January 16, 2026

Via Federal Rulemaking Portal (Regulations.gov)

Secretary Robert F. Kennedy, Jr.
Department of Health and Human Services
Office for Civil Rights
Attention: Disability NPRM, RIN 0945-AA27
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW, Washington, DC 20201

RE: **Comment on Notice of Proposed Rulemaking to Amend Provisions Related to Nondiscrimination on the Basis of Disability, 45 C.F.R. § 84.4(g), Implementing Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.**

Dear Secretary Kennedy:

On behalf of the Attorneys General of California, Maryland, Colorado, Connecticut, Delaware, the District of Columbia, Illinois, Maine, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, and Wisconsin (States), we submit a comment and request for immediate withdrawal of the proposed rule issued by the United States Department of Health and Human Services (HHS), Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance, 90 Fed. Reg. 59478 (Dec. 19, 2025) (to be codified at 45 C.F.R. pt. 84) [hereinafter, Proposed Rule]. The Notice of Proposed Rulemaking (NPRM) proposes to modify the definition of "disability" in 45 C.F.R. § 84.4(g), the regulation implementing section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. The Proposed Rule would categorically exclude from the definition—and therefore from the protections of the regulations—"gender dysphoria not resulting from physical impairments," by interpreting this category as falling under the exclusion of "gender identity disorders not resulting from physical impairments." As explained below, this change is an unsupported exercise that is part and parcel of this administration's efforts to harm the transgender community.

The undersigned Attorneys General strongly oppose the proposed changes and urge HHS to retain the existing definition of disability. As Attorneys General, we are deeply concerned that the Proposed Rule constitutes another troubling instance in a series of steps this Administration has taken to undermine the essential rights of individuals with disabilities who are protected from discrimination under federal and state law. We have watched as the Administration has weakened the federal enforcement of civil rights and stripped government watchdogs of their power to investigate disability rights violations. Moreover, the Administration has subpoenaed sensitive medical records of those seeking medically necessary healthcare to treat gender dysphoria and has proposed excluding hospitals that offer such care from participating in Medicare and Medicaid. Under the guise of correcting statutory interpretation, HHS's Proposed Rule is yet another action motivated by the Administration's animus and borne of its bare desire to target the transgender community, neither of which can support government activity.

Introduction

Congress enacted the Rehabilitation Act to prohibit discrimination on the basis of disability in programs and activities that receive federal financial assistance or are conducted by any Federal agency. *See* Pub. L. 93–112 § 504, 87 Stat. 355, 394 (1973) (codified at 29 U.S.C. § 794). Congress found that "the goals of the Nation properly include the goal of providing individuals with disabilities with the tools necessary to . . . achieve equality of opportunity, full inclusion and integration in society, employment, independent living, and economic and social self-sufficiency." 29 U.S.C. § 701(a)(6). To that end, Congress made clear that "[it] is the policy of the United States that all programs, projects, and activities receiving assistance under this chapter shall be carried out in a manner consistent with the principles of . . . inclusion, integration, and full participation" of individuals with disabilities. *Id.* § 701(c)(3).

Congress defined an "individual with a disability" under the Rehabilitation Act to mean anyone who "has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment" and "can benefit in terms of an employment outcome from vocational rehabilitation services provided" pursuant to the law's subchapters. 29 U.S.C. § 705(20)(A). The definition also provides that an "individual with a disability" includes, for purposes of section 504, "any person who has a disability as defined in" the Americans with Disabilities Act ("ADA"). *Id* § 705(20)(B). Congress excluded from the definition, for purposes of section 504, "transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders." *Id.* § 705(20)(F)(i). This exclusion was added as part of the Rehabilitation Act Amendments of 1992, *see* Pub. L. 102–569, 106 Stat. 4344 (1992), following the enactment of a similar exclusion in the ADA, Pub. L. 101–336, 104 Stat. 327 (1990) (codified at 42 U.S. Code § 12211(b)(1)). In neither statute did Congress define "gender identity disorders."

After a series of Supreme Court decisions adopting a narrow view of the ADA and Rehabilitation Act, Congress responded by passing the ADA Amendments Act of 2008. Pub. L. 110–325, 122 Stat. 3553 (2008). Congress instructed that the definition of "disability" "shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the [ADA's] terms." 42 U.S.C. § 12102(4).

In 2024, HHS published a final rule titled Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 40066 (2024). In the 2024 Rule, HHS amended the existing section 504 regulation on nondiscrimination obligations for recipients of Federal financial assistance, 45 C.F.R. pt. 84. As relevant here, the 2024 Rule provided a detailed definition of disability implementing the ADA Amendments Act, which amended section 504 to adopt the ADA's definition of disability. 89 Fed. Reg. at 40067.

In the preamble to the 2024 Rule, HHS discussed whether gender dysphoria may constitute a disability under section 504. 89 Fed. Reg. at 40069. HHS concluded that such an inquiry "is necessarily a fact-based, individualized determination," but that "gender dysphoria can satisfy this standard." *Id.* HHS also reasoned that "gender dysphoria does not fall with the statutory exclusions for gender identity disorders." *Id.* HHS based its analysis on a survey of the case law, including *Williams v. Kincaid*, 45 F.4th 759 (4th Cir. 2022), *cert. denied*, 143 S. Ct. 2414 (2023).

HHS recognized that the Fourth Circuit is "the only Federal appellate court to consider the issue of coverage for gender dysphoria under section 504 and the ADA" and that the court had "concluded that the language excluding gender identity disorders from coverage did not encompass gender dysphoria." *Id.* HHS acknowledged that some lower courts reached the opposite conclusion but stated that "the conclusion the Fourth Circuit reached in the *Williams* case . . . reflect[s] the more compelling reading of the statute." *Id.*

In April 2025, HHS published a notice in the Federal Register regarding the 2024 Rule. *See* 90 Fed. Reg. 15412 (Apr. 11, 2025). In that notice, HHS stated that "there has been significant confusion about the preamble language referencing gender dysphoria in the" 2024 Rule. *Id.* The notice stated: "It is well-established that where, as here, the language included in the regulatory text itself is clear, statements made in the preamble to a final rule published in the Federal Register, lack the force and effect of law and are not enforceable." *Id.*

On December 19, 2025, HHS issued the Proposed Rule seeking to modify the definition of disability contained in 45 C.F.R. § 84.4(g). In the preamble, HHS stated its position that "gender dysphoria" is not covered under section 504 and the ADA, as "the Department interprets the exclusionary language 'gender identity disorders not resulting from physical impairments' to encompass gender dysphoria that does not result from physical impairment." 90 Fed. Reg. at 59480. HHS noted the *Williams* decision but criticized its analysis for "rais[ing] serious concerns under established canons of statutory construction." *Id*. at 59481. Instead, HHS relied on the dissenting opinion in the *Williams* case, as well as the dissenting opinion in the Supreme Court's denial of certiorari. The Proposed Rule also cited to district court cases pre-dating *Williams* which held that "disability" does not include gender dysphoria not resulting from physical impairments. The Proposed Rule does not engage with the overwhelming majority of district court cases following *Williams* that reached the opposite conclusion.

Although the Proposed Rule acknowledged that HHS had previously stated that the preamble to the 2024 Rule was not enforceable, HHS went a step further by modifying the regulation to adopt a blanket exclusion of gender dysphoria from the definition of disability. The proposed definition states: "For the purpose of part 84, the term 'gender identity disorders not resulting from physical impairments' includes gender dysphoria not resulting from physical impairments." *Id*. at 59483.

I. THE 30-DAY COMMENT PERIOD DEPRIVES STAKEHOLDERS OF A MEANINGFUL OPPORTUNITY TO COMMENT.

The undersigned Attorneys General urge HHS to extend the comment period beyond its current 30-day timeframe to 60 days to give affected stakeholders an adequate opportunity to participate in the rulemaking and comment on the proposal as required by the Administrative Procedure Act (APA). The APA provides that agencies must afford a meaningful opportunity for public participation through submission of written data, views, or arguments. 5 U.S.C. § 553(c). Under section (2)(b) of Executive Order 13563, a standard comment period should be *at least* sixty days. Exec. Order No. 13563, 76 Fed. Reg. 3821, 3821-22 (Jan. 18, 2011); *see also* Exec. Order 12866, 58 Fed. Reg. 51735, § 6(a)(1) (Oct. 4, 1993). The purpose of the 60-day comment period is to promote an "open exchange of information and perspectives among State, local, and tribal

officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole." *See* 76 Fed. Reg. at 3821. Notably, on the same day HHS released this Proposed Rule, HHS also published two other notices of proposed rulemaking related to similar topics and allowed for 60-day comment periods. There is no obvious reason why HHS would deny stakeholders a meaningful opportunity to comment and deprive stakeholders of the customary 60-day comment period here.

Thirty days is also insufficient given the impacts of the Proposed Rule and considering that three out of the four weeks in the comment period contained federal holidays. The Proposed Rule was published just before Christmas and New Years, on December 19, and the comment period closes just after the Martin Luther King Jr. holiday. With half of the already short comment period falling over the holidays, members of the public have not been afforded a meaningful opportunity to comment as required by law.

II. THE PROPOSED REVISION IS UNWARRANTED AND UNFOUNDED.

The Department purports to solicit comment on "all issues related to the proposed rule," including "the regulatory alternatives it considered" and "the Department's decision to pursue this rulemaking." *See* 90 Fed. Reg. at 59483.

HHS's rationale for why rulemaking is needed is internally inconsistent. Earlier this year, HHS published a notice in the Federal Register "to clarify the non-enforceability of certain language that was included in the preamble" of the 2024 Rule. *See* 90 Fed. Reg. 15412. According to that notice, the "statements made in the preamble to a final rule published in the Federal Register[] lack the force and effect of law and are not enforceable." *Id.* Since HHS has already stated its position that "the preamble language is not binding or legally enforceable," there is no need to issue a further regulation. Indeed, even HHS acknowledges that this rulemaking "may ultimately result in the same outcome" as if HHS done nothing. *See* 90 Fed. Reg. at 59482.

While HHS says it "believes that the 2024 Final Rule Preamble has generated significant confusion," *id*., HHS cites no evidence for this proposition, which makes it impossible for commenters to respond to this claim. Yet HHS relies on this supposed confusion as the reason why it declined the alternatives of either taking no action or of issuing only guidance stating its position. Even more, HHS ignores that its *own* Proposed Rule, if finalized, will generate confusion, as the proposed text of the regulation conflicts with a great body of case law, including the only appellate decision to have addressed this issue. *See Williams*, 45 F.4th at 759.

Instead, the Proposed Rule openly adopts an interpretation at odds with Fourth Circuit precedent. The Proposed Rule acknowledges that *Williams* constitutes "binding precedent within Maryland, North Carolina, South Carolina, Virginia, and West Virginia." *See* 90 Fed. Reg. at 59480. Yet in modifying the regulation to adopt a position squarely rejected by *Williams*, without even discussing the inability to enforce such regulation in the Fourth Circuit, HHS has improperly disregarded judicial precedent. *See Grant Med. Ctr. v. Burwell*, 204 F. Supp. 3d 68, 78 (D.D.C. 2016) ("The separation of powers doctrine requires administrative agencies to follow the law of the circuit with jurisdiction over a cause of action."). Given the constitutional concerns accompanying such an action, "[a]gencies that have followed a policy of intracircuit

nonacquiescence have been roundly 'condemned' by every circuit that has addressed the issue." *Id.* at 79 (collecting cases).

Moreover, the Proposed Rule fails to address the fact that the overwhelming majority of district courts post-*Williams* have agreed with and adopted the Fourth Circuit's analysis. *See, e.g.*, *Doe v. Georgia Dep't of Corr.*, 730 F. Supp. 3d 1327, 1348 (N.D. Ga. 2024) ("The Court agrees with the Fourth Circuit's reasoning."); *Doe v. Horne*, No. CV-23-00185-TUC-JGZ, 2024 WL 3091984, at *2 (D. Ariz. June 21, 2024) ("The Court agrees with [the *Williams* court's] analysis and concludes that gender dysphoria is not excluded from coverage by Section 12211(b)."); *Kozak v. CSX Transportation, Inc.*, No. 20-CV-184S, 2023 WL 4906148, at *5 (W.D.N.Y. Aug. 1, 2023) ("This Court finds the Fourth Circuit's reasoning more persuasive[.]").

While the Proposed Rule broadly summarizes the *Williams* decision, HHS fails to grapple with the majority's reasoning in any detail. Ignoring this case law compounds the legal and factual errors throughout the Proposed Rule. For example, the Proposed Rule confidently asserts that any difference between the diagnoses of "gender identity disorders" and "gender dysphoria" is "merely linguistic." 90 Fed. Reg. at 59481. Yet as the *Williams* court explained, the changes in diagnoses between the third and fifth versions of the Diagnostic and Statistical Manual of Mental Disorders (DSM) "are *not* just semantic. Indeed, the definition of gender dysphoria differs dramatically from that of the now-rejected diagnosis of 'gender identity disorder.'" 45 F.4th at 767 (emphasis added). The court of appeals took pains to explain how the condition of "gender identity disorder" in DSM-3 indicated an "incongruence" in an individual's gender identity, whereas "gender dysphoria" in DSM-5 is defined as the "*clinically significant distress* felt by some of those who experience 'an incongruence between their gender identity and their assigned sex.'" *Id*. (citation omitted).

The Proposed Rule's sole substantive discussion of the *Williams* analysis faults the court for evaluating changed "medical classifications," arguing that the court should have restricted itself to looking solely to the DSM-3, which was in place in 1990 when the ADA was passed. 90 Fed. Reg. at 59481. Yet HHS's argument that "gender dysphoria" was somehow encompassed in the DSM-3's diagnosis of "gender identity disorders" ignores that "in 1990, the medical community did not acknowledge gender dysphoria either as an independent diagnosis or as a subset of any other condition." *Williams,* 45 F.4th at 767. As the *Williams* court recounted, these different diagnoses reflect "different symptoms" and "also affect different populations," such that, "while the older DSM pathologized the very existence of transgender people, the recent DSM-5's diagnosis of gender dysphoria takes as a given that being transgender is not a disability and affirms that a transgender person's medical needs are just as deserving of treatment and protection as anyone else's." *Id*. at 768-69. The *Williams* decision is also consistent with the ADA Amendments Act of 2008, which codified that the meaning of "disability" under the law must be "construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted . . . ." 42 U.S.C. § 12102(4)(A).

The Proposed Rule's failure to contend with the ramifications of taking a position inconsistent with binding appellate precedent, and the lack of engagement with the reasoning of *Williams* and its progeny, is fatal. HHS should decline to pursue this new rulemaking changing the language of the regulation.

III. THE PROPOSED RULE UNDERMINES THE ABILITY OF THE ATTORNEYS GENERAL TO PROTECT THE RIGHTS OF TRANSGENDER AND DISABILITY COMMUNITIES IN OUR STATES.

As Attorneys General, we strongly support the rights of transgender people and people with disabilities to live with dignity, be free from discrimination, and have equal access to healthcare, education, employment, and housing. Living consistent with one's gender identity is essential to mental health and well-being,[1] whereas discrimination based on a medical condition and the denial of medically necessary healthcare to treat gender dysphoria exacerbate the condition.[2] The pervasive discrimination against transgender people within the healthcare system nationwide is well-documented, as are the resulting economic, emotional, and health consequences.[3] Discrimination, exclusion, and denial of care on the basis of transgender status causes economic, emotional, and health-related harms including an increased risk of depression, anxiety, substance abuse, and suicide.[4] Transgender individuals, including those with gender dysphoria, deserve greater protection under federal law, not less.

To support the health and dignity of transgender people and prevent these injuries, our states have adopted laws and policies to ensure access to gender-affirming healthcare and to combat discrimination throughout daily activities. These laws and policies—which are consistent with evidence-based, medically accepted standards of care—result in better health outcomes for our transgender residents. In our states, transgender individuals are protected by state laws that prohibit discrimination in, among other things, the provision of healthcare services, and which enable them to live healthy lives consistent with their gender identity. Many of our state legislatures and administrative agencies have enacted and enforce statutes, laws, and regulations

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[1] E. Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People*, 23 INT'L J. TRANSGENDER HEALTH, S1, 171 (2022).

[2] Kevin M. Barry & Jennifer L. Levi, *The Future of Disability Rights Protections for Transgender People*, 35 TOURO L. REV. 25, 34-35 (2019). *Cf. Flack v. Wis. Dept. of Health Servs*., 395 F.Supp.3d 1001, 1019 (W.D. Wis. 2019) (finding the failure to allow treatment for gender dysphoria when the same treatments are covered for other medical conditions "discriminates on the basis of diagnosis").

[3] Azenya Kachen, et al., *Health Care Access and Utilization by Transgender Populations: A United States Transgender Survey Study,* 5 Transgender Health 141, 141-48 (Sep 2020), https://pmc.ncbi.nlm.nih.gov/articles/PMC7906231; Jen Kates, et al., *Health and Access to Care and Coverage for Lesbian, Gay, Bisexual, and Transgender Individuals in the U.S.*, Kaiser Family Found. (May 2018), https://files.kff.org/attachment/Issue-Brief-Health-and-Access-to-Care-and-Coverage-for-LGBT-Individuals-in-the-US..

[4] Kristie Seelman, et al., *Transgender Noninclusive Healthcare and Delaying Care Because of Fear: Connections to General Health and Mental Health Among Transgender Adults*, 2.1 Transgender Health 17, 25-26 (Feb 2017) https://pmc.ncbi.nlm.nih.gov/articles/PMC5436369; Shabab Mirza & Caitlin Rooney, *Discrimination Prevents LGBTQ People From Accessing Healthcare*, Ctr. for Am. Progress, (Jan 2018), https://www.americanprogress.org/article/discrimination-prevents-lgbtq-people-accessing-health-care.

consistent with this fundamental principle. For example, California law prohibits discrimination on the basis of gender identity, gender expression, transgender status, gender dysphoria diagnosis, or intersex status in the provision of healthcare services. Cal. Civ. Code § 51; Cal. Gov't Code §§ 11135, 12926; Cal. Code Regs. tit. 2, §§ 14000 *et seq*. Many of the other states represented here have similar laws. *See, e.g,* Conn. Gen. Stat. §§ 19a-490pp, 46a-59a; 775 Ill. Comp. Stat. §§ 5/1-102(A), 103(Q), 103(O), 5/5/101(A)(6); Md. Code Ann., Health-Gen. §§ 15-151, 15-1A-22; Wash. Rev. Code Ann. § 49.60.030(1)(e).

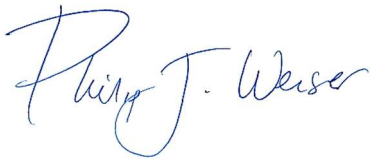
Excluding gender dysphoria as a protected category under section 504 removes an important protection against discrimination for our states' residents. It is the purpose and intent of disability rights laws to integrate people with disabilities and for people with disabilities to "fully participate in all aspects of society." 42 U.S.C. § 12101(a)(1). Our states have a profound interest in protecting transgender individuals from discrimination and in mitigating the injuries from such discrimination that individuals who are transgender and individuals with disabilities frequently suffer.

IV. CONCLUSION

Proper enforcement of section 504 is an issue of vital importance to our states, our residents, and our communities of transgender people and people with disabilities. For the reasons stated above, we strongly oppose the Proposed Rule *Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance* and request that it be withdrawn.

Sincerely,

ROB BONTA
Attorney General
State of California



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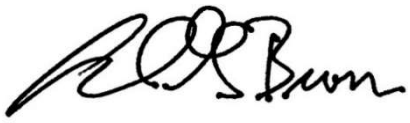

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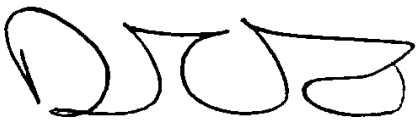

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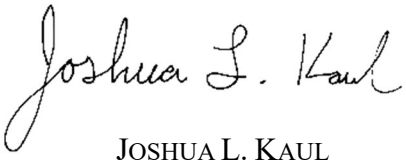

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