

Removal of Mentions of the Term "Gender" from HHS's Office for Civil Rights "Discrimination on the Basis of Sex" Webpage

Website Monitoring Mini-report

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The purpose of "mini-reports" is to inform journalists, experts, and the public about a reported or developing news story. A "mini-report" is a condensed version of one of the Web Integrity Project's [website monitoring reports](#), created on a rapid timeline to explain a narrowly scoped alteration, and is not a comprehensive analysis of a website.

Summary of findings and context: In the beginning of 2018, HHS's Office for Civil Rights' (OCR) "Discrimination on the Basis of Sex" page (Webpage 1) was altered to remove 10 mentions of the term "gender." These changes preceded [reporting](#) by *The New York Times* from October 21, revealing that HHS has internally circulated a memo that aims to legally redefine sex as an immutable trait determined by one's genitalia at birth, which would impact how OCR oversees Title IX's prohibition on sex discrimination in educational programs receiving federal financial assistance. WIP has previously detailed changes in language pertaining to sex discrimination on OCR's webpages about Section 1557 of the Affordable Care Act, which are documented in our [website monitoring report](#) and contextualized further in our [blog post](#).

Webpage 1:

Page title: Discrimination on the Basis of Sex

Page status: Altered (*this occurred between **February 26, 2018, 4:21 PM ET** and **March 5, 2018, 12:28 PM ET** according to WIP's website monitoring software. The Internet Archive's Wayback Machine versions of the page, which correspond to a wider time window due to sporadic captures of snapshots, are provided below*)

- Before: [September 16, 2017](#)
- After: [May 23, 2018](#)

URL: <https://www.hhs.gov/civil-rights/for-individuals/sex-discrimination/index.html>

Description of change:

1. The phrase "discrimination on the basis of ... sex (**gender**)" has been altered to "discrimination on the basis of ... sex" in all 10 instances where it appeared on the page. These instances were found in the sections: "Education and Health Training Programs," "Specific Programs," and "Block Grants."
 - a. Parentheticals containing the term "gender" have been removed from the page. "(Gender)" no longer follows the term "sex" in mentions of "discrimination on the basis of ... sex."
 - b. The same alteration was made on the "Civil Rights for Individuals and Advocates" page to the text in a box with the "Sex" header, which links to this page (see versions before the change from [January 23, 2018](#) and after the change from [April 24, 2018](#)).
2. Currently, the page uses the term "gender" once in the following text: "On December 31, 2016, the U.S. District Court for the Northern District of Texas issued an opinion in

Franciscan Alliance, Inc. et al v. Burwell, enjoining the Section 1557 regulation’s prohibitions against discrimination on the basis of gender identity and termination of pregnancy on a nationwide basis.”

- a. The [Section 1557 regulation](#) states that HHS can prohibit forms of sex discrimination, including discrimination based on an individual’s sex, pregnancy, gender identity, and sex stereotyping.
- b. The text above describes an [injunction](#) that prohibits HHS from enforcing protections against discrimination on the basis of gender identity and termination of pregnancy.

Screenshot: A side-by-side comparison of a portion of the [September 16, 2017](#) and [May 23, 2018](#) versions of the page, as captured by the Internet Archive’s Wayback Machine. Red highlights indicate removed content.

Before	After
<p>INTERNET ARCHIVE Wayback Machine 33 captures 24 Oct 2018 - 22 Oct 2018</p> <p>https://www.hhs.gov/civil-rights-for-individuals/sex-discrimination/index.html [GO] JUL SEP 16 MAY 2018</p> <h3>Education and Health Training Programs</h3> <p>Title IX of the Education Amendments of 1972, as amended, (20 USC § 1681) prohibits discrimination on the basis of sex (gender) in federally-assisted education programs. The non-discrimination protections apply to student recruitment, admissions, educational programs (including individual courses), housing, counseling, financial and employment assistance, health and insurance benefits and services. It also covers employment practices and benefits (45 CFR Part 86).</p> <p>Sections 794 & 855 of the Public Health Service Act (42 USC §§ 295m & 296g) prohibits discrimination on the basis of sex (gender) in federally assisted health training programs (45 CFR Part 83).</p> <h3>Specific Programs</h3> <p>Section 533 of the Public Health Service Act prohibits discrimination on the basis of age, race, color, national origin, disability, sex (gender), or religion in Projects for Assistance in Transition from Homelessness (42 USC § 290cc-33).</p> <p>The Family Violence Prevention and Services Act prohibits discrimination on the basis of race, color, national origin, disability, sex (gender), or religion in programs, services, and activities funded under this Act (42 USC § 10406).</p> <p>The Low-Income Home Energy Assistance Act of 1981 prohibits discrimination on the basis of age, race, color, national origin, disability, or sex (gender) in programs, services, and activities funded under this Act (42 USC § 8625).</p> <p>The Communications Act of 1934, as amended by Equal Employment Opportunity provisions, prohibit employment discrimination on the basis of age, race, color, religion, national origin, or sex by (gender) by Federally-funded public telecommunication entities (47 USC § 398).</p> <h3>Block Grants</h3> <p>Section 508 of the Social Security Act prohibits discrimination on the basis of age, race, color, national origin, disability, sex (gender), or religion in the Maternal and Child Health Services Block Grant (42 USC § 708).</p>	<p>INTERNET ARCHIVE Wayback Machine 33 captures 24 Oct 2018 - 22 Oct 2018</p> <p>https://www.hhs.gov/civil-rights-for-individuals/sex-discrimination/index.html [GO] SEP MAY 23 AUG 2018</p> <h3>Education and Health Training Programs</h3> <p>Title IX of the Education Amendments of 1972, as amended, (20 USC § 1681) prohibits discrimination on the basis of sex in federally-assisted education programs. The non-discrimination protections apply to student recruitment, admissions, educational programs (including individual courses), housing, counseling, financial and employment assistance, health and insurance benefits and services. It also covers employment practices and benefits (45 CFR Part 86).</p> <p>Sections 794 & 855 of the Public Health Service Act (42 USC §§ 295m & 296g) prohibits discrimination on the basis of sex in federally assisted health training programs (45 CFR Part 83).</p> <h3>Specific Programs</h3> <p>Section 533 of the Public Health Service Act prohibits discrimination on the basis of age, race, color, national origin, disability, sex, or religion in Projects for Assistance in Transition from Homelessness (42 USC § 290cc-33).</p> <p>The Family Violence Prevention and Services Act prohibits discrimination on the basis of race, color, national origin, disability, sex, or religion in programs, services, and activities funded under this Act (42 USC § 10406).</p> <p>The Low-Income Home Energy Assistance Act of 1981 prohibits discrimination on the basis of age, race, color, national origin, disability, or sex in programs, services, and activities funded under this Act (42 USC § 8625).</p> <p>The Communications Act of 1934, as amended by Equal Employment Opportunity provisions, prohibit employment discrimination on the basis of age, race, color, religion, national origin, or sex by Federally-funded public telecommunication entities (47 USC § 398).</p> <h3>Block Grants</h3> <p>Section 508 of the Social Security Act prohibits discrimination on the basis of age, race, color, national origin, disability, sex, or religion in the Maternal and Child Health Services Block Grant (42 USC § 708).</p>

Note: Other pages on the OCR website, including the [“Disability Laws, Regulations, and Guidance” page](#) and the [“Laws and Regulations Enforced by OCR” page](#), have not been altered at the time of this report’s writing to remove similar instances of the “discrimination on the basis of ... sex (gender)” phrase.