

Gender transition healthcare services under the Trump administration

With the House of Representatives' recent passage of the American Healthcare Act (AHCA), we have begun to see the influence of Republican-controlled government on the U.S. healthcare system. Even though the bill is not yet law, those who identify as [transgender](#) or whose gender identity does not align with their assigned sex are already seeing vital healthcare protections dropped as the political environment shifts. Still, in this time of fear and uncertainty, there are a few examples of institutions increasing access for transgender folks to receive the healthcare they need.

What's the law?

[Historically, the U.S. transgender community has faced many barriers to accessing healthcare, including lack of health insurance.](#) The Affordable Care Act ("ObamaCare" or the ACA) put in place [provisions](#) to protect patients from discriminatory practices based on sex or gender identity by healthcare insurance companies and providers; these measures are enforced by the U.S. Department of Health and Human Services (DHHS).

For instance, under the ACA, gender dysphoria, a condition specific to the transgender community, [cannot be considered a disqualifying pre-existing condition.](#)

As a direct result of the patient protection provisions of the ACA, a June 2014 Department of Health and Human Services (DHHS) [communication to local Medicare Administrative Contractors invalidated Section 140.3 of the National Coverage](#)

[Determinations Manual](#), which specifically denied any coverage for transsexual surgery. This action [allowed local contractors to make decisions on coverage requests for gender reassignment surgery on a case-by-case basis](#), though it [stopped short of creating a National Coverage Determination \(NCD\)](#) for this therapy. [Another DHHS directive, effective in May 2016](#), which [aimed to clarify and codify](#) the protections of the [ACA's Section 1557](#), [stated that entities covered under Medicare and the ACA cannot](#) “deny or limit coverage, deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage, for specific health services related to gender transition if such denial, limitation, or restriction results in discrimination against a transgender individual.”

While the regulation does not require insurers to cover gender transition services, it does [require coverage for transgender-specific healthcare](#) be determined based on the “same neutral, nondiscriminatory criteria that [the entity] uses for other conditions”.

Since President Trump's inauguration in January 2017, there has been a strong push to repeal the ACA, including its anti-discriminatory measures. [A recent ruling by a Texas judge](#) specifically placed a preliminary injunction on Section 1557, stopping the DHHS from enforcing the ACA provisions against discrimination based on gender identity nationwide. The [judge's justification](#), issued when Trump was the president-elect, claimed that the federal government had overstepped the definition of sex by including gender identity and that Section 1557 potentially violated the religious freedom of healthcare providers.

Recent developments in

discriminatory practices...

The injunction against Section 1557 of the ACA has, in the span of less than six months, begun to allow for discrimination against the transgender community. Republican lawmakers in Minnesota introduced a House bill on February 13th, 2017 to allow health insurance companies to deny coverage to clients desiring to go through gender reassignment surgeries. In fact, [House File 1183 \(HF1183\)](#) affects a broad range of care, as it applies to all “health services related to gender transition”. The bill circumvents the ACA’s protections by stating it would only apply to health plans [if there are no federal laws protecting against transgender discrimination](#), meaning after a repeal of the ACA. The [bill has advanced](#) to the Minnesota House’s Health and Human Services Reform Committee.

In Wisconsin, the [state legislature’s Group Insurance Board decided to overturn](#) their July 2016 decision to add coverage for state employees seeking gender reassignment surgery. According to the Board, the stoppage is a direct response to the December 2016 injunction on Section 1557. [A report](#) has estimated the cost of such coverage would have added between \$100,000 and \$250,000 per year to a \$1.5 billion state healthcare system for employees and dependents. drive for the change was likely less about fiscal responsibility than to social issues related to transphobia.

And on January 24th, 2017, the [University of Arkansas stated it would no longer cover](#) services related to gender identity under its health insurance after March 6th. The University had only granted access to transgender-specific services in January 2017 in order to be in compliance with ACA. [It cited the Section 1557 injunction](#) and the potential repeal of the ACA in suspending a final decision until further clarification is given regarding the ACA’s regulations.

... Yet some are increasing access to transgender health services

Interestingly, some recent initiatives across the country have *increased* the availability of transgender-specific services. A [package of New Jersey bills](#) set in motion in the beginning of February could prevent health insurance companies from discriminating against residents of the state based on gender identity. The [bills were approved](#) by the Assembly's Human Services Committee and will be voted on shortly by the New Jersey Assembly and Senate. At the University of Nebraska-Lincoln, [a Transgender Care Clinic](#) opened on February 1st. This clinic offers transition services to students, paid through the student insurance health plan, including hormone therapy, postoperative follow-up, and gynecologic care. And later this year, Johns Hopkins Medicine in Maryland [will launch its Center for Transgender Health](#) to provide gender transition services including gender reassignment surgery. These examples of members of the healthcare community responding to the needs of their transgender patients demonstrates the progress that has been made in the fight against transgender health inequalities.

What comes next?

The transgender population is in a precarious position in so many ways; healthcare is no different, though the ACA had worked to codify non-discrimination. Without the ACA's provisions—particularly Section 1557—explicitly in place, the first half of 2017 has seen swift movements to undermine the ability of a group of people to receive care, even though there have been some more local positive advancements aimed at expanding access to transgender healthcare in Nebraska, New Jersey, and Maryland since the Texas court's injunction. Barring federal protection against discrimination toward

transgender people in healthcare, state-level anti-transgender actors can build on the injunction of Section 1557 and encode healthcare discrimination practices into state law. The continued threat of repeal or “repair” of the ACA with the AHCA demonstrates how discrimination against many groups could become a national law. In fact, access to affordable, transgender-specific health services is not only under threat, it’s under direct attack.

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