

How Oregon Ruling Affects Federal Gender Care Crackdown

By Benjamin Mizer, Paula Ramer and Lisa Re (May 5, 2026)

On April 18, the [U.S. District Court for the District of Oregon](#) **vacated** Health and Human Services Secretary Robert F. Kennedy's declaration deeming certain pediatric gender-affirming care treatments "neither safe nor effective," holding that the agency lacked authority to unilaterally override established standards of care.

In a sweeping decision, the court also entered declaratory and injunctive relief barring HHS from enforcing the declaration or implementing similar policies out the bounds of its authority.

The Kennedy Declaration

In January 2025, President Donald Trump issued an executive order that directed HHS to prohibit or limit gender-affirming care for minors and instructing Kennedy to take all appropriate actions, including regulatory and subregulatory measures.

Kennedy followed that order on Dec. 18, with a declaration addressing gender-affirming care for minors. Relying in part on a Nov. 19 HHS report on pediatric gender dysphoria,[1] the Kennedy declaration purported to deem pediatric gender-affirming care "neither safe nor effective," and therefore outside professionally recognized standards of healthcare.

The Kennedy declaration defined "sex-rejecting procedures" broadly to include pharmaceutical and surgical interventions — such as puberty blockers, cross-sex hormones and certain surgeries — intended to align an individual's physical characteristics with their gender identity.

Importantly, the Kennedy declaration also invoked HHS' exclusion authority, stating that the Office of the Inspector General may exclude providers from participation in federal healthcare programs if they furnished items or services to patients that fail to meet professionally recognized standards of healthcare.



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By linking its conclusions regarding gender-affirming care to potential exclusion under Title 42 of the U.S. Code, Section 1320a-7(b)(6)(B), the Kennedy declaration signaled that providers offering such services could be excluded.

HHS quickly amplified that message. On Dec. 26, then-HHS general counsel Michael Stuart announced on social media that he had referred Seattle Children's Hospital to the OIG based on the Kennedy declaration.

Over the following weeks, he invoked the Kennedy declaration to refer at least 16 additional hospital systems and federally qualified health centers for potential exclusion, and asserted that more than 30 hospitals and hospital systems stopped offering gender-affirming care.[2] HHS also pointed to the reports of hospitals that had stopped providing care as evidence that the Kennedy declaration had worked.

Procedural History

On Dec. 23, 19 states and the [District of Columbia](#) sued Kennedy, HHS Inspector General Thomas Bell, HHS and the OIG in the U.S. District Court for the District of Oregon, arguing that the Kennedy declaration violated the Administrative Procedure Act.[3]

On Jan. 6, the plaintiff states, joined by Hawaii and Nevada, moved for summary judgment, asserting that the Kennedy declaration constituted unlawful final agency action, exceeded the secretary's statutory authority, violated Medicare and APA notice-and-comment requirements, and conflicted with the Medicaid Act.[4]

The defendants moved to dismiss, arguing the court lacked jurisdiction and that the claims failed on the merits.[5] On March 19, after nearly six hours of oral argument, U.S. District Judge Mustafa T. Kasubhai issued a preliminary ruling from the bench in the plaintiffs' favor.[6]

Court's Decision

Judge Kasubhai's sharply critical opinion held that Kennedy "unlawfully issued a declaration threatening to cut federal funding to medical providers who provided gender-affirming care to minors," and that his failure to follow proper procedure caused significant disruption and distress for providers, families and children.[7]

The court first rejected the defendants' threshold arguments, finding that the Kennedy

declaration was a final agency action because it established a new standard of care, superseded existing ones and created immediate legal consequences for providers.

The court further found the case ripe for review, pointing to the dozens of healthcare providers that had already suspended gender-affirming care in response to the Kennedy declaration and social media posts. The court colorfully dismissed the defendants' argument that providers' decisions to suspend care were voluntary.

Turning to the merits, the court granted summary judgment for the plaintiffs on all four counts. It found the Kennedy declaration violated both Medicare and APA notice-and-comment requirements because it functioned as a binding rule that constrained OIG discretion, but was not promulgated by the notice-and-comment process.

The court further found the Kennedy declaration exceeded the secretary's statutory authority, noting that no statute granted HHS the power to unilaterally declare an entire treatment modality unsafe and ineffective — and that the Medicare statute itself explicitly prohibits federal officers from exercising "any supervision or control over the practice of medicine."

Finally, the court found that the Kennedy declaration unlawfully conflicted with the plaintiff states' federally approved Medicaid plans, which the secretary is statutorily obligated to fund unless HHS first provides notice and an opportunity for a hearing, which it did not do.

As relief, the court vacated the declaration, issued a declaratory judgment that the secretary lacks authority to unilaterally supersede state standards of care for gender-affirming care, and entered a permanent injunction barring the defendants from enforcing the declaration or any materially similar policy.

The court declined to rely on declaratory relief alone, citing the administration's "significant and troubling history of evading or flouting prior court orders" and concluding that an injunction backed by contempt power was necessary to provide the plaintiff states with adequate relief.

What's Next

Though Judge Kasubhai's ruling may be viewed favorably by patients and healthcare providers who provide pediatric gender-affirming care, by the time the decision was issued, some providers had already suspended services in response to perceived enforcement

risk.

And because the defendants will almost certainly appeal this decision to the [U.S. Court of Appeals for the Ninth Circuit](#), Judge Kasubhai's ruling might have limited immediate practical effect.

This decision also takes its place in the broader context of federal actions aimed at stopping pediatric gender-affirming care. The Kennedy declaration was only one piece of the federal government's coordinated campaign, which also includes proposed rulemaking, the potential use of exclusion authority, and investigative efforts across a number of agencies.[8]

On the day after the Kennedy declaration was issued, the [Centers for Medicare and Medicaid Services](#) issued two proposed rules that would strictly limit healthcare providers' ability to provide gender-affirming care to minors.

The first proposed rule — titled "Medicare and Medicaid Programs; Hospital Condition of Participation: Prohibiting Sex-Rejecting Procedures for Children" — seeks to prohibit Medicare and Medicaid-participating hospitals from providing pediatric gender-affirming care.[9]

The proposed rule broadly restricts any pharmaceutical or surgical intervention intended to align an individual's physical appearance with a gender identity different from their sex, including by suppressing biological development or altering primary or secondary sex characteristics.

The second proposed rule — "Medicaid Program; Prohibition on Federal Medicaid and Children's Health Insurance Program Funding for Sex-Rejecting Procedures Furnished to Children" — would bar State Medicaid programs from covering such procedures for individuals under 18 and prohibit the use of federal Medicaid funds for that purpose.[10] It would also require state CHIP plans to exclude coverage for these procedures for individuals under 19, and prohibit the use of federal CHIP funds to support them.

The OIG's exclusion authority remains an open question. As a condition of extending the briefing deadline, on Jan. 6, the OIG agreed not to issue any notices of intent to exclude or notices of exclusion based on the Kennedy declaration until the court ruled on summary judgment or 30 days after oral argument.[11]

Although the injunction will prevent enforcement against providers in the plaintiff states, it remains unclear whether HHS-OIG will pursue exclusion actions in other states or on grounds unrelated to the Kennedy declaration. As a result, providers will continue to face a complex and evolving regulatory landscape.

In addition, the administration's strategy includes [U.S. Department of Justice](#) subpoenas to hospitals and [Federal Trade Commission](#) inquiries directed at organizations involved in developing clinical standards.

Although a number of hospitals and other providers of gender-affirming care successfully moved to quash the DOJ subpoenas in federal district court, the DOJ has [appealed](#) those decisions.

Of note, on April 30, the DOJ filed a petition for the [U.S. District Court for the Northern District of Texas](#) to enforce a subpoena against Rhode Island Hospital. The court granted the motion to compel the same day.

On May 4, the Child Advocate for the State of Rhode Island filed an emergency motion to quash the same subpoena in the [U.S. District Court for the District of Rhode Island](#). This is a case worth watching closely, as the DOJ's next steps may signal whether enforcement actions against other hospitals are forthcoming.

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[1] <https://opa.hhs.gov/sites/default/files/2025-11/gender-dysphoria-report.pdf>.

[2] <https://x.com/HHSGCMikeStuart/status/2018828343144010025>.

[3] https://litigationtracker.law.georgetown.edu/wp-content/uploads/2025/12/State-of-Oregon-v.-Kennedy_2025.12.23_COMPLAINT.pdf.

[4] https://litigationtracker.law.georgetown.edu/wp-content/uploads/2025/12/State-of-Oregon-v.-Kennedy_2026.01.06_PLAINTIFFS-MOTION-FOR-SUMMARY-JUDGMENT.pdf.

[5] https://litigationtracker.law.georgetown.edu/wp-content/uploads/2025/12/State-of-Oregon-v.-Kennedy_2026.02.10_DEFENDANTS-MOTION-TO-DISMISS.pdf.

[6] <https://www.courthousenews.com/federal-judge-blocks-rfk-declaration-targeting-gender-affirming-care/>.

[7] <https://www.bloomberglaw.com/product/blaw/document/X46VH9KJE2U81RBIHCR83VACAGO>.

[8] <https://www.justice.gov/opa/pr/department-justice-subpoenas-doctors-and-clinics-involved-performing-transgender-medical>.

[9] <https://www.federalregister.gov/documents/2025/12/19/2025-23465/medicare-and-medicaid-programs-hospital-condition-of-participation-prohibiting-sex-rejecting>.

[10] <https://www.federalregister.gov/documents/2025/12/19/2025-23464/medicaid-program-prohibition-on-federal-medicaid-and-childrens-health-insurance-program-funding-for>.

[11] https://litigationtracker.law.georgetown.edu/wp-content/uploads/2025/12/State-of-Oregon-v.-Kennedy_2026.01.06_JOINT-MOTION-ON-BRIEFING-SCHEDULE.pdf.