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## HHS Shifts Course On LGBTQ Protections Under Health Law

By **Alexis Shanes**

Law360 (May 10, 2021, 12:57 PM EDT) -- The Biden administration said Monday it would scuttle a Trump-era interpretation of the Affordable Care Act and enforce the statute in line with a June U.S. Supreme Court ruling that federal law bans discrimination based on sexual orientation and gender identity.



HHS Secretary Xavier Becerra said in a Monday statement that it is the position of the agency that "everyone — including LGBTQ people — should be able to access health care free from discrimination or interference." (Greg Nash/The Hill/Bloomberg via Getty Images)

The decision by the U.S. Department of Health and Human Services brings Section 1557 of the ACA up to date with the U.S. Supreme Court's **watershed 6-3 decision** in *Bostock v. Clayton County*, Georgia, which said Title VII of the Civil Rights Act shields gay and transgender workers.

"The Supreme Court has made clear that people have a right not to be discriminated against on the basis of sex and receive equal treatment under the law, no matter their gender identity or sexual orientation," HHS Secretary Xavier Becerra said in a Monday statement.

"Fear of discrimination can lead individuals to forgo care, which can have serious negative consequences," Becerra added. "It is the position of the Department of Health and Human Services that everyone — including LGBTQ people — should be able to access health care free from discrimination or interference."

The agency said it would interpret and enforce Section 1557 of the ACA, which contains a range of anti-discrimination provisions, to include sexual orientation and gender identity as part of the ban on sex discrimination.

"No one should be discriminated against when seeking medical services because of who they are," Dr. Rachel Levine, assistant secretary for health, said in a statement. "All people need access to health care services to fix a broken bone, protect their heart health and screen for cancer risk."

With Monday's announcement, the HHS Office for Civil Rights will enforce Section 1557 as it originally did during the Obama administration.

In September, a Washington, D.C., federal judge **barred the HHS** from enforcing the Trump

administration policy that undid the ACA's legal protections for gay and transgender people. The case, *Whitman-Walker Clinic et al. v. U.S. Department of Health and Human Services et al.*, is still pending.

Lambda Legal, a nonprofit civil rights group that represents the plaintiffs in *Whitman-Walker*, applauded Monday's decision but noted it didn't address certain aspects of the Trump-era rule, such as provisions for religious exemptions and limits on the number of medical providers and insurance companies that must comply.

"Today, the Biden administration and HHS provided some needed clarity after the Trump administration did everything it could to undermine and muck up the law to target and hurt our communities — in particular, transgender patients," Omar Gonzalez-Pagan, senior attorney and health care strategist for Lambda Legal, said in a statement. "However, the significant step taken today is just one step in what is a long road to undo the undermining of health care protections for all people under the Trump administration."

Chase Strangio, deputy director for trans justice with the American Civil Liberties Union LGBT & HIV Project, also praised the announcement in a Monday statement.

"With health care for transgender youth under attack by state legislatures, this move to protect LGBTQ people from discrimination in health care is critical," Strangio said. "The Biden administration has affirmed what courts have said for decades: Discrimination against LGBTQ people is against the law."

"It also affirms what transgender people have long said," Strangio added. "Gender-affirming care is life-saving care."

--Additional reporting by Hailey Konnath. Editing by Vincent Sherry.