What If Federal Law Defines Sex so That Transgender People Don't Exist?

Over 35 groups—including HIV doctors—warn Trump administration leaders about the negative health care consequences of such a plan.

November 9, 2018 By Trent Straube

The Trump administration wants to define sex as "a person's status as male or female based on immutable biological traits identifiable by or before birth," according to a leaked memo from the Department of Health and Human Services and reported last month in The New York Times. This would effectively erase the existence of transgender people as it concerns recognition by the federal government.

In response, more than 35 health care groups—including HIV Medicine Association, the American Academy of Pediatrics and several LGBT and HIV health care centers—sent a letter to top Trump officials urging them to drop the plan to narrowly define sex.

The letter explains that such a definition "will likely worsen health outcomes and disparities experienced by transgender and intersex individuals." What's more, the letter writers states, "this narrow definition of sex is clearly aimed at excluding transgender and intersex people from necessary nondiscrimination protections on the basis of sex, including Section 1557, the nondiscrimination provision of the Affordable Care Act.... These nondiscrimination protections are necessary, given that discrimination against transgender people is widespread."

The letter continues: "The reported memo's narrow definition of sex also ignores the existence of intersex people, who are born with sex characteristics, such as anatomy or chromosomes, that do not fit the typical male/female binary definition set forth in the reported memo. Transgender and intersex people have existed throughout time and have unique health needs and lived experiences, necessitating that health care providers recognize these needs and differences as a part of providing high quality, affirming, and culturally competent care. The proposed definition of sex would instead ignore the existence of these populations, which in turn could worsen the health disparities experienced by transgender and intersex individuals and promote discrimination."

Transgender women, notably women of color, also face unusually high rates of HIV, so this change would affect efforts at HIV prevention and care. According to the Center of Excellence for Transgender Health, about 1.4 million adults in the United States identify as transgender.

The letter was sent November 5 to Attorney General Jeff Sessions (who has since resigned), Health and Human Services Secretary Alex Azar and Department of Education Secretary Betsy DeVos.

“Transgender people face discriminatory treatment in public settings, including hospitals and other health care facilities,” said Sean Cahill, director of health policy research for The Fenway Institute, an LGBT and HIV research group, in a press release about the letter. “As a result, many transgender people avoid care due to prior mistreatment and the fear of anticipated mistreatment and stigma. It would be malpractice to rescind nondiscrimination protections for transgender people in health care settings.”

“The science is clear. Genetic sex chromosomes, anatomy, sexual orientation, gender and gender identity are separate. In many people they are aligned with one another, and in millions of other people they are not,” added GLMA president Gal Mayer, MD, MS, and former medical director of Callen-Lorde Community Health Center, which sees LGBT clients in New York City. “Any policy that tries to define an individual’s gender based solely on any one of these characteristics ignores decades of research and study, and contradicts the massive expertise of the healthcare providers and their associations represented on this letter. We can all confirm that gender and gender identity are not binary and in many cases not the same as the sex assigned at birth. Gender and gender identity exist on a spectrum, are personal experiences, are not always static, and can only be defined by the person living that experience.”

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