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January 20, 2026

VIA ELECTRONIC SUBMISSION

Department of Health and Human Services
Office for Civil Rights
Attention: Disability NPRM
RIN 0945-AA27
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW
Washington, DC 20201

Re: RIN 0945-AA27: Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance

The Medicare Rights Center (Medicare Rights) appreciates this opportunity to comment on the **Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance** notice of proposed rulemaking (NPRM). Medicare Rights is a national, nonprofit organization that works to ensure access to affordable health care for older adults and people with disabilities through counseling and advocacy, educational programs, and public policy initiatives. Each year, Medicare Rights provides services and resources to over three million people with Medicare, family caregivers, and professionals.

Medicare Rights strongly opposes the proposed change and the NPRM's disregard for the lives, safety, and access to care of people diagnosed with gender dysphoria. We urge the agency to withdraw this proposal in its entirety.

Background

Section 504 of the Rehabilitation Act bars discrimination on the basis of disability in federally assisted and federally conducted programs and activities¹ and explicitly adopts² the definition of "disability" from

¹ Pub. L. No. 93-112.

² 29 U.S.C. 705(9)(B).

the Americans with Disabilities Act (ADA) of 1990.³ The ADA's definition of disability excludes "gender identity disorders not resulting from physical impairments."⁴

In 2022, in *Williams v. Kincaid*, the 4th Circuit found 2-1 that gender dysphoria, as clinically classified, is distinct from the definition of "gender identity disorders not resulting from physical impairments" and is therefore not barred by the ADA's restrictions.⁵ The Supreme Court declined to consider the case in 2023, leaving the appellate court's decision in place.

In 2024, the Biden administration flagged that gender dysphoria might be considered a disability according to *Williams*, but did not attempt to codify this into regulation.⁶

Proposed Rule

This NPRM proposes to codify an assertion that "gender identity disorders not resulting from physical impairments" encompasses "gender dysphoria not resulting from physical impairments," because, the agency asserts, "the statutory text states as much."⁷ While the NPRM's text identifies *Williams* as "the only appellate review of this issue on the merits under the ADA and the Rehabilitation Act,"⁸ it downplays the decision through comments that it is only binding on some states and that the Supreme Court's denial of cert does not prove the higher court agrees with *Williams*.⁹ Then the NPRM attacks the *Williams* decision, claiming it raises "serious concerns" about statutory interpretation.¹⁰

Thus the NPRM fails to consider the conflict between the proposed rule and the *Williams* decision or the impact of such a conflict on the states where *Williams* controls. But an agency cannot simply ignore inconvenient court decisions and statutory interpretations.

Because of these factors and the potential for greater harm to people with gender dysphoria, we strongly oppose this proposed rule. We urge the Office for Civil Rights to abandon this arbitrary and harmful proposal in its entirety.

Conclusion

Thank you again for the opportunity to provide comment. For additional information, please contact Lindsey Copeland, Federal Policy Director at LCopeland@medicarerights.org or 202-637-0961 and Julie Carter, Counsel for Federal Policy at JCarter@medicarerights.org or 202-637-0962.

³ Pub. L. No. 101-336.

⁴ 42 U.S.C. 12211(b)(1).

⁵ *Williams v. Kincaid*, 45 F.4th 759 (4th Cir. 2022), cert. denied, 600 U.S. (2023).

⁶ Proposed rule: 88 Fed. Reg. 63392, final rule: 89 Fed. Reg. 40066, clarification of final rule: 90 Fed. Reg. 15412.

⁷ 90 Fed. Reg. 59478, 59482.

⁸ 90 Fed. Reg. 59478, 59479.

⁹ 90 Fed. Reg. 59478, 59480.

¹⁰ 90 Fed. Reg. 59478, 59481.

Sincerely,

Fred Riccardi

Fred Riccardi
President
Medicare Rights Center