PERSPECTIVE

Policies Sanctioning Discrimination Against Transgender Patients Flout Scientific Evidence and Threaten Health and Safety

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Access to equitable and evidence-based health care for transgender people is increasingly under threat across the United States. The Trump administration has engaged in broad efforts to limit the rights of transgender Americans and multiple conservative-led state congressional proposals have attempted to make treatment of transgender youth with hormones and puberty blockers a criminal offense. In June, 2020, the Department of Health and Human Services (DHHS) finalized a rule eliminating protections against health care discrimination based on gender identity.¹ This protection from health care discrimination was previously afforded by section 1557 of the Affordable Care Act (ACA), with guidance by the Obama administration explicitly stating that transgender individuals were protected by this section. With last week's rule change, DHHS has granted health care facilities, insurers, and providers the right to deny transgender patients care simply because of their gender identity.²

These malicious changes target a highly vulnerable population and provide fodder to perpetuate discrimination, fear, and exclusion. It is our ethical responsibility as health care providers to respond to this assault, and we will rebut the administration's claims based on the science of gender identity, the evidence in support of affirming care for transgender patients, and the language of the rule change itself.

Science of Gender Identity

Gender identity (including both cisgender and transgender identity) is self-evident and requires no justification or explanation. And yet, we must address the

pseudoscience advanced by this administration. As aforementioned, in justifying the rule change for section 1557 of the ACA, the administration defines sex as male or female as determined by biology. Although not explicitly stated, it is implied that biology in this context is defined by what one's genitals look like at birth, rather than reflecting the complex process of gender development that involves genes, hormones, brains, bodies, and experiences. This narrow-minded thinking disregards decades of research in developmental neuroscience that has sought to understand the biological underpinnings of gender development.³ Contrary to what this administration may state, our brains are very much a part of our biology.

Evidence for Affirming Care for Transgender Patients

Transgender people face undue health burden and risk stemming from pervasive discrimination. Undoubtedly, these risks are anticipated to worsen as structural barriers to care increase.⁴ Among transgender adults, 22% (32% among people of color) have no health insurance as compared with 12% of all adults.⁵ Even for those with insurance, 70% of transgender adults have faced discrimination in medical care and 27% have been refused the care that they need.⁶ Nearly a quarter avoided the doctor because of fear of mistreatment and denials of life-saving care are routine.⁷

This stigma and bias has led to chronic mental and physical health disparities among the transgender

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population. In transgender youth, one third of those seeking care had depression with more than half having contemplated suicide.⁸ Substance use rates were uniformly higher than in cisgender peers, as were high-risk sex behaviors and rates of experiencing physical violence (24%) and sexual violence (24%).⁹ Among transgender adults, disparities continue to accumulate. Forty percent of transgender adults have attempted suicide.⁷ There is an HIV prevalence of 14.1% among transgender women and 44% among black transgender women.¹⁰ Transgender adults have rates of cigarette smoking that are 50% higher than the general population.¹¹

As providers caring for transgender youth, the treatment we provide is rooted in evidence demonstrating that individuals with access to care have improved mental health outcomes^{12,13} and reduced suicidality.¹⁴ Section 1557's previous protections for transgender Americans provided access to affirming medical and mental health care for countless citizens and removing these protections will lead to worsening outcomes and increased death.

Language of the Rule Change

The Trump administration describes the rule change to section 1557 as a reversion to the "plain meaning" of the word "sex" and justifies this change by arguing that discrimination on the basis of sex has never included gender identity. However, just 3 days after the Trump administration made this claim, the Supreme Court ruled in an employment discrimination case that "discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex."¹⁵ We urge DHHS to re-examine their flawed logic and look to this guidance provided by their judicial counterparts for an understanding of a clearer definition of discrimination based on sex.

Furthermore, DHHS claims that their regulatory change "omits overboard provisions related to sex and gender identity." We would ask the administration, what "overboard provisions related to sex and gender identity" are you seeking to omit? Based on the aforementioned health disparities, if anything, protections against discrimination for transgender people should be strengthened.

Conclusion

Our patients are afraid. After Trump was elected, we held space for them as they expressed fear that they

would not be able to access life-saving gender-affirming care. We have watched their journeys as our country has at once made strides forward in understanding best practices to support transgender patients, and simultaneously, our leaders have made concerted efforts to stand in the way of this care. Our patients and their families, already unduly stressed by the global COVID pandemic and the recent escalation in police violence, are now feeling their health and safety being threatened on yet another level.

Federal rule changes to the ACA that eliminate protections against discrimination are a threat to the health of transgender youth and adults. These initiatives directly oppose the evidence-based care recognized by professional societies across multiple disciplines (AAP, AMA, Endocrine Society, WPATH, and AACAP). The changes are based on flawed logic and an effort to oppress. We urge providers to seek out, rather than turn away from, opportunities to better understand the unique health risks and needs of transgender patients to continue to improve care delivery. We will continue to provide the highest level of care and advocate for our patients as they surmount the ever-changing barriers created for them by the American health care system.

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Abbreviations Used

ACA = Affordable Care Act
DHHS = Department of Health and Human Services