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TN ATTORNEY GENERAL'S OFFICE LEADS 20 STATE COALITION IN FILING COMMENT ON PROPOSED HHS REGULATION

Nashville- Tennessee Attorney General Jonathan Skrmetti is leading a coalition of 20 states in filing a Public Comment in response to the U.S. Department of Health and Human Services' [proposed regulation](#) related to Section 1557 of the Patient Protection and Affordable Care Act (ACA).

Tennessee and the coalition states have a strong interest in the interpretation and enforcement of Section 1557 due to its broad implications and effects on healthcare in Tennessee.

In his comments to Health and Human Services Secretary Xavier Becerra, General Skrmetti notes that the Department's proposed redefinition of "sex" to include "gender identity" would deviate from the language of the statute, promote sex-based discrimination, threaten constitutional rights, and create unnecessary obstacles for healthcare providers.

"This regulation seeks to rewrite the law without going through the legislative process. That's not how our system works," said General Skrmetti. "This sort of unilateral action deprives the people of a voice in the process and undermines the legitimacy of federal law."

The Public Comment points out several issues of concern.

- The proposed regulation ignores the text of the relevant statute and relies on judicial precedent that does not support the proposed changes in law.
- The proposed regulation fails to address the context of Title IX's use of the terms "sex" and "sex discrimination."
- The proposed regulation fails to consider the significant effects it will have on regulated parties.
- The proposed regulation relies on an interpretation of Title IX that has been enjoined by a federal court.

The Department's proposed regulations follow an [Executive Order](#) issued by President Joe Biden on January 20, 2021, which directed the head of each agency to propose new regulations to redefine "sex" to include "gender identity," a meaning never contemplated by Congress when the law was passed.

The Department followed suit with this proposed regulation that adopts an ahistorically broad definition of “sex” and rescinds a previous regulation that adhered to the statutory text. Tennessee has led multiple state coalitions in submitting public comments, sending letters, and filing lawsuits to push back on the Administration’s unlawful distortion of statutory law.

The U.S. District Court for the Eastern District of Tennessee stopped the Department of Education from enforcing similar guidance on July 17th, 2022, following a [lawsuit](#) filed by Tennessee and nineteen other states.

Tennessee is joined on the Public Comment by the attorneys general of the following states: Alabama, Arkansas, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Montana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, and West Virginia.

To read the Comment, click below:

<https://www.tn.gov/content/dam/tn/attorneygeneral/documents/pr/2022/pr22-39-comment.pdf>