

December 19, 2019

Secretary Alex Azar
Department of Health and Human Services
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW,
Washington, DC 20201

36 MHLG Members and Affiliates Oppose the Health and Human Services Grants Regulation Proposed Rule, RIN 0991 -AC16

The undersigned members and affiliates of the Mental Health Liaison Group write to express our opposition to a proposed revision and repromulgation of provisions of 45 C.F.R. Part 75 that were set forth in a final rule published in the Federal Register at 81 FR 89393 (Dec. 12, 2016) (Final Rule), in particular the amendment limiting the scope and effect of nondiscrimination protections in the administration of HHS programs and services at §75.300.

Prior to the Administration's announcement of its decision not to enforce the December 2016 final rule, HHS' central nondiscrimination regulation for federal awards required HHS-funded service providers not to discriminate based on any non-merit factor including race, color, national origin, disability, sexual orientation, gender identity, sex, or religion. The regulation also made it clear that individuals in married same-sex couples are to be treated as married for all HHS grant programs. These regulations are reasonable and have functioned well for the vast majority of service providers.

MHLG members have supported these regulations, and the undersigned organizations have serious concerns about the new proposed rule that strips away these comprehensive nondiscrimination protections and introduces significant confusion for both providers and beneficiaries of federally-funded HHS programs. We believe the new rule would allow service providers that receive HHS federal grant money for numerous programs to discriminate based on many other non-merit factors, including sexual



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orientation, gender identity, sex, and religion. Discrimination has no place in federally-funded programs meant to promote the health and welfare of those in need.

The Proposed Rule Leaves LGBTQ People, Women, Religious Minorities Vulnerable

Among the taxpayer-funded programs where LGBTQ people, women, and religious minorities would be vulnerable to discrimination under the revised rule are programs older adults rely on for congregate meals, legal services, and transportation; Head Start programs for children; foster and adoption programs that help children; and many more. We are particularly concerned that such discrimination would not be limited to those providers who claim a sincerely-held religious objection to serving particular groups of people; under this proposed rule, those who receive HHS grants wouldn't even have to give a reason why they want to discriminate on these bases.

The health disparities experienced by LGBTQ people are well-documented,^[1] and can be attributed at least in part to these communities' experiences of discrimination or their avoidance in seeking out care because of their credible fear of discrimination. Similarly, LGBTQ youth are disproportionately experiencing mental health conditions^[2] and are overrepresented within the foster care system. They deserve the best chance of finding permanent, loving homes - a chance which is lessened when adoption and foster care providers are granted the ability to pick and choose who to serve based on criteria unrelated to the best interests of the child, including a potential parent's religion, marital status, sexual orientation, or gender identity.

The proposed rule will also promote discrimination against women, religious minorities, and others such as survivors of domestic violence in some critical programs. Because the proposed rule strips away clear protections against discrimination:

- An evangelical Christian child placement agency that receives HHS grants could turn away Jewish, Muslim or Catholic families seeking to provide a home to a child. This rule would create a license to discriminate for agencies like Miracle Hill in South Carolina, which has already done exactly this.
- An agency providing foster care services could keep a child in a group home rather than place them with qualified Jewish or LGBTQ parents.
- Children of same-sex parents could be denied enrollment in Head Start and other federally funded childcare facilities.
- Federally funded after-school programs could refuse to serve the children of LGBTQ parents—and could also exclude transgender youth.

- A senior services center could continue to receive government funding while ignoring sexual harassment of women it serves.
- Community meal programs designed to support older adults could refuse to deliver food to older Americans who are LGBTQ.

The Proposed Rule Will Cause Confusion Even Where Nondiscrimination Is Required

If the proposed rule goes into effect, it will contribute to serious and illegal discrimination committed by federally -funded providers who erroneously believe the new rule has removed their obligation to serve all beneficiaries, regardless of their religion, sex, sexual orientation or gender identity. This is because many of the HHS programs covered by the central nondiscrimination rule described above that would be amended by this change are also covered by other nondiscrimination statutes or regulations or have their own program -specific laws and program-specific regulations prohibiting discrimination based on these protected class traits, and these statutory and regulatory protections would remain in place. Understanding the impact of the proposed rule to roll back the central nondiscrimination regulation is complicated and ultimately requires a program -by-program analysis. Unfortunately, many providers and beneficiaries will not perform this analysis or will misunderstand the implications of the rule, resulting in providers engaging in illegal discrimination or would -be beneficiaries opting not to seek service, out of a mistaken belief that they could legally be discriminated against because of who they are. This is particularly true in programs administered in states or localities with explicit nondiscrimination protections on the basis of sex, sexual orientation, gender identity, or religion, who will have to determine which law or rule governs. This confusion and subsequent discrimination undermines the purpose of federally -funded programs under HHS's authority.

Conclusion

In conclusion, the undersigned members of the Mental Health Liaison Group strongly encourage the Department of Health and Human Services to withdraw this proposed Rule and return to enforcement of the previously -issued Final Rule protecting all beneficiaries of federally funded programs under HHS from discrimination on the basis of any non-merit factor. We appreciate your consideration of our views.

Sincerely,

American Art Therapy Association
American Association for Geriatric Psychiatry
American Association for Marriage and Family Therapy
American Association for Psychoanalysis in Clinical Social Work
American Association of Suicidology
American Dance Therapy Association
American Foundation for Suicide Prevention
American Group Psychotherapy Association
American Mental Health Counselors Association
American Nurses Association
American Psychological Association
Anxiety and Depression Association of America
Association for Ambulatory Behavioral Healthcare
Association for Behavioral & Cognitive Therapies
Depression and Bipolar Support Alliance
Eating Disorders Coalition for Research, Policy & Action
Global Alliance for Behavioral Health and Social Justice
The Jewish Federations of North America
Legal Action Center
Mental Health America
National Alliance on Mental Illness
National Association of School Psychologists
National Association of Social Workers
National Council for Behavioral Health
National Disability Rights Network
National Register of Health Service Psychologists
Postpartum Support International
Residential Eating Disorders Consortium
School Social Work Association of America
The Kennedy Forum
The National Alliance to Advance Adolescent Health
The National Association for Children's Behavioral Health
The National Association for Rural Mental Health
The National Association of County Behavioral Health and Developmental Disability
Directors

The Trevor Project
Treatment Communities of America

[1] Shabab Ahmed Mirza and Caitlin Rooney, “Discrimination Prevents LGBTQ People From Accessing Health Care,” Center for American Progress. Jan. 18, 2018. Access Dec. 16, 2019.
<https://www.americanprogress.org/issues/lgbt/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care/>

[2] <https://www.mhanational.org/lgbtq-mental-health-insights-mha-screening>