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# CALIFORNIA HEALTH LAW NEWS

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# CALIFORNIA HEALTH LAW NEWS

California Health Law News (CHLN) is a quarterly publication of the California Society for Healthcare Attorneys (CSHA). The mission of CHLN and the CSHA Publications Committee is to publish articles that are interesting and useful to health lawyers practicing California law. While the Publications Committee strives to ensure that CHLN articles provide accurate and authoritative information regarding the subject matters covered, the information is provided with the understanding that neither CSHA nor CHLN contributors are engaged in rendering legal services. Contributors to CHLN are not agents of CSHA and the opinions and positions stated in CHLN articles are those of the authors and not of CSHA, its staff, the CHLN editors or Publications Committee members.

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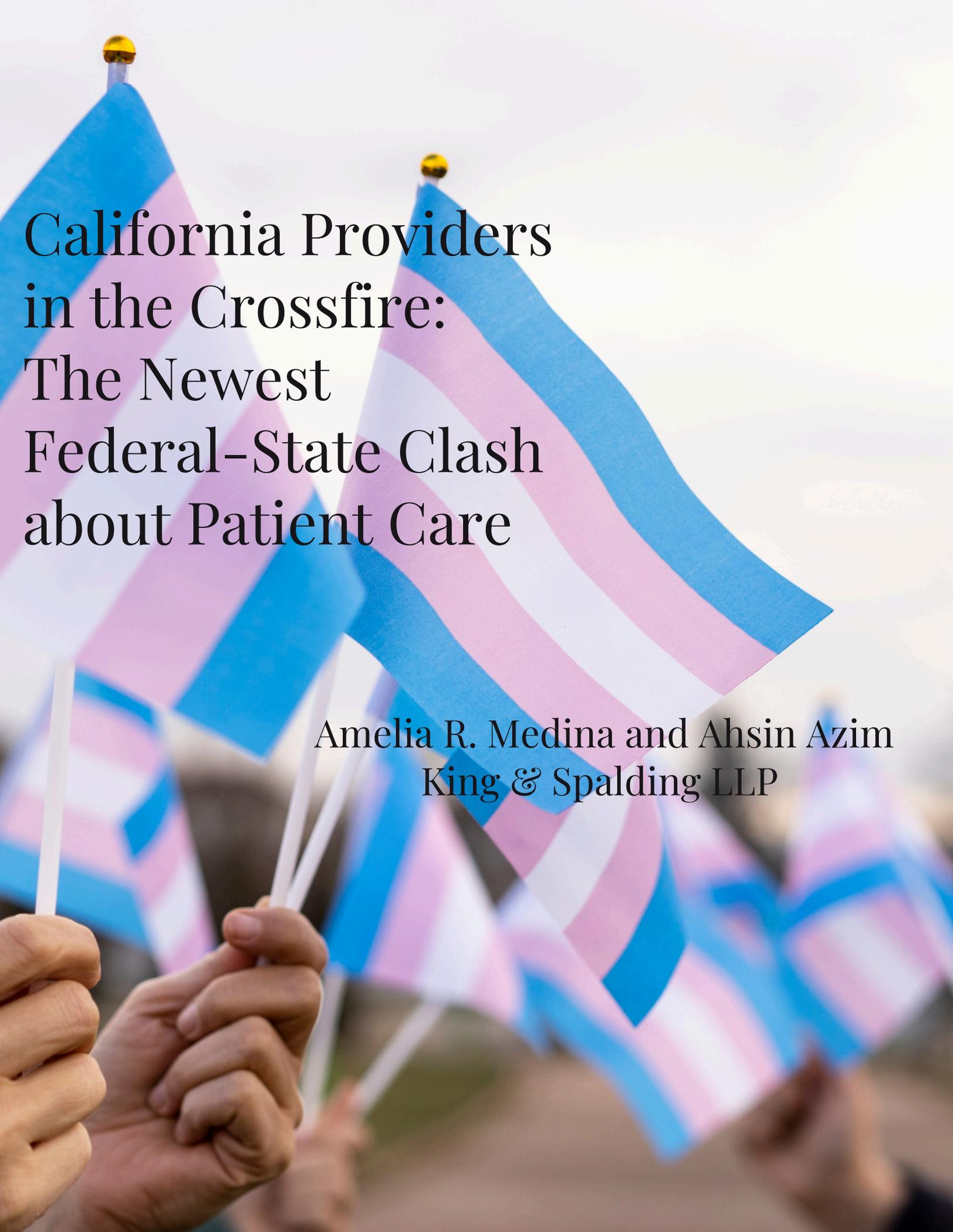
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California Providers  
in the Crossfire:  
The Newest  
Federal-State Clash  
about Patient Care

Amelia R. Medina and Ahsin Azim  
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In June 2025, following President Trump’s January 2025 Executive Order No. 14,187 ending federal funding or support for transgender care for minors,[1] the U.S. Department of Justice (“DOJ”) announced it had served more than twenty subpoenas on “doctors and clinics involved in performing transgender medical procedures on children.”[2] In that announcement, Attorney General Pam Bondi declared that “[m]edical professionals and organizations that mutilated children in the service of a warped ideology will be held accountable by this Department of Justice.”[3] At the same time, providers were hearing from patients, families, physicians, and community stakeholders with profoundly held convictions on all sides of this sensitive issue.

### *I. DOJ Subpoenas: The Opening Salvo*

The subpoenas demanded a broad range of sensitive information. A subpoena served on Children’s Hospital of Philadelphia (“CHOP”) in June 2025, which was later made public through court filings, included requests for fifteen different categories of documents and information related to transgender care dating back to January 2020. [4] Litigation in other jurisdictions has revealed that DOJ served nearly identical subpoenas on Boston Children’s Hospital, Children’s National Hospital, Children’s Hospital Colorado, and QueerDoc. [5] The requests encompassed physician communications with patients and about patient care—including voicemails, emails, and text messages from encrypted platforms as well as clinical information including diagnoses,

assessments, informed consent documentation, intake forms, and parent authorizations. Critically, the subpoenas demanded information to identify patients by name, date of birth, social security number, address, and parent/guardian information if they were prescribed puberty blockers or hormone therapy as treatment for gender dysphoria. The requests also extended to corporate personnel files, training manuals, billing records, insurance information, and communications between hospital staff and pharmaceutical manufacturers. Some providers are challenging these subpoenas in federal district court. For example, federal district courts in Boston and Seattle have granted motions to quash the subpoenas issued to certain providers in those jurisdictions, and a magistrate judge in Colorado has issued a Report & Recommendation recommending that the district court there do the same. [6]

Early legal challenges to enforce the of certain affected patients have also been successful.



In January 2026, a federal judge in Baltimore sided with a group of patients who sought to reject the DOJ’s bid to obtain records containing their protected health information from Children’s National Hospital, finding the subpoena was issued as a “pretext” to advance the administration’s policy goal rather than as part of a legitimate law enforcement inquiry. [7] A similar action against the DOJ by patients in the Western District of Pennsylvania was also granted. [8] And most recently, partially in response to patient litigation filed in California, the DOJ agreed to withdraw certain requests in its subpoena to Children’s Hospital Los Angeles, which had sought records identifying over thousands of transgender youth patients. [9]

These early judicial rejections have not stopped the Trump Administration from pursuing other enforcement avenues—most notably the recent campaign by the U.S. Department of Health and Human Services (“HHS”) General Counsel Mike Stuart to refer providers to HHS’s Office of Inspector General (“OIG”) for investigation and possible exclusion from participation in federal healthcare programs for their allegedly ongoing provision of prohibited services to transgender minors.

## *II. The Kennedy Declaration*

On December 18, 2025, HHS Secretary Kennedy issued a declaration (the “Kennedy Declaration”) asserting that puberty blockers, cross-sex hormones, and surgeries are “neither safe nor effective” for treating gender dysphoria in minors and “therefore, fail to meet professional recognized standards of health care.”[10]

The Kennedy Declaration invoked HHS OIG’s Program Integrity regulations. [11] Unlike proposed rules requiring notice-and-comment periods, the Kennedy Declaration purported to take effect immediately.

Significant questions remain about the Kennedy Declaration’s legal effect. By its own terms, the Kennedy Declaration states it “does not constitute a determination that any individual or entity should be excluded,” and an OIG Branch Chief submitted a sworn statement in related litigation filed by a number of State Attorneys General, affirming that the declaration “alone is not dispositive” in exclusion proceedings. [12] Nonetheless, HHS General Counsel Mike Stuart mentioned the Kennedy Declaration in several of his social media posts referring providers to OIG. [13] These include posts that have called out California hospitals and Governor Gavin Newsom:

*Today I referred to @OIGatHHS THREE California hospitals for full investigation .... California’s @GovGavNew needs to do a better job protecting our kids from sex-rejecting procedures that cause permanent terrible harm. These California hospitals continue to operate outside recognized standards of health care and entirely outside @SecKennedy’s easy to understand declaration that sex-rejecting procedure for children and adolescents are not safe nor effective. [14]*

The decision to announce OIG referrals via social media represents a choice with profound implications for targeted institutions.

Historically, referrals within HHS have been handled with little public fanfare. The agency has almost always treated referrals to and investigations by OIG as confidential. This afforded OIG career officials a chance to evaluate the veracity of allegations and the providers a chance to respond and defend themselves before potentially damaging information was made public. Resolutions – including exclusions and settlements to avoid exclusion – were publicized, but by that point, the provider would have been afforded at least some opportunity to advocate for itself with the agency. [15]

The shift to real-time social media announcements transformed what would likely be confidential communications within the agency into external announcements, with targeted institutions learning that they might be subject to an OIG investigation no earlier than the general public. As of February 10, 2026, OIG had not issued any notices of intent to exclude or commenced any exclusion proceedings based on the Kennedy Declaration. [16] Hospitals and healthcare systems, along with their counsel, have been left wondering how best to prepare a defense for this unconventional enforcement threat.

### *III. The Multi-State Legal Challenge*

On December 23, 2025, California Attorney General Rob Bonta (“AG Bonta”) joined a coalition of 18 other Attorneys General and one Governor in filing suit in federal court in Oregon to vacate the Kennedy Declaration. [17]

The lawsuit alleges that the Kennedy Declaration violates the Administrative Procedure Act’s (“APA”) notice-and-comment requirements, exceeds the Secretary’s authority to determine professional standards of care, and violates states’ rights to regulate the practice of medicine. [18] HHS has agreed to pause exclusion proceedings under the Kennedy Declaration until the court’s ruling or 30 days after oral argument, scheduled for March 19, 2026. General Counsel Stuart has continued to refer additional providers—including California providers—to HHS OIG during this period.

In its response brief, the federal government argues that the Kennedy Declaration is a “general statement of policy” exempt from notice-and-comment requirements. [19] Per the government’s filing, general statements of policy “do not have the force and effect of law” and instead “advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.” [20] The government characterizes the Kennedy Declaration as merely one piece of information that OIG may consider— analogous to position statements issued by medical associations. The government further contends that the claims of the Attorneys General are not ripe because they rest on “contingent future events that may not occur.” [21]

The Oregon v. Kennedy case is not the first time California has joined a multi-state coalition challenging the Trump Administration’s policies on transgender care to minors. On August 1, 2025,



California was among seventeen states (plus the District of Columbia and Pennsylvania Governor Josh Shapiro) to file suit in the U.S. District Court for the District of Massachusetts challenging Executive Order 14,187 and its implementing memoranda. [22] That lawsuit challenges the April 22, 2025 “Bondi Directive” and the June 11, 2025 “Shumate Directive,” which instructed DOJ personnel to prioritize investigations and enforcement actions against providers of transgender care to minors under the False Claims Act, the Food, Drug, and Cosmetic Act, and the Female Genital Mutilation statute. [23] The litigation is pending, with briefing now complete.

#### ***IV. The Proposed Rules***

While the Kennedy Declaration arguably provides HHS OIG with an avenue for immediate enforcement, HHS has also initiated formal rulemaking through two proposed rules: the Medicaid/CHIP

Proposed Rule (Prohibition on Federal Medicaid and Children’s Health Insurance Program Funding for Sex-Rejecting Procedures Furnished to Children, 90 Fed. Reg. 59441 (Dec. 19, 2025)) and the Conditions of Participation (“CoP”) Proposed Rule (Hospital Condition of Participation: Prohibiting Sex-Rejecting Procedures for Children, 90 Fed. Reg. 59463 (Dec. 19, 2025)).

The Medicaid/CHIP Proposed Rule prohibits federal Medicaid and Children’s Health Insurance Program (“CHIP”) payments to states for “Sex-Rejecting Procedures” (“SRPs”). This prohibition applies even if a provider determines such a procedure is “medically necessary for a child diagnosed with gender dysphoria.” [24] The prohibition does not apply to medically necessary treatments for precocious puberty, therapy subsequent to traumatic injury, or hormone replacement therapy for growth hormone deficiency.

The CoP Proposed Rule prohibits Medicare- and Medicaid-certified hospitals from performing SRPs on any child as a condition of participating in those programs. The rule includes exceptions for: (1) procedures to treat an individual with a medically verifiable disorder of sexual development; (2) procedures for purposes other than aligning physical appearance with an asserted identity differing from biological sex; and (3) treatment of complications arising from previous procedures.

The comment period closed on February 17, 2026, for both rules. The Medicaid/CHIP proposed rule received 6,420 comments. The Hospital CoP proposed rule received 4,817 comments. HHS may take as long as it wishes to review and respond to comments, to decide whether to issue one or both rules in final form, and to determine whether the text of the rules will be altered from their draft formulations. Many aspects of the process are left to the agency's discretion, with providers awaiting the results.

## *V. Shifting Medical Association Positions*

Adding to the uncertainty, major medical associations have recently revised their positions about gender care for young patients. On February 3, 2026, the American Society of Plastic Surgeons issued a position statement recommending that members delay gender-related surgeries until patients are at least 19 years old, citing "insufficient evidence demonstrating a favorable risk-benefit ratio." [25]



The American Medical Association agreed soon thereafter, announcing that "surgical interventions in minors should be generally deferred to adulthood." [26] These reflect changes from the medical associations' prior positions. In 2021, for example, the American Medical Association called on governors to reject state legislation that would prohibit transgender care for minors, calling such efforts "a dangerous intrusion into the practice of medicine." [27]

Providers who may have relied on these positions to inform their decisions about patient care now find that information landscape shifting. This, in turn, affects the regulatory landscape as well. For instance, HHS OIG considers information from "state or local professional societies" when determining whether care meets professionally recognized standards. [28] At present providers do not know whether and to what extent other medical organizations may realign, or whether they will continue to support their prior positions (for now), as the American Academy of Pediatrics and the World Professional Association for Transgender Health have indicated they intend to do.

## *VI. The Rady Children's Health Litigation: A California Case Study*

No California case better illustrates this federal-state tension than the ongoing litigation between AG Bonta and Rady Children's Health. [29] San Diego Superior Court Judge Matthew Braner aptly described the hospital as being "between a rock and a hard place." [30]

On January 20, 2026, Rady announced that in February it would cease transgender medical interventions, procedures, and prescriptions for all patients under 19, affecting approximately 1,450 patients. [31] This decision collided directly with conditions attached to a hospital merger approved on November 4, 2024 by Attorney General Bonta, who had conditionally approved Rady's merger with Children's Hospital of Orange County ("CHOC") with a requirement that Rady continue to maintain existing specialty healthcare services—including transgender care for minors—through 2034. [32] Rady reportedly did not notify nor obtain approval from the Attorney General before the announcement that it would end this care. [33]

On January 30, 2026, Attorney General Bonta filed suit alleging violation of merger conditions and unfair business practices. On February 5, Judge Braner granted plaintiff's request for a temporary restraining order, requiring Rady to continue all gender-affirming care except surgeries until at least February 10, 2026. [34]

The court extended the temporary restraining order by minute order on February 11, 2026: "The Court orders the Temporary Restraining Order remain in effect with the exception of surgeries. ... If the HHS issues a 15 day notice, counsel is to notify the court immediately to schedule a hearing within 24 hours." [35] A hearing on a motion for preliminary injunction was set for March 10, 2026, but has been subsequently delayed to April 27, 2026.

Rady's attorneys argued that every day the hospital provides care in violation of the Kennedy Declaration creates "potential grounds for exclusion from Medicare or Medicaid coverage," representing "catastrophic risk" to an organization serving 800,000 children. [36] The judge was not persuaded by the immediacy of the threat, stating he was "not completely on board with the idea that, tomorrow, you lose Medicaid funding." [37] Meanwhile, the federal government has shown no signs of relenting on enforcement, with General Counsel Mike Stuart stating publicly on X, "Rob Bonita [sic] may be the worst AG in America. Rather than fighting to allow child mutilation, why isn't he defending our children? Has Bonita [sic] done anything to stop all the California healthcare fraud? No worries. @HHSGov is soon on our way to help!" [38]

## *VII. Key Considerations for California Healthcare Providers*

California hospitals face conflicting pressures that create significant compliance challenges.

On one side, federal authorities threaten exclusion from Medicare and Medicaid programs. On the other, California law and potential State enforcement actions may impose requirements to continue providing certain transgender care services to minors.

Indeed, AG Bonta issued a reminder to “California hospitals and federally-funded healthcare providers of their ongoing obligation under California anti-discrimination law to provide gender affirming care ....”, including pursuant to the Unruh Civil Rights Act, Civil Code section 51, and Government Code section 11135. [39, 40, 41] AG Bonta also attempted to make clear “California families seeking gender affirming care, and the providers and staff who provide it, are protected under state laws. The Office of the Attorney General will continue to defend California law.” [42]

The Rady litigation illustrates the real-world consequences of these state-law protections and the consequences providers may face when they fail to account for them. Merger conditions and other state-imposed obligations create independent legal exposure providers may not be able to fully avoid by pointing to federal mandates, and public announcements discontinuing services can trigger both state enforcement and private Unruh Civil Rights Act litigation. At the same time, providers must weigh their decisions against the devastating impact that federal exclusion would have against their wider patient population, including all those who have had no contact with gender care services.

## *VIII. Practical Steps*

In light of this rapidly evolving landscape, California providers should consider the following actions with respect to transgender care to minors:

- Preserve all relevant documentation regarding treatment decisions, clinical protocols, and the medical basis for care decisions, as well as documents regarding corporate decisions to wind down or terminate the provision of gender care to minors.
- Monitor and evaluate exposure to evolving federal and state requirements, recognizing that provider liability may extend to claims under the Unruh Civil Rights Act relating to any affected patient.
- Consider whether to engage proactively with state regulators, including the Attorney General’s office, before making any changes to service offerings, particularly for providers subject to merger conditions or other special obligations.
- Develop a draft action plan for responding to a potential OIG inquiry or to a public announcement of a referral to OIG.
- Closely track ongoing litigation challenging new policies promulgated by the current Administration.
- Monitor individual and organizational or contractor exclusion status through OIG’s List of Excluded Individuals and Entities.
- Consult with experienced outside counsel for an objective perspective on how best to steward an institution through vacillating perspectives among lawmakers, enforcement officials, and professional medical associations.

## ***IX. Conclusion***

Providers are navigating these conflicting mandates without the benefit of knowing how pending litigation will play out. The stakes are high on all sides: potential exclusion from federal healthcare programs, state enforcement actions, and the health and safety of the minor patients and families involved.

## Endnotes

- [1] See Exec. Order No. 14,187, 90 Fed. Reg. 8603 (Feb. 3, 2025).
- [2] Press Release, DOJ, Department Subpoenas Doctors and Clinics Involved in Performing Transgender Medical Procedures on Children (July 9, 2025), <https://tinyurl.com/y827kf8c>.
- [3] Id.
- [4] Declaration of William McGinty Exhibit 9, *Washington v. Trump*, No. 2:25cv-00244 (W.D. Wash. Aug. 18, 2025), ECF No. 209-9.
- [5] See, e.g., Press Release, Rob Bonta, Cal. Att’y Gen., Attorney General Bonta Challenges U.S. DOJ’s Continued Attempts to Subpoena Hospitals’ Gender-Affirming Care Records (Dec. 5, 2025), <https://tinyurl.com/24drrsfw>; Blog, QueerDoc, We Fought Back – And We Won (Oct. 29, 2025), <https://tinyurl.com/bdjvcxbv>.
- [6] See *In re Admin. Subpoena No. 25-1431-019*, No. 1:25-mc-91324-MJJ, slip op. (D. Mass. Sept. 9, 2025), ECF No. 33; *In re Subpoena Duces Tecum No. 25-1431-016*, No. 2:25-mc-00041-JHC (W.D. Wash. Sept. 3, 2025), ECF No. 25 (order granting motion to set aside subpoena); *In re Dep’t of Just. Admin. Subpoena No. 25-1431-030*, No. 25-mc-00063-SKC-CYC (D. Colo. Jan. 5, 2026), ECF No. 35 (recommendation to grant the motion to quash subpoena).
- [7] *In re 2025 Subpoena to Children’s Nat’l Hosp.*, No. 1:25-cv-03780-JRR, slip op. at 15 (D. Md. Jan. 21, 2026) (ECF No. 23).
- [8] *In re: 2025 UPMC Subpoena*, No. 2:25-mc-01069-CB (W.D. Pa. Dec. 24, 2025), ECF No. 52. [
- [9] Notice of Dismissal, *In re 2025 Children’s Hosp. of L.A. Subpoena*, No. 2:25cv-11183 (C.D. Cal. Jan. 22, 2026), ECF No. 25.
- [10] Secretarial Declaration Regarding the Safety, Effectiveness, and Professional Standards of Care for Sex-Rejecting Procedures on Children and Adolescents § V (Dec. 18, 2025) (“Kennedy Declaration”), <https://tinyurl.com/bxw7tt48>.
- [11] 42 C.F.R. § 1001.2 (2025).
- [12] Kennedy Declaration § V; Declaration of Robert M. Penezic ¶¶ 4, 8, *Oregon v. Kennedy*, No. 6:25-cv-2409-MTK (D. Or. Feb. 10, 2026), ECF No. 75.
- [13] Mike Stuart, HHS Gen. Counsel (@HHSGenMikeStuart), X (Dec. 26, 2025, at 18:39), <https://x.com/HHSGenMikeStuart/status/2004695988242710776>.
- [14] Mike Stuart, HHS Gen. Counsel (@HHSGenMikeStuart), X (Jan. 9, 2026, at 14:41), <https://x.com/HHSGenMikeStuart/status/2009712125422264413>.
- [15] See HHS OIG, Exclusions Program, <https://oig.hhs.gov/exclusions/> (last visited Feb. 15, 2026).
- [16] Declaration of Robert M. Penezic ¶ 4, *Oregon*, No. 6:25-cv-2409-MTK.
- [17] Complaint, *Oregon*, No. 6:25-cv-2409-MTK (D. Or. Dec. 23, 2025), ECF No. 1.
- [18] See 42 U.S.C. § 1395.
- [19] Defendants’ Opposition to Plaintiffs’ Motion for Summary Judgment at 21–25, *Oregon*, No. 6:25-cv-2409-MTK (D. Or. Feb. 10, 2026), ECF No. 74.
- [20] Id. at 21 (quotation marks omitted).
- [21] Id. at 18 (quotation marks omitted).
- [22] Complaint, *Massachusetts v. Trump*, No. 1:25-cv-12162 (D. Mass. Aug. 1, 2025), ECF No. 1.
- [23] Id. ¶¶ 115–28.
- [24] 90 Fed. Reg. at 59451.
- [25] Position Statement on Gender Surgery for Children and Adolescents 3 (2026), <https://tinyurl.com/4pus8zx8>.
- [26] Theresa Gaffney, Did the AMA Change Its Position on Surgery for Transgender Minors?, STAT News (Feb. 10, 2026), <https://tinyurl.com/2h7u43xn>.
- [27] Press Release, AMA to states: Stop interfering in health care of transgender children (Apr. 26, 2021), <https://tinyurl.com/mr324fjb>.
- [28] 42 C.F.R. § 1001.701(b)(4).
- [29] Complaint, *People v. Rady Children’s Health*, No. 26CU005360C (Cal. Super. Ct. San Diego Cnty. Jan. 30, 2026) (“Rady Children’s Health Complaint”).
- [30] City News Serv., *Rady Children’s to Continue Providing Gender-Affirming Care for Now*, Judge Rules, NBCSanDiego.com (Feb. 11, 2026), <https://tinyurl.com/3ffafkmt>.
- [31] *Rady Children’s Health Complaint* ¶ 5.
- [32] Press Release, Rob Bonta, Cal. Att’y Gen., Conditionally Approved Pediatric Hospital Merger to Transform Pediatric Health in Southern California (Nov. 4, 2024), <https://tinyurl.com/3573rvr5>.
- [33] *Rady Children’s Health Complaint* ¶¶ 44–54.
- [34] *Rady Children’s Health*, No. 26CU005360C (Cal. Super. Ct. San Diego Cnty. Feb. 5, 2026).
- [35] *Rady Children’s Health*, No. 26CU005360C (Cal. Super. Ct. San Diego Cnty. Feb. 11, 2026).
- [36] *Rady Children’s to Continue Providing Gender-Affirming Care for Now*, Judge Rules, NBCSanDiego.com.
- [37] Rob Sisson, San Diego Union-Tribune, Judge Upholds Restraining Order, *Rady Children’s to Continue Gender Care*, MSN.com (2026), <https://tinyurl.com/52f4ncrm>.

[38] Mike Stuart, HHS Gen. Counsel (@HHSGCMikeStuart), X (Feb. 5, 2026, at 19:40), <https://x.com/HHSGCMikeStuart/status/2019571899345309964>.

[39] Press Release, Rob Bonta, Cal. Att’y Gen., Attorney General Bonta Reminds Hospitals and Clinics of Anti-Discrimination Laws Amid Executive Order on Gender Affirming Care (Feb. 5, 2025), <https://tinyurl.com/3dd5h8e3>.

[40] Id.; see also Letter from CA DOJ to Children’s Hospital Los Angeles (Feb. 5, 2025), <https://tinyurl.com/2aex59r8>.

[41] Letter from CA DOJ to Children’s Hospital Los Angeles at 1.

[42] Id. at 1-2..



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