

United States Senate

WASHINGTON, DC 20510

October 16, 2024

Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Mr. Secretary:

We write out of deep concern over Guidance you issued entitled “Gender Identity Non-Discrimination and Inclusion Policy for Employees and Applicants.” This Guidance denies science, compels speech, jeopardizes the ability of federal employees to practice their faith without fear of retaliation, endangers women, and further erodes the American people’s trust in public institutions. We urge you to reverse course and rescind this Guidance.

According to the Guidance, failure to use the preferred names and pronouns an individual asks to be addressed with “contribute[s] to an unlawful hostile work environment.” Notably, your Guidance states that the Department cannot “require a legal change of name or gender marker, medical certification, or other documentation.” In other words, anyone can change their names and pronouns and compel coworkers to use that name or pronoun, or face disciplinary action. The Guidance also stipulates that training on this guidance will be included in “all new employee training.” It also says additional trainings regarding gender identity will be made available, and that “specialized training” may be deemed necessary “for particular offices or Department-wide.” There is no mention anywhere in the Guidance about accommodations for those with religious or conscience objections to the compelled use of incorrect pronouns.

In addition to violating extremely clear, long-standing Supreme Court precedents on compelled speech, reaffirmed as recently as *303 Creative v Elenis*, this also violates Title VII of the *Civil Rights Act of 1964*, as well as the *Religious Freedom Restoration Act*. In forcing employees to choose between deeply held religious beliefs or losing their job, HHS is creating a hostile work environment for employees.

Perhaps more egregious than the Guidance’s position on compelled speech related to pronoun usage is the policy on bathroom, locker room, and lactation room usage. According to the Guidance, HHS will “ensure there are no barriers to equally accessing restrooms, locker rooms, lactation rooms, or other personal care spaces.” The Guidance notes that, “HHS will not condition this access on an employee having undergone or providing proof of gender-affirming surgeries or other medical procedures.” Further, if any employees are made uncomfortable by having to share bathrooms, locker rooms, or lactation rooms with individuals using the wrong space, they will be directed to use other facilities, because “employees will not be barred from using the restroom consistent with their gender identity.”

Given the Guidance's stipulation on not requiring any evidence of gender dysphoria or gender transition procedures, women could be forced to be exposed to fully male anatomy in the bathroom or in the locker room. This creates a hostile work environment for women who may have no other option than using the facilities at work. A female employee who has used a women's restroom for more than a decade will be told that she has to find a new option for a restroom if she is uncomfortable with a biological male in her restroom. Women deserve better. Including lactation rooms in this same Guidance is blatantly offensive – males cannot breastfeed their children, and claiming to be female does not change that reality. The only reason for including this in the Guidance is to continue to push a radical agenda in every facet of the federal workplace.

Finally, the Guidance's denial of science – and incorporation of that denial into the hiring, firing, and promotion process – raises questions about the work and research being done through the HHS. Gender is not, as the Guidance erroneously asserts, “a social construct of identities, norms, behaviors, and roles that vary between societies over time.” There are only two sexes: male and female. Research by the HHS at taxpayer expense should not be done in contravention of that scientific and self-evident fact.

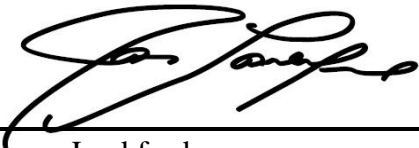
HHS is rapidly losing the confidence of the American people over the last three years. According to Pew Research polling, in 2020, HHS had a favorable/unfavorable rating of 73/19. In 2023, that favorability metric had plummeted to 55/30. By rejecting science and diving deeper into the culture wars, HHS risks further undermining faith in critical public institutions. We urge you to rescind this Guidance, and request answers to the following questions no later than October 30.

1. In your response to a Finance Committee question for the record, you stated that this Guidance does not change any religious protections for employees, but you did not answer whether there was a specific exemption process in place for this guidance. What exemption process is HHS providing to employees and managers being required to follow or implement this guidance based on religious or conscience objections?
 - a. Please provide detailed account of the exemption process; how HHS is ensuring employees are aware of this process; if individuals have to apply for an exemption; and how many individuals have received exemptions.
2. The Guidance requires managers who become aware of “derogatory remarks or demeaning behaviors” to “take appropriate steps to immediately and effectively stop these activities.”
 - a. Is an employee's refusal to use preferred name or pronouns considered “derogatory remarks or demeaning behavior?”
 - b. What does HHS consider “appropriate steps?”
3. How many HHS employees have faced employment consequences of any type for not abiding this guidance?
4. The Guidance refers to updating websites, policies, programs, trainings, and publications to “replace gendered language with gender-neutral and gender-inclusive language.”

- a. Please provide detailed accounts of how many hours have already or will be used on this, the total cost of updating training materials, and any other expenses incurred as a result of this change.
 - b. Will information pertaining to male and female specific medical issues – including testicular or ovarian cancer, maternal health, etc. – also be changed to gender neutral language?
5. The Guidance creates an “LGBTQI+ Coordinating Committee.”
- a. Who will determine the members of this committee?
 - b. What funds will be used to pay for the activities of this committee?
 - c. Will there be a member on this committee dedicated to ensuring the protection of employees with religious and conscience objections?
6. On what statutory authority does HHS base this Guidance?

We look forward to your prompt response.

Sincerely,



James Lankford
United States Senator



James Risch
United States Senator



Mike Lee
United States Senator



Marco Rubio
United States Senator



Steve Daines
United States Senator



Ted Cruz
United States Senator