



# THE NATIONAL CATHOLIC BIOETHICS CENTER

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January 20, 2026

Paula M. Stannard, JD  
U.S. Department of Health and Human Services  
Director, Office for Civil Rights  
Attention: Disability NPRM, RIN 0945-AA27  
Humber H. Humphrey Building  
Room 509F  
200 Independence Avenue SW  
Washington, DC 20201

**Subj: Proposed Rule, Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance, RIN–0945–AA27; CFR 45 Part 84 [Proposal]**

Dear Atty. Stannard:

Thank you for the opportunity to provide public comment on behalf of The National Catholic Bioethics Center (NCBC), The Catholic Medical Association (CMA), the National Catholic Partnership on Disability (NCPD), and the National Association of Catholic Nurses, USA (NACN-USA), to the Department of Health and Human Services (HHS). We are responding to the proposal to revise 45 CFR 84.4(g) in the regulation implementing section 504 of the *Rehabilitation Act of 1973*, (*Rehabilitation Act*) as amended in 1992 (29 U.S.C. § 705(20)(F)(i)), as well as the *Americans with Disabilities Act* as amended in 1990 (ADA: 42 U.S.C. 12211(b)(1)). Our comments address the proposed revisions as they apply to recipients of HHS funding previously addressed in “Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance,” 89 FR 40066 (“2024 Final Rule”), published on May 9, 2024.

We hold that there is a need for clarification concerning the statutory exclusion of “gender identity disorders not resulting from physical impairments” from the definitions of “individual with a disability” and “disability” set forth at 29 U.S.C. 705(9) & (20)(F)(i), and 42 U.S.C. 12211(b). This is clearly

needed since the “2024 Final Rule” asserted, contrary to statutory provisions, that gender dysphoria would be considered a disability under law. Thus, this clarification is necessary to resolve ambiguity introduced in the preamble, as it relates to provisions within, the “2024 Final Rule” and to ensure compliance with the best reading of the plain language of the governing statute.<sup>1</sup>

The National Catholic Partnership on Disability (NCPD) works with dioceses, parishes, ministers, and laity to promote the full and meaningful participation of persons with disabilities in the life of the Church. It promotes this ever-evolving mission to renovate and sustain ministry to-and-with all people with disabilities and their families through the following initiatives: leads and participates in trainings, workshops, and regional meetings; collaborates with the U.S. Conference of Catholic Bishops in revising guidelines, resources, and pastoral statements to foster these same ends; provides educational resources using a multitude of accessible media; participates in International Ecclesial Conferences; and advocates for policies that respect the full dignity and inclusion of all persons, especially those with varying abilities. The programs addressing persons we serve will be directly or indirectly impacted by the Final Rule resulting from this Proposal.

The National Catholic Bioethics Center (NCBC) is a faith-based organization engaged in bioethics publication, education and consultation to thousands of persons seeking its services. It has a membership of over 500 members, representing individuals, dioceses, parishes, health care corporations, educational institutions, among many others. Thus, the impact on membership far exceeds the official number of members. Through our consultation services increasingly we are made aware of challenges to religious freedom faced by individuals and institutions seeking to address the health and social service needs of the very populations served by HHS and HHS funded programs. There is significant potential for such individuals and institutions to be erroneously charged with violations of the *Rehabilitation Act* and the *ADA*, in upholding their right to religious liberty in the care of persons with gender identity disorder, by the absence of clarity in the “2024 Final Rule.”

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<sup>1</sup> The “2024 Final Rule” concluded, in its preamble, that “gender dysphoria does not fall with the statutory exclusions for gender identity disorders.” [89 FR 40066, May 9, 2024] The codified regulatory text merely cross-referenced the statutory exclusion in 29 U.S.C. 705(20)(F). See 45 C.F.R. 84.4(g).

The Catholic Medical Association (CMA) has over 3,000 physicians and allied health members nationwide. CMA members seek to uphold the principles of the Catholic faith in the science and practice of medicine—including the belief that every person’s conscience and religious freedoms should be protected. The CMA’s mission includes defending its members’ right to follow their consciences and Catholic teaching within the physician-patient relationship, based on the patient’s best interest. Members engage in this ministry of health within numerous secular, as well as faith-based organizations sponsored by the Catholic Church, the largest provider of non-profit, non-governmental health care in the United States.<sup>2</sup> There are numerous examples of Catholic sponsored ministries partnering with the federal government to meet critical health and social service needs. There is significant potential for such individual health care professionals and organizations to be erroneously charged with violations of the *Rehabilitation Act* and the *ADA*, in attempting to meet the best interests of persons they serve with gender identity disorders, by the absence of clarity in the “2024 Final Rule.”

The National Association of Catholic Nurses, USA (NACN-USA) is the national professional organization for Catholic nurses in the United States, representing a membership of hundreds of nurses. NACN-USA shares the ministry of Catholic Nursing which advocates for human rights of vulnerable populations, especially those facing a wide variety of disabling conditions. Through prayer, leadership, fellowship, education, and the formation of conscience, we strive to imitate Jesus Christ and His teachings. Our members endorse the dignity and sanctity of all human life from conception to natural death, regardless of diagnosis or disability of the persons we serve. Nursing plays an integral role in the care of persons with gender identity disorders. In that role, nurses advocate for patients, protect the vulnerable, and promote human dignity and, thus, have a great interest in this Proposal. There is significant potential for nurses to be erroneously charged with violations of the *Rehabilitation Act* and the *ADA*, in attempting to meet the best interests of persons they serve with gender identity disorders, by the absence of clarity in the “2024 Final Rule.”

The *Rehabilitation Act* and the *ADA* expressly exclude “gender identity disorders not resulting from physical impairments” from the definitions of “disability” and “individual with a disability:” 29 U.S.C.

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<sup>2</sup> Catholic Health Association of the USA, “Facts – Statistics: Catholic Health Care in the United States” (April 2023), Catholic Health Association of the USA. Retrieved from <https://www.chausa.org/about/about/facts-statistics>.

705(9) & (20)(F)(i); and 42 U.S.C. 12211(b)(1). When Congress clearly excluded “gender identity disorders not resulting from physical impairments,” federal agencies and courts are bound to apply that exclusion as written, unless and until Congress amends the underlying statutes. Federal agency rulemaking does not have the authority to broaden or narrow these statutory exclusions through agency rulemaking, as was done in the “2024 Final Rule.”

We support that the language of the “2024 Final Rule” comes to an inconsistent conclusion on whether “gender dysphoria” not resulting from physical impairment may be a disability under section 504, compared to what is stated in its own preamble. Furthermore, what is included in the preamble of the “2024 Final Rule” lacks the force and effect of law, especially since there is internal inconsistency. Therefore, we seek that consistency of interpretation consistent with the *Rehabilitation Act* and the *ADA*, which expressly exclude “gender identity disorders not resulting from physical impairments” from the definitions of “disability” and “individual with a disability.” This Proposal clarifies that the HHS interprets the statutory exclusion of “gender identity disorders not resulting physical impairments” to encompass “gender dysphoria not resulting from a physical impairment.” We support this legal interpretation. Despite the fact that all persons, including those suffering with gender dysphoria, deserve dignity and respect in the delivery of health care and social services, the evolving social classifications of gender disorders cannot change the meaning of the statutory language, and the obligations it places on those delivering these services.

### **Religious Liberty**

The Proposal will rectify the threat to religious liberty from the “2024 Final Rule.” The U.S. Congress has for decades been careful to balance civil rights with religious liberty protections. Unfortunately, the “2024 Final Rule” asserted that people with gender dysphoria can bring federal civil right claims unbalanced by appropriate defenses for affected religious entities. Particularly at risk are the professionals meeting the missions of religious healthcare institutions, social service agencies, and religious schools who provide outstanding care and services to all the persons they serve in a non-discriminatory manner. Thus, we endorse that this Proposal correctly holds that there is no “clear statutory authority” for claiming that people with gender dysphoria are disabled as defined in federal law.

There have been numerous examples of excellent faith-oriented professionals and organizations being penalized for purported discrimination in attempting to provide excellent care and services to persons with gender identity disorders without violating their own deeply held moral and religious convictions. Here is a sample of those cases:

- ✓ *Chiles v. Salazar*. A Colorado Law prohibited a Christian counselor from providing individuals with talk therapy for unwanted same-sex attractions and gender-dysphoria. SCOTUS agreed to review the case and heard arguments in October 2025.
- ✓ *Kloosterman v. Metropolitan Hospital*. A physician assistant, known for her excellent patient care, was fired for refusing to engage in what are misnamed as “gender-affirming” interventions. In August 2025, the U.S. Court of Appeals for the Sixth Circuit upheld her right to litigate her First Amendment claim in federal court.
- ✓ *Hammons v. UMMS*. St. Joseph Towson (University of Maryland St. Joseph Medical Center) was sued by a transgender woman who identifies as a man, who won a lawsuit in 2023 after the hospital canceled her sex-rejecting hysterectomy due to Catholic directives, which were held to violate the Affordable Care Act (ACA) by discriminating against her.
- ✓ *Minton v. Dignity Health*. A transgender woman identifying as a man won the right to sue, holding that she was discriminated against when denied a hysterectomy at a Dignity Health Catholic hospital due to its religious directives. The case established that Dignity Health, even with a religious affiliation, could not deny a procedure request based on gender identity. In 2021 the courts ruled the case could proceed, affirming it was discrimination to not provide this procedure, even though the hospital respected the patient’s dignity and worth and transferred care to another facility, and the procedure was performed within days.

Most notably the “2024 Final Rule” does not respect the rights protected by the *First Amendment* or *Religious Freedom Restoration Act*. Many religious organizations will feel coercive pressure to abide by behavior contrary to their views on human sexuality and gender, creating a significant crisis of conscience. Moreover, as specifically applied to schools which receive federal funding, the “2024 Final Rule” could force schools to compromise their religious freedom to avoid being charged with “discrimination” based on gender dysphoria under the *Individuals with Disabilities Education Act* (IDEA). The very non-discriminatory provisions mandated by the “2024 Final Rule” have the grave potential of discriminating against grant recipients for their deeply held moral and religious beliefs protected by the U.S. Constitution’s First Amendment, the *Religious Freedom Restoration Act (RFRA)*, Title VII of the *Civil Rights Act of 1964* (Title VII), and Title IX of the *Education Amendments Act of 1972*. This final Proposal, when

finalized (Final Rule) must assure the religious and conscience protections guaranteed under these aforementioned provisions.

There are numerous questions concerning the obligations that would be created by the “2024 Final Rule” impacting health care, social services, and educational institutions and professionals from false charges of discrimination under the *ADA* and the *Rehabilitation Act*, e.g.:

- Would these professionals be forced by the government to violate conscience, requiring cooperation with sex-rejecting procedures considered to be mutilating to healthy anatomical functioning?
- What reasonable accommodations would be provided for those serving persons with gender dysphoria or gender identity disorder?
- What are the rights and recourse for both employee and employers?

### **Protecting Disability Rights**

Refusing to cooperate in providing sex-rejecting procedures—puberty blockers, cross-sex hormones, or surgical interventions, to address gender dysphoria, which render patients permanently disabled because these render patients infertile or impotent or amputate sexual organs, is not a violation of the *ADA* or the *Rehabilitation Act*. The “2024 Final Rule,” which the Proposal is attempting to correct, could force health and social service professionals to render patients with gender dysphoria permanently disabled. In fact, in July 2025 the U.S. Federal Trade Commission launched a public inquiry to better understand how consumers may have been exposed to false or unsupported claims about “gender-affirming care,” especially as it relates to minors, and to gauge the harms consumers may be experiencing. A number of our organizations responded to these claims, documenting how sex-rejecting procedures are creating disabilities.<sup>3</sup>

Not only do sex-rejecting procedures produce deleterious *psychological* effects they often cause permanent, irreversible *physiological* damage.<sup>4</sup> While the irreversibility, or extreme complexity, in “restoring” an individual’s genitalia following sexual-rejecting surgery is apparent, the damage that is caused by cross-sex hormone therapy is less obvious, but sometimes equally as permanent. Studies show

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<sup>3</sup> Call for Public Comment Regarding “Gender-Affirming Care” for Minors: Docket ID FTC-2025-0264. See Federal Trade Commission, Call for Public Comment Regarding “Gender-Affirming Care” for Minors: Docket ID FTC-2025-0264 (July 28, 2025). <https://www.regulations.gov/document/FTC-2025-0264-0001>.

<sup>4</sup> Executive Committee of the Catholic Medical Association, *The Ideology of Gender Harms Children* (Revised October 16, 2023). <https://www.cathmed.org/resources/the-ideology-of-gender-harms-children/>.

that the use of cross-sex hormones often comes with significant health risks. For example, boys who take estrogen are at risk of developing thromboembolism, elevated lipids, hypertension, decreased glucose tolerance, cardiovascular disease, obesity, and breast cancer, and similarly girls who take testosterone are at risk of developing elevated lipids, insulin resistance, cardiovascular disease, obesity, polycythemia, and unknown effects on breast, endometrial, and ovarian tissues.<sup>5</sup> Finally, when combined with puberty blocking hormones, cross-sex hormones can cause permanent sterility in young teens and children<sup>6</sup>—children who are not yet capable or mature enough to fully understand their own future desire to raise a family.<sup>7</sup> Thus, they create a disability.

This is especially problematic when one considers the “2024 Final Rule” claims that gender dysphoria is considered a disability under Section 504 of the *Rehabilitation Act*. And the proposal to the “2024 Final Rule” states: “Public schools that receive Federal financial assistance already must ensure they comply with obligations under other statutes such as the IDEA [*The Individuals with Disabilities Education Act*] and Section 504 of the *Rehabilitation Act* including the Department of Education's regulations implementing those statutes.”<sup>8</sup> However, this inclusion of gender dysphoria is not contained within definitions of “disability” in *The Individuals with Disabilities Education Act* (IDEA):

### **(3) Child with a disability**

#### **(A) In general**

The term “child with a disability” means a child—

- (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as “emotional disturbance”), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
- (ii) who, by reason thereof, needs special education and related services.

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<sup>5</sup> See Am. Coll. of Pediatricians, *Gender Dysphoria in Children*, (2018) <https://acped.org/gender-dysphoria-in-children/>.

<sup>6</sup> *Id.*

<sup>7</sup> University of Rochester Med. Ctr., *Understanding the Teen Brain*, <https://www.urmc.rochester.edu/encyclopedia/content?ContentID=3051&ContentTypeID=1>, (highlighting that the pre-frontal cortex of the brain, the part that is associated with long-term decision making, is not fully developed until the mid-20s.)

<sup>8</sup> *Federal Register*, Thursday, September 14, 2023, Proposed Rules, 88 FR 63392-63512. <https://www.federalregister.gov/documents/2023/09/14/2023-19149/discrimination-on-the-basis-of-disability-in-health-and-human-service-programs-or-activities>. Section 84.85(f)(1)-(4).

**(B) Child aged 3 through 9**

The term "child with a disability" for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child—

- (i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and
- (ii) who, by reason thereof, needs special education and related services.<sup>9</sup>

Similarly, social service agencies will be faced with the same aforementioned uncertainties, with added obligations to respect client rights, including privacy rights, and the need for a sense of security of all populations they serve. A number of these populations have vulnerabilities based on unrelated past traumas that must be respected. Furthermore, great sensitivities are needed in foster care and adoption policies, to assure the needs of the child are met, which must take precedence over those seeking to parent. Can an agency determine that a parent who has or is suffering with gender dysphoria or has transitioned may not be the best match for a child, with the child's own psychological needs, especially for a home with the presence of a father and a mother? What conscience and religious freedom policies of providers guaranteed by federal law, will be respected?

**Conclusion:**

While we clearly support and affirm the rights identified in the *ADA* and the *Rehabilitation Act*, on behalf of the many persons we serve, we reject the distortion of the provisions in the "2024 Final Rule." This distortion could weaken the legitimate protections these laws were promulgated to address. In fact, Congress' 1992 amended definitions in the federal *Rehabilitation Act* of 1973, and as well as in the 1990 amendments to the *ADA*, in defining "disability" excluded "transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, *gender identity disorders not resulting from physical impairments*, or other sexual behavior disorders."<sup>10</sup> [Emphasis added]. Thus, Congress does not consider gender dysphoria a disability unless it is the result of a physical impairment, which is generally not the case.<sup>11</sup> Despite this statutory exclusion, the "2024 Final Rule" claims that gender dysphoria is "not excluded from coverage

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<sup>9</sup> 22 U.S.C. § 1401(3).

<sup>10</sup> 29 U.S.C. 705(20)(F).

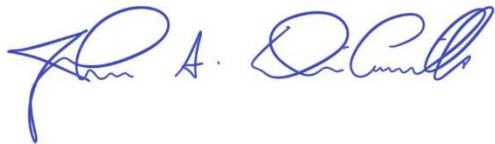
<sup>11</sup> Alterations of physical sexual characteristics due to congenital defects (ambiguous genitalia, etc.), and traumatic accidental mutilations do exist which would represent the result of a physical impairment but not a gender identity disorder.



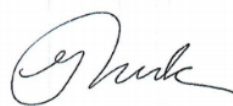
under the ADA or section 504 of the *Rehabilitation Act*.” These statutes are clear, regardless of the arbitrary misinterpretation of applicability of these provisions. In fact, Congress’s statutory exclusions do not diminish protections for people with genuine disabilities, but it supports genuine disability protections, by ensuring they are not diluted through conceptual overextensions. This Proposal supports genuine textual adherence to the very rights Congress is attempting to protect.

Thank you for this opportunity to express our concerns, as well as our support for an accurate application of the *Rehabilitation Act* and the *Americans with Disabilities Act*. We also are grateful for the efforts being made by this Administration to protect vulnerable children from a false ideology that perpetuates subjecting them to sex-rejecting procedures, which actual create for children and adults, alike, a disability.

Sincerely yours,



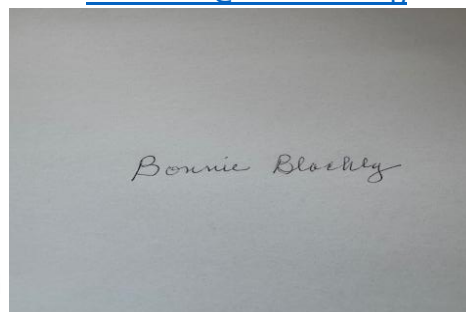
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