THE NATIONAL CATHOLIC BIOETHICS CENTER

600 REED ROAD, SUITE 102, BROOMALL, PA 19008 (215) 877-2660 (215) 877-2688 FAX NCBCENTER.ORG

April 9, 2025

Robert F. Kennedy, Jr.
Secretary
U.S. Department of Health and Human Services
Centers for Medicare & Medicaid Services, Department of Health and Human Services
Attention: CMS-9884-P, (RIN 0938-AV61) Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

Subj: Patient Protection and Affordable Care Act; Marketplace Integrity and Affordability, CMS-9884-P; 45 CFR Parts 147, 155, and 156; RIN 0938-AV61.

Dear Secretary Kennedy:

The National Catholic Partnership on Disability (NCPD), the Catholic Medical Association (CMA), The National Catholic Bioethics Center (NCBC), and the National Association of Catholic Nurses, USA (NACN-USA) submit the following comments in support of, as well as providing suggestions to, some of the provisions of the U.S. Department of Health and Human Services (HHS) proposed rule "Patient Protection and Affordable Care Act; Marketplace Integrity and Affordability"[1] (Proposal) We support the Proposal in its provisions to exclude "sex-trait modification" (STM) as an Essential Health Benefit (EHB) (§156.115(d), pp. 12985-87) of the non-grandfathered Benchmark plans of Exchanges pursuant to the *Affordable Care Act* (ACA).[2] We are not providing comment on HHS's DACA (Deferred Action for Childhood Arrivals)[3] proposal, specifically on whether DACA recipients are legal residents for purposes of accessing benefits, which we conclude is a question pertaining to immigration law.

A. **Introduction:** There are five points that we wish to address:

1. The need for the Proposal to exclude from Essential Health Benefits (EHB), but also to identify "sex-trait modification" (STM) beyond referencing the definition of "chemical and surgical mutilation" used in President Trump's Executive Order, "Protecting Children from Chemical

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[1] *Federal Register,* Wednesday, March 19, 2025, Proposed Rules, 2025-04083, 90 FR 12942. https://www.federalregister.gov/documents/2025/03/19/2025-04083/patient-protection-and-affordable-care-act-marketplace-integrity-and-affordability.

[2] *Patient Protection and Affordable Care Act* (ACA) (42 U.S.C. 18116).

[3] On Aug. 30, 2022, DHS (Dept. of Homeland Security) published the DACA Final Rule, with the intent to preserve and fortify the DACA policy. This rule, which puts into effect regulations at 8 CFR 236.21-236.25, rescinds and replaces the DACA guidance set forth in the June 15, 2012 Memorandum issued by Secretary Napolitano.

and Surgical Mutilation" (Enjoined Executive Order: includes puberty blockers, sex hormones, and surgical procedures to affirm an individual's gender identity that differs from their sex assigned at birth).[4] [12987]

2. The need for the Proposal to differentiate between "gender identity" confusion and physiological anomalies resulting from physiologic developmental anomalies, such as ambiguous genitalia resulting in an erroneous sex assignment at birth, which medical interventions are attempting to correct. [12987]
3. The impact on the wellbeing of persons, especially adolescents, as well as society of the falsely constructed "gender ideology." There is a need to address the real psycho-social sources of gender dysphoria and include in the EHB interventions to remedy those causes and treat their effects.
4. The need for the Proposal to provide for federal coverage of medical interventions aimed at restoring or reconstructing form and function consistent with sex assigned at birth, but lost due to disease, trauma, or previous transgender interventions. Diagnostic, including genetic, and restorative interventions should be included in the EHBs.
5. The importance of securing religious freedom and conscience protection, eroded in recent years by the redefinition of "sex," in obligations flowing from Section 1557 of the *Affordable Care Act* (ACA).

Most importantly, we wish to thank HHS for protecting and securing the wellbeing of persons with gender dysphoria, who deserve health care that promotes their flourishing, not destroys their physical and psychological integrity.

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. A number of the persons who are served rely heavily on the Exchanges for their health and wellbeing and need to trust that such health care services will contribute to their human flourishing, not deceptively erode such flourishing. Sex-Trait Modifications (STM), promoted under the past federal administration actually create disabilities by the very nature of the recommended chemical and surgical alterations, while not addressing the actual sources of the gender dysphoria, which themselves are disabling. Furthermore, a number of the persons we serve are on the autism spectrum and data support they are vulnerable to this gender ideology.[5]

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 physical, psychological, and spiritual integrity, and

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[4] President Donald J. Trump, *Protecting Children from Chemical and Surgical Mutilation*, Presidential Actions (The White House: January 28, 2025). https://www.whitehouse.gov/presidential-actions/2025/01/protecting-children-from-chemical-and-surgical-mutilation/.

[5] Aimilia Kallitsounaki and David M Williams, "Autism Spectrum Disorder and Gender Dysphoria/Incongruence. A systematic Literature Review and Meta-Analysis," *J Autism Dev Disord*. (2022 May 20;53(8)):3103–3117. doi: 10.1007/s10803-022-05517-y.

conscience and religious freedoms, should be protected. The CMA's mission includes defending its members' right to provide care to address the best interest of their patients, and in so doing follow their consciences and Catholic teaching within the physician/professional-patient relationship. 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.[6] There are numerous examples of CMA members and Catholic sponsored ministries partnering with the federal government to meet critical health and social service needs of society, including relationships with the Exchanges of the ACA.

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 1300 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 services increasingly we are made aware of challenges families face when struggling with providers and health plans which offer "gender affirming" interventions, which do not address the underlying causes of gender dysphoria. Furthermore, providers and plan enrollees express concerns that by enrollment with the Exchanges, which offer interventions inconsistent with their religious or deeply held beliefs of conscience, they are fostering a harmful gender ideology.

The National Association of Catholic Nurses, USA (NACN-USA) is a non-profit organization of nurses from different backgrounds and specialties. NACN-USA shares the ministry of Catholic Nursing which advocates for human rights of vulnerable populations, and the rights of health care providers to protect those persons, as well as the rights of health care providers to have their own deeply held moral and religious beliefs protected. 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, and the innate integrity written within human sexuality. As professionals directly involved with patients and their family members are seeing firsthand the harm done by a gender ideology that is not addressing the foundational needs of the persons they serve. When Exchanges reimburse for interventions that are destructive to the human person, and the underlying psycho-social needs are not addressed, great harm is done.

B. **The Five Points We Wish to Address**:

1. **The need for the Proposal to exclude from EHBs, but also identify "sex-trait modification:" [12987]**

For enforceability there is a need to at least identify STMs for exclusion as EHBs *both physical and psycho-social* interventions by "purpose", e.g., not routine or medically necessary to maintain physiological integrity or organ functioning, but to reinforce an erroneous gender identity different from that assigned at birth. President Trump's enjoined Executive Order cites "chemical and surgical mutilation" to include the use of puberty blockers, sex hormones, and surgical procedures to affirm an individual's gender identity that differs from their sex assigned at birth. Currently the federal government takes no position on whether STMs are included as EHBs under the *Affordable Care Act* (see 12987 n.155; 13017 n.214) and five states (CA, CO, NM, VT, WA) specifically include coverage of some STMs (while forty states exclude such coverage in the state plan).[7] At a minimum the Proposal, besides citing the

[6] 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.
[7] Proposal, Footnote 155.

aforementioned "purpose," should give possible examples, e.g.: puberty blockers; hormone therapy; genital surgery (amputation, building replica cross-sex organs); and non-genital cosmetic surgeries (mastectomy, breast construction, cheek/chin implants, rhinoplasty, feminization surgeries, liposuction, voice surgery, hair removal, etc., and even "Adam's Apple" reduction). Furthermore, erroneous gender-affirming psycho-social interventions should be excluded. Despite President Trump's Executive Order being enjoined, this does not preclude the exclusion of STMs from EHBs. Also, this does not preclude employers or states from choosing to provide such coverage in their health plans, or state sponsored Exchanges.

2. The need for the Proposal to differentiate between "gender identity" confusion and physiological anomalies. [12987]

As President Trump has stated, there are only two genders (physiological sexes), male and female.[8] These are determined by 23rd chromosomal pair patterns, dictated at the moment of conception (fertilization). The female 23rd chromosomal pattern is XX and the male 23rd chromosomal pattern is XY. There are aberrations due to translocation of the male SRY gene from the Y chromosome to the X chromosome from the father, or chromosomal pair non-disjunction of the development of the gametes (sperm/egg), e.g., Turner's Syndrome (Female XO); Klinefelter's Syndrome (Male XXY), with other similar extra 23rd chromosome aberrations. However, when there is a "Y" 23rd chromosome, or the SRY (male) gene on the X chromosome of an XX child, the child is characteristically male.[9] Each chromosomal pattern is present in every cell in the person's body (it is halved in gametes), and cannot be altered by any sex-trait modification intervention. There also are physiological anomalies that occur in fetal development in the womb, such as androgen insensitivity syndrome, resulting in a chromosomal male baby being misidentified at birth due to the appearance of ambiguous genitalia.[10] Again, every cell in that male baby's body is male, and cannot be altered by any sex-trait modification intervention. Thus, accurate diagnostic assessments are needed to correctly identify and address the chromosomal status of the baby. These interventions would not be dissimilar to those engaged in by those with gender dysphoria seeking to alter an individual's gender identity that differs from their sex assigned at birth. However, again, focusing on the "purpose" of the interventions, such STM interventions should not be excluded, since by definition their purpose is not to alter a correctly determined chromosomal sex assignment.

3. The impact on the wellbeing of persons, especially adolescents, as well as society of the falsely constructed "gender ideology." There is a need to address the real psycho-social sources of gender dysphoria, and include in the EHB interventions to remedy those causes and treat their effects.

There is evidence of significant increases in gender dysphoria, especially among adolescents,[11] with a corresponding increase in the use of medically supported STMs. Increasingly there is evidence that there is a lack of a scientific defense to support the continuance of federal support for STM for adults and children, but especially for children. Great Britain, Sweden, Finland, and France have recently halted the

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[8] President Donald J. Trump, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, Presidential Actions (The White House: January 20, 2025). https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/.

[9] "Y Chromosome," *Medline Plus*, https://medlineplus.gov/genetics/chromosome/y/#conditions.

[10] "Ambiguous Genitalia," Mount Sinai, https://www.mountsinai.org/health-library/symptoms/ambiguous-genitalia#:~:text=the%20ambiguous%20genitalia.-,Causes,the%20genetic%20sex%20is%20male..

[11] Andre' Leonhardt, MSc., et al., "Gender Dysphoria in Adolescence: Examining the Rapid Onst Hypothesis," *Neuropsychiatrie* (July 1, 2024). https://link.springer.com/article/10.1007/s40211-024-00500-8.

use of puberty blocking drugs in children with gender dysphoria.[12] In fact, data are supporting that great harm is not only occurring for individuals, but also for society. A thirty-year follow-up study of 324 sex reassigned adults found "substantially higher rates of overall mortality, death from cardiovascular disease and suicide, suicide attempts and psychiatric hospitalizations in post-surgical transsexuals as compared to a healthy control population."[13]Adults who have been harmed, and even mutilated by STM as minors increasingly are seeking recourse from those interventions, including procedure reversals. Evidence of regret from so called de-transitioners, who have undergone sex reassignment procedures as children or adolescents are surfacing. These individuals claim they were coerced into sex reassignment when most vulnerable and immature, and when uninformed of consequences. Some are initiating lawsuits against medical practitioners and medical organizations who provided such interventions.[14] There is significant evidence of contagion of "rapid onset gender dysphoria"[15] especially among adolescent girls, from a society, including the government endorsing the falsehood that mutilating one's human sexuality will remedy the underlying psychological foundations for the dysphoria. Particularly vulnerable are persons on the autism spectrum, who need to be protected from false remedies to the struggles they already are facing.[16]

There are probably many paths that could lead to gender dysphoria. There is no single-family dynamic or social situation that appears to be causative of gender confusion. There may be an association with adverse events in childhood including sexual abuse. Social reinforcement, parental psychopathology, family dynamics, and social contagion may all contribute to the development of gender dysphoria in some children. The traditional understanding of childhood gender dysphoria had been that it reflected confused thinking on the part of the child. The standard approach was watchful waiting by the parents with the advice of a mental health specialist. The goals of therapy were to address family pathology when present, treat any psychosocial co-morbidities in the child, and aid the child in aligning gender identity with biological sex.[17]

However, erroneously the current so called "treatment" for gender dysphoria in the US includes affirmation of the child's confusion, chemically blocking puberty, lifelong cross-sex hormones (testosterone for girls and estrogen for boys), and mutilating surgeries. Data support that puberty blocking hormones "arrest bone growth, decrease bone density, prevent the sex steroid dependent organization and maturation of the adolescent brain, and inhibit fertility."[18] Recently the FDA placed a warning on the use of

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[12] Jill Lawless, "England's Health Service Says It Won't Give Puberty Blockers to Children at Gender Clinics." *Associated Press* (June 11,2023). https://apnews.com/article/uk-transgender-puberty-blockers-abd9145484006fea23de6b4656c937da. Lisa Nainggolan, "Hormonal Tx of Youth with Gender Dysphoria Stops in Sweden." *Medscape* (May 12, 2021). https://www.medscape.com/viewarticle/950964. Wesley J. Smith, "Finns Turn against Puberty Blockers for Gender Dysphoria." *National Review* (July 25, 2021). https://www.nationalreview.com/corner/fins-turn-against-puberty-blockers-for-gender-dysphoria/. Wesley J. Smith, "France's Academy of Medicine Urges 'Great Medical Caution' in Blocking Puberty," National Review (April 26, 2022). https://www.nationalreview.com/corner/frances-academy-of-medicine-urges-great-medical-caution-in-blocking-puberty/.

[13] Celia Dhejne, *et al*., "Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden" (2011) PLoS One 6, no. 2: e16885. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3043071/.

[14] Independent Women's Forum, ND. "Identity Crisis: Stories the transgender movement doesn't want you to hear." https://www.iwf.org/identity-crisis/. Accessed August 13, 2023.

[15] L. Littman, "Rapid onset of gender dysphoria in adolescents and young adults: A descriptive study." Abstract, Journal of Adolescent Health (February 2017, 60:2, Supplement 1) S95-S96. https://doi.org/10.1016/j.jadohealth.2016.10.369.

[16] *Op cit*., Aimilia Kallitsounaki and David M Williams.

[17] American College of Pediatricians, "Gender Dysphoria in Children" (2018). https://acpeds.org/position-statements/gender-dysphoria-in-children.

[18] *Ibid.*

hormone puberty blockers because of several cases of pseudotumor cerebri.[19] The pathological effects of puberty blockers are not easily reversed. The noxious psychological effect of not growing into adolescence together with one's peers is not reversible. Cross-sex hormones are associated with dangerous health risks. Estrogen administration to boys will place them at risk of developing thromboembolism, elevated lipids, hypertension, decreased glucose tolerance, cardiovascular disease, obesity, and breast cancer. Girls provided with high-dose testosterone will place them at risk of developing elevated lipids, insulin resistance, cardiovascular disease, obesity, polycythemia, and unknown effects on breast, endometrial, and ovarian tissues.[20] Prepubertal children who receive puberty blocking hormones followed by cross-sex hormones risk permanent sterilization.

The claim that children with sexual confusion will commit suicide if they are not quickly affirmed and set on the path of sex reassignment is not scientifically supported. Sexually confused children frequently show significant psychiatric co-morbidities; the incidence of suicidality in this group corresponds to the psychiatric co-morbidities these children show. Scientific evidence suggests that the transgender interventions do not reduce the risk of suicide. In fact, puberty blockers are associated with depression and other emotional disturbances related to suicide. Furthermore, data support that in the long run transitioning may even exacerbate the psychological distress that could lead to suicide.[21]

Clearly, the federal government should remove from its Exchanges sex-trait modifications as an EHB. The science is continuing to document that such interventions are scientifically unsound. In fact, twenty-six states prohibit such interventions on minors.[22]

4. **The need for the Proposal to provide for federal coverage of interventions aimed at restoring or reconstructing form and function consistent with sex assigned at birth, including de-transitioning. Diagnostic, including genetic, and restorative interventions should be included in the EHBs. [12987]**

The attempt to address surgically and hormonally, what should be treated psychiatrically with counselling, is not authentic health care. HHS must not affirm what is not true. Cognitive Based Therapy (CBT) has been shown to be useful in treating other body dysphoria disorders associated with increased risk of death, such as anorexia nervosa.[23] Persons with gender dysphoria would benefit from such treatment of depression and anxiety along with aggressive counseling and medications directed to those conditions. Those experiencing gender dysphoria, and most importantly those who have experienced the trauma of surgical or hormonal STMs have great need for such care. Furthermore, restorative and reconstructive interventions must be included as EHB, especially since great harm has been perpetrated by previous HHS Rules fostering transitioning.[24]

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[19] U.S. Food and Drug Administration (FDA), "Risk of Pseudotumor Cerebri Added to Labeling for Gonadotropin-Releasing Hormone Agonists" (2022). https://www.fda.gov/media/159663/download.

[20] *Op cit,* American College of Pediatricians (2018).

[21] J.W. Robbins Broyles, V. R., "The Myth about Suicide and Gender Dysphoric Children, Child and Parental Rights," Online resource (ND) *American College of Pediatricians*.

[22] Annette Choi, "26 states have passed laws restricting gender-affirming care for trans youth," *CNN* (December 3, 2024) https://www.cnn.com/politics/state-ban-gender-affirming-care-transgender-dg/index.html.

[23] Alexandra F. Muratore, PhD and Evelyn Attia, MD, "Current Therapeutic Approaches to Anorexia Nervosa: State of the Art," *Clinical Therapeutics Volume* 43, Issue 1 (January 2021) Pages 85-94. https://www.sciencedirect.com/science/article/abs/pii/S0149291820305166.

[24] Secretary Robert F. Kennedy, Jr. "The prior administration's policy of trying to engineer gender ideology into every aspect of public life is over." U.S. HHS Press Release: "HHS Takes Action on President Trump's Executive Orders Defending Women and Children" (February 19, 2025). https://www.hhs.gov/press-room/eo-defending-women-and-children.html.

There also are populations that need such restorative and reconstructive interventions due to mutilation caused by antenatal developmental aberrations, physical trauma, disease, and prior surgeries to address pathologies such as cancers. HHS should include in the Exchanges coverage of these interventions as EHBs.

5. The importance of securing religious freedom and conscience protection.

The ACA requires certain non-grandfathered health care plans to cover "Essential Health Benefits" (EHBs).[25] While there is no national standard, federal government sets baseline requirements with which a qualifying employer-sponsored health plans must comply. Section 1302(a)(1) states that the HHS Secretary shall determine what qualifies as an EHB. Each state has its own individual plan of coverage. The Proposal does not require, nor prohibit States from requiring, the coverage of sex-trait modifications subject to the rules related to state-mandated benefits. As cited earlier, the current Section 156.115(d) takes no position on whether "sex-trait modifications" are an EHB.[26] As HHS notes, five states (CA, CO, NM, VT, WA) specifically include coverage of some sex-trait modifications in their benchmark plans (while forty states exclude such coverage in the state plan).[27] This Proposal is a way to achieve no federal funding of STM. This is a desirable and significant cost-saver, while at the same time not requiring additional cost to states. The Proposed Rule would continue to leave states the option of deciding whether to mandate coverage of "sex-trait modifications" in their benchmark plans. The proposed exclusion would merely ensure that costs associated with this mandate are borne by the state and not covered by the federal government.

Such exclusions of STM as an EHB also can positively impact small employers. EHBs apply to individual market, nongroup, and small group plans (generally less than 51 FTEs, some states say 100), who rely on provisions of federal benchmark programs for employee coverage. Employers, and often their employees are required to pay for premiums for health care coverage, which should be reduced with this Proposal. More importantly, just as with the "contraceptive mandate" and the conscience and religious liberty violations of the Little Sisters of the Poor,[28] Conestoga Wood Specialties, and Hobby Lobby,[29] were demonstrated to be unconstitutional, the rights of objecting employers would be protected with this Proposal, while employers and states could continue to provide such coverage. Furthermore, many individual plan participants must pay premiums for their health care coverage. The Proposal will respect the conscience and religious liberty rights of enrollees who object to paying premiums contributing to the payment for interventions for other enrollees which violate their deeply held religious or moral beliefs.

Respect for deeply held moral beliefs should be protected, even if not faith-based. Most desirable models are found in two Rules promulgated under President Trump's first administration.[30] Removing

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[25] Section 1302 of the ACA, 42 U.S.C. § 18022.

[26] 90 Fed. Reg. at 12987.

[27] Erica Honig, J.D., Senior Compliance Director, Employee Benefits, "CMS Proposed Rule's Potential Impacts to Gender Identity-Related Care Coverage under Group Health Plans Employee Benefits (March 18, 2025). https://www.risk-strategies.com/blog/cms-proposed-rules-potential-impacts-to-gender-identity-related-care-coverage-under-group-health-plans#:~:text=The%20EHB%2Dbenchmark%20plans%20for,language%20that%20excludes%20such%20coverage.

[28] *Supreme Court of The United States Little Sisters of The Poor Saints Peter and Paul Home, Petitioner 19–431 V. Pennsylvania, Et Al.*

[29] Joan Frawley Desmond, "Supreme Court Rules in Favor of Hobby Lobby, Conestoga Wood in 5-4 Decision," Blogs, *National Catholic Register* (June 30, 2014). https://www.ncregister.com/blog/supreme-court-rules-in-favor-of-hobby-lobby-conestoga-wood-in-5-4-decision-oewf5h32.

[30] Internal Revenue Service and U.S. HHS, "Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act" (11/15/2018) 26 CFR Part 54 [TD-9840] RIN 1545-BN92. Also, Internal Revenue Service

STM from EHB protects small business employers and enrollees from being forced, through premiums they would pay, to violate their deeply held religious and moral beliefs.

C. **<u>Other Points</u>:**

1. **Financial Impact:**

As provided in the Proposal, there will be no additional cost to state and local governments. Clearly there will be cost savings to the federal government. In recent years there has been an unprecedented increase in adolescents seeking treatment for gender dysphoria.[31] There has been, as referenced above, a "contagion," especially among adolescent girls, already developmentally struggling with their sexual development. They have been presented with a false remedy by society, and unfortunately by the federal government, specifically in prior proposals promulgated by the HHS.[32] The financial savings to the federal government from removing STMs for EHBs will be significant. At the same time, it is critical that the federal government provides for the coverage of the medical care necessary to reverse the tremendous damage it has perpetrated on trusting vulnerable populations, especially those who legally were unable to consent, e.g., minors and those with psychological or developmental comorbidities. However, that cost will be short term as the exclusion of STM coverage is halted. Furthermore, premiums could be reduced as the exorbitant cost of STMs are avoided.

There may be additional cost if the federal government provides, as it should, for coverage of diagnostic testing of newborns with questions of the accuracy of sex-assignment at birth. Such coverage should include interventions to correct the impact of antenatal errors of development. However, if the accurate sex-assignment at birth is achieved, and addressed, the long-term costs to family and society will be minimized.

Lastly, there is a need for the federal government to provide EHBs for the root psycho-social causes of gender dysphoria, to prevent the misdirected requests for the surgical and chemical mutilations that have ensued because such root causes have not been addressed. This, itself, will be cost saving as the need for future STMs will be averted.

2. **Timing and Severability:**

Fiscal year 2026 implementation seems to be prudent, for addressing the need to protect vulnerable populations from this damaging gender ideology, while at the same time providing the internal plan adjustments for states and health insurance coverage in the individual, small group, and large group markets. However, no one offering STM in their plan would have to change offerings in their plans. If they wish to provide for such coverage, fiscal year 2026 implementation provides time for that implementation.

In terms of severability, we agree with HHS that various proposals in the rule could easily be severed, thus still protecting the overall intent of this Proposal**.**

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and U.S. HHS, "Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act" (11/15/2018) 26 CFR Part 54 [TD-9841] RIN 1545-BN91.

[31] *Op cit.,* Andre' Leonhardt, MSc., et al. (July 1, 2024).

[32] *Op cit.,* Robert F. Kennedy, Jr. (February 19, 2025).

Conclusions:

The National Catholic Partnership on Disability (NCPD), the Catholic Medical Association (CMA), The National Catholic Bioethics Center (NCBC), and the National Association of Catholic Nurses, USA (NACN-USA) submit the above referenced comments in support of, as well as providing suggestions to, some of the provisions of the U.S. Department of Health and Human Services (HHS) proposed rule "Patient Protection and Affordable Care Act; Marketplace Integrity and Affordability."[33] We support the Proposal in its provisions to exclude "Sex-Trait Modification" (STM) as an Essential Health Benefit (EHB: §156.115(d), pp. 12985-87) of the non-grandfathered Benchmark plans of Exchanges pursuant to the *Affordable Care Act,*[34] with the following provisions:

1. The need for the Proposal to exclude from EHBs, but also to identify "sex-trait modification" beyond referencing the definition of "chemical and surgical mutilation" used in President Trump's Executive Order, "Protecting Children from Chemical and Surgical Mutilation" (Enjoined Executive Order: includes puberty blockers, sex hormones, and surgical procedures to affirm an individual's gender identity that differs from their sex assigned at birth). STM exclusions should be identified by "purpose," e.g., not routine or medically necessary to maintain physiological integrity or organ functioning, but to reinforce an erroneous gender identity different from that assigned at birth. Furthermore, examples, as identified under B.1., above, should be provided.

2. There is a need for the Proposal to differentiate between "gender identity" confusion and physiological anomalies resulting from physiologic developmental anomalies, such as ambiguous genitalia resulting in an erroneous sex assignment at birth, which medical interventions are attempting to correct. Diagnostic, including genetic, and restorative interventions should be included in the EHBs.

3. Concerning the impact on the wellbeing of persons, especially adolescents, as well as society of the falsely constructed "gender ideology:" There is a need to address the real psycho-social sources of gender dysphoria, and include in the EHB interventions to remedy those causes and treat their effects.

4. There is a need for the Proposal to provide for federal coverage of medical interventions aimed at restoring or reconstructing form and function consistent with sex assigned at birth, but lost due to disease, trauma, or previous transgender interventions. Those experiencing gender dysphoria, and most importantly those who have experienced the trauma of surgical or hormonal STMs have great need for such care. Therefore, restorative and reconstructive interventions must be included as EHBs, especially since great harm has been perpetrated by previous HHS Rules fostering transitioning. There also are populations that need such restorative and reconstructive interventions due to antenatal aberrations, or mutilation caused by physical trauma, disease, and prior surgeries to address pathologies such as cancers. HHS should include in the Exchanges coverage of these interventions as EHBs.

5. The importance of securing religious freedom and conscience protection, eroded in recent years by the redefinition of "sex," in obligations flowing from Section 1557 of the Affordable Care Act (ACA).

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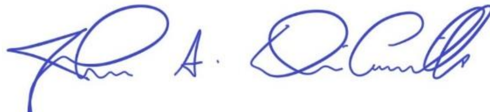
[33] *Federal Register,* Wednesday, March 19, 2025, Proposed Rules, 2025-04083, 90 FR 12942. https://www.federalregister.gov/documents/2025/03/19/2025-04083/patient-protection-and-affordable-care-act-marketplace-integrity-and-affordability.

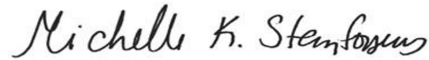
[34] Patient Protection and Affordable Care Act (ACA) (42 U.S.C. 18116).

We are not providing comment on HHS's DACA (Deferred Action for Childhood Arrivals)[35] proposal, specifically on whether DACA recipients are legal residents for purposes of accessing benefits, which we conclude is a question pertaining to immigration law.

We thank you for this opportunity to contribute to the wellbeing of vulnerable individuals, as well as the larger society.

Sincerely yours,



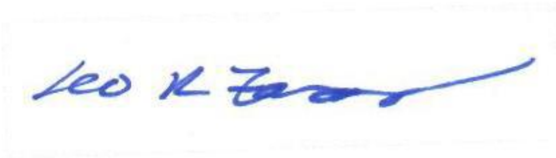


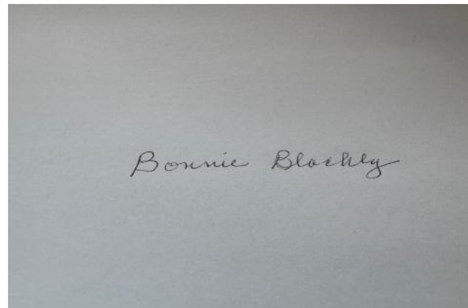
John A. Di Camillo, PhD, BeL

President
The National Catholic Bioethics Center
600 Reed Road, Suite 102
Broomall, PA 19008
215-877-2660

Michelle Stanford, MD
President
The Catholic Medical Association
550 Pinetown Road, Suite 205
Fort Washington, PA 19034

484-270-8002





Leo Zanchettin
Chair, Board of Directors
The National Catholic Partnership on Disability
415 Michigan Avenue, N.E, Suite 95
Washington, D.C. 20017
771-203-4477

Bonnie Blachly, MN, RN
President
The National Association of Catholic
Nurses, USA
450 State Road 13 North, Suite 106-Box124
St. Johns, Florida 32259

[35] On Aug. 30, 2022, DHS (Dept. of Homeland Security) published the DACA Final Rule, with the intent to preserve and fortify the DACA policy. This rule, which puts into effect regulations at 8 CFR 236.21-236.25, rescinds and replaces the DACA guidance set forth in the June 15, 2012 Memorandum issued by Secretary Napolitano.