



CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

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TRUMP ADMINISTRATION REPEAL OF HEALTH CARE NON-DISCRIMINATION RULES

What the Repeal Means for the Future of Transgender Health Care Rights

On June 12, 2020, the Trump Administration, via the U.S. Department of Health and Human Services (HHS), celebrated the fourth anniversary of the Pulse Nightclub massacre—the deadliest incident of violence targeting the LGBT community and the second deadliest terrorist attack on U.S. soil—by repealing the Obama Administration-era health care non-discrimination rules which declared discrimination against transgender people is sex discrimination under Section 1557 of the Affordable Care Act.

Back in May 2016, the Obama Administration issued the most important legal protections for transgender people developed to date. Those regulations prohibited health care practitioners from discriminating against transgender patients, specifically targeting the well-known practice of practitioners refusing to treat transgender patients even when their medical needs were in no way related to gender transition. [Colloquially called “trans broken arm syndrome,” this sort of health care discrimination was \(and still is\) common and led to the unnecessary deaths of countless transgender people, including at least one instance where medical providers declined to provide treatment and made hostile comments about a trauma victim’s gender identity while she bled out on a gurney.](#) The regulations further provided that “blanket exclusions” of transgender care in health insurance policies were unlawful, ending the 35-year industry standard practice of denying coverage for all transition-related treatment, making health insurance coverage available to transgender people for the first time in a generation.

Sadly, those regulations never took effect. On December 31, 2016, the day before the regulations were to take effect, a reactionary judge in Fort Worth, Texas, Reed O’Connor, prohibited the enforcement of those regulations.

Even without ever taking effect, the regulations still made significant positive impacts. Insurance companies removed blanket exclusions from their plans, and most have not reinserted the exclusions after Judge Reed's injunction. Courts across the country continued to hold that discrimination against transgender patients is sex discrimination even without the regulations.

Transgender people are still protected from discrimination in healthcare. Discrimination against transgender people by health care providers or health insurance companies is still unlawful sex discrimination.

The Trump Administration's repeal of the regulations protecting transgender people is clearly more symbolic than anything, given that those regulations never took effect, and the repeal is quite possibly moot following the U.S. Supreme Court (SCOTUS)'s June 15, 2020 Title VII decision. SCOTUS held that firing an employee solely on the basis of the employee's sexual orientation or transgender status discriminates against the employee on the basis of their sex. This decision likely undermines the Trump Administration's rationale that "sex" discrimination is separate and distinct from sexual orientation and gender identity discrimination, which was the basis for their repeal of the health care non-discrimination rules.

While the news from SCOTUS somewhat softens the blow of the new HHS rule, it is important to remain aware that the Trump administration continues to target the civil rights of LGBTQ people, especially transgender people. The Administration is following a [Five Point Plan](#) developed by the [Family Research Council](#) (FRC)—an organization identified as a hate group by the Southern Poverty Law Center—which aims to make the legal, medical, and social climate in the United States too hostile for transgender people to exist. In just the past few weeks, we have seen this Administration make powerful moves to further these objectives.

In addition to repealing health care nondiscrimination protections for transgender people, the Department of Education declared that allowing transgender student-athletes to participate on teams corresponding to their gender identities violates Title IX. The Administration's purpose is clearly to deny transgender student-athletes the opportunity to participate in school-sponsored athletics.

We stand on guard expecting similar rules from the Department of Housing and Urban Development (HUD) in the coming weeks, which will encourage homeless shelters to deny transgender residents access to shelters corresponding to their gender identities.

Transgender people have long been the punchline of unfunny “jokes” and we have repeatedly had our dignity denigrated by the majority, including [all your favorite lazy white liberal sitcoms](#). It is easy to not care about the plight of marginalized groups when you can dehumanize them through repetition of false tropes and mischaracterizations. The Trump Administration, staffed by dozens of people with ties to hate groups, are counting on you not caring.

The U.S. Supreme Court’s decision was great news. Every single LGBTQ person gained civil rights recognition, by far the most remarkable legal development in the struggle for LGBTQ liberation. But whatever success we achieved this week, the Trump Administration’s actions suggest we should expect further bigotry and attacks aiming to force us all back into the closet. All of us, not just LGBTQ advocates, must be prepared to meet these attacks and uphold the dignity and rights of all humankind. Bigots are counting on you sitting this out. Stand up.

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California Rural Legal Assistance, Inc. (CRLA)

California Rural Legal Assistance, Inc. (CRLA) was founded in 1966 to be a world-class nonprofit law firm for those who cannot afford to pay a private attorney. Through 21 offices statewide, CRLA provides no-cost legal services and education to tens of thousands of low-income Californians and litigates cases that benefit even more people. We help our clients get fair pay for their hard work, find and stay in safe housing, access healthcare, ensure quality education for their kids, and more. Our vision is a rural California where all people are treated with dignity and respect and guaranteed their fundamental rights.

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