

Background on HHS Gender Dysphoria Rule

This document includes background information that may be useful as we plan for the upcoming HHS proposed rule. It's meant as an informal primer for our coalition (not a public-facing document).

Here is the list of topics covered in this document. (Each topic in the list includes a hyperlink so that you can jump directly to the section relevant to you. The list of resources at the end of each section also includes hyperlinks.)

- [Gender dysphoria under Section 504 and the ADA](#)
 - [The 2024 Section 504 rule](#)
 - [Lawsuit challenging the Section 504 rule](#)
 - [Regulations and comment periods](#)
 - [OIRA review](#)
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Gender Dysphoria Under Section 504 and the ADA

- The main issue in this rule is whether gender dysphoria counts as a disability under Section 504 of the 1973 Rehabilitation Act, which prohibits disability discrimination by recipients of federal funding.
- Under Section 504 and the Americans with Disabilities Act (ADA), the definition of “disability” excludes “transvestism,” “transsexualism,” and “gender identity disorders not resulting from physical impairments.”
- Over the past decade, courts have increasingly held that this exclusion does not apply to gender dysphoria. For example, the Fourth Circuit concluded that “gender identity disorders” does not include gender dysphoria, because gender dysphoria represents a fundamentally different condition.
- If gender dysphoria counts as a potential disability under the ADA and Section 504, that opens the door for more robust nondiscrimination protections for many trans people. Many of these protections go further than what other nondiscrimination laws provide and apply to settings where those laws don't reach.

→ Resources

- [Exclusion section in the ADA](#) at (b)(1)
 - [Fourth Circuit decision in *Williams v. Kincaid*](#) (the Supreme Court decided not review, but you can find the dissent from Justices Alito and Thomas [here](#))
 - [“The Future of Disability Rights Protections for Transgender People”](#) (2019), an article by Kevin Barry and Jennifer Levi discussing the statutory exclusion and evolving case law
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The 2024 Section 504 Regulation

- Under the previous administration, HHS published a landmark regulation interpreting Section 504. The rule clarified and strengthened nondiscrimination requirements for HHS funding recipients across a wide range of issue areas.
- Gender dysphoria is not mentioned in the rule itself, but it is briefly referenced in the preamble. (A preamble to a rule explains its purpose, justification, and impacts, and it provides additional guidance on how the agency plans on interpreting and implementing it.)
- The preamble offered guidance on how HHS would assess discrimination based on gender dysphoria. It indicated that gender dysphoria may be a disability under Section 504. As with any other condition, HHS would make an individualized assessment of whether someone with gender dysphoria qualifies as a person with a disability.

→ Resources

- [2024 Section 504 rule](#) (search for “gender dysphoria” or see pages 3-4 of [this PDF](#))
 - [LGBTQI+ coalition comment on Section 504 proposed rule](#)
 - [Overview of other key provisions in the Section 504 rule](#)
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Lawsuit Challenging the Section 504 Rule

- After the 2024 rule on Section 504 was published, 17 states sued to challenge it. This case has been stayed while HHS reconsiders portions of the rule (meaning that it is on pause for now).
- The states' lawsuit focused heavily on the reference to gender dysphoria in the preamble. But they also challenged other parts of the rule and even the constitutionality of Section 504 statute itself. (The states have since told the court that they are not planning to continue to challenge the constitutionality of Section 504.)
- The current administration has told the court that HHS is planning on changing its interpretation of gender dysphoria under Section 504. HHS also published a "clarification" saying that reference in the preamble to gender dysphoria does not have the force of law.

→ *Resources*

- [DREDF explainer on the lawsuit](#)
 - [Original complaint by 17 states](#)
 - [Major filings](#) (and more [detailed docket](#))
 - [April 2025 "clarification" from Trump administration](#)
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Regulations and Comment Periods

- Once a proposed rule is published, the public typically has a chance to submit comments. (There are some exceptions where an agency can skip the comment period, but at this point it does not look like HHS will apply one of those exceptions to this rule.)
- There are several common goals for engaging in comment periods. Our specific goals vary depending on the rule, so a key part of our strategy is identifying which objectives are relevant to this particular rule and which are not. Here are some examples of common goals:
 - Supporting litigation challenging the final rule (e.g., if HHS ignores important evidence that we bring up, the rule may be more vulnerable to legal challenges)
 - Building a strong record with key evidence and arguments

- Slowing down the process
 - Building cross-movement solidarity and knowledge
 - Creating civic engagement opportunities for interested individuals
 - Shaping public narratives (e.g., about the administration's broader anti-trans and anti-civil rights attacks or about the importance of disability nondiscrimination protections)
- Identifying our goals can help us determine what tactics are most effective. For example, that can help us decide what types of arguments and evidence to include in comments; whether we want a few sign-on comments or a large number of organizational comments; whether we want to do targeted outreach to key stakeholders or encourage broader public participation; and what public communications strategy we want, if any.
 - As a general standard, comment periods are usually supposed to last 60 days, but this administration has often allowed only 30 days.

→ *Resources*

- [Guide to the rulemaking process](#)
 - [Regulations.gov](#) (website for submitting comments)
 - [Federal Register](#) (this is where proposed rules are published)
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OIRA Review

- **You can request an OIRA meeting for this rule at [the site hyperlinked here](#).**
- After an agency drafts a proposed rule, it typically goes to the Office of Information and Regulatory Affairs or OIRA (pronounced oh-eye-ruh), an office within the Office of Management and Budget (OMB).
- At this stage, members of the public can request meetings (often referred to as OIRA meetings, OMB meetings, or 12866 meetings). We can use these meetings to explain our opposition to the rule, including its harmful impacts and policy concerns. Ideally, our remarks should be as specific as possible to the rule, given the information we have.

- These meetings are attended by OIRA staff and (usually) representatives from the agency moving the rule. They are not allowed to share details about the proposed rule with you and will usually just be in listening mode, though they occasionally ask follow-up questions. The meetings are scheduled for 30 minutes (but you don't need to take up the whole time).
- OIRA is normally expected to accept meeting requests, but they can reject them (especially if their review period is ending soon) or even cancel meetings after they have been scheduled.
- When the agency drafts a final rule, they send it back to OIRA for a second round of review. We can request OIRA meetings again at this stage.

→ *Resources*

- [Link to schedule an OIRA meeting for this rule](#)
- [Guide to OIRA meetings](#)