Illinois Health and Hospital Association

January 9, 2026

ILLINOIS HEALTH AND HOSPITAL ASSOCIATION
M E M O R A N D U M

SUBJECT: **CMS Proposed Rules Banning Gender-Affirming Care for Children**

On Dec. 19, 2025 the Centers for Medicare & Medicaid Services (CMS) proposed two rules seeking to restrict the provision of gender-affirming care to children. The first proposed rule (CMS-3481-P) would ban hospitals providing gender-affirming care, including puberty blockers, hormones, and surgery, from receiving funding from the federal Medicare or Medicaid programs. The second proposed rule (CMS-2451-P) would prohibit spending of federal Medicaid and Children's Health Insurance Program (CHIP) funds on gender-affirming care for children.

CMS developed these proposed rules in response to Executive Order 14187: "Protecting Children from Chemical and Surgical Mutilation" (signed Jan. 28, 2025).

In both proposed rules, CMS notes that the prevalence of gender dysphoria diagnoses among children and the use of gender-affirming care to treat gender dysphoria has increased in recent years. Gender-affirming care includes the use of pharmacological interventions such as puberty blocking medications to delay the onset of puberty, cross-sex hormone therapy to promote secondary sexual characteristics associated with the opposite biological sex, and surgical procedures such as chest/breast and genital surgery.

Due to these increases, the U.S. Dept. of Health and Human Services (HHS) conducted a review of the evidence and best practices for promoting the health of children and adolescents diagnosed with gender dysphoria. On Nov. 19, 2025, HHS published this review, which is a summary of outcome data across systematic reviews of the evidence base for treatment of gender dysphoria among children. The review concluded that: "the presuppositions that guide [pediatric medical transition (PMT)] have not been shown to be valid; the nature, probability and magnitude of risks associated with PMT have not been distinguished with sufficient clarity; PMT proponents' estimates of the probability of harm and benefits have not been shown to be reasonable, as judged by known facts and available studies; and the risks of serious impairment that PMT involves have not been shown to be justified. For these reasons, administering PMT to adolescents, even in a research context, is in tension with well-established ethical norms for human subjects research."

Despite statements from medical professional organizations, including the American Medical Association, the American Academy of Pediatrics, and the American Psychological Association, supporting access to gender-affirming care for children, HHS cited its review as the basis for the

proposed rules. CMS stated that they reviewed the "most influential sources of clinical guidance for treating pediatric gender dysphoria in the U.S.," including the World Professional Association for Transgender Health (WPATH) and the Endocrine Society (ES) clinical practices guidelines, as well as the American Academy of Pediatrics guidance document,[1] and determined that all three documents are "very low quality and should not be implemented."

CMS also provided a robust analysis of the current legal landscape regarding gender-affirming care. In both proposed rules, Illinois is identified as one of 14 states and the District of Columbia with shield laws in place protecting providers and recipients against laws in other states that restrict gender-affirming care. Illinois is also called out as one of three states that require some level of gender-affirming care coverage by all health insurance providers.

Comments on the proposed rules are due by 5 p.m. ET on Feb. 17, 2026 and can be submitted online through the Federal Register. Comments on the proposed rule banning hospitals from providing certain gender-affirming care services to children (CMS-3481-P) can be submitted *here*. Comments on the proposed rule prohibiting federal Medicaid and CHIP spending on certain gender-affirming care services for children (CMS-2451-P) can be submitted *here*. A detailed summary of the policies and requirements of the proposed rules is set forth below.

If finalized, these rules would supersede Illinois protections when it comes to hospital participation in Medicare and Medicaid, and Federal reimbursement under the Medicaid and CHIP programs.

Hospital Condition of Participation: Prohibiting Sex-Rejecting Procedures for Children (CMS-3481-P)

On Dec. 19, 2025, CMS issued a proposed rule that, if finalized, would prohibit hospitals from providing certain gender-affirming care services to children or risk losing their ability to participate in the Medicare and Medicaid programs. CMS cites Social Security Act (the Act) section 1861(e)(9) as giving them explicit authority to enact regulations that the HHS Secretary finds necessary in the interest of the health and safety of individuals who are furnished services in a hospital. CMS also sites section 1871 of the Act as giving it authority to prescribe regulations as necessary to carry out the administration of the Medicare program, and which a hospital must meet to participate in Medicare (42 CFR part 482; Conditions of Participation or CoPs). Hospitals that provide inpatient and outpatient services to Medicaid enrollees are required to meet the Medicare CoPs to also participate in Medicaid under sections 440.10(a)(3)(iii) and 440.20(a)(3)(ii) of the Act.

Provisions of the Proposed Regulations

[1] The American Academy of Pediatrics' (AAP) 2018 Policy Statement was reaffirmed in 2023 (Rafferty et al., 2018); the Endocrine Society's (ES) published in 2017 represents the most recent published version (Hembree et al., 2017); the World Professional Association for Transgender Health's (WPATH) most recent clinical practice guideline is Standards of Care, Version 8 (SOC-8) (Coleman et al., 2022).

CMS proposed adding a new section to 42 CFR part 482, subpart C that would prohibit Medicare and Medicaid-participating hospitals from performing certain gender-affirming care procedures on any child, regardless of payer. CMS termed gender-affirming care as "sex-rejecting procedures" (SRP) in the proposed rule, defining SRPs as any pharmaceutical or surgical intervention that attempts to align an individual's physical appearance or body with a stated identity that differs from the individual's sex by either:

- Intentionally disrupting or suppressing the development of biological functions, including primary or secondary sex-based traits; or
- Intentionally altering an individual's physical appearance or body, including removing, minimizing, or permanently impairing the function of primary or secondary sex-based traits such as the sexual and reproductive organs.

CMS proposed several additional definitions to this new section, including:

- Child: any individual younger than 18 years of age.
- Female: an individual of the sex characterized by a reproductive system with the biological function of (at maturity, absent disruption or congenital anomaly) producing eggs (ova).
- Male: an individual of the sex characterized by a reproductive system with the biological function of (at maturity, absent disruption or congenital anomaly) producing sperm.
- Sex: an individual's immutable biological classification as either male or female.

CMS also proposed limited, specific exceptions to this new CoP, including:

- Procedures to treat an individual with a medically verifiable disorder of sexual development (section 482.46(b)(1))).
- Procedures for purposes other than attempting to align an individual's physical appearance or body with an asserted identity that differs from the individual's sex (section 482.46(b)(2))).
- Treating complications (section 482.46(b)(3))).

CMS noted that any procedures or treatments under these exceptions must still be performed with the consent of the child's parent or legal guardian, as currently required under the patient rights CoP at section 482.13(b)(2), the medical records CoP at section 482.24(c)(4)(v), the surgical services CoP at section 482.51(b)(2), and in compliance with applicable state law(s).

CMS preemptively addressed comments around its ability to issue this proposed rule, acknowledging that under section 1801 of the Act CMS may not "exercise any supervision or control over the practice of medicine or the manner in which medical services are provided (42 U.S.C. 1395). Specifically, CMS states that it does not believe that providing the gender-affirming care defined as SRPs to children constitutes healthcare and, therefore, such services are not subsumed under the term of "the practice of medicine."

Administrative Burden Associated with the Proposed Rule
CMS expects hospitals that are currently providing the gender-affirming care banned under this rule would need to inform affected children and their parents or legal guardian that they no longer perform such procedures. CMS stated it expects the child's physician or the licensed practitioner providing this care to spend an average of 30 minutes writing each notification and an additional 30 minutes answering any questions from the child and their parents or legal guardian, leading to a total burden of 1 hour per patient. CMS estimated a total, national cost of providing these notices at $1,938,363.

CMS anticipates hospitals that are currently providing the gender-affirming care banned under this rule would need to update their policies and procedures to ensure that they align with the proposed requirements. CMS estimated these updates would cost $1,472.10 per hospital.

Prohibition on Federal Medicaid and Children's Health Insurance Program Funding for Sex-Rejecting Procedures Furnished to Children (CMS-2451-P)

On Dec. 19, 2025, CMS issued a second proposed rule that, if finalized, would prohibit federal Medicaid and CHIP spending on certain gender-affirming care services for children. CMS cites section 1102 of the Act as giving it authority to issue this proposed rule. Section 1102 of the Act requires the HHS Secretary to make and publish rules and regulations as necessary for the efficient administration and oversight of state Medicaid programs.

Regarding provisions of the proposed rule related to Medicaid payment, CMS cites section 1902(a)(19) and 1902(a)(30)(A) of the Act. Section 1902(a)(19) requires states to assure that care and services under the state's Medicaid plan are provided in a manner consistent with the best interest of the recipients. Section 1902(a)(30)(A) requires the state plan to assure that payments are consistent with quality of care. CMS used these citations to support this proposed rule, stating this action is necessary given the lack of an adequate evidence base for the effectiveness of these treatments and the significant potential for negative and irreversible side effects.

Regarding the provisions of the proposed rule related to CHIP payment, CMS cites section 2102(a) of the Act, which requires effective and efficient administration of CHIP and coordination with other healthcare programs, including Medicaid. CMS also cites section 2107(e) of the Act, which requires the execution of functions required by the Medicaid provisions that apply to the Medicaid program in the same manner as they apply to CHIP.

Provisions of the Proposed Regulations
CMS proposed to add a new subpart N to part 441 of the Act, prohibiting Federal Financial Participation (FFP) in Medicaid for certain gender-affirming care services provided to children under the age of 18. Within new subpart N, CMS proposed that state Medicaid plans must provide that the Medicaid agency will not make payment under the plan for certain gender-

affirming procedures, defined as sex-rejecting procedures (SRPs) by CMS, for children under the age of 18.

CMS proposed defining SRPs as any pharmaceutical or surgical intervention that attempts to align a child's physical appearance or body with an asserted identity that differs from the child's sex either by:

1. Intentionally disrupting or suppressing the normal development of natural biological functions, including primary or secondary sex-based traits; or
2. Intentionally altering a child's physical appearance or body, including amputating, minimizing, or destroying primary or secondary sex-based traits such as the sexual and reproductive organs.

This proposed definition would not include procedures undertaken:

- To treat a child with a medically verifiable disorder of sexual development;
- For purposes other than attempting to align a child's physical appearance or body with an asserted identity that differs from the child's sex; or
- To treat complications, including any infection, injury, disease, or disorder that has been caused or exacerbated by the provision of gender-affirming care.

CMS also proposes the following definitions:

- FFP: Federal financial participation, or the longstanding term used in the Medicaid program to describe the federal government's matching arrangement with states and territories.
- Female: a person of the sex characterized by a reproductive system with the biological function of (at maturity, absent disruption or congenital anomaly) producing eggs (ova).
- Male: a person of the sex characterized by a reproductive system with the biological function of (at maturity, absent disruption or congenital anomaly) producing sperm.
- Sex: a person's immutable biological classification as either male or female.

CMS solicits comments on whether these proposed definitions of female, male and sex could pose challenges to states in operationalizing this proposed prohibition on federal reimbursement of gender-affirming procedures or other aspects of the Medicaid program or CHIP.

Regarding CHIP, CMS proposes to revise subpart D of 42 CFR part 457 to prohibit the use of federal CHIP dollars to fund certain gender-affirming care procedures for children under the age of 19. The prohibition on FFP for payments by states for gender-affirming care procedures for children would apply in the same manner as proposed for the Medicaid program and described above. The only difference for states administering a separate CHIP program is that the policy applies to children under the age of 19 in accordance with the definition of a targeted low-income child at section 457.310. This prohibition would apply to CHIP regardless of the type of health benefit coverage option described at section 457.410.

The definitions applied under Medicaid and described above would apply equally to a separate CHIP.

CMS noted that these proposed regulatory changes would not prohibit the use of federal Medicaid or CHIP dollars for mental health treatments for conditions such as gender dysphoria. Additionally, states may provide coverage for the affected gender-affirming services with state-only funds outside of the federally-matched Medicaid program or CHIP.

CMS anticipates ceasing federal reimbursement of the gender-affirming procedures defined in this rule for both Medicaid and CHIP upon the effective date established in the final rule.