

FEBRUARY 6, 2026 | NEWS

Client Alert: Centers for Medicare & Medicaid Services Proposes Sweeping Restrictions on "Sex-Rejecting Procedures" (aka Gender-Affirming Care) for Minors

The Department of Health and Human Services (HHS), through the Centers for Medicare & Medicaid Services (CMS), has issued two landmark proposed rules that would significantly restrict the delivery and funding of gender-affirming care—referred to in the proposals as **"sex-rejecting procedures" (SRPs)**—for minors.

If finalized, these rules would leverage federal funding and hospital certification standards to effectively prohibit these medical interventions in the majority of U.S. health care facilities.

1. Hospital Condition of Participation (CoP) Proposed Rule

Title: *Medicare and Medicaid Programs; Hospital Condition of Participation: Prohibiting Sex-Rejecting Procedures for Children*

This rule proposes a new **CoP** for hospitals. Compliance with CoPs is mandatory for any hospital seeking to receive reimbursement from Medicare or Medicaid.

- **The Mandate:** Prohibits participating hospitals from performing SRPs—including puberty blockers, cross-sex hormones, and gender transition surgeries—on any individual under the age of 18.
- **The Penalty:** Non-compliance could lead to **termination** from the Medicare and Medicaid programs. For most hospitals, this loss of federal funding would be financially catastrophic.
- **Scope:** Unlike many previous restrictions that focus only on federal dollars, this CoP would apply to **all patients** at a participating hospital, regardless of whether the patient is covered by private insurance or

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paying out-of-pocket.

2. Medicaid and Children’s Health Insurance Program (CHIP) Funding Proposed Rule

Title: *Medicaid Program; Prohibition on Federal Medicaid and Children’s Health Insurance Program Funding for Sex-Rejecting Procedures Furnished to Children*

This rule focuses on state-level reimbursement and federal matching funds.

- **Federal Funding Ban:** Prohibits the use of federal Medicaid and CHIP funds for SRPs for individuals under 18 (Medicaid) or 19 (CHIP).
- **State Impact:** While states could theoretically continue to cover these services using 100 percent state-only funds, they would be barred from receiving the federal “matching” dollars (Federal Financial Participation) that typically cover a majority of Medicaid costs.
- **Target Effective Date:** CMS has suggested an intended effective date of **October 1, 2026**, for these funding restrictions.

Key Definitions & Exceptions

Both rules utilize the novel term **“Sex-Rejecting Procedures” (SRPs)**, defined generally as pharmaceutical or surgical interventions that attempt to align a minor’s physical appearance with an identity different from their biological sex.

The rules provide narrow exceptions for:

- Treating medically verifiable disorders of sexual development (intersex conditions).
- Treating infections, injuries, or complications caused by previous transition procedures.
- Situations where the procedure is used for a purpose other than gender transition.

Strategic Implications for Providers

These proposals represent an unprecedented use of CMS’s regulatory authority to ban specific clinical practices. Health care systems must consider:

- **Operational Risk:** The risk of decertification creates a “nuclear option” for federal enforcement.
- **Legal Conflict:** These rules may conflict with existing state laws in jurisdictions that mandate access to gender-affirming care, creating a complex preemption battle.
- **Litigation:** Legal challenges are already anticipated based on arguments regarding administrative authority and constitutional protections.

Next Steps: Public Comment Opportunity

The administrative rulemaking process requires CMS to consider public input before finalizing these regulations. Stakeholders—including hospitals, medical associations, and advocacy groups—have a critical window to voice their concerns or support.

- **Comment Deadline:** Public comments for both rules must be submitted by **February 17, 2026**.
- **How to Submit:** Comments can be filed electronically via the Federal Register or Regulations.gov.

If you have any questions or would like assistance drafting a formal comment on behalf of your organization to address the specific clinical or financial impacts of these rules, please contact Daphne Kackloudis or

another member of Shumaker's Health Law Service Line.