



Trump HHS Ends ObamaCare Rule That Included Abortion Under “Healthcare”

The Trump administration’s Department of Health and Human Services (HHS) has issued a statement about ending a definition issued by the Obama administration regarding Section 1557 of the Affordable Care Act (ACA or “ObamaCare”). The Obama administration had redefined sex discrimination to include termination of pregnancy (abortion) and gender identity, which it defined as “one’s internal sense of gender, which may be male, female, neither, or a combination of male and female.”



Under the revised HHS rules, abortion and “gender identify” will no longer be protected under anti-discrimination laws. Though the Obama-era rules have not been put into practice since the last day of 2016, they were still on the books. With the latest HHS ruling, they are now erased.

The Obama administration rules, issued in 2016, could have forced medical workers to help abort unborn babies. It also would have protected so-called transgender individuals from sex discrimination based on their “identify” rather than the traditional biological definition of gender as determined at birth.

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Roger Severino, director of the Office for Civil Rights at HHS, has reassured the public that the changes will not affect the agency’s protections: “HHS respects the dignity of every human being, and as we have shown in our response to the pandemic, we vigorously protect and enforce the civil rights of all to the fullest extent permitted by our laws as passed by Congress. We are unwavering in our commitment to enforcing civil rights in healthcare.”

The Obama administration, however, decided to add its own definitions to certain federal statutes, such as Title IX of the Education Amendments of 1972 (Title IX) stating that it wanted to prohibit discrimination on the basis of sex in certain federally funded programs.

However, noted the HHS release, on December 31, 2016, a federal court enjoined the Obama administration’s attempt to redefine sex discrimination in its 2016 rule. The court concluded that the administration’s provisions were likely contrary to applicable civil rights law, the Religious Freedom Restoration Act, and the Administrative Procedure Act. On October 15, 2019, the federal court issued a final judgment, and vacated and remanded these provisions as unlawful.

HHS noted that this final ruling is binding on HHS, which has not been able to enforce these provisions since December 2016, and the provisions have been vacated since October 2019.

Therefore, HHS has eliminated certain provisions of the 2016 Rule that exceeded the scope of the authority delegated by Congress in Section 1557. HHS will enforce Section 1557 by returning to the government’s interpretation of sex discrimination according to the plain meaning of the word “sex” as



Written by [Warren Mass](#) on July 14, 2020

male or female and as determined by biology. The 2016 Rule declined to recognize “sexual orientation” as a protected category under the ACA, and HHS will abide by that judgment.

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