more due to lost productivity. Furthermore, the proposed rule would also eliminate ACA Marketplace insurance eligibility for Deferred Action for Childhood Arrivals (DACA) recipients. We oppose this proposed change. It is cruel and would exacerbate racial and ethnic health disparities, which are real and which we as a society should try to reduce, not cause to worsen.

Fenway Health urges CMS to reject CMS-9884-P and maintain the federal protections to ensure comprehensive, nondiscriminatory healthcare coverage for all Americans. Transgender and gender diverse

<sup>7</sup> 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. *J Gen Intern Med*. 2016 Apr;31(4):394-401. doi: 10.1007/s11606-015-3529-6. Epub 2015 Oct 19. PMID: 26481647; PMCID: PMC4803686.

<sup>8</sup> Baker K, Restar A. Utilization and Costs of Gender-Affirming Care in a Commercially Insured Transgender Population. *Journal of Law, Medicine & Ethics*. 2022;50(3):456-470. doi:10.1017/jme.2022.87

people deserve equitable access to healthcare marketplace coverage. The proposed rule is counterproductive and places lives at unnecessary risk.

Should you have any questions, please contact Dallas Ducar, Executive Vice President of Donor Engagement and External Relations, at [dducar@fenwayhealth.org](mailto:dducar@fenwayhealth.org). Thank you for considering this comment.

Sincerely,

Jordina Shanks

Chief Executive Officer

Dallas Ducar

Executive VP for Donor Engagement and External Relations

Kenneth H. Mayer, MD

Medical Research Director, Fenway Health

Co-Chair, The Fenway Institute

Jennifer Potter, MD

Co-Chair and LGBT Population Health Program Director, The Fenway Institute

Will Giordano-Perez, MD, MBA

Chief Medical Officer

Julie Thompson, PA-C

Interim Associate Medical Director

Ralph Veters, MD, MPH

Site Director, Sidney Borum Jr. Health Program

Taimur Khan, MD

Associate Medical Research Director, The Fenway Institute

Steph DeNormand, MA

Trans Health Program Manager