



January 20, 2026

U.S. 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  
For Electronic Submission

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

The New York City Department of Health and Mental Hygiene (“DOHMH”) and the New York City Commission on Human Rights (“CCHR”) submit this comment in opposition to the above-referenced proposed rule by the U.S. Department of Health and Human Services (“HHS”) Office of Civil Rights (“OCR”) titled “Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance” (“Proposed Rule”). The Proposed Rule amends regulations implementing Section 504 of the Rehabilitation Act of 1973 (“Rehabilitation Act”), which prohibits disability discrimination in programs or activities receiving federal financial assistance. The Proposed Rule purportedly clarifies the definitions of “individual with a disability” and “disability” in the Rehabilitation Act by expressly providing that the exclusion from such defined terms for “gender identity disorders not resulting from physical impairments” encompasses “gender dysphoria not resulting from physical impairments.” The Proposed Rule is contrary to law and of a piece with the federal administration’s ongoing efforts to harm persons based on their gender identity, including the vibrant and growing transgender, gender non-conforming, and nonbinary community that calls New York City home. HHS OCR should withdraw the Proposed Rule in full.

**I. Background on Proposed Rule**

Section 504 of the Rehabilitation Act prohibits disability discrimination in programs or activities receiving federal financial assistance. *See* 29 U.S.C. § 794. At adoption, Congress found that

“individuals with disabilities constitute one of the most disadvantaged groups in society” and that the policy of the United States is to carry out programs or activities receiving federal financial assistance “consistent with the principles of . . . inclusion, integration, and full participation” of individuals with disabilities. 29 U.S.C. § 701.

The American with Disabilities Act of 1990 (“ADA”) also prohibits disability discrimination, namely, by employers and public entities and in public accommodations. *See generally* 42 U.S.C. § 12101 *et seq.* In enacting the ADA, Congress found that, “historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious pervasive social problem” and that the ADA’s purpose is “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C. § 12101(a)(2), (b)(1).

The definitions of “disability” and “individual with a disability” under the Rehabilitation Act and the ADA (collectively, the “Acts”) are aligned. “Disability” is broadly defined as a “physical or mental impairment that substantially limits one or more major life activities.” 42 U.S.C. § 12102; *see also* 29 U.S.C. § 705(9) (“The term ‘disability’ means . . . for purposes of [section 504], the meaning given it in section 12102 of Title 42.”). The Acts also contain exclusions from these defined terms, including for “gender identity disorders not resulting from physical impairments.” 29 U.S.C. § 705(20)(F)(i); 42 U.S.C. § 12211(b)(1) (the “GID Exclusion”).

In March 2022, due to “[dangerous a]ttempts to restrict, challenge, or falsely characterize” gender affirming care for minors as “abuse,” HHS OCR issued guidance stating, *inter alia*, that “[g]ender dysphoria may, in some cases, qualify as a disability” under the Acts and that “[r]estrictions that prevent otherwise qualified individuals from receiving medically necessary care on the basis of their gender dysphoria, gender dysphoria diagnosis, or perception of gender dysphoria may” amount to unlawful discrimination (“March 2022 Guidance”).<sup>1</sup>

In September 2023, HHS commenced rulemaking to update its Section 504 regulations (codified at 45 C.F.R. Part 84), including to add the GID Exclusion. 88 Fed. Reg. 63392. In the preamble to the proposed rule, HHS reiterated its position that gender dysphoria may qualify as a disability under the Acts, citing a decision by the Fourth Circuit Court of Appeals in *Williams v. Kincaid*, 45 F.4th 759 (4th Cir. 2022). *Id.* at 63464. HHS stated:

The court noted that the term “gender dysphoria,” was not used in section 504 or the ADA nor in the then current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM). In 2013, the phrase was changed in the DSM from “gender identity disorder” to “gender dysphoria,” a revision that the court said was not just semantic but reflected a shift in medical understanding. Under the court’s reasoning, gender dysphoria is not included in the

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<sup>1</sup> HHS, HHS Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy (March 2, 2022) (removed from HHS website).

scope of “gender identity disorder” and is thus not excluded from coverage under the ADA or section 504. . . .

Recognizing “Congress’ express instruction that courts construe the ADA in favor of maximum protection for those with disabilities,” the court said that it saw “no legitimate reason why Congress would intend to exclude from the ADA’s protections transgender people who suffer from gender dysphoria.” The Department agrees that restrictions that prevent, limit, or interfere with otherwise qualified individuals’ access to care due to their gender dysphoria, gender dysphoria diagnosis, or perception of gender dysphoria may violate section 504.

*Id.* (internal citations omitted).

HHS promulgated the final rule updating its Section 504 Regulations in May 2024 (“2024 Section 504 Regulations”). 89 Fed. Reg. 40066. In doing so, HHS responded to comments on gender dysphoria, reiterating the evolution in medical understanding of gender-based conditions. *Id.* at 40069. Relatedly, HHS noted that it did not attempt to set forth a comprehensive list of impairments under the Rehabilitation Act and referred to the preamble to the U.S. Department of Justice’s ADA regulations, which expressed the difficulty in ensuring the comprehensiveness of such a list, “particularly in light of the fact that other conditions or disorders may be identified in the future.” *Id.* at 40068. HHS reasoned that this approach is consistent with congressional intent and “has the added benefit of ensuring a consistent interpretation of this important statutory term that is shared by both section 504 and both titles II and III of the ADA and avoids any confusion that might result from having related Federal disability rights regulations with different language for the same term.” *Id.*

In January 2025, President Trump issued Executive Order 14168, “Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.”<sup>2</sup> Executive Order 14168 directed federal agencies to enforce laws governing sex-based rights to protect men and women as biologically distinct sexes and to remove all policies and regulations promoting “gender ideology,” which “replaces the biological category of sex with an ever-shifting concept of self-assessed gender identity” and thereby “permit[s] the false claim that males can identify as and thus become women and vice versa.” 90 Fed. Reg. 8615. Consistent with these policy goals, President Trump also issued Executive Order 14187, “Protecting Children From Chemical and Surgical Mutilation” to cut federal support for gender-affirming care for

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<sup>2</sup> E.O. 14168, 90 Fed. Reg. 8615, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government>.

minors and thus stop “perpetuating a radical, false claim that [adults] can somehow change a child’s sex.”<sup>3</sup>

In February 2025, citing Executive Order 14187, HHS OCR rescinded the March 2022 Guidance.<sup>4</sup> And in April 2025, HHS published a “document” in the Federal Register to “clarify” the legal effect of language in the preamble of the 2024 Section 504 Regulations concerning gender dysphoria. 90 Fed. Reg. 15412. Specifically, HHS asserted that “where, as here, the language included in the regulatory text itself is clear, statements made in the preamble to a final rule published in the Federal Register, lack the force and effect of law and are not enforceable.” *Id.*

In December 2025, again citing Executive Order 14187, HHS announced two proposed rules that seek to curtail the provision of gender affirming care (or “sex-rejecting procedures,” in HHS parlance) to minors by placing restrictions on hospitals that participate in Medicare and Medicaid programs and on the use of HHS funding for such care.<sup>5</sup> Simultaneously, HHS announced that it would release the Proposed Rule to “reassure recipients of HHS funding that policies preventing or limiting sex-rejecting procedures do not violate Section 504’s disability nondiscrimination requirements.”<sup>6</sup> HHS stated in the preamble that the Proposed Rule was necessary to “resolve ambiguity” in the preamble to the 2024 Section 504 Rule and to “ensure compliance with the best reading of the plain language of the governing statute.” 90 Fed. Reg. 59478.

## **II. The Proposed Rule is Contrary to Law**

Agency action that is “not in accordance with law” or in excess of statutory authority must be set aside. 5 U.S.C. § 706(2)(A), (C). In the Proposed Rule, HHS seeks to interpret the GID Exclusion to include a separate and distinct medical condition, gender dysphoria. But courts, not agencies, determine the meaning of statutes and decide whether agency action falls within the bounds of statutory authority. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 391-96 (2024). Because the Proposed Rule’s interpretation of the GID Exclusion is incompatible with the underlying statute

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<sup>3</sup> E.O. 14187, Protecting Children From Chemical and Surgical Mutilation (Jan. 28, 2025), <https://www.federalregister.gov/documents/2025/02/03/2025-02194/protecting-children-from-chemical-and-surgical-mutilation>; President Trump is Delivering on His Commitment to Protect our Kids, THE WHITE HOUSE (Feb. 3, 2025), <https://www.whitehouse.gov/articles/2025/02/president-trump-is-delivering-on-his-commitment-to-protect-our-kids/>.

<sup>4</sup> HHS, “Rescission of ‘HHS Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy’ (issued March 2, 2022)” (Feb. 20, 2025), <https://www.hhs.gov/sites/default/files/ocr-rescission-february-20-2025-notice-guidance.pdf>.

<sup>5</sup> HHS, HHS Acts to Bar Hospitals from Performing Sex-Rejecting Procedures on Children (Dec. 18, 2025), <https://www.hhs.gov/press-room/hhs-acts-bar-hospitals-performing-sex-rejecting-procedures-children.html>.

<sup>6</sup> *Id.*

and consequently exceeds HHS’ authority, the Proposed Rule is invalid and should not be finalized.

### **A. The Historical Meaning of Gender Identity Disorders Does Not Encompass Gender Dysphoria**

To determine the meaning of a statute, courts must look to the meaning of the statute’s “terms at the time of its enactment.” *Bostock v. Clayton County*, 590 U.S. 644, 654 (2020). Although the Rehabilitation Act was first enacted in 1973, 87 Stat. 355, the GID Exclusion was not enacted until seventeen years later when Congress passed the ADA, 104 Stat. 327, 42 U.S.C. §§ 12101 *et seq.* (1990). In the ADA, Congress excluded “transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders” from the definition of “individual with a disability.” 104 Stat. 376. Two years later, Congress passed the Rehabilitation Act Amendments of 1992, 106 Stat. 4344 (the “1992 Act”), which, *inter alia*, aligned key definitions in the Rehabilitation Act with key definitions in the ADA. Thus, in the 1992 Act, Congress amended the Rehabilitation Act by, *inter alia*, replacing the term “individual with handicaps” with “individual with a disability” and adopting word-for-word the ADA’s GID Exclusion. 106 Stat. 4344, 4349 (1992); *accord* 104 Stat. 327, 376 (1990).

In 2008, Congress again amended the Rehabilitation Act in the ADA Amendments Act of 2008, 122 Stat. 3553 (the “ADAAA”), to further align the Rehabilitation Act with the ADA. In the ADAAA, Congress explicitly adopted the ADA’s definition of “disability” for purposes of the anti-discrimination provision in Section 504. *See* 29 U.S.C. § 705(9) (“The term ‘disability’ means . . . for purposes of [section 504], the meaning given it in section 12102 of Title 42.”). The ADAAA did not change the language of the GID Exclusion enacted in 1990. *See* 42 U.S.C. § 12211(b)(1). At the same time, Congress instructed courts in the ADAAA that the term “disability” “shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the [ADA’s] terms.” *Id.* § 12102(4)(a).

Whether “gender dysphoria” is included in the GID Exclusion therefore depends on the meaning of gender identity disorders in 1990, when that language was passed by Congress. *See New Prime Inc. v. Oliveira*, 586 U.S. 105, 113 (2019) (“It’s a fundamental canon of statutory construction that words generally should be interpreted as taking their ordinary meaning at the time Congress enacted the statute.”). As set forth below, the 1990 GID Exclusion, as interpreted consistent with the contemporary understanding of “gender identity disorders,” does not apply to gender dysphoria.

#### **1. The Condition of Gender Dysphoria Is Substantially Different from the Condition of Gender Identity Disorders that Existed in 1990**

The legislative history of the ADA reflects that Congress relied on the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (“DSM”) in drafting the GID Exclusion. The DSM is a publication for the classification of mental disorders that is periodically revised and is widely recognized as “one of the basic texts used by psychiatrists and other experts.” *Hall v. Florida*, 572 U.S. 701, 704 (2014). In 1990, the DSM was in its third, revised, edition, *see* Am. Psych. Ass’n, *Diagnostic and Statistical Manual of Mental Disorders* (3d ed., rev. 1987)

(“DSM-III-R”), and this edition served as the source of the GID Exclusion. *See* H.R. Rep. No. 101-485(IV), at 81 (May 15, 1990) (dissenting views of Reps. Dannemeyer, Barton and Ritter) (referencing DSM-III-R); *see also* 135 Cong. Rec. S11173-01, 1989 WL 183785, at \*S11174 (Sept. 14, 1989) (statement of Sen. Armstrong) (“A private entity that wishes to know what the act might mean with respect to mental impairments would do well to turn to DSM-III-R because that is one reputable place where mental disorders are listed category-by-category, name-by-name.”).

Under the DSM-III-R, “gender identity disorders” referred to a class of disorders characterized by an individual’s “incongruence between assigned sex . . . and gender identity.” DSM-III-R at 71. The “essential feature” of these disorders was:

an incongruence between assigned sex (i.e., the sex that is recorded on the birth certificate) and gender identity. Gender identity is the sense of knowing to which sex one belongs, that is, the awareness that “I am a male,” or “I am a female.” Gender identity is the private experience of gender role, and gender role is the public expression of gender identity. Gender role can be defined as everything that one says and does to indicate to others or to oneself the degree to which one is male or female.

*Id.* The DSM-III-R further divided gender identity disorders into three disorders, transsexualism, gender identity disorder of childhood, and gender identity disorder of adolescence or adulthood, nontranssexual type (“GIDAANT”), but the core feature of each disorder was the sense of incongruence with one’s assigned sex. *See id.* at 76 (transsexualism requires, *inter alia*, “[p]ersistent or recurrent discomfort and sense of inappropriateness about one’s assigned sex”), 73 (gender identity disorders of childhood require, *inter alia*, for females, “[p]ersistent and intense distress about being a girl, and a stated desire to be a boy,” and, for males, “[p]ersistent and intense distress about being a boy and an intense desire to be a girl”), 77 (GIDAANT requires “[p]ersistent or recurrent discomfort and sense of inappropriateness about one’s assigned sex”). Indeed, while the DSM-III-R noted that some individuals with a gender identity disorder may suffer impairment, it is not required for a diagnosis, and many may experience no impairment or distress. *See id.* at 72 (“The amount of impairment [for gender identity disorder of childhood] varies from none to extreme, and is related to the degree of underlying psychopathology and the reaction of peers and family to the person’s behavior.”), 75 (individuals with transsexualism “[f]requently” experience social and occupational impairment, but such impairment not required for diagnosis), 76 (impairment among those with GIDAANT “generally restricted to conflicts with family members and other people regarding the cross-dressing”).

Since 1990, the DSM has gone through several editions and revisions, and the medical understanding of gender identity has evolved considerably. The DSM is now in its fifth edition, text revision. *See* Am. Psych. Ass’n, *Diagnostic and Statistical Manual of Mental Disorders* (5th ed., text rev. 2022) (“DSM-V-TR”). The DSM-V-TR dispenses with the category of gender identity disorders altogether. Instead, it refers to a separate condition, “gender dysphoria.” While similar in some respects to the category of gender identity disorders described in the DSM-III-R, under the DSM-V-TR, the condition of gender dysphoria is defined by the clinical distress associated with the incongruence between gender identity and assigned gender, not incongruence itself:

*Gender dysphoria* as a general descriptive term refers to the distress that may accompany the incongruence between one’s experienced or expressed gender and one’s assigned gender. However, it is more specifically defined when used as a diagnostic category. It does not refer to distress related to stigma, a distinct although possibly co-occurring source of distress.

DSM-V-TR at 511. As reflected in the diagnostic criteria for the two subconditions of gender dysphoria, gender dysphoria in children and gender dysphoria in adolescents and adults, this clinical distress is both a necessary element of diagnosis and significant, as it is defined as “clinically significant distress or impairment in social, occupational, or other important areas of functioning.” *Id.* at 520. Thus, under current medical understanding as set forth in the DSM-V-TR, experiencing the sort of incongruence that would have been sufficient to support a diagnosis of a “gender identity disorder” under the DSM-III-R is no longer sufficient to support a diagnosis of gender dysphoria. Instead, the condition is defined by the “clinically significant distress or impairment” resulting from such incongruence rather than the incongruence itself. As the DSM-V-TR makes clear, “not all individuals will experience distress from [such] incongruence.” *Id.* at 512.

## **2. The Proposed Rule is Contrary to Law Under the Only Circuit Court Decision to Consider Whether the GID Exclusion Applies to Gender Dysphoria and the Majority of District Court Decisions to Consider the Issue**

As HHS acknowledges in the preamble to the Proposed Rule, to date, only one circuit court has directly addressed whether the GID Exclusion includes gender dysphoria. *See Williams v. Kincaid*, 45 F.4th 759 (4th Cir. 2022), *cert. denied*, 143 S. Ct. 2414 (2023). In *Williams*, the Fourth Circuit undertook a detailed analysis of gender identity disorders as that group of conditions was understood in 1990, relying largely on the DSM-III-R, and as compared to the then-current DSM-V’s<sup>7</sup> definition of gender dysphoria. 45 F.4th at 766-769. The court noted that “in 1990, the medical community did not acknowledge gender dysphoria either as an independent diagnosis or as a subset of any other condition.” *Id.* at 767, 769. Comparing gender dysphoria to the gender identity disorders of the DSM-III-R, the court found that “the definition of gender dysphoria differs dramatically from that of the now-rejected diagnosis of ‘gender identity disorder,’” explaining that while the obsolete diagnosis “focused solely on cross-gender identification,” the modern diagnosis of gender dysphoria concerns “clinically significant distress.” *Id.* at 767-69. Put simply, “while the older DSM pathologized the very existence of transgender people, the recent DSM-5’s diagnosis of gender dysphoria takes as a given that being transgender is not a disability.” *Id.* at 769. The court further noted that the two diagnoses “affect different populations,” as gender dysphoria is “a disability suffered by many (but certainly not all) transgender people.” *Id.* at 768. Thus, the *Williams* court held that gender dysphoria is not a gender identity disorder within the meaning of the GID Exclusion.

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<sup>7</sup> At the time of the *Williams* decision, the current edition of the DSM was the fifth edition. *See* Am. Psych. Ass’n, *Diagnostic and Statistical Manual of Mental Disorders* (5th ed. 2013) (“DSM-V”). A revised version, the DSM-V-TR (defined above) was published in 2022.

HHS cites to five cases that it claims determined that “gender dysphoria is subject to the ADA’s gender identity disorder exclusion.” 90 Fed. Reg. 59479 n.3. Yet, as HHS acknowledges, the Proposed Rule, if finalized, would be inconsistent with federal case law in five states. *Id.* at 59480 (“*Williams* remains binding precedent within Maryland, North Carolina, South Carolina, Virginia, and West Virginia”). Moreover, at least five separate district courts in other states have found that gender dysphoria is not subject to the GID Exclusion. *See Guthrie v. Noel*, No. 20 Civ. 2351, 2023 WL 8115928, at \*11 (M.D. Pa. Sept. 11, 2023) (agreeing with *Williams* that “removal of the ‘gender identity disorder’ diagnosis and the addition of the ‘gender dysphoria’ diagnosis to the DSM-5 reflected a significant shift in medical understanding”), *report and recommendation adopted*, 2023 WL 8116864 (M.D. Pa. Sept. 29, 2023); *Kozak v. CSX Transportation, Inc.*, No. 20 Civ. 184, 2023 WL 4906148, at \*4 (W.D.N.Y. Aug. 1, 2023) (“The question that divides the parties, and courts around the country, then, is whether gender dysphoria—a diagnosis that did not exist when Section 12211 was enacted—belongs in the category ‘gender identity disorders not resulting from a physical impairment’ excluded by the section. This Court answers the question in the negative.”); *Griffith v. El Paso Cnty., Colo.*, No. 21 Civ. 387, 2023 WL 2242503, at \*17 (D. Colo. Feb. 27, 2023) (“[T]he Court is likewise convinced that gender dysphoria is a disability included in the ADA’s protections.”), *report and recommendation adopted*, 2023 WL 3099625 (D. Colo. Mar. 27, 2023), *vacated on other grounds*, 129 F.4th 790 (10th Cir. 2025); *Blatt v. Cabela’s Retail, Inc.*, No. 14 Civ. 4822, 2017 WL 2178123, at \*4 (E.D. Pa. May 18, 2017) (interpreting the statutory exclusions narrowly such that they do not “exclude from ADA coverage disabling conditions that persons who identity with a different gender may have—such as Blatt’s gender dysphoria, which substantially limits her major life activities of interacting with others, reproducing, and social and occupational functioning”); *see also Doe v. Mass. Dep’t of Corr.*, No. 17 Civ. 12255, 2018 WL 2994403, at \*7 (D. Mass. June 14, 2018) (“[T]he continuing re-evaluation of GD underway in the relevant sectors of the medical community is sufficient, for present purposes, to raise a dispute of fact as to whether Doe’s GD falls outside the ADA’s exclusion of gender identity-based disorders as they were understood by Congress twenty-eight years ago.”).

### **III. The Proposed Rule is Part of Broader Effort by the Federal Government to Harm Persons Based on their Gender Identity and Gender Expression**

HHS’s proffered reason for the Proposed Rule – to clarify a statutory provision – is pretextual, barely masking a desire to isolate a community. *See Saget v. Trump*, 375 F. Supp. 3d 280, 361 (E.D.N.Y. 2019) (“An agency’s actions are arbitrary and capricious under the [Administrative Procedure Act] if they are pretextual.”) (citing *Cowpasture River Pres. Ass’n v. Forest Serv.*, 911 F.3d 150, 176-79 (4th Cir. 2018)). Similarly, the Proposed Rule raises equal protection concerns, as the U.S. Constitution creates guardrails against the “bare desire to harm a politically unpopular group,” which is not a *legitimate* government interest. *See Romer v. Evans*, 517 U.S. 620, 634-35 (1996) (citing *Department of Agriculture v. Moreno*, 413 U. S. 528, 534 (1973)).

The Proposed Rule should be viewed as part of a broader effort by the federal government to harm persons based on their gender identity and gender expression. Executive Order 14168 directed federal agencies to remove all policies and regulations promoting gender ideology. With these marching orders, federal agencies have launched a frontal assault against individuals and communities. The U.S. Department of Housing and Urban Development stopped enforcing the Equal Access Rule, which requires federally-funded housing programs to serve people based on



their gender identity.<sup>8</sup> The U.S. Department of Justice prioritized investigations of doctors, hospitals, and other entities that provide gender affirming care.<sup>9</sup> The U.S. Department of Education sought to terminate federal funding to jurisdictions that recognize transgender persons.<sup>10</sup> The U.S. Equal Employment Opportunity Commission is similarly restricting funding for states and localities that bring cases relating to gender identity and transgender status.<sup>11</sup>

Here, HHS claims that the Proposed Rule is necessary to clarify the scope of the GID Exclusion as it relates to gender dysphoria. Yet only months ago, HHS issued a document seeking to clarify the very issue, and notably, in that document, HHS took the position that “the language included in the regulatory text itself is clear.” Thus, under HHS’s own reasoning, the Proposed Rule is unnecessary. At the same time, while purportedly attempting to “resolve ambiguity” in the preamble to the 2024 Section 504 Regulations, the Proposed Rule would generate inconsistency with the case law discussed above and DOJ’s ADA regulations, which do not specify any exclusion for gender dysphoria. *See* 28 C.F.R. § 35.108. Indeed, as noted above, it was this type of confusion that HHS sought to avoid in the 2024 Section 504 Regulations by declining to specify a comprehensive list of impairments under the Rehabilitation Act. 89 Fed. Reg. 40068.

Rather than resolving ambiguity, the Proposed Rule appears more to be designed to support HHS’s efforts to restrict gender affirming care for minors. HHS announced the Proposed Rule alongside two other proposed rules that unlawfully coerce entities into imposing restrictions that prevent otherwise qualified individuals from receiving medically necessary care due to their gender dysphoria, the type of restrictions that HHS previously said could constitute a violation of the Rehabilitation Act.<sup>12</sup> In this way, HHS seeks less to clarify a statutory provision, than to “reassure” providers that they can deny individuals from receiving medically necessary care.<sup>13</sup> At the very

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<sup>8</sup> U.S. Dep’t of Housing and Urban Development, Secretary Turner Halts Enforcement Actions of HUD’s Gender Identity Rule, <https://www.hud.gov/news/hud-no-25-026> (accessed Jan. 20, 2026).

<sup>9</sup> U.S. Dep’t of Justice, Mem. re: Civil Enforcement Priorities (June 11, 2025), <https://www.justice.gov/civil/media/1404046/dl?inline>.

<sup>10</sup> Nate Raymond and Jack Queen, Trump administration moves to pull Maine’s school funding over transgender athletes, REUTERS (Apr. 12, 2025), <https://www.reuters.com/legal/trump-administration-cannot-freeze-maine-school-lunch-funds-over-transgender-2025-04-12/>.

<sup>11</sup> U.S. Equal Empl. Opp. Comm., Mem. for Fair Employment Practices Agency Directors from Thomas Colclough, Director Office of Field Programs (May 20, 2025) (stating with retroactive effect: “Effective January 20, 2025, we are not granting credit for intakes or charge resolutions that implicated by ... Executive Order 14168 and Executive Order 14281.”)

<sup>12</sup> HHS, “Rescission of ‘HHS Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy’ (issued March 2, 2022)” (Feb. 20, 2025), <https://www.hhs.gov/sites/default/files/ocr-rescission-february-20-2025-notice-guidance.pdf>.

<sup>13</sup> HHS, HHS Acts to Bar Hospitals from Performing Sex-Rejecting Procedures on Children (Dec. 18, 2005), <https://www.hhs.gov/press-room/hhs-acts-bar-hospitals-performing-sex-rejecting-procedures-children.html>.

least, by implementing the Proposed Rule, HHS aims to eliminate any inconsistencies that exist between a Rehabilitation Act that protects persons with gender dysphoria and HHS's dubious policy goals of curbing gender affirming care. The result undermines robust rights and protections that are afforded to individuals to prevent discrimination based on their gender identity and expression, including under the laws of New York State and the New York City.<sup>14</sup>

At bottom, the Proposed Rule would harm individuals simply because of their gender identity and expression, including transgender individuals in schools, workplaces, jails and prisons, as well as in healthcare settings. And it would eviscerate the right to seek and receive reasonable accommodations, ultimately resulting in the denial of equal opportunities. HHS is taking this action despite congressional direction to construe federal anti-discrimination laws in favor of maximum protection for individuals with disabilities. HHS is also taking this action notwithstanding the fact that individuals with gender dysphoria face significant health and safety risks as a result of gender-based discrimination,<sup>15</sup> including suicide attempts, severe psychological distress, depression, withdrawal from medical care, and interpersonal violence.<sup>16</sup>

The federal administration is attempting to enforce a strict binary legal definition of gender, thereby amplifying stigma and misinformation and emboldening state-level bans and related enforcement actions. The combination of the Proposed Rule and other federal actions creates tangible and psychological barriers to care and civil equality.

For the above reasons, DOHMH and CCHR oppose the Proposed Rule and urge HHS to withdraw it.<sup>17</sup>

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<sup>14</sup> For decades, the New York City Human Rights Law has explicitly recognized that discrimination against New Yorkers based on their gender identity is illegal in housing, employment, and public accommodations. Local Law No. 3 (2002); Local Law No. 38 (2018); N.Y.C. Admin. Code § 8-102 (“[G]ender’ includes actual or perceived sex, gender identity, and gender expression including a person’s actual or perceived gender-related self-image, appearance, behavior, expression, or other gender-related characteristic, regardless of the sex assigned to that person at birth”).

<sup>15</sup> Arjee Javellana Restar et al., *The Public Health Crisis State of Transgender Health Care and Policy* 114 AM. J. OF PUB. HEALTH 161-163, <https://doi.org/10.2105/AJPH.2023.307523>.

<sup>16</sup> *Id.*

<sup>17</sup> This comment reflects that presently a formal medical diagnosis can serve significant purposes – particularly for insurance coverage, billing, and reimbursement for certain interventions, as well as for evidence-based studies and interventions – while also recognizing that requiring a diagnosis from a medical professional to seek gender-affirming care or to benefit from reasonable accommodations may perpetuate harm for some individuals, while it may be affirming for others. K. Mumford et al, *What the Past Suggests About When a Diagnostic Label is Oppressive*, AMA J. OF ETHICS, Vol. 25: 6 June 2023), <https://journalofethics.ama-assn.org/article/what-past-suggests-about-when-diagnostic-label- oppressive/2023-06/>.