

AG Kaul: Announces lawsuit against Trump administration for allowing health care discrimination

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MADISON, Wis. – Wisconsin Attorney General Josh Kaul today joined a coalition of 23 attorneys general in filing a lawsuit to stop a new Trump Administration rule that makes it easier for health care providers and insurance companies to discriminate against certain vulnerable and protected classes of Americans. In a lawsuit filed against the U.S. Department of Health and Human Services (HHS), HHS Secretary Alex Azar, and the head of HHS's Office of Civil Rights, Roger Severino, the coalition of attorneys general argues that the new rule emboldens providers and insurers to discriminate against LGBTQ+ individuals, those with limited English proficiency, and women, among others, by stripping express protections for these groups in HHS regulations that implement the nondiscrimination provision of the Patient Protection and Affordable Care Act (ACA). This provision of the ACA prohibits discrimination based on race, color, national origin, sex, disability, or age by health programs or facilities that receive federal funds, but the Trump Administration is seeking to undermine many of those protections.

“The Trump Administration’s move attempts to make it easier to discriminate in health care against women, LGBTQ+ individuals, and those with limited English proficiency. That’s wrong, it violates the law, and we’re fighting it,” said AG Kaul.

“Healthcare and health insurance should be affordable and accessible to every Wisconsinite, period,” said Gov. Evers, who authorized joining the lawsuit. “We have and will continue to do everything we can to protect healthcare for folks across our state.”

The Obama Administration's HHS issued regulations implementing Section 1557 of the ACA in 2016 — making clear that discrimination on the basis of gender identity, nonconformity to sex stereotypes, and pregnancy status are forms of sex discrimination prohibited by the statute. Specifically, Section 1557 prohibits discrimination by any health care program — including providers and insurers — against individuals on the basis of race, color, national origin, sex, disability, or age. Federal courts have also held that the statute's prohibitions on sex discrimination protect transgender and other LGBTQ+ individuals from discrimination, which was confirmed in last month's Supreme Court decision in *Bostock v. Clayton County*, which held that discrimination based on sexual orientation and transgender status are forms of sex discrimination prohibited by federal civil rights law.

"The Department of Health Services is committed to protecting and promoting the health of all Wisconsinites," said DHS Secretary-designee Andrea Palm. "Undermining the anti-discrimination protections provided in the Affordable Care Act would put the health and well-being of many Wisconsinites at risk and we must do everything we can to preserve the integrity of those protections."

"Access to health care is critically important for everyone and that means having equal access to health insurance," said Wisconsin Insurance Commissioner Mark Afable. "We continue to affirm fair and equal access to health insurance coverage and benefits for all Wisconsinites. I'm grateful to Attorney General Kaul for his leadership in challenging the federal government on Section 1557. Banning discrimination requires that we all work together to call out unfair application of the law."

But, despite numerous failed legislative and legal battles to repeal and dismantle the ACA, the Trump Administration's new rule would now eliminate many of the express protections contained in the Section 1557 regulations, unlawfully exclude many health insurers from Section 1557's scope, and would embolden health care providers and health insurers to deny care and insurance coverage. The new rule would also impose unreasonable barriers and impede timely access to health care for Americans, in violation of Section 1554 of the ACA.

In the lawsuit filed today — in the U.S. District Court for the Southern District of New

York — the coalition argues that HHS has unlawfully ignored the harms that the new rule will impose on vulnerable populations, including LGBTQ+ individuals, individuals with limited English proficiency, and women, as well as other protected classes. The coalition additionally contends that HHS has failed to justify why it abandoned its prior policy, which, among other things, explicitly prohibited discrimination in health care and required health entities to provide meaningful language assistance services to individuals with limited English proficiency, including notifying them of their rights to translation and interpretation services. The lawsuit finally alleges that the Trump Administration was motivated by animus toward the transgender community in issuing this rule.

The coalition specifically argues that the new rule is arbitrary, capricious, and contrary to law under the Administrative Procedure Act (APA), and that it violates the equal protection guarantee of the Fifth Amendment.

Attorney General Kaul joins Attorneys General James, Becerra, and Healey, as well as the attorneys general of Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and the District of Columbia in filing today's lawsuit.

<https://www.doj.state.wi.us/news-releases/attorney-general-kaul-announces-lawsuit-against-trump-administration-allowing-health>